(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following addresses:

1. With respect to permits and certificates:

Bureau of New Source Review
Air Quality Permitting Program
Department of Environmental Protection
401 East State Street, Second Floor
PO Box 027
Trenton, New Jersey 08625–0027

2. With respect to emission statement submittals:

Bureau of Air Quality Planning
Department of Environmental Protection
401 East State Street, Seventh Floor
PO Box 418
Trenton, New Jersey 08625–0418

3. With respect to compliance reports or enforcement actions:

Administrator
Air and Environmental Compliance and Enforcement
Division of Enforcement Field Operation
Department of Environmental Protection
401 East State Street, Fourth Floor
PO Box 422
Trenton, New Jersey 08625–0422

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (b), changed names and addresses.

7:27–1.9 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:27–1.26 through 1.30, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

7:27-1.26 Hearing before disclosure of information for which a confidentiality claim has been made

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:27A-3.4(a), and shall be delivered to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:27A-3.4(a);

2. The Department receives the request after disclosure of the assertedly confidential information occurs;

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:27-1.21.

(c) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:27.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27-1.27 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:27-1.20 through 1.26.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27-1.28 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27-1.29 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27-1.30 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or

2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Administrative change.
See: 32 N.J.R. 1796(a).

7:27-1.31 Right to enter

(a) The Department and its representatives shall have the right to enter and inspect at any time, any facility or building, or portion thereof, including all documents and equipment on the premises, in order to ascertain compliance or noncompliance with this chapter or with any preconstruction permit, certificate, operating permit, order, authorization or other legal document issued pursuant thereto, or to verify any information submitted to the Department. This right is absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested, and compliance with appropriate safety standards. This right includes, but is not limited to, the right to:

1. Enter upon the premises of the facility;

2. Sketch or photograph any portion of the facility;

3. Enter upon the premises of a facility where records are maintained under the conditions of the preconstruction permit, certificate or operating permit;

4. Review any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

5. Copy or photograph any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

6. Inspect any part of the facility, including any equipment (including any equipment used for monitoring and any air pollution control apparatus), practices, or operations, regulated or required under the preconstruction permit, certificate or operating permit;

7. Interview any employee or representative of the owner or operator; and

8. Test or sample any substance or material.

(b) No person shall obstruct, hinder or delay the Department or its representatives in its exercise of its rights under (a) above.

(c) An owner or operator of a facility, and any appropriate employee or representative of any owner or operator, shall, upon request, assist the Department and its representatives in the performance of any inspection. Such assistance shall include, but shall not be limited to, making available sampling equipment and facilities necessary to conduct sampling to determine the nature and quantity of any air contaminant emitted by the facility.

(d) During any sampling or testing conducted by the Department, any equipment, and all components connected to, attached to, or serving the equipment, shall be operated under normal operating conditions, or under conditions set forth in any preconstruction permit, certificate, operating permit, order or other State or Federal authorization covering the equipment.

New Rule, R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Formerly "Inspections", at 7:27-8.25.

7:27-1.32 Request for an adjudicatory hearing

(a) Any applicant, registrant, or permittee may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1 regarding a decision made by the Department to:

1. Deny an application, or any part thereof, for a permit or certificate, for a modification or revision thereof, or for a renewal or a variance; or not accept a registration;

2. Impose any condition on its approval which the applicant, registrant, or permittee finds objectionable;

3. Revoke or withdraw a previously issued approval; or

4. Deny the request for a stay under N.J.A.C. 7:27-1.33.

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, New Jersey 08625-402

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Administrative change in (b).
See: 23 N.J.R. 3325(b).
Recodified from N.J.A.C. 7:27-8.12 and amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (a), deleted "regarding any preconstruction permit and certificate, amendment, certificate renewal, variance, or registration," preceding "may contest" in the introductory paragraph, and changed N.J.A.C. reference in 4.
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote (a).
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Rewrote (a).

7:27-1.33 Request for a stay of the effective date of a departmental decision

(a) The Department may grant a stay of the effective date of a decision to revoke any previous approval. The applicant for a stay shall submit documents which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

1. The granting of the stay is required as a constitutional or statutory right; or

2. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

(c) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(d) Written requests for a stay of the effective date of the Department's decision shall be made to the Department within 20 days of the date upon which the notice of decision was received.

(e) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

(f) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Recodified from N.J.A.C. 7:27-8.13 by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27-1.34 through 7:27-1.35 (Reserved)

7:27-1.36 Applicability

(a) Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable provisions of this chapter.

(b) A facility's actual emissions of carbon dioxide (CO_2) or potential emissions of CO_2, or an item of equipment's actual emissions of CO_2 or potential emissions of CO_2, or actual emissions of CO_2 or potential emissions of CO_2 from an item of control apparatus, is not a basis for any of the following under this chapter:

1. A requirement to include in a permit application information about CO_2 emissions;

2. A requirement to obtain a permit under N.J.A.C. 7:27-8 or 22;

3. A limitation on CO_2 emissions in a permit;

4. A requirement for a state-of-the-art analysis with respect to the control of CO_2 emissions;

5. A fee;

6. A facility being considered a "major facility";

7. An item of equipment or a source operation being considered a "significant source"; or

8. The applicability of any other requirement under this chapter, other than the requirements of N.J.A.C. 7:27-21.

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Amended by R.2005 d.392, effective November 21, 2005.
See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).
Designated existing rule as subsection (a); added (b)

7:27-1.37 Severability

If any portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

In (k), inserted "approval by the Department of a" following "No" in the first sentence, and changed N.J.A.C. reference in the second sentence; rewrote (*l*); and added (*o*).
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
In (a), substituted "or control apparatus serving the significant source" for "that is not covered by a permit and certificate"; in (b), inserted "or control apparatus serving the significant source" preceding "without".
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Reserved (k) and (*l*); rewrote (*o*).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Deleted (*o*).

Law Review and Journal Commentaries

New Rules Establish Clean Air Act Standards, 132 N.J.L.J. No. 8, S10 (1992).

State Operating Permits Bring Major changes to New Jersey's Air Pollution Control Program. Paul H. Schneider, Peter L. Benza, 160 N.J.Law. 20 (Mag.) (April 1994).

Case Notes

Temporary operating certificate was license entitling operator to hearing prior to nonrenewal. New Jersey Dept. of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J.Super. 591, 575 A.2d 895 (A.D.1990).

Orders to cease violation of failure to obtain a permit and certificate to install and operate furnace boosting equipment were upheld. Midland Glass Co., Inc. v. Dept. of Environmental Protection, 136 N.J.Super. 194, 345 A.2d 353 (App.Div.1975), certification dismissed 70 N.J. 152, 358 A.2d 199 (1976).

Permit requirement for structural changes. D.E.P. v. Midland Glass Co., 145 N.J.Super. 108, 366 A.2d 1343 (App.Div.1976), certification denied 73 N.J. 65, 372 A.2d 330 (1977).

Respondent's laminating facility violated air pollution regulations for failing to continuously monitor carbon monoxide emissions; its independent auditor mistakenly used the wrong standard of 100 parts per million of carbon monoxide in a Relative Accuracy Test Audit, resulting in a finding of compliance with the applicable emission limit when, in fact, the monitor was undeniably "out-of-control" for 125 days (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN LEXIS 177). N.J. Dep't of Envtl. Prot. v. Lamart Corp., OAL Dkt. No. EEQ 7868-04 and EEQ 7873-04 (Consolidated), 2008 N.J. AGEN LEXIS 677, Final Decision (April 17, 2008).

Because a permit clearly required that operation of an entire sludge incinerator system cease within 24 hours if the continuous emission monitor system (CEM) became "inoperable," operation of the sludge incinerator without the CEM clearly violated the permit and constituted operation of incinerator equipment with a "component connected or attached to" the permitted equipment or control apparatus that was not "functioning properly" and "in accordance with the preconstruction permit and certificate and all conditions and provisions thereto," for which respondent was properly fined. The central question was not whether the CEM was equipment within the meaning of the regulations but whether respondent operated in conformity with certain permit conditions, including that the CEM system be attached and operating properly. N.J. Dep't of Envtl. Prot. v. Parsippany-Troy Hills Twp., OAL Dkt. No. EEQ 03009-04 and EEQ 03010-04 (Consolidated), 2008 N.J. AGEN LEXIS 646, Final Decision (March 10, 2008).

Failure to fulfill stack testing conditions set forth in permits for asphalt plants warranted imposition of civil penalties. Department of Environmental Protection v. Hamilton, 95 N.J.A.R.2d (EPE) 63

Violations of Solid Waste Management Act warranted imposition of civil penalties totaling $204,400. Department of Environmental Protection v. Standard Tank Cleaning, 95 N.J.A.R.2d (EPE) 31.

Incineration company violated permit and certificate; penalties imposed based upon current regulations. New Jersey Department of Environmental Protection v. Trofe Incineration Inc. 93 N.J.A.R.2d (EPE) 177.

Storage of hazardous chemical and use of reactor without proper permit; penalty. Department of Environmental Protection, Div. of Environmental Quality v. Polymer Systems Corp., 93 N.J.A.R.2d (EPE) 133.

Perforation of gasoline pump nozzle "vapor boot"; air pollution penalty assessed. New Jersey Department of Environmental Protection v. Columbus Texaco, 92 N.J.A.R.2d (EPE) 235.

Both "smog hog"/electrostatic precipitator and "Binks" spray booth were control apparatus requiring permits and operating certificates. Affiliated Manufacturers, Inc. v. State of New Jersey, 92 N.J.A.R.2d (EPE) 186.

Use of temporary certificate application as emissions limitations under certificate was not improper; stack tests established violations. U.S. Intec., Inc. v. Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 167.

Attaching control apparatus to ovens and kilns without appropriate permit constituted air pollution violation; penalty imposed. Certech, Inc. v. Division of Environmental Quality, 92 N.J.A.R.2d (EPE) 21.

7:27-8.4 How to apply, register, submit a notice, or renew

(a) This subchapter applies to:

1. Application for a preconstruction permit and operating certificate;

2. Application for a preconstruction permit and operating certificate for an environmental improvement pilot test;

3. Application for a preconstruction permit and operating certificate revision;

4. Application for a compliance plan change;

5. Registration of one or more sources under a general permit;

6. Registration of one of more used oil space heaters;

7. Notice of a seven-day-notice change;

8. Notice of an amendment to a preconstruction permit and operating certificate;

9. Notice of an amendment to a preconstruction permit and operating certificate for an environmental improvement pilot test;

10. Notice of an amendment to a registration;

11. Renewal of an operating certificate; and

12. Renewal of a registration.

(b) The actions listed at (a)1 through 12 above shall be submitted in accordance with (c) below on forms obtained from the Department. These forms, and information about these actions, may be obtained in the following ways:

1. In paper form, by contacting the Department at:

Bureau of Preconstruction Permits
Air Quality Permitting Element
Division of Air Quality
Department of Environmental Protection
401 East State Street, Second Floor
PO Box 027
Trenton, New Jersey 08625-0027
Telephone: (609) 292-6716 or 1-800-441-0065
Website: http://www.state.nj.us/dep/aqpp; or

2. In electronic form, through the Department's Remote AIMS Data Input User System (RADIUS) or Electronic New Jersey Environmental Management System (e-NJEMS), which can be accessed through the Department's website at the address in (b)1 above.

(c) A completed electronic or paper application form, registration form, notice or renewal application stub and renewal fee payment shall be submitted as follows:

1. Prior to January 1, 2008, a completed application form or notice shall be submitted to the Department on paper in accordance with (c)6 below, electronically other than via the Internet in accordance with (c)6 below, or electronically via the Internet, if available, in accordance with (c)7 below.

2. On or after January 1, 2008, a completed application form or notice shall be submitted to the Department electronically other than via the Internet in accordance with (c)6 below, or electronically via the Internet, if available, in accordance with (c)7 below.

3. Prior to January 1, 2010, a completed registration form shall be submitted to the Department on paper in accordance with (c)6 below, electronically other than via the Internet in accordance with (c)6 below, or electronically via the Internet, if available, in accordance with (c)7 below.

4. On or after January 1, 2010, a completed registration form shall be submitted to the Department electronically via the Internet, if available, in accordance with (c)7 below.

5. A completed renewal application stub and renewal fee payment shall be submitted on paper in accordance with (c)6 below, electronically other than via the Internet in accordance with (c)6 below, or electronically via the Internet in accordance with (c)7 below, and in accordance with all other rules in this subchapter regarding renewals including, but not limited to, N.J.A.C. 7:27-8.4(a), (f) and (n); 8.7(e) and (f); 8.13(b)1 and 2; 8.14(d); and 8.16(a)5.

6. A submission on paper, or on a removable electronic medium using one of the non-Internet-based electronic methods listed at http://www.state.nj.us/dep/aqpp, shall be sent via the postal service, a delivery service, or otherwise delivered, to the address listed on the application form, registration form, renewal application stub or listed in the non-Internet-based electronic method. If a person wishes to document the date upon which a completed application form, registration form, notice or renewal application stub and renewal fee payment is submitted, the person may submit the application form, registration form, notice or renewal application stub and renewal fee payment in a way that will provide documentation of the submittal date, such as by certified mail.

7. An Internet-based electronic submission shall be through an Internet-based electronic method listed at http://www.state.nj.us/dep/aqpp. If a person wishes to document the date of the Internet-based electronic submission, the person may print the appropriate website confirmation screen.

(d) An application, registration or notice shall contain such details regarding the equipment or control apparatus as necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any relevant State or Federal laws or regulations. In addition, if a source is required to document advances in the art of air pollution control (or SOTA) under N.J.A.C. 7:27-8.11, Standards for issuing a permit, the Department shall require information necessary to determine compliance with the SOTA requirement in accordance with N.J.A.C. 7:27-8.12, State of the art. Information required under this subsection may include description of processes, raw materials used, operating procedures, physical and chemical nature of any air contaminant, volume of gas discharged, and such other information as the Department considers necessary.

(e) All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 and N.J.A.C. 7:27-1. To claim information submitted as part of an application, registration or notice as confidential information, the applicant shall clearly mark the information as required at N.J.A.C. 7:27-1.6. The Department shall handle the confidentiality claim in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(f) Before an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the preconstruction permit and certificate and that only the air contaminants approved in the preconstruction permit are being emitted. If such testing is required, the applicant shall:

1. Submit a source-specific testing protocol to the Department, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate. The protocol shall be submitted at least 60 days prior to the anticipated date of the testing, except where the Department determines that a different submittal date is needed to allow for adequate testing;

2. Obtain approval of any required source-specific testing protocol from the Department in advance of conducting the testing;

3. Conduct the testing in accordance with a standard testing procedure acceptable to the Department or the approved source-specific testing protocol approved in advance by the Department;

4. Contact the Department to schedule mutually acceptable testing dates and startup times at least 30 days in advance of the planned testing date for any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has approved a different test notification requirement in the preconstruction permit or certificate;

5. Submit the test report to the Department within 30 days after the completion of the sampling, unless a longer period for submission is approved in writing by the Department; and

6. Have the test report from any source emission testing reviewed and certified by a licensed professional engineer, or by an industrial hygienist who has been certified by the American Board of Industrial Hygiene, prior to their submission to the Department.

(g) The application, registration or notice form shall require the applicant to provide information about significant sources. The applicant does not need to include information on any insignificant sources, except where emissions from the insignificant source are released through the same control device as emissions from a significant source. Where this occurs, the form shall require a list of the emissions from the insignificant source(s), as well as the emissions from the significant source. (Even if emissions from an insignificant source are listed, there is no fee for the insignificant source. This is stated at N.J.A.C. 7:27-8.6(k).)

(h) In some cases, an application, registration or notice (and the issued permit) may cover more than one source. Determination of the number of sources to be included shall depend on how each source is vented or, in the case of batch processing operations, how the product is made or it may be based on another basis for a logical grouping, provided that this basis is approved by the Department:

1. For a single source that exhausts through one or more stacks or vents, the applicant shall apply for one permit;

2. For multiple sources that exhaust through a common stack or vent, or through common stacks or vents, the applicant shall apply for one permit to cover all these sources;

3. For multiple sources that each exhaust through an individual stack or vent, the applicant shall either apply for a single permit for each source, so that the number of permits will be equal to the number of sources, or shall apply for permit(s) based on logical grouping(s) approved by the Department; and

4. For batch processing operations in which two or more sources make up a process unit, an applicant may choose to include these sources in one permit application.

(i) Any person who is applying for a preconstruction permit or permit revision shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.

(j) If required under N.J.A.C. 7:27-8.5, an application shall include a protocol for conducting an air quality impact analysis. The protocol shall include a risk assessment if one is required under N.J.A.C. 7:27-8.5.

(k) An application, registration or notice shall, if required by the applicable form, list each air contaminant which meets either of the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable reporting threshold set forth in Table A or B in Appendix 1; or

2. The source operation may, under normal operations, emit the air contaminant in an amount which may result in noncompliance with the air pollution odor provisions at N.J.A.C. 7:27-8.3(j) and N.J.A.C. 7:27-5.

(*l*) When listing raw materials on an application, registration or notice, the applicant shall list each HAP raw material separately. Each non-HAP raw material shall be:

1. Listed separately; or

2. Listed in a group of non-HAP raw materials with similar physical and/or chemical properties. If a group is listed, the group shall be sufficiently limited so as to allow the Department to evaluate whether the source, using those raw materials, shall comply with specified maximum emission rates and applicable requirements. The grouping shall be approved by the Department.

(m) When listing the emissions for a contaminant for which emissions information is required under (k) above:

1. The applicant shall separately list emissions for each HAP;

2. Emissions for each non-HAP shall be:

i. Listed separately; or

ii. If the contaminant is a VOC or particulate, the emissions may be listed in a group of total VOCs or total particulates; and

3. If a source emits a contaminant that is both a HAP and is also a VOC or a particulate, emissions of that air contaminant shall be listed separately as a HAP, and shall also be included in any grouping of total VOCs or total particulates.

(n) In order to ensure timely renewal of an operating certificate, a used oil space heater registration, or a registration under a general permit, the permittee shall submit the renewal application stub and the renewal fee payment in accordance with (c) above not less than 90 days prior to the

expiration date of the operating certificate, general permit registration or used oil space heater registration.

(*o*) Any person submitting an application, registration or notice to the Department pursuant to this subchapter shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27-1.39.

(p) Any information an applicant wants the Department to take into consideration in making a decision on an application, registration or notice shall be submitted to the Department in writing prior to the Department's making a decision on the application, registration or notice.

(q) If the permit and certificate shall cover any of the sources listed below, the application, registration or notice shall also include a demonstration that appropriate odor prevention measures will ensure compliance with the odor provisions at N.J.A.C. 7:27-8.3(j) and 7:27-5:

1. Sewage sludge treatment and storage equipment;

2. Municipal wastewater treatment equipment;

3. A landfill;

4. A municipal solid waste transfer station;

5. A composting facility;

6. Coffee roasting equipment; or

7. Equipment used for slaughtering, meat or shellfish processing, meat byproduct processing, or rendering.

(r) (Reserved)

(s) For a significant source included in any of the following categories, the Department has prepared permitting procedures manuals, which summarize certain alternative application and permitting procedures developed to take into consideration the specific characteristics of these sources. An applicant may elect, for sources in these categories, to use the alternative procedures, rather than the corresponding standard procedures set forth in this subchapter. The manuals are available from the Department at the address in (b) above:

1. Batch plants (see technical manual 1301);

2. Pilot plants (see technical manual 1302);

3. Dual plants (see technical manual 1302); and

4. Laboratory operations (see technical manual 1211).

Amended by R.1985 d.96, effective March 4, 1985 (operative April 5, 1985).
See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).
Substantially amended.
Amended by R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 22 N.J.R. 593(a), 23 N.J.R. 723(a).
In (a), added application and information request address. In (b), stylistic change and reference to new subsections 8.14 through 8.23 added. Replaced (c) and (d). Added (e), (f), (g), (h), (i).
Amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
New subsections (j) and (k) added pertaining to air quality impact analysis protocol approval.
Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Public Notice: Processing delays for temporary Certificates and renewals of five year Certificates.
See: 29 N.J.R. 3087(b).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.
Petition for Rulemaking.
See: 31 N.J.R. 691(a).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Deleted a former (r); recodified former (s) and (t) as (r) and (s); and in the new (r), changed N.J.A.C. reference.
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
In (b), rewrote 1 and 2; in (c), substituted "RADIUS or e-NJEMS" for "AIMS".
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Reserved (r).
Public Notice: Draft Revised Technical Manual 1302 for Pilot Plants.
See: 38 N.J.R. 342(a).
Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
Section was "Applications"; rewrote (a), (b), (c) and (n); and deleted "and" from the end of (s)2, substituted "; and" for a period at the end of (s)3 and added (s)4.
Public Notice: Announcement of Availability of Revised Technical Manual 1302 for Pilot Plants.
See: 38 N.J.R. 2890(c).

Case Notes

Evidence supported air pollution control permit for resource recovery facility. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al, 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

Pollution control equipment. Campbell Foundry Co. v. Sullivan, 119 N.J.Super. 51, 289 A.2d 801 (App.Div.1972).

7:27-8.5 Air quality impact analysis

(a) An application shall include an air quality impact analysis, conducted in accordance with this section, if:

1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR Part 52;

2. The proposed maximum allowable emissions of an air contaminant would result in a significant net emission increase, as calculated in accordance with N.J.A.C. 7:27-18.7, and:

i. The facility for which the application is submitted is a major facility as defined at N.J.A.C. 7:27-8.1; or

ii. The emission increase, proposed in the application for any air contaminant, by itself equals or exceeds the major facility threshold level which determines if a facility is a major facility for that air contaminant;

3. A State or Federal rule requires that an air quality impact analysis be performed; or

4. The Department determines that an air quality impact analysis is required for an accurate assessment of the environmental impact of the activities proposed.

(b) An air quality impact analysis shall include ambient air monitoring and risk assessment, if the Department determines that this is required for an accurate assessment of the impact of the activities proposed.

(c) An air quality impact analysis shall demonstrate whether the maximum controlled emissions stated on the preconstruction permit application may cause:

1. A violation of any State or Federal ambient air quality standard;

2. Any exceedance of a PSD increment as defined in 40 CFR Part 52;

3. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or

4. A contravention of any other criterion established by the Department to protect human health and welfare and the environment.

(d) An air quality impact analysis and/or a risk assessment shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and/or risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of a protocol can be found in the Air Quality Permitting Program's Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions). Additional technical guidance on preparing a protocol may be requested from:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
401 East State Street, 2nd Floor
PO Box 027
Trenton, New Jersey 08625-0027
Attention: Bureau of Air Quality Evaluation

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Former N.J.A.C. 7:27-8.5, Public comment, recodified to N.J.A.C. 7:27-8.10.

7:27-8.6 Service fees

(a) A registrant shall submit the applicable registration fee listed in the Base Fee Tables below with the completed registration form as follows:

1. If a registrant submits a paper registration form, the registrant shall submit the fee and form to the mailing address listed on the form.

2. If a registrant registers online, the registrant shall submit the fee as directed by the Internet-based registration software.

(b) After a person submits a completed application form or notice, the Department will assess and invoice the person for the base fee and any supplementary fee due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule below. The person shall submit any fees so assessed to the mailing address or website address listed on the invoice within 30 days of receipt of the invoice.

(c) (Reserved)

(d) If an application is denied or a permit is revoked, for any reason, and the applicant reapplies, the new application shall meet all application requirements, including the fee requirement.

(e) Any fee under this section that is subject to N.J.A.C. 7:1L may be paid in installments in accordance with N.J.A.C. 7:1L.

(f) Except for applications for sources at facilities subject to (g) below, a complete application fee for a preconstruction permit and certificate shall include all applicable fees as set forth below in the Base Fee Tables and the Supplementary Fee Schedule.

(g) The owner or operator of a facility subject to N.J.A.C. 7:27-22 is not required to pay the operating certificate fees set forth in Tables 1, 2, 5, 6 and 10 below after June 30, 1995. However, the owner or operator of a facility subject to N.J.A.C. 7:27-22 is required to maintain operating certificates for sources at the facility under this subchapter until the issuance of an operating permit for the facility. In addition, after June 30, 1995 the owner or operator shall pay fees in

accordance with N.J.A.C. 7:27-22.31 for any significant modification, as defined in the operating permit rules at N.J.A.C. 7:27-22.1, while the issuance of an operating permit for the facility is pending.

(h) Fees due to the Department may be paid by credit card, Internet electronic checking, personal check, or corporate check, made payable to "Treasurer, State of New Jersey."

(i) and (j) (Reserved)

(k) There is no fee for an insignificant source, even if emissions from an insignificant source must be listed on an application under N.J.A.C. 7:27-8.4(g).

(*l*) An increase of the fees in the Base Fee Tables and Supplementary Fee Schedule shall be determined in accordance with this subsection.

1. The Department shall consider a fee increase operative for the five-year periods in Table 1.

2. An increase shall be calculated using an inflation factor based on the Consumer Price Index, All Urban Consumers, United States city average, all items (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, available at http://www.bls.gov/cpi. The inflation factor used shall be the percent change over the preceding five-year period for the CPI-U, except the preceding six-year period shall be used to calculate the January 1, 2010 through January 30, 2015 five-year period.

3. The inflation factor for each five-year period shall be calculated as follows:

$$\text{Inflation Factor} = 100 \times \frac{\text{Recent CPI-U} - \text{Base CPI-U}}{\text{Base CPI-U}}$$

Where:

100 = Multiplier to convert fraction into percent

Recent CPI-U = the CPI-U for the August before January 1 of the next five-year period in Table 1. For example, a five-year period in Table 1 starts on January 1, 2015. The August before January 1, 2015 is August 2014. Therefore, the Recent CPI-U would equal the CPI-U for August 2014. Use the year as directed in Table 1.

Base CPI-U = the CPI-U for the sixth August before January 1 of the next five year period in Table 1. An exception is that the Base CPI-U for the five year period, January 1, 2010 through December 31, 2014, shall be the CPI-U for August 2003. Use the year as directed in Table 1.

Table 1

Five-Year Period	Base CPI-U	Recent CPI-U	New Jersey Register Publication
January 1, 2010 through December 31, 2014	August 2003	August 2009	November 2009
January 1, 2015 through December 31, 2019	August 2009	August 2014	November 2014
January 1, 2020 through December 31, 2024	August 2014	August 2019	November 2019
January 1, 2025 through December 31, 2029	August 2019	August 2024	November 2024
January 1, 2030 through December 31, 2034	August 2024	August 2029	November 2029

4. If the inflation factor is a negative number, the fees set forth in the subchapter shall remain unchanged.

5. If the inflation factor is a positive number, the percent increase shall be rounded to one decimal place. Each of the fees set forth in this subchapter shall be multiplied by the rounded percent increase to preliminarily determine each fee's increase. Each fee's increase shall then be added to the fee to preliminarily determine the adjusted fee. The final adjusted fee shall then be determined by rounding up the preliminary adjusted fee to the next five dollars.

6. In November of the year preceding the year in which the adjusted fees are to be operative, the Department shall provide a public notice, which shall set forth the adjusted fees, if any, established under this subsection and operative on the following January 1. The Department shall provide public notice by publication of the notice and a notice of administrative change, setting forth the adjusted fees, in the New Jersey Register according to the schedule in Table 1 above. For example, the adjusted fees operative January 1, 2010 shall be published in November 2009.

7. The adjusted fees, listed under A (Base Fee Tables) and B (Supplementary Fee Schedule) below, shall be operative starting the first day of each five-year period stated in Table 1.

8. The applicable fee shall be determined as follows:

i. The Base Fee shall be the Base Fee operative on the date the Department receives an administratively complete application or notice.

ii. The Supplementary Fee shall be the Supplementary Fee operative on the date performance of the supplementary activity is completed.

3. Shall result in emission of an air contaminant not previously emitted; or

4. If the source is covered by a permit or certificate, shall result in air contaminant emissions which are not authorized under that permit or certificate.

(c) To act under the authority of this section, the applicant shall:

1. Have submitted a complete application covering activities listed at (b) above; and

2. Notify the Department in writing seven days prior to beginning the activities listed in (b) above. This notice shall be submitted in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27-8.20, and shall include the fee for a seven day notice set forth at N.J.A.C. 7:27-8.6.

(d) An applicant who acts under the authority of this section assumes all risks for the actions. If an applicant pursues activities under this section, and the Department does not approve the activities as proposed in the application, the applicant may be required to reverse the activities, and may be liable for penalties for the activities under (h) below.

(e) This section does not limit the Department in establishing standards, nor in reviewing any application.

(f) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds for an appeal of the Department's decision on the application.

(g) If the Department determines that actions taken at risk by the applicant under this section are inconsistent with applicable law, the Department and the applicant shall enter into an agreement. The agreement shall contain a date by which the applicant shall comply with the law. If the Department and the applicant fail to enter into an agreement, the Department may issue a schedule setting forth a date by which the applicant shall comply.

(h) If the applicant fails to comply with the schedule set under (g) above, the applicant shall be subject to penalties if the applicant's actions have caused:

1. Emission of an air contaminant not previously being emitted;

2. Emission of an air contaminant not authorized by an existing permit; or

3. An exceedance of an emission limit in an existing permit.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (d), added the last sentence.
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
Rewrote (d).
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
In (d), deleted the last sentence.

7:27-8.26 Civil or criminal penalties for failure to comply

Any person who is subject to this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 or criminal penalties pursuant to N.J.S.A. 26:2C-19(f) or both.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Changed N.J.S.A. reference.
Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
Substituted "19(f)" for "28.3".

Case Notes

Failure of manufacturer to give notice of release of vinyl chloride monomer until 28 minutes after occurrence was not immediate enough to avoid penalty. Department of Environmental Protection and Energy v. Occidental Chemical, 95 N.J.A.R.2d (EPE) 119.

Failure to fulfill stack testing conditions set forth in permits for asphalt plants warranted imposition of civil penalties. Department of Environmental Protection v. Hamilton, 95 N.J.A.R.2d (EPE) 63.

Dispute over enforcement of penalties for exceedances of air contaminant allowables was not within agency jurisdiction. Department of Environmental Protection v. Trenton District Energy Company, 95 N.J.A.R.2d (EPE) 3.

Reduction of penalty; good compliance history and efforts at mitigation. Harrison Delivery Services v. DEPE, 94 N.J.A.R.2d (EPE) 30.

7:27-8.27 Special facility-wide permit provisions

(a) The holder of a facility-wide permit, as defined at N.J.A.C. 7:27-8.1, is not required to obtain a permit and certificate under this subchapter for a planned action or change if:

1. The production process affected by the action or change is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;

2. The planned action or change is either:

i. Allowed under the facility-wide permit; or

ii. Documented in a modification to a Pollution Prevention Plan, which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-5; and

3. The planned action or change does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the equipment or production process;

ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;

iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

iv. The addition of a new production process.

(b) An action or change for which no permit is required under (a) above shall be reported to the Department within 120 days after the start of the action or change, as an amendment of the facility-wide permit. A copy of the Pollution Prevention Plan Modification or Pollution Prevention Assessment shall be submitted with the amendment to the facility-wide permit.

(c) If the holder of a facility-wide permit makes a change which does not meet the criteria at (a) above, the change would require a permit, or shall be processed through any applicable procedures for changes to existing permits at N.J.A.C. 7:27-8.17 through 8.22.

New Rule, R.1993 d.428, effective September 7, 1993 (operative October 4, 1993).
See: 24 N.J.R. 4323(a), 25 N.J.R. 4075(b).
New Rule, R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.

7:27-8.28 Delay of testing

(a) A permittee may seek the approval of the Department for a delay in testing required pursuant to N.J.A.C. 7:27-8.4(f), 8.7(f), or 8.13(d). In such case the following shall apply:

1. The permittee shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27-8.4(b) and to the appropriate regional enforcement office indicated in (a)1i through iv below;

i. If the permitted source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, PO Box 407
Robbinsville, NJ 08625-0407.

ii. If the permitted source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place
West Orange, NJ 07052-5504.

iii. If the permitted source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2
Parsippany-Troy Hills, NJ 07054-4191.

iv. If the permitted source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08103.

2. A request for a delay in testing shall include the following information, at a minimum:

i. Justification why the delay in testing is necessary;

ii. A proposed test date or a proposed set of conditions that would define a future test date; and

iii. Certification signed by the responsible party at the facility and in accordance with the certification procedures at N.J.A.C. 7:27-1.39.

3. The Department shall approve each initial request for a delay in testing of up to 90 days, and any subsequent request for a delay in testing, only if one of the following criteria is met:

i. The test was delayed due to a Department delay, such as if the protocol is still under review/negotiation, but only if the protocol was submitted in a timely fashion;

ii. The equipment which is to be tested had not been installed;

iii. The requirement for testing is a Federal requirement, and the EPA has given its approval in writing of the delay in testing; or

iv. The permittee has described in writing an impediment to the testing, which, based on its review of documentation submitted by the permittee, the Department has determined is a valid reason for further delaying the testing.

(b) In a request for a delay of testing, submitted pursuant to (a) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
In (a), rewrote 1 and 3.
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Deleted (c).

APPENDIX 1

TABLE A

Reporting and SOTA thresholds

(Potential to emit)

Air contaminant	Reporting Threshold[1] (in lbs/hour)	SOTA Threshold[2] (in tons/yr)
Total VOC	0.05	5.0
TSP	0.05	5.0
PM-10	0.05	5.0
NO_x	0.05	5.0
CO	0.05	5.0
SO_2	0.05	5.0
Each TXS	0.01	See Table B
Each HAP	See Table B	See Table B
Any air contaminant listed in footnote[3]	0.05	5.0

[1] If a source emits an air contaminant that both belongs to an air contaminant class that appears on Table A and is also a HAP found on Table B, emissions of the air contaminant must be taken into consideration in a permit application in determining if the Table A reporting threshold is met, as well as if the Table B reporting threshold is met. If both the Table A and the Table B reporting thresholds are met, emissions of that air contaminant must be included in the emissions reported in application forms for both Table 1 air contaminants and Table 2 HAPs.

[2] If a source emits an air contaminant that appears on Table A and is also a HAP found on Table B, the lower of the two SOTA thresholds applies.

[3] Any 112(r) contaminant; any stratospheric ozone depleting substance, or any greenhouse gas except carbon dioxide (CO_2).

TABLE B

Reporting and SOTA thresholds for HAPs

(Potential to emit)

CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Threshold (lbs/yr)
75070	Acetaldehyde	1,800	10,000
60355	Acetamide	200	2,000
75058	Acetonitrile	800	8,000
98862	Acetophenone	200	2,000
53963	2-Acetylaminofluorene	1	10
107028	Acrolein	8	80
79061	Acrylamide	4	40
79107	Acrylic acid	120	1,200
107131	Acrylonitrile	60	600
107051	Allyl chloride	200	2,000
92671	4-Aminobiphenyl	200	2,000
62533	Aniline	200	2,000
90040	o-Anisidine	200	2,000
71432	Benzene	N/A[3]	4,000
92875	Benzidine	0.06	0.6
98077	Benzotrichloride	1.2	12
100447	Benzyl chloride	20	200
92524	Biphenyl	2,000	10,000
117817	Bis(2-ethylhexyl)phthalate	1000	10,000
542881	Bis(chloromethyl)ether	0.06	0.6
75252	Bromoform	2,000	10,000
106990	1,3-Butadiene	14	140
156627	Calcium cyanamide	2,000	10,000
133062	Captan	2,000	10,000
63252	Carbaryl	2,000	10,000
75150	Carbon disulfide	200	2,000
56235	Carbon tetrachloride	N/A[4]	2,000
463581	Carbonyl sulfide	1,000	10,000
120809	Catechol	1,000	10,000
133904	Chloramben	200	10,000
57749	Chlordane	2	20
7782505	Chlorine	20	200
79118	Chloroacetic acid	20	200
532274	2-Chloroacetophenone	12	120
108907	Chlorobenzene	2,000	10,000
510156	Chlorobenzilate	80	800
67663	Chloroform	N/A[5]	1,800
107302	Chloromethyl methyl ether	20	200
126998	Chloroprene	200	2,000
1319773	Cresols/Cresylic acid	200	2,000
95487	o-Cresol	200	2,000
108394	m-Cresol	200	2,000
106445	p-Cresol	200	2,000
98828	Cumene	2,000	10,000
94757	2,4-D, salts and esters	2,000	10,000
547044	DDE	2	20
334883	Diazomethane	200	2,000
132649	Dibenzofurans	1,000	10,000
96128	1,2-Dibromo-3-chloropropane	2	200
84742	Dibutylphthalate	2,000	10,000
106467	1,4-Dichlorobenzene	600	6,000
91941	3,3-Dichlorobenzidine	40	400

CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Thres-hold (lbs/yr)
111444	Dichloroethyl ether	12	120
542756	1,3-Dichloropropene	200	2000
62737	Dichlorvos	40	400
111422	Diethanolamine	1,000	10,000
121697	N,N-Dimethylaniline	200	2,000
64675	Diethyl sulfate	200	2,000
119904	3,3-Dimethoxybenzi-dine	20	200
60117	4-Dimethyl aminoazo-benzene	200	2,000
119937	3,3-Dimethyl benzidine	1.6	16
79447	Dimethyl carbamoyl chloride	4	40
68122	Dimethyl formamide	200	2,000
57147	1,1-Dimethyl hydrazine	1.6	16
131113	Dimethyl phthalate	2,000	10,000
77781	Dimethyl sulfate	20	200
534521	4,6-Dinitro-o-cresol	20	200
51285	2,4-Dinitrophenol	200	2,000
121142	2,4-Dinitrotoluene	4	40
123911	1,4-Dioxane	N/A[6]	10,000
122667	1,2-Diphenylhydrazine	18	180
106898	Epichlorohydrin	400	4,000
106887	1,2-Epoxybutane	200	2,000
140885	Ethyl acrylate	200	2,000
100414	Ethyl benzene	2,000	10,000
51796	Ethyl carbamate	160	1,600
75003	Ethyl chloride	2,000	10,000
106934	Ethylene dibromide	20	200
107062	Ethylene dichloride	N/A[8]	1,60
107211	Ethylene glycol	2,000	10,000
151564	Ethylene imine	0.6	6
75218	Ethylene oxide	20	200
96457	Ethylene thiourea	120	1,200
75343	Ethylidene dichloride	200	2,000
50000	Formaldehyde	400	4,000
76448	Heptachlor	4	40
118741	Hexachlorobenzene	2	20
87683	Hexachlorobutadiene	180	1,800
77474	Hexachlorocyclopeta-diene	20	200
67721	Hexachloroethane	1,000	10,000
822060	Hexamethylene-1,6-diisocyante	4	40
680319	Hexamethylphosphor-amide	2	20
110543	Hexane	2,000	10,000
302012	Hydrazine	0.8	8.
7647010	Hydrochloric acid	2,000	10,000
7664393	Hydrogen fluoride	20	200
123319	Hydroquinone	200	2,000
78591	Isophorone	2,000	10,000
58899	Lindane	2	20
108316	Maleic anhydride	200	2,000
67561	Methanol	2,000	10,000
72435	Methoxychlor	2,000	10,000
74839	Methyl bromide	2,000	10,000
74873	Methyl chloride	2,000	10,000
71556	Methyl chloroform	2,000	10,000
78933	Methyl ethyl ketone	2,000	10,000

CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Thres-hold (lbs/yr)
60344	Methyl hydrazine	12	120
74884	Methyl iodide	200	2,000
108101	Methyl isobutyl ketone	2,000	10,000
624839	Methyl isocyanate	20	200
80626	Methyl methacrylate	2,000	10,000
1634044	Methyl tert butyl ether	2,000	10,000
101144	4,4-Methylene bis(2-chloraniline)	40	400
75092	Methylene chloride	2,000	10,000
101688	4,4-Methylene diphenyl diisocyanate	20	200
101779	4,4'-Methylene dianiline	200	2,000
91203	Naphthalene	2,000	10,000
98953	Nitrobenzene	200	2,000
92933	4-Nitrobiphenyl	200	2,000
100027	4-Nitrophenol	1,000	10,000
79469	2-Nitropropane	200	2,000
684935	N-Nitroso-N-methylurea	0.04	0.4
62759	N-Nitrosodimethyl-amine	0.2	2
59892	N-Nitrosomorpholine	200	2,000
56382	Parathion	20	200
82688	Pentachloronitrobenzene	60	600
87865	Pentachlorophenol	140	1,400
108952	Phenol	20	200
106503	p-Phenylenediamine	2,000	10,000
75445	Phosgene	20	200
7803512	Phosphine	1,000	10,000
7723140	Phosphorus	20	200
85449	Phthalic anhydride	1,000	10,000
1336363	Polychlorinated biphenyls	1.8	18
1120714	1,3-Propane sultone	6	60
57578	beta-Propiolactone	20	200
123386	Propionaldehyde	1,000	10,000
114261	Propoxur	2,000	10,000
78875	Propylene dichloride	200	2,000
75569	Propylene oxide	1,000	10,000
75558	1,2-Propylenimine	0.6	60
91225	Quinoline	1.2	120
106514	Quinone	1,000	10,000
100425	Styrene	200	2,000
96093	Styrene oxide	200	2,000
1746016	2,3,7,8-TCDD	.00012	.0012
79345	1,1,2,2-Tetrachloro-ethane	60[10]	600
127184	Tetrachloroethylene	N/A[11]	10,000
7550450	Titanium tetrachloride	20	200
108883	Toluene	2,000	10,000
95807	2,4-Toluene diamine	4	40
584849	2,4-Toluene diiscocyan-ate	20	200
95534	o-Toluidine	200	2,000
8001352	Toxaphene	2	20
120821	1,2,4-Trichlorobenzene	2,000	10,000
79005	1,1,2-Trichloroethane	N/A[12]	2,000
79016	Trichloroethylene	N/A[13]	10,000
95954	2,4,5-Trichlorophenol	200	2,000
88062	2,4,6-Trichlorophenol	1,200	10,000
121448	Triethylamine	2,000	10,000

1. Pursuant to (a) above, determine the 24-hour emission rates for 30 consecutive calendar days;

2. Divide the sum of the 24-hour emission rates by the total number of days on which the source was operated, during the 30-consecutive-day period, pursuant to (b)4 below. The result is the 30-calendar-day rolling average emission rate for the 30th day;

3. Calculate a new 30-calendar-day rolling average emission rate for each subsequent calendar day pursuant to (b)1 and 2 above; and

4. Any calendar day during which no combustion of solid fuel occurred shall not be included in the 30-calendar-day rolling average emission rate. For example, if a source did not combust solid fuel during two calendar days of a 30-calendar-day rolling average emission rate period, the 24-hour emission rates of the 28 days during which emissions occurred would be used to determine the 30-calendar-day rolling average emission rate. The total emissions for the 28 days would be divided by 28, not 30.

(c) For purposes of N.J.A.C. 7:27-10.2(h), when calculating a SO_2 emission rate for an affected coal-fired unit, the owner or operator may exclude SO_2 emissions as follows:

1. In calculating a 30-calendar-day rolling average SO_2 emission rate for a unit that has ceased firing fossil fuel, for a period of time not to exceed two hours, from the restart of the unit to the time that the unit is fired with coal; and

2. In calculating a 24-hour SO_2 emission rate for a unit, the period of time in which the unit is not fired with coal.

(d) The owner or operator submitting a written application to the Department pursuant to (a)1 above shall submit the application to the following address:

Assistant Director, Air Quality Permitting Element
Division of Air Quality
New Jersey Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

New Rule, R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).

SUBCHAPTER 11. INCINERATORS

7:27-11.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Auxiliary fuel" means fuel other than waste materials used to attain temperatures sufficiently high to dry and ignite waste materials, to maintain ignition, or to effect complete combustion of combustible solids, vapors and gases.

"Common incinerator" means an incinerator designed and used to burn waste materials of Types 0, 1, 2 and 3 only, in all capacities not exceeding 2,000 pounds per hour of waste material input.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant.

"Department" means the State Department of Environmental Protection.

"Existing incinerator" means an incinerator purchased, acquired or used before the effective date of this subchapter.

"Incinerator" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap or a facility for cremating human or animal remains.

"Liquid particles" means particles which have volume but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

"Multiple chamber incinerator" means an incinerator with two or more refractory-lined combustion chambers in series physically separated by refractory walls, interconnected by gas passages, and employing adequate design parameters necessary for maximum combustion of the waste materials.

"Municipal incinerator" means an incinerator owned or operated by government or by a person who provides incinerator service to government or others, and designed and used to burn waste materials of any and all types, 0 to 6 inclusive.

"New incinerator" means an incinerator purchased or constructed after the effective date of this Subchapter.

"Particles" means any material, except uncombined water, which exists in a finely divided form as liquid particles or solid particles at standard conditions.

"Pathological waste incinerator" means an incinerator designed and used to burn Type 4 waste materials, primarily human and animal remains, in all burning capacities. Crematoriums are included in this category.

"Ringelmann smoke chart" means the "Ringelmann Scale for Grading the Density of Smoke" published by the United States Bureau of Mines or any chart, recorder, indicator or device for the measurement of smoke density which is approved by the Department as the equivalent of the Ringelmann Scale.

"Single flue-fed incinerator" means an incinerator provided with a single flue which serves as both the charging chute and the flue to transport products of combustion to the atmosphere.

"Smoke" means and includes small gas-borne and air-borne particles arising from a process of combustion in sufficient number to be observable.

"Solid particles" means particles of rigid shape and definite volume.

"Special incinerator" means a municipal, pathological waste, or trade waste incinerator of any burning capacity, or any incinerator with a burning capacity in excess of 2,000 pounds per hour.

"Standard conditions" means 70 degrees Fahrenheit and one atmosphere pressure (14.7 psia or 760 mm Hg).

"Trade waste incinerator" means an incinerator designed and used to burn waste material primarily of Types 5 and 6, either separately or together with waste materials of Types 0, 1, and 3.

i. The operating temperature at the exit of the combustion chamber;

ii. The carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; and

iii. Upon request of the Department, any other operating parameter relevant to the prevention or control of air contaminant emissions from the tank or the oxidizer;

2. For a vapor control system that uses carbon or other adsorptive material, the owner or operator shall record the following on a continuous basis or at a frequency approved in writing by the Department:

i. The concentration of the total applicable VOCs in the flue gas emitted to the outdoor atmosphere; or

ii. Provided that the owner or operator confirms daily that the automatic switching between carbon beds is functioning in accordance with permit conditions, the date of carbon bed replacement; and upon request of the Department, any other operating parameter relevant to the prevention or control of air contaminant emissions from the tank or the adsorber; and

3. For any other vapor control device, upon request of the Department, any operating parameter relevant to the prevention or control of air contaminant emissions from the tank or that vapor control device.

(u) If, during an inspection required at (r) above, or at any other time, the owner or operator determines that a tank does not comply with (*l*) above, the owner or operator shall submit a written report to the Department including the cause of the non-compliance, corrective actions to achieve compliance and measures taken to prevent a re-occurrence of the non-compliance. If the facility has an operating permit, in accordance with N.J.A.C. 7:27-22, the owner or operator shall include this report as part of the periodic compliance reports required at N.J.A.C. 7:27-22.19(d) and (f). If the facility does not have an operating permit, the owner or operator shall submit this report to the Department within three business days after becoming aware of the non-compliance.

(v) An owner or operator that seeks Department approval for an alternate method for calculating a tank's roof landing emissions pursuant to (p)2iii above shall:

1. Prepare an application that includes:

i. A description of the proposed alternate method;

ii. The parameters in the alternate method; and

iii. Supporting documentation that justifies the use of the alternate method; and

2. Submit a complete application in writing to the Department at:

Assistant Director, Air Quality Permitting Element
Division of Air Quality
New Jersey Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (n) (operative October 1, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
EPA identified deficiencies addressed by adding recordkeeping requirements.
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Amended by R.2003 d.224, effective June 2, 2003 (operative June 29, 2003).
See: 34 N.J.R. 2489(a), 35 N.J.R. 2509(a).
Rewrote (a) and (b).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Section was "Stationary storage tanks". Rewrote (a) and (f); in (b)1ii, substituted "and" for "or" at the end; in the introductory paragraph of (b)2, inserted ", in addition to meeting the requirement in (b)1 above,"; in (d), deleted "except when gauging or sampling is taking place" from the end; reserved (g), (i) and (k); in (h), inserted "In Range III as determined by table 2A" and inserted the last sentence; and added (*l*) through (v).

7:27-16.3 Gasoline transfer operations

(a) This section shall apply to any gasoline transfer operation and to the storage, transportation, and dispensing of gasoline for the refueling of vehicles or for use in any other type of operation including, but not limited to, agricultural, aviation, industrial, commercial, construction, and marine operations.

(b) This section shall not apply to the following:

1. The loading of gasoline as cargo into a marine tank vessel. Marine tank vessel loading operations that occur in New Jersey or in New Jersey coastal waters are subject to the provisions at N.J.A.C. 7.27-16.5;

2. The transfer of gasoline into a stationary storage tank during construction ballasting; and

3. The transfer of gasoline into or from portable fuel containers.

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline into a receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater, unless the following requirements are met:

1. The transfer is made:

i. Through a submerged fill pipe. If the receiving vessel is a stationary storage tank (either above ground or underground), the submerged fill pipe shall be permanently affixed to the tank; or

ii. By some other means approved by the Department as being equally or more effective in reducing total applicable VOC emissions into the outdoor atmosphere during transfer; or

2. The manufacturing process vessel was installed before December 17, 1979.

(d) No person shall cause, suffer, allow, or permit the transfer of gasoline from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless:

1. The storage tank is equipped and operating with one of the following emission controls:

i. A vapor control system that:

(1) Reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 98 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline; and

(2) Includes a pressure/vacuum relief valve on each atmospheric vent which remains closed during the gasoline transfer; or

ii. A floating roof; and

2. The storage tank meets the requirements of N.J.A.C. 7:27-16.2.

(e) Except as provided in (f) and (h) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline laden vehicular fuel tank, unless the following requirements are met:

1. The transfer is made using a vapor control system that is approved by the Department and that:

i. Reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 95 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline; and

ii. Prevents overfilling and spillage;

2. If the transfer is made at a gasoline dispensing facility, the vapor recovery system shall be one of the following:

i. A system that was certified by CARB prior to July 25, 2001;

ii. A system that has been certified by CARB on or after July 25, 2001;

iii. A system that was certified by CARB prior to July 25, 2001; and any replacement parts/equipment/components and any subsequent construction modifications:

(1) Are approved in an Executive Order or approval letter issued by CARB on or after July 25, 2001; and

(2) Do not decrease the VOC emission control efficiency of the system; or

iv. A system that is equivalent for the purpose of VOC emission control to a CARB certified system and that is approved by the Department and EPA;

3. At a gasoline dispensing facility which was constructed on or after June 29, 2003, and for which a construction permit was issued by the Department after June 29, 2003, each dispensing device at a gasoline dispensing facility which dispenses more than one grade of gasoline shall utilize a unihose system for dispensing gasoline; and

4. Each dispensing device at a gasoline dispensing facility shall meet the following requirements:

i. Each nozzle shall have a check valve located in the nozzle;

ii. At a facility with a vacuum assist vapor control system, each nozzle shall be equipped with a splash-guard that prevents spillage during refueling; and

iii. Each dispensing device and its nozzle(s) shall be designed to be compatible, such that:

(1) The nozzle together with its vapor boot fits into the housing in which it is hung on the dispensing device; and

(2) The nozzle's vapor check valve remains in the closed position when the nozzle is properly hung on the dispensing device.

(f) Notwithstanding (e) above, the provisions of (e) above shall not apply as follows:

1. The provisions of (e) above shall not apply to the transfer of gasoline into a vehicular fuel tank at a gasoline dispensing facility if:

i. The facility is located at a marina and used exclusively for the refueling of marine vehicles;

ii. The maximum capacity of each gasoline stationary storage tank at the facility is less than 2,000 gallons (7,570 liters);

iii. The vehicle being refueled is an aircraft; or

iv. The facility meets the following:

(1) The facility does not have, and has never had, for any 12-month period subsequent to February 6, 1989, an average monthly throughput of greater than 10,000 gallons (37,850 liters), determined in accordance with (g) below; and

(2) If the gasoline dispensing facility commenced operation after June 29, 2003, the facility does not have any stationary storage tanks which are subject to the requirements of (d) above; and

2. The provisions of (e)4 above shall not apply to dispensing devices at a gasoline dispensing facility until June 29, 2005, if construction of the dispensing device commenced prior to June 29, 2003; or a permit for the construction of the dispensing device was issued by the Department prior to June 29, 2003.

(g) For the purposes of (f)1iv above or (h) below, the average monthly throughput of a gasoline dispensing facility shall be an average of the facility's monthly throughputs between September 1, 1986, and August 31, 1987, or during any subsequent period of 12 consecutive months.

(h) If a gasoline dispensing facility, which has been exempt from the provisions of (e) above pursuant to (f)1ii, but which on or after March 28, 1992, becomes subject to (e) above because the facility's average monthly throughput increases such that it exceeds 10,000 gallons (37,850 liters) during at least one 12-month period, the owner or operator shall ensure that no gasoline is dispensed at the facility unless the requirements of (e) above are met in accordance with the following schedule:

1. Within three months of the facility's having an average monthly throughput of more than 10,000 gallons of gasoline, the owner or operator shall submit to the Department a completed application for a permit and certificate, pursuant to N.J.A.C. 7:27-8, for the construction, installation, and operation of a vapor control system and any other modifications needed for the facility to meet the requirements of (e) above;

2. Within nine months of the facility's having an average monthly throughput of more than 10,000 gallons of gasoline, the owner or operator shall commence construction to comply with (e) above, in accordance with the permit issued by the Department pursuant to N.J.A.C. 7:27-8; and

3. Within 18 months of the facility's having an average monthly throughput of more than 10,000 gallons of gasoline, the owner or operator shall achieve compliance with (e) above.

(i) The owner or operator of a gasoline dispensing facility shall perform the following tests:

1. The owner or operator shall demonstrate the facility's vapor control system is performing properly, as follows:

i. Each of the tests set forth in Table 3A below, that are applicable to the facility, shall be conducted in accordance with the schedule for testing given in the table.

ii. The tests required to be performed pursuant to (i)1i above shall be conducted utilizing the applicable CARB test method cited in Table 3A (except that the Static Pressure Performance Test shall be modified as indicated in Table 3A) which are incorporated herein by reference or utilizing some other method approved by the Department and USEPA. A copy of any CARB procedure cited in Table 3A may be downloaded from CARB's website at http://www.arb.ca.gov/vapor or obtained from the Department at the following address:

New Jersey Department of Environmental Protection
Bureau of Technical Services
PO Box 437
Trenton, NJ 08625-0437

iii. A vapor control system shall be deemed to have passed a test conducted pursuant to (i)1i above if it meets the performance standards and specifications which are set forth in CARB's Vapor Recovery Certification Procedure (CP - 201), as amended, and which are applicable to the test. A copy of CARB's Vapor Recovery Certification Procedure may be downloaded from CARB's website at http://www.arb.ca.gov/vapor or obtained from the Department at the following address:

New Jersey Department of Environmental Protection
Bureau of Technical Services
PO Box 437
Trenton, NJ 08625-0437

iv. If the vapor control system at a facility fails any test required to be performed pursuant to (i)1i above, the owner or operator shall have the system repaired and retested within 14 days of failure of the test.

v. If the vapor control system fails any retesting required to be performed pursuant to (i)1iv above, the following procedures shall be followed:

(1) The owner or operator shall notify the Department in writing within 72 hours of the failure. Such notification shall be submitted to the applicable regional office of the Department at the following address:

New Jersey Department of Environmental Protection
Bureau of Minor Source Investigation
Central Regional Office Air and Environmental Quality
Compliance and Enforcement
Horizon Center, PO Box 407
Robbinsville, NJ 08625-0407

(2) The owner or operator shall have the system repaired and retested in accordance with a compliance plan approved by the Department;

2. Upon the request of the Department, the owner or operator shall demonstrate the efficiency of the facility's vapor control system in reducing the total applicable VOC emissions released from the facility into the outdoor atmosphere, as required pursuant to (d)1i(1) and/or (e)1i above, in accordance with test procedures approved by the Department; and

3. A record of the performance of each of the tests, and of the results obtained, shall be maintained in accordance with (s) below.

Table 3A
Methods for Testing Performance of Gasoline Dispensing Facilities

Test	Applicability	Required Testing Schedule	Test Method (CARB Citation)
Static Pressure Performance Test	Applies to any facility required to have a vapor control system under (e) above	Within 90 days from the date of installation of the system and at last once in every 12 month period thereafter	CARB TP-201.3, including all subsequent revisions thereto, which are incorporated herein by reference except that the vapor control system shall be tested at two inches of water column
Pressure Vacuum Valve Test	Applies to any facility required to have a vapor control system under (e) above	Within 90 days from the date of installation of the system and at last once in every 12 month period thereafter	CARB TP-201.2B, including all subsequent revisions thereto, which are incorporated herein by reference
Dynamic Backpressure Performance Test	Applies to any facility required to have a vapor control system under (e) above	Within 90 days from the date of installation of the system and at last once in every 36 month period thereafter	CARB TP-201.4, including all subsequent revisions thereto, which are incorporated herein by reference
Air to Liquid Volume Ratio Test	Applies to any facility with a vacuum assist vapor control system under (e) above	Within 90 days from the date of installation of the system and at last once in every 12 month period thereafter	CARB TP-201.5, including all subsequent revisions thereto, which are incorporated herein by reference

(j) No person shall cause, suffer, allow, or permit a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater, except if it is a railroad tank car or marine tank vessel, to contain gasoline unless:

1. The delivery vessel sustains a pressure change of less than three inches of water (six millimeters of mercury) in five minutes when pressurized to 18 inches of water (34 millimeters of mercury) and evacuated to six inches of water (11 millimeters of mercury);

2. Pressure and vacuum tests are performed on the delivery vessel at least once in every 12-month period, in accordance with test procedures specified by the Department, to determine whether or not the requirements of (j)1 above are met;

3. A certification is affixed to the delivery vessel in a prominent location, which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests; and

4. A record of certification is kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the name and address of the delivery vessel owner; the delivery vessel identification number; and, for each test performed, the test method used, the testing location, date of test, tester's name and signature, and test results.

(k) No person shall cause, suffer, allow, or permit a transfer of gasoline, to or from a delivery vessel, if the transfer is subject to the provisions of (d) above, and (*l*) or (m) below, and if the delivery vessel being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the delivery vessel being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge.

(*l*) Except as provided in (p) below, no person shall cause, suffer, allow, or permit the transport or transfer of gasoline in a delivery vessel having a maximum capacity of 2,000

gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC except during:

1. Emergency conditions;

2. Gauging; or

3. Venting through a vapor control system approved by the Department.

(m) No person shall cause, suffer, allow, or permit the transfer of gasoline or any other substance into a gasoline vapor laden delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater, unless:

1. The transfer operation is conducted at a gasoline loading facility equipped with a vapor control system which meets the requirement of (n) below, the vapor control system is properly connected to the delivery vessel, and the vapor control system is properly operated throughout the duration of the transfer operation; or

2. The delivery vessel is being used for the purpose of holding gasoline from a storage tank during a period in which the storage tank is undergoing repair or maintenance and the duration of this use is limited to less than one month.

(n) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any other substance into any gasoline vapor laden delivery vessel except at a gasoline loading facility that is equipped and operating with a vapor control system in accordance with the following provisions:

1. At a facility where the daily loading rate does not exceed 15,000 gallons (56,775 liters) of gasoline per day, as determined in accordance with (n)3 below, the facility shall be equipped and operating with a vapor balance system or some other vapor control system of equal or higher efficiency. Such vapor balance system shall not have a vent that is open to the atmosphere during transfer and shall not return the vapors to a tank equipped with a floating roof;

2. At a facility where the daily loading rate exceeds, or may exceed, 15,000 gallons (56,775 liters) of gasoline per day, as determined in accordance with (n)3 below, the facility shall be equipped and operating with a vapor control system which:

i. Prevents applicable VOC emissions to the outdoor atmosphere from exceeding the maximum allowable emissions as determined from Table 3B below; or

ii. Reduces the total applicable VOC emissions to the outdoor atmosphere by no less than 90 percent by weight; and

3. For the purposes of (n)1 and 2 above, a gasoline loading facility's daily loading rate shall be its average daily rate during the month in which the facility had its highest monthly throughput in the last 12 months of operation.

TABLE 3B

EMISSION STANDARDS FOR GASOLINE LOADING FACILITIES LOADING MORE THAN 15,000 GALLONS (56,775 LITERS) PER DAY

Concentration of Applicable VOC in Gas Displaced from Delivery Vessel, Volume Percent		Maximum Allowable Emissions per Volume Unit Loaded	
Greater Than	But Not Greater Than	Pounds per Ten Thousand Gallons	Milligrams per Liter
50	—	6.7	80
40	50	5.8	70
30	40	5.0	60
20	30	4.2	50
15	20	3.8	45
0	15	3.3	40

(*o*) Except as provided in (p) below, no person shall cause, suffer, allow, or permit any transfer of gasoline, subject to the provisions of (d), (e), (m), or (n) above, if:

1. The delivery vessel being loaded or unloaded, or the vapor control system or other equipment serving the transfer operation, has:

i. A vapor leak which results in a concentration of applicable VOC greater than or equal to 100 percent of the lower explosive limit of propane, when measured at a distance of 1.0 inch (2.54 centimeters) or less from the location of the leak; or

ii. A liquid leak;

2. Any component of the delivery vessel designed for preventing the release of gasoline vapors is not installed and operating as designed; or

3. Commencing or continuing the transfer would result in a liquid gasoline spill.

(p) A delivery vessel subject to the provisions of (j) above that is found to be in violation of (*l*) or (*o*) above shall be:

1. Repaired and a new certification, in accordance with (j)3 and 4 above, shall be affixed to the delivery vessel within 15 days; or

2. Removed from service until (*l*) and (*o*) above are met in full.

(q) No person shall cause, suffer, allow, or permit the transfer of gasoline at a gasoline loading facility, into or from a delivery vessel, or at a gasoline dispensing facility, which is required to have a vapor control system pursuant to (d)1i, (e)1i, (m), or (n) above unless:

1. The vapor control system is designed to meet the applicable requirements in (d), (e), (m), or (n) above;

2. All hoses, piping, connections, fittings and manholes serving the vapor control system are vapor-tight and free of liquid leaks, except when gauging or sampling is being performed.

3. The vapor control system, including any component thereof, is maintained in proper operating condition and kept free of defects that could impair the effectiveness of the system;

4. The vapor control system is constructed out of materials that will not become degraded when exposed to any grade of gasoline which may be stored, transferred, and/or dispensed; and

5. The vapor control system is operated properly whenever gasoline is stored, transferred, and/or dispensed.

(r) (Reserved)

(s) The owner or operator of a gasoline dispensing facility shall maintain the following records at the facility:

1. A record of the monthly throughput of gasoline;

2. If the facility is required to test a vapor control system pursuant to (i) above:

i. Documentation of the performance of each test required pursuant to (i) above, including the date, name of the testing company and the test method used; and

ii. A record of the results of each test performed pursuant to (i) above.

(t) The owner or operator of a gasoline loading facility with a vapor control system pursuant to (n) above shall maintain the following records at the facility:

1. On a daily basis, record the total quantity, in gallons or liters, loaded into delivery vessels at the facility;

2. On a continuous basis or at a frequency approved by the Department in writing:

i. For any thermal oxidizer used to control the emission of applicable VOCs, record the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; or

ii. For a vapor control system using carbon or other adsorptive material, record the concentration of the total applicable VOCs in the flue gas emitted to the outdoor atmosphere; or, provided that the owner or operator confirms daily that the automatic switching between carbon beds is functioning in accordance with permit conditions, record the date of carbon bed replacement; and

3. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the facility.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1988 d.44, effective January 19, 1988 (operative February 22, 1988).
See: 19 N.J.R. 1938(a), 20 N.J.R. 186(b).
Substantially amended.
Amended by R.1989 d.62, effective February 6, 1989.
See: 20 N.J.R. 1866(a), 21 N.J.R. 321(a).
Added (e)4; repealed (n); renumbered (*o*)-(q) as (n)-(p); added new (q).
Amended by R.1989 d.595, effective December 4, 1989 (operative January 7, 1990).
See: 21 N.J.R. 1960(a), 21 N.J.R. 3748(c).
Compliance date of February 28, 1991 established.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (w)1., (operative October 1, 1992); (w)2-3, (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; added recordkeeping requirement; strengthened verification of conformance with CTG requirements for the transfer of gasoline into storage tanks.
Administrative correction to (i).
See: 24 N.J.R. 1889(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (r)1, deleted a reference to a Permit to Construct, Install, or Alter Control Apparatus or Equipment.
Amended by R.2003 d.224, effective June 2, 2003 (operative June 29, 2003).
See: 34 N.J.R. 2489(a), 35 N.J.R. 2509(a).
Rewrote the section.
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Updated the addresses in (i)1ii and (i)1iii; and in (q)2, substituted "vapor-tight and free of liquid leaks" for "vapor tight and leak free".

Case Notes

Regulations prescribing implementation schedule for stage II vapor recovery system were valid. American Petroleum Institute v. New Jersey Dept. of Environmental Protection, 230 N.J.Super. 563, 554 A.2d 3 (A.D.1989).

7:27-16.4 VOC transfer operations, other than gasoline

(a) On and after July 26, 1994, the provisions of this section shall apply to any transfer of an applicable VOC, except:

1. The transfer of gasoline. Gasoline transfer operations are subject to the provisions of N.J.A.C. 7:27-16.3; and

2. The loading of applicable VOC as cargo into a marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey's coastal waters are subject to the provisions of N.J.A.C. 7:27-16.5.

(b) No person shall cause, suffer, allow or permit the transfer of any applicable VOC into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill

4. The compliance plan demonstrates that the potential to emit VOC will be less than 25 tons if the plan is approved and implemented.

(*l*) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:

1. The demonstration includes all of the information required under (e) above;

2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained any new preconstruction permit and certificate, operating permit, or facility-wide permit, or any change thereto required for the control apparatus, and has agreed to install and use all such control apparatus in accordance with the applicable permit and certificate;

3. To the extent that the demonstration depends upon the implementation of pollution prevention measures that have not been implemented before the time at which the demonstration was submitted, the owner or operator has agreed to implement such measures; and

4. The demonstration establishes to the satisfaction of the Department that the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the pollution prevention measures will achieve at least the same level of emission reductions.

(m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment.

(n) Before altering any source operation which is included in an approved alternative or facility-specific VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the VOC control plan, compliance plan or demonstration to reflect the alteration, in a manner satisfying the criteria set forth in (j), (k) or (*l*) above, respectively; and

2. Apply for and obtain any preconstruction permit and certificate, operating permit, or facility-wide permit, or change thereto, required for the alteration. Each application must be submitted with the application to amend the VOC control plan.

(*o*) The Department will revoke an approval of an alternative VOC control plan by written notice to the holder of the approval if EPA denies approval of the proposed VOC plan as a revision to the State Implementation Plan. The Department may revoke an approval of an alternative or facility-specific VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation; or

3. The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

4. For an alternative or facility-specific VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan.

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1. The Department has denied the person's application for approval under this section for any other reason than an EPA rejection of the SIP revision;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (m) above; or

3. The Department has revoked the person's approval pursuant to (*o*)1 through 3 above.

(q) After receipt of a written request from an owner or operator, the Department may authorize one non-renewable 60-day extension of the deadline set forth in (c)3 above. Written requests for the extension of a deadline shall be submitted to the address listed below:

Administrator
Air Compliance and Enforcement
Department of Environmental Protection
PO Box 422
401 East State Street, 4th floor
Trenton, New Jersey 08625-0422

(r) Notwithstanding the requirement at (b)2 above, demonstration that a source operation is currently served by control apparatus that meets the criteria set forth in (b)1i above does not relieve a facility from complying with all existing emission limits and conditions set forth in this chapter.

(s) The owner or operator submitting a proposed alternative or facility-specific VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of Operating Permits
Division of Air Quailty
Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, New Jersey 08625-0027

(t) If a source operation is covered by a preconstruction permit and operating certificate or an operating permit, either of which requires the source operation to utilize a control apparatus which attains at least 90 percent capture and 90 percent control, the owner or operator need only be in compliance with that permit or certificate to be deemed in compliance with this section; the owner or operator need not submit the demonstration required by (b) above.

New Rule, R.1993 d.666, effective December 20, 1993 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 25 N.J.R. 4551(a), 25 N.J.R. 6002(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Public Notice: Submittal date for categories exempted from compliance until November 15, 1994.
See: 26 N.J.R. 4217(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).
Amended by R.1995 d.255, effective May 15, 1995 (operative June 19, 1995).
See: 26 N.J.R. 4478(a), 27 N.J.R. 1979(b).
Administrative Correction.
See: 27 N.J.R. 2740(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
In (m) provided for approval of alternative VOC control plans.
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d)2, rewrote xi; in (e), substituted "new permit required and for each change to an existing permit" for "permit required under N.J.A.C. 7:27-8" in 3; in (*l*), rewrote 2; in (n), rewrote 2; and in (p), changed N.J.A.C. reference in the introductory paragraph.
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (m), substituted "application for an alternative VOC control plan submitted to the Department pursuant to" for "alternative VOC control plan issued, extended or renewed under" following "of any" in the second sentence.
Administrative change.
See: 32 N.J.R. 3117(a).
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
In (m), deleted the last sentence.
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Section was "Facility-specific VOC control requirements". Rewrote (a)1, (a)2, (c) and (q); added (a)3; in (b)2ii, substituted "a facility-specific" for "an alternative"; in the introductory paragraph of (d) and in (d)1i, substituted "(b)2ii" for "(b)1iii"; in the introductory paragraph of (d), and in (i) and the introductory paragraphs of (j), (n) and (*o*) and in (*o*)4 and (s), inserted "or facility-specific" throughout; in (d)2x, inserted "and an implementation schedule"; in (g), substituted "facility-specific" for "alternative"; in (h), deleted "request for approval of the" preceding "submission"; in the introductory paragraph of (j) and (j)1, deleted "or request" following "proposed plan"; and in (s), rewrote the address.

Law Review and Journal Commentaries

Business-Friendly Regulators Ease Air Pollution Rules. Neale R. Bedrock. 139 N.J.L.J. No.8, S10 (1995).

7:27-16.18 Leak detection and repair

(a) The provisions of this section shall apply to any owner or operator of the following:

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

3. Any synthetic organic chemical or polymer manufacturing facility; or

4. Any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, which is a major VOC facility.

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

1. At any petroleum refinery, is 10 percent by weight or greater applicable VOC;

2. At any natural gas/gasoline processing plant, is one percent by weight or greater applicable VOC; or

3. At any synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater gaseous applicable VOC or light liquid VOC and the equipment is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of synthetic organic chemicals or polymers, or any combination thereof; or

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is 10 percent by weight or greater applicable VOC, and the total quantity of applicable VOC processed in the equipment is greater than 550 tons per year. The total quantity processed shall include the total annual quantity of applicable VOC charged to all operations for which the equipment is used and does not include any in-process recycled and in-process refluxed applicable VOC and any applicable VOC which is generated during the process.

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Case Notes

Definition of "complete" in state emission offset regulations gave sufficient standards for determining when air pollution control permit application is complete. Matter of Crown/Vista Energy Project. 279 N.J.Super. 74, 652 A.2d 212 (A.D.1995), certification denied 140 N.J. 277, 658 A.2d 301.

7:27–18.4 Air quality impact analysis

(a) Any person, subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and (b), who proposes to cause a significant net emission increase of an air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7, not including VOC, shall conduct an air quality impact analysis to determine whether the proposed net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant, not including ozone, and shall determine whether the increase in ambient concentration would:

1. Equal or exceed the significant air quality impact level for the respective criteria pollutant as set forth in Table 1; or

2. Taken together with the existing concentration of the criteria pollutant in the ambient air, cause a violation of a NAAQS or a NJAAQS.

TABLE 1

SIGNIFICANT AIR QUALITY IMPACT LEVELS FOR INCREASES IN AMBIENT AIR CONCENTRATIONS IN NONATTAINMENT AREAS

	Averaging Time				
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO2	1.0 μg/m3 *	5 μg/m3		25 μg/m3	
TSP	1.0 μg/m3	5 μg/m3			
NO2	1.0 μg/m3				
CO			500 μg/m3		2000 μg/m3
Pb		0.1 μg/m3			
PM–10	1.0 μg/m3	5 μg/m3			

* μg/m3 = micrograms per cubic meter

(b) Any person conducting an air quality impact analysis pursuant to (a) above is subject to the air quality impact analysis service fees set forth in the Supplementary Fee Schedule at N.J.A.C. 7:27–8.11 or 22.31, whichever is applicable.

(c) An air quality impact analysis shall be performed in accordance with a protocol approved by the Department. The protocol shall be prepared in accordance with the Department's technical manuals on Air Quality Modeling (Technical Manual 1002) and Risk Assessment (Technical Manual 1003). These manuals are available through the Department's electronic bulletin board service at (609) 292–2006, or by mail at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
PO Box 417
Trenton, New Jersey 08625–0417
(609) 777–1039

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Inserted "a significant emission increase" throughout.
Recodified from 18.3 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Repealed and replaced (a)1. and 2. and (b).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Case Notes

Definition of "complete" in state emission offset regulations gave sufficient standards for determining when air pollution control permit application is complete. Matter of Crown/Vista Energy Project, 279 N.J.Super. 74, 652 A.2d 212 (A.D.1995), certification denied 140 N.J. 277, 658 A.2d 301.

7:27–18.5 Standards for use of emission reductions as emission offsets

(a) Only a creditable emissions reduction, as defined at N.J.A.C. 7:27–18.1, may be used to offset an emission increase. Such emission reductions shall be:

i. Contemporaneous; or

ii. Banked in accordance with N.J.A.C. 7:27–18.8.

(b) Creditable emission reductions may result from:

1. Installing control apparatus to decrease the actual emissions from existing equipment or source operations;

2. Applying fugitive emissions control measures which reduce the rate of actual emissions to less than the allowable emissions;

3. Obtaining emission reductions banked pursuant to N.J.A.C. 7:27–18.8;

4. Permanently curtailing the actual production rate or operating hours of an existing source operation;

5. Implementing one or more transportation control measures (TCM);

6. Shutting down an existing source operation; or

7. Adopting any other measure approved by the Department, including, but not limited to, pollution prevention measures, that reduces the rate of actual emissions or allowable emissions, whichever is lesser.

(c) Any use of emission reductions to offset an emission increase shall result in a net air quality benefit. Except as provided in (e), (f) or (g) below, such net air quality benefit shall be demonstrated by showing that the ratio of emission offsets to the proposed net increase in allowable emissions

equals or exceeds the minimum offset ratio, specified in Table 2 below, that is applicable based on the distance between the facility and the location of the emission reductions being proposed as emission offsets.

TABLE 2

MINIMUM OFFSET RATIO

Air Contaminant	Distance (miles)	Minimum Offset Ratio (Reductions: Increase)
VOC	0–100	1.3:1.0
	100–250	2.6:1.0
	250–500	5.2:1.0
NO_x	0–100	1.3:1.0
	100–250	2.6:1.0
	250–500	5.2:1.0
SO_2	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
TSP	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
PM–10	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
CO	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0

(d) The minimum offset ratio for lead is 1.00:1.00.

(e) If an applicant proposes to use, as emission offsets, emission reductions that do not satisfy the distance and ratio requirements in Table 2 in (c) above, an air quality simulation model shall be used to demonstrate a net air quality benefit. Such emission reductions shall not be used as emission offsets unless the air quality simulation model shows that the combined effects of the proposed emission reductions, and of meeting the LAER requirements at N.J.A.C. 7:27–18.3(b), will result in a net air quality benefit. An air quality simulation model shall be performed in accordance with a protocol approved by the Department. The protocol shall be prepared in accordance with the Department's technical manual on Air Quality Modeling (Technical Manual 1002), available as stated in N.J.A.C. 7:27–18.4(c).

(f) Notwithstanding (e) above, in no case shall the minimum offset ratio be less than:

1. For CO, 1.00:1.00; and

2. For VOC and NO_x, 1.30:1.00.

(g) Creditable emission reductions may be used as emission offsets only if they are emission reductions of the same category of air contaminant, and must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to the proposed increase.

(h) Reductions in emissions of VOC or NO_x between October 1 and April 30 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between May 1 and September 30 inclusive.

(i) Emission reductions used previously as emission offsets, or used in calculating the proposed net emission increase, in accordance with N.J.A.C. 7:27–18.7(a)1, may not be used again as emission offsets.

(j) Except as provided in (k) below, the emission reductions used to offset emission increases shall, unless the facility for which the emissions increase is proposed is located in an attainment area, be secured from the applicant's facility or from another facility located in the same nonattainment area as the applicant's facility. In a case where the facility at which the emissions increase is to occur is located in an attainment area, the emission reductions shall be secured from a facility in the nonattainment area whose air quality could be adversely affected by the proposed construction or alteration. In both cases, if the area has been designated a nonattainment area by EPA pursuant to 40 CFR 81.331, the emission reductions shall be secured from the same Federally-designated nonattainment area.

(k) Any emission offsets for lead shall be obtained from:

1. The facility to which the application for a permit pertains; or

2. Another facility which significantly contributes to the same violation of the NAAQS or NJAAQS for lead in the same nonattainment area as the facility for which an application for a permit has been made.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Section substantially amended.
Recodified from 18.4 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (h), substituted a reference to October 1 and April 30 for a reference to November and March 31, and substituted a reference to May 1 and September 30 for a reference to April 1 and October 31.

7:27–18.6 Emission offset postponement

(a) If the Department has authorized a postponement before April 20, 1993 of these amendments, for complying with N.J.A.C. 7:27–18.3(c)1 or (d), to any person, the postponement will continue in effect until one year after the emission offsets become available, provided that the person complies with (b) below.

(b) Until emission offsets become available, any person who has received a postponement described in (a) above shall demonstrate to the Department annually that emission offsets are unavailable and shall certify that demonstration in accordance with N.J.A.C. 7:27–1.39.

(c) Any person who has received a postponement described in (a) above shall obtain emission offsets within one year after they become available.

(d) A postponement shall terminate if a person fails to comply with (b) or (c) above.

Petition for Rulemaking: Petitioner's request to eliminate emission offset postponement provision denied.
See: 22 N.J.R. 66(c).
Recodified from 18.5 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
New (a)-(d) added.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.7 Determination of a net emission increase or a significant net emission increase

(a) Any calculation to determine whether the maximum allowable emissions proposed in an application for a permit would result in a net emission increase or significant net emission increase at the facility of any air contaminant listed in Table 3 below shall be conducted in accordance with the following:

1. Determine the net emission increase of each air contaminant listed in Table 3 using the following formula:

$$NI = IP + INP + IF + IA - DO - DC$$

Where:

NI = The net emission increase at a facility

IP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which were authorized by permits issued by the Department;

INP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which came from any equipment or control apparatus for which no permit was in effect at the time of the increase;

IF = Any increase in fugitive emissions of the air contaminant from the facility during the contemporaneous period;

IA = Any proposed increase in allowable emissions of the air contaminant from the newly constructed, reconstructed, or modified equipment or control apparatus which is the subject of the permit application;

DO = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period, if emission offsets were secured for these increases from the facility or from another facility; and

DC = The sum of all creditable emissions reductions at the facility during the contemporaneous period, not including any creditable emissions reductions previously used as emission offsets at the facility or any other facility.

2. Compare the net emission increase of each air contaminant, derived pursuant to (a)1 above, to the significant net emission increase level for that air contaminant set forth in Table 3 below. If the net emission increase is equal to or greater than the applicable significant net emission increase level, it is a significant net emission increase.

TABLE 3

SIGNIFICANT NET EMISSION INCREASES

Air Contaminant	Significant Net Emission Increase Levels (tons per year)
SO_2	40
TSP	25
PM–10	15
NO_x	25
CO	100
Pb	0.6
VOC	25

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.8 Banking of emission reductions

(a) Any person may apply to the Department for the banking of emission reductions to be applied in the future as emission offsets. The applicant shall make the application in writing, submitted on a form obtained from the Department, containing the following information: name and address of person making the application; chemical name of air contaminant; quality of emission reductions with supporting calculations and documentation; reason for the emission reduction; specification of the equipment or source operations related to the emission reductions; and any additional information reasonably necessary to enable the Department to determine that a creditable emission reduction has been achieved. Such a form may be requested from:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
Bureau of New Source Review
PO Box 027
Trenton, New Jersey 08625–0027

(b) Any application for the banking of emission reductions shall be certified in accordance with N.J.A.C. 7:27–1.39.

(c) An application to bank emission reductions shall be made no later than 12 months after the emission reduction occurs. No emission reductions due to the shutdown of any equipment or source operation shall be eligible for banking, unless the applicant notifies the Department at least 60 days prior to removal of the equipment and provides the Department with the opportunity to inspect the equipment or source operation at least 30 days before it is dismantled.

(d) Any emission reductions submitted to the Department for banking shall, upon their approval by the Department for banking, be an enforceable operating restriction for the facility.

(e) If a State or Federal statute, rule, or regulation decreases an allowable emission limit for an air contaminant, the value of any banked emission reductions of that air contaminant shall be reduced, before discounting pursuant to (f) or (g) below, to equal the allowable emission limits in effect at the time the banked emission reductions are used to offset emission increases. The following example illustrates this reduction:

1. Assume that a CO reduction of 10 tons per year is approved for banking, and that seven years after that approval, the CO limit applicable to the equipment is reduced to four tons per year;

2. If the banked emission reduction is used five years after it was approved for banking, under (f) below its value is discounted by 50 percent, to five tons per year; and

3. If the banked emission reduction is used eight years after it was approved for banking (which is after the date of the change in the applicable CO limit), its value is reduced to two tons per year, as follows: first, from 10 tons per year to four tons per year, to reflect the reduction in the applicable CO limit; and second, from four tons per year to two tons per year, to reflect the 50 percent discount under (f) below.

(f) The value of banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for more than five years after the date the emission reduction is submitted for banking shall be discounted by 50 percent. As of the date five years after the date of submittal for banking, the discounted portion of the banked emission reductions may no longer be used as an emission offset by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant, but shall revert to the State.

(g) Any banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for 10 years after the date they have been submitted for banking, shall revert to the State. As of the date 10 years after the date of submittal for banking, these emission reductions may no longer be used as emission offsets by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant.

(h) Any discount of or reduction in the value of banked emission reductions pursuant to (e), (f) or (g) above shall take effect without further action by the Department.

(i) For the purposes of the discounting provisions set forth in (f) and (g) above, the Department shall treat any emission reductions which have been submitted for banking prior to April 20, 1993, as if they were submitted for banking on April 20, 1993.

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the following service fees for banking:

Banking fees

Activity	Basis	Amount
a. Base Application Review	Per Source Operation	$200.00
b. Verification	Per Source Operation	$200.00
c. Transfer of Facility Ownership	Per Source Operation	$ 50.00
d. Withdrawal of Credits	Per Source Operation	$200.00
e. Donation of Credits to the State of New Jersey	Per Source Operation	00.00

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Substantially amended subsection (a) and deleted subsection (b).
Recodified from 18.7 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote (j).

Law Review and Journal Commentaries

New Rules Establish Clean Air Act Standards, 132 N.J.L.J. No. 8, S10 (1992).

7:27–18.9 Secondary emissions

(a) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions under the person's control will meet all requirements of N.J.A.C. 7:27–18.3.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions not under the person's control will meet the requirements of only N.J.A.C. 7:27–18.3(c)1.

(c) The certifications required under (a) and (b) above shall be submitted with the application and shall be made in accordance with N.J.A.C. 7:27–1.39.

Recodified from 18.8 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

1. If the notice concerns a combustion source located in Mercer County, Middlesex County, Monmouth County, Ocean County, or Union County, the person shall send the notice to:

Department of Environmental Protection
Central Regional Office
Air Compliance & Enforcement
Horizon Center
Rt. 130, Building 300
P.O. Box 407
Robbinsville, NJ 08625-0407

2. If the notice concerns a combustion source located in Bergen County, Essex County, Hudson County, Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County, the person shall send the notice to:

Department of Environmental Protection
Northern Regional Office
Air Compliance & Enforcement
7 Ridgedale Avenue
Cedar Knolls, NJ 07927

3. If notice concerns a combustion source located in Atlantic County, Burlington County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County, the person shall send the notice to:

Department of Environmental Protection
Southern Regional Office
Air Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08103

4. If the notice concerns an averaging plan pursuant to N.J.A.C. 7:27-19.6, the person shall determine the county in which the averaging unit with the biggest potential to emit NO_x is located, and send the notice to the address applicable to that county under (j)1 through 3 above.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Added (g) and redesignated former (g) and (h) as (h) and (i).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (c) and (e), changed N.J.A.C. references.
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Rewrote (g); added a new (h) and recodified former (h) and (i) as (i) and (j).
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
Rewrote (b), (c), (d), (f), (i), and (j).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Rewrote the introductory paragraph of (e); updated the address in (e); rewrote the introductory paragraph of (f); and reserved (g) and (h).

7:27-19.4 Boilers serving electric generating units

(a) The owner or operator of any boiler serving an electric generating unit shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Tables 1, 2 and 3 below, as applicable, unless the owner or operator is complying with N.J.A.C. 7:27-19.3(f) or unless otherwise specified in an enforceable agreement with the Department. Table 1 is operative through December 14, 2012. Table 2 is operative starting December 15, 2012 through April 30, 2015, except that a coal-fired boiler serving an electric generating unit may be eligible for up to a one-year extension of the December 15, 2012 compliance date pursuant to (f) below. Table 3 is operative on and after May 1, 2015. A boiler serving an electric generating unit is also subject to the state-of-the-art requirements at N.J.A.C. 7:27-8.12 and 22.35, lowest achievable emission rate requirements at N.J.A.C. 7:27-18, and best available control technology requirements at 40 CFR 52.21, incorporated herein by reference, as applicable.

TABLE 1
(Operative through December 14, 2012)
Maximum Allowable NO_x Emission Rates for
Boilers Serving Electric Generating Units
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	**Tangential**	**Face**	**Cyclone**
Coal –Wet Bottom	1.0	1.0	0.60
Coal – Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

TABLE 2
(Operative from December 15, 2012 through April 30, 2015)
Maximum Allowable NO_x Emission Rates for
Boilers Serving Electric Generating Units
(pounds per megawatt hour)

	Firing Method		
Boiler Type	**Tangential**	**Face**	**Cyclone**
Coal	1.50	1.50	1.50
Oil and/or Gas	2.00	2.80	4.30
Gas only	2.00	2.00	4.30

TABLE 3
(Operative on and after May 1, 2015)
Maximum Allowable NO_x Emission Rates for
Boilers Serving Electric Generating Units
(pounds per megawatt hour)

Fuel	
Coal	1.50
Heavier than No. 2 fuel oil	2.00
No. 2 and lighter fuel oil	1.00
Gas only	1.00

(b) The owner or operator of any boiler serving an electric generating unit shall install on the boiler a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18.

(c) The owner or operator of any boiler serving an electric generating unit shall adjust the boiler's combustion process before May 1st of each calendar year in accordance with N.J.A.C. 7:27-19.16, except the adjustment may occur within seven days of the first period of operation after May 1, if the boiler has not operated between January 1 and May 1 of that year.

(d) The owner or operator of a boiler serving an electric generating unit shall demonstrate compliance with its applicable maximum allowable NO_x emission rate in Table 2 or 3 as follows:

1. Using the methods at N.J.A.C. 7:27-19.15(a), any coal-fired boiler that is subject to an emission rate at Table 2 above shall demonstrate compliance with the maximum allowable NO_x emission rate in Table 2 either by June 15, 2013 or, if the boiler or control apparatus is altered to meet the Table 2 emission rate, by the date determined by N.J.A.C. 7:27-19.15(c), whichever date is earlier, and thereafter according to the schedule in the approved permit, except that a coal-fired boiler may be eligible for up to a one-year extension of the June 15, 2013 compliance demonstration date pursuant to (f) below; and

2. Using the methods at N.J.A.C. 7:27-19.15(a), any boiler that combusts any fuel other than coal and that is subject to an emission rate at Table 3 above shall demonstrate compliance with the applicable maximum allowable NO_x emission rate in Table 3 by November 1, 2015 or, if the boiler or control apparatus is altered to meet the applicable Table 3 emission rate, by the date determined by N.J.A.C. 7:27-19.15(c), whichever date is earlier, and thereafter according to the schedule in the approved permit.

(e) When calculating a 24-hour NO_x emission rate for an affected coal-fired unit, the owner or operator may exclude emissions from:

1. A unit that has ceased firing fossil fuel, the period of time, not to exceed eight hours, from initial firing of the unit until the unit is fired with coal and synchronized with a utility electric distribution system; and

2. A unit that is to be shut down, the period of time in which the unit is not longer synchronized with any utility electric distribution system and is no longer fired with coal.

(f) The owner or operator of a coal-fired boiler that is subject to Table 2 at (a) above may request up to a one-year extension past the December 15, 2012 Table 2 emission limit compliance deadline required at (a) and the June 15, 2013 compliance demonstration deadline required at (d)1 above by sending a written request to the address at N.J.A.C. 7:27-19.30(a). The request shall document the reasons the extension is needed. The Department will approve an extension request only if compliance by December 15, 2012 is not possible due to circumstances beyond the control of the owner or operator that are not reasonably foreseeable, including, but not limited to, the unavailability of a control apparatus needed to comply with the December 15, 2012 compliance deadline or a contractor needed to install the control apparatus.

(g) Each owner or operator identified at N.J.A.C. 7:27-19.29(a) shall submit to the Department a 2009 HEDD Emission Reduction Compliance Demonstration Protocol and annual reports pursuant to N.J.A.C. 7:27-19.29.

(h) Each owner or operator of a boiler serving an electric generating unit that is a HEDD unit shall submit to the Department a 2015 HEDD Emission Limit Achievement Plan and annual progress updates, as applicable, pursuant to N.J.A.C. 7:27-19.30.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
In rule heading substituted "Boilers serving electric generating units" for "Utility boilers"; rewrote (a) and (b); added (c).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Rewrote the introductory paragraph of (a); in Table 1 in (a), inserted "(Operative through December 14, 2012)"; added Tables 2 and 3 in (a); and added (d) through (h).

7:27-19.5 Stationary combustion turbines

(a) The owner or operator of a simple cycle combustion turbine shall comply with (a)1 through 3 below, as applicable.

1. Until March 7, 2007, the owner or operator of any stationary simple cycle combustion turbine that has a maximum gross heat input rate of at least 30 million BTUs per hour shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, unless the owner or operator is complying with N.J.A.C. 7:27-19.3(f).

2. March 7, 2007 through May 19, 2009, the owner or operator of any simple cycle combustion turbine that has a maximum gross heat input rate of at least 25 million BTUs per hour and is a NO_x Budget source shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, unless the owner or operator is complying with N.J.A.C. 7:27-19.3(f).

3. May 20, 2009 through April 30, 2015, the owner or operator of any simple cycle combustion turbine that is a HEDD unit shall cause it to emit NO_x at a rate no greater than the lesser of the applicable maximum allowable NO_x emission rate specified in Table 4 below, or the maximum allowable NO_x emission rate contained in its preconstruc-

8. The allowable NO_x emissions calculated pursuant to (d)2 above; and

9. Any other information required to be maintained as a condition of approval granted pursuant to (b) above.

(h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (k) below. The owner or operator shall include the following information in the quarterly report:

1. The information listed in (g)2 and 3 above;

2. In the report for the quarter ending March 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter;

3. In the report for the quarter ending June 30:

i. The compliance determination required under (f)2 above for each 30-day period ending on a calendar day from April 1 through May 14, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from May 15 through June 30, inclusive;

4. In the report for the quarter ending September 30, the compliance determination required under (f)1 above for each calendar day from July 1 through September 30; and

5. In the report for the quarter ending December 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter.

(i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the designated set shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified at N.J.A.C. 7:27-19.3(i) for the county in which the averaging unit with the highest NO_x emission rate is located. The owner or operator shall include the following information in the notification:

1. The name of the owner or operator;

2. The name and telephone number of the person specified in (b)7 above;

3. All information required to be recorded under (h) above;

4. A statement of the reason(s) for the non-compliance, if known; and

5. Certification of the notification, in accordance with N.J.A.C. 7:27-1.39.

(j) An owner or operator of an averaging unit which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the control of the owner or operator, including, but not limited to, a Generator Forced/Unplanned Outage as defined by PJM Manual 35: Definitions and Acronyms, Revision: 14, Effective Date: October 21, 2008 at http://www.pjm.com/documents/manuals/~/media/documents/manuals/m35.ashx, which definition is incorporated herein by reference, as supplemented or amended, and for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, or 19.10 shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written preliminary notice to the Department. This preliminary notice shall be followed up within 30 calendar days of the occurrence of the incident certifying the information in accordance with N.J.A.C. 7:27-1.39. In the written notice, the owner or operator shall identify the unit which is or was not operating, and state why it is or was not operating;

2. If circumstances beyond the control of the owner or operator make it impracticable either to repair the averaging unit within 15 calendar days after it ceased operating, or to comply with the averaging plan without operating the unit (for example, through reducing the operations of another unit and purchasing electric power from another source), include in the notice described in (j)1 above an explanation of those circumstances and an estimate of the time required to repair the averaging unit; and

3. In determining whether the designated set is in compliance with (d)2 above, assume that the NO_x emissions and heat input for the non-operational averaging unit for each of the first 15 days of non-operation (or such longer period, not to exceed six months, as the Department determines is necessary to repair the averaging unit based on the information submitted under (j)2 above) are equal to the actual emissions and heat input for that unit on the most recent comparable demand day. For each day after the end of the period described above, assume that the NO_x emissions and heat input for the non-operational averaging unit are zero.

(k) A person required to submit a quarterly report to the Department under (h) above shall send the quarterly report to the applicable address listed below:

1. If the averaging unit with the highest NO_x emission limit is located in Mercer County, Middlesex County, Monmouth County, Ocean County, or Union County, the person shall send the quarterly report to:

Department of Environmental Protection
Central Regional Office
Air Compliance & Enforcement
Horizon Center
Rt. 130, Building 300
P.O. Box 407
Robbinsville, NJ 08625-0407

2. If the averaging unit with the highest NO_x emission limit is located in Bergen County, Essex County, Hudson County, Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County, the person shall send the quarterly report to:

Department of Environmental Protection
Northern Regional Office
Air Compliance & Enforcement
7 Ridgedale Avenue
Cedar Knolls, NJ 07927

3. If the averaging unit with the highest NO_x emission limit is located in Atlantic County, Burlington County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County, the person shall send the quarterly report to:

Department of Environmental Protection
Southern Regional Office
Air Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08103

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (i)5 and (j)1, changed N.J.A.C. references.
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (b)6ii and (d)2ii, substituted references to September 30 for references to September 15 and substituted references to October 1 for references to September 16; in (f), substituted a reference to September 30 for a reference to September 15 in 1, and substituted a reference to October 1 for a reference to September 16 in 2; and rewrote (h)4.
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
In (b)1, deleted "utility", added "serving an electric generating unit" and substituted "combustion" for "gas"; in (h), substituted "(k)" for "(*l*)"; added (k).
Administrative correction.
See: 38 N.J.R. 5155(b).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Rewrote the introductory paragraph of (j).

7:27-19.7 Industrial/commercial/institutional boilers and other indirect heat exchangers

(a)-(c) (Reserved)

(d) The owner or operator of any industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27-19.18.

(e)-(f) (Reserved)

(g) On and after March 7, 2007, the owner or operator of an industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least five million BTU per hour, whether or not it is located at a major NO_x facility, shall adjust the combustion process annually in accordance with the procedure set forth at N.J.A.C. 7:27-19.16 and the following schedule:

1. For an industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least five million BTU per hour, but less than 10 million BTU per hour, in the same quarter of each calendar year, beginning in 2010;

2. For an industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 10 million BTU per hour, but less than 20 million BTU per hour, in the same quarter of each calendar year beginning in 2008; or

3. For an industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 20 million BTU per hour or greater, in the same quarter of each calendar year beginning in 2007.

(h) On and after March 7, 2007, the owner or operator of an industrial/commercial/institutional boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million BTU per hour, located at a major NO_x facility, shall cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 8 below, in accordance with the following, unless the owner or operator is complying with N.J.A.C. 7:27-19.3(f):

1. For an industrial/commercial/institutional boiler or other indirect heat exchanger that is not located at a petroleum refinery:

i. The owner or operator shall cause the industrial/commercial/institutional boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 8 below through April 30, 2010, if compliance is achieved without physically modifying the boiler or other indirect heat exchanger; or

(f) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed NO_x control plan or request for an alternative emission limit. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which the major NO_x facility is located.

(g) Within six months after receiving a complete proposed NO_x control plan or request for an alternative emission limit, the Department shall approve, approve and modify, or disapprove the proposed plan or request and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above and under (b) or (c) above, as applicable;

2. The proposed plan or request considers all control technologies available for the control of NO_x emissions from the type of equipment or source operation in question;

3. For any control technologies described in (g)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan or request demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the equipment or source operation;

ii. Is unsuitable for use in the equipment or source operation, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions limit which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of equipment or source operations used by other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation and item of equipment is the lowest limit, which can practicably be achieved at a cost within the limits described in (g)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed emission limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. Any significant net emission of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27-19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard, an exceedance of a Federal Prevention of Significant Deterioration increment if applicable, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27-18.

(h) Any alternate emission limit pursuant to (c) above or NO_x control plan pursuant to (b) above approved by the Department will be submitted to EPA for approval as a revision to the State Implementation Plan (SIP) for ozone.

(i) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any of the equipment or source operations at the subject facility listed pursuant to (b)3i or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment.

(j) Before altering any equipment or source operation which is included in an approved facility-specific NO_x control plan, the owner or operator shall:

1. If the alteration would change any of the information required in (b) or (d) above, apply for and obtain pursuant to the procedures set forth at (b) and at (d) through (j) above the Department's approval of an amended facility-specific NO_x control plan, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the facility-specific NO_x control plan to reflect the alteration, in a manner satisfying the criteria set forth in (g) above; and

2. Apply for and obtain such permits and certificates, or changes thereto, as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(k) An approval of an alternative emission limit is void upon the alteration of equipment or source operation which is subject to the rate unless:

1. The Department approves continued application of the existing alternative emission limit if the proposed alteration does not materially affect the basis of the Department's original approval; or

2. The owner or operator, before altering any equipment or source operation which is subject to an alternative emission limit, applies for and obtains the Department's approval of:

i. A revised alternative emission limit pursuant to this section, reflecting the proposed alteration; and

ii. Such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(*l*) The Department will revoke an approval of a NO_x control plan by written notice to the holder of the approval if EPA denies approval of the proposed NO_x plan as a revision to the State Implementation Plan. The Department may revoke an approval of a NO_x control plan by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the proposed plan or any supporting documentation;

3. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

(m) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1. The Department denied the person's application for approval of a plan or alternative limit under this section;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (i) above; or

3. The Department has revoked the person's approval pursuant to (*l*)1, 2 or 3 above.

(n) The owner or operator of a facility described in (a)1 above shall implement the NO_x control plan (including, without limitation, complying with the emission limit set forth in the plan) approved by the Department by May 31, 1995, or by March 7, 2007 for any facility, equipment or source operation that is subject to a NO_x emissions limit under this subchapter as set forth at N.J.A.C. 7:27-19.5(d), 19.7(h), or 19.8(e), and maintain compliance with the plan and all conditions of the Department's approval thereafter. The owner or operator of a source operation or item of equipment for which the Department has approved an alternative emission limit shall cause it to emit NO_x at a rate no greater than the approved alternative emission limit.

(*o*) The owner or operator submitting a proposed NO_x control plan or request for an alternative emission limit shall send it to the Department at the following address:

Chief, Bureau of Operating Permits
Division of Air Quality
Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, New Jersey 08625-0027

(p) A major NO_x facility satisfies the requirements of this section if its only equipment or source operations with the potential to emit 10 tons or more of NO_x per year are thermal oxidizers. The owner or operator of such a facility is not required to submit a facility-specific NO_x control plan for the facility.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
In (i) provided for approval of alternative emission rates.
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d)9, changed N.J.A.C. reference; in (j)2 and (k)2ii, inserted "or 22, N.J.A.C. 7:1K-1.5"; and in (m), changed N.J.A.C. reference in the introductory paragraph.
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (i), inserted "application for an" following "of any", and substituted "submitted to the Department pursuant to" for "issued, extended or renewed under" following "rate" in the second sentence.
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
In (i), deleted the last sentence.
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
Rewrote (a)1; added "or (c)" and substituted "that" for "which" in (a)2; in (b), rewrote introductory paragraph; in (b)1, substituted "that" for "which" and added "or (c)"; rewrote (n); rewrote address in (*o*); deleted "non-utility boilers or" in (p).
Administrative correction.
See: 38 N.J.R. 5155(b).
Amended by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Section was "Facility-specific NO_x emissions limits". Rewrote the section.

7:27-19.14 Procedures for obtaining approvals under this subchapter

(a) This section establishes the procedure for obtaining any of the following from the Department:

1. An exemption from this subchapter, pursuant to N.J.A.C. 7:27-19.2(f);

2. Approval of a fuel switching plan under N.J.A.C. 7:27-19.20, and authorization to operate under the plan;

3. Approval of a plan for phased compliance under N.J.A.C. 7:27-19.21, 19.22 or 19.23, and authorization to operate under the plan;

4. Approval of compliance with the requirements of N.J.A.C. 7:27-19.5(c) for a stationary combustion turbine;

5. Approval of an emissions averaging plan under N.J.A.C. 7:27-19.6, and authorization to operate under the plan; or

6. Approval of an alternative monitoring plan pursuant to N.J.A.C. 7:27-19.18(b).

(b) The person seeking an approval listed in (a) above shall submit a written application to the Department at the following address:

Chief, Bureau of Preconstruction Permitting
Division of Air Quality
Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1. Any information required under N.J.A.C. 7:27-19.2(f), 19.5(c), 19.6(b), 19.18(c), 19.20 or 19.21, as applicable;

2. The name, address and telephone number of the owner and the operator of the equipment or source operation which is the subject of the application;

3. The street address of the facility at which the subject equipment or source operation is located;

4. The type of equipment or source operation which is the subject of the application, and its make, model and serial number;

5. For requests submitted under N.J.A.C. 7:27-19.5(c), a proposed maximum allowable emission rate for the subject stationary combustion turbine;

6. A certification of the application, satisfying the requirements of N.J.A.C. 7:27-1.39; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above. If the application is incomplete:

1. The Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application;

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete;

3. The applicant shall submit a complete application within the time stated in the Department's notification; and

4. The Department may reject the application if the applicant fails to submit a complete application within the time stated in the Department's notification.

(e) Within six months after receiving a complete application, the Department shall grant its approval under this section only if:

1. The applicant satisfies all eligibility requirements set forth in N.J.A.C. 7:27-19.5(c), 19.6(c), 19.20, or 19.21 as applicable; and

2. Any significant net emission of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27-19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard as determined pursuant to N.J.A.C. 7:27-18, an exceedance of a Federal Prevention of Significant Deterioration increment if applicable, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27-18.

(f) As a condition of an approval issued under this section (other than an approval of an exemption pursuant to N.J.A.C. 7:27-19.2(f)), the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) An approval issued under this section is void upon the alteration of equipment or source operation which is the subject of the approval unless:

1. The owner or operator applies for and obtains the Department's approval of a revised approval pursuant to this section, reflecting the proposed alteration; and

2. Before altering the equipment or source operation subject to the approval, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(h) The Department may revoke an approval issued under this section, by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date of the approval, the subject equipment or source operations are able to comply with the applicable section of this subchapter. In revoking an approval pursuant to this paragraph, the Department shall specify an effective date for the revocation which

provides the owner or operator with a reasonable amount of time to comply with the applicable section of this subchapter; or

4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to public health, welfare or the environment.

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1. The Department has denied the person's application for an approval under this section;

2. The person seeks to contest conditions of the approval imposed under (f) above; or

3. The Department has revoked the person's approval pursuant to (h) above.

(j) If an item of equipment or a source operation has exceeded the maximum allowable emission rate applicable under this subchapter without an approval pursuant to this section, it shall not be a defense to an enforcement action that an application for an approval is pending.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (c)6, changed N.J.A.C. reference; in (g)2, inserted "or 22, N.J.A.C. 7:1K-1.5,"; and in (i), changed N.J.A.C. reference in the introductory paragraph.
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
Substituted "combustion" for "gas" in (a)4 and (c)5; rewrote address in (b).

7:27-19.15 Procedures and deadlines for demonstrating compliance

(a) Except as set forth in (d) and (e) below, the owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit as follows:

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, or if any other provision of this subchapter requires emissions from the equipment or source operation to be monitored by a continuous emissions monitoring system under N.J.A.C. 7:27-19.18, the owner or operator shall calculate the average NO_x emission rate using the data from such a system for the NO_x concentration in the flue gas and either the flue gas flow rate or the fuel flow rate. To calculate the emission rate using the NO_x concentration and fuel flow rate, the owner or operator shall use the conversion procedure set forth in the Acid Rain regulations at 40 CFR 75, Appendix F, or an alternative procedure that the Department determines will yield the same result. Compliance with the limit shall be based upon the average of emissions:

i. Between May 1 and September 30, over each calendar day; and

ii. From October 1 through April 30 of the following year, over the 30-day period ending on each such day; or

2. If no continuous emissions monitoring system has been or is required to be installed on the equipment or source operation, compliance with the limit shall be based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27-19.17. Any NO_x testing conducted pursuant to this section shall be conducted concurrently with CO testing. The applicable NO_x emission limits in this subchapter will not be considered to have been met unless the concurrent CO testing demonstrates compliance with the CO limit in N.J.A.C. 7:27-16.8, 16.9, 16.10, 16.11, or the permit limit for CO, whichever is more stringent, is also met.

(b) Except as set forth in (d) and (e) below, for any equipment or source operation subject to this subchapter that was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation, except that the owner or operator of any facility, equipment or source operation that is subject to a NO_x emissions limit under this subchapter as set forth at N.J.A.C. 7:27-19.5(d), 19.7(h), or 19.8(e), and that is in operation before November 7, 2005 shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by March 7, 2008. Test results that demonstrate compliance with a new requirement within the five years preceding November 7, 2005 shall be accepted by the Department as satisfying this test requirement, if the testing and test report were reviewed by the Department and found satisfactory.

(c) Except as set forth in (d) and (e) below, for any equipment or source operation subject to this subchapter which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above within 180 days from the date on which the source commences operation, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(d) For any equipment or source operation at an asphalt pavement production plant subject to a NO_x emissions limit at N.J.A.C. 7:27-19.9(a), the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)2 above, within 365 days from the date at N.J.A.C. 7:27-19.9(f)1 or 2, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(E) Established monitoring procedures utilized at the facility to meet other regulatory requirements; and

2. Under the plan, a continuous emissions monitoring system will be installed on each boiler serving an electric generating unit at the facility if required under 40 CFR 75 or 76.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any equipment or source operation subject to a monitoring plan necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under this section is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed) unless:

1. The owner or operator applies for and obtains the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration; and

2. Before altering the equipment or source operation subject to the plan, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27-8 or 22, N.J.A.C. 7:1K-1.5, and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation; or

3. The Department determines that the alternative monitoring methodology is not equivalent to a continuous emissions monitor which satisfies the criteria of (a)1 above.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions monitor on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(*l*) The owner or operator of an item of equipment or source operation required to have a continuous monitoring system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of an alternative monitoring plan shall send the application to the Department at the following address:

Chief, Bureau of Technical Services
Air Quality Regulation Program
Department of Environmental Protection
PO Box 411
Trenton, New Jersey 08625-0411

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (g)2, inserted "or 22, N.J.A.C. 7:1K-1.5,"; and in (k), changed N.J.A.C. reference.
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
In (e)2, deleted "utility" and added "serving an electric generating unit".

7:27-19.19 Recordkeeping and recording

(a) Any person required to record or maintain information or records pursuant to this subchapter shall maintain the required information or records for a period of no less than five years after the record was made. Such person shall make the records available to the Department or to EPA upon request.

(b) Any person required to record or maintain information or records pursuant to this subchapter may submit a request to the Department, in writing, for approval to maintain alternate records. The Department may approve the request if the person demonstrates to the satisfaction of the Department that the alternate records or information are at least as effective as those required by this subchapter in documenting compliance with this subchapter.

(c) The recordkeeping requirements in (d) and (f) below apply to the owner or operator of any combustion source that is:

1. Included in a fuel switching plan approved under N.J.A.C. 7:27-19.14 and 19.20; or

2. Included in a plan for phased compliance approved under N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21 or 19.23

(d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September 30, for the 30-day period ending on October 1, and for each 30-day period ending on each subsequent day through April 30 of the following year:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired boiler serving an electric generating unit"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. The day or 30-day period, as applicable, for which the record is being made;

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September 30, during the 30-day period ending on October 1, and during each 30-day period ending on each subsequent day through April 30 of the following year;

4. The quantity of NO_x emitted during the day or 30-day period, as applicable, determined in accordance with N.J.A.C. 7:27-19.15(a) and expressed in pounds or tons;

5. The allowable quantity of NO_x emissions as expressed in pounds or tons for the day or 30-day period as determined according to N.J.A.C. 7:27-19.20, 19.21 or 19.23; and

6. Any other information required to be maintained as a condition of an approval granted under N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.20, 19.21 or 19.23.

(e) The owner or operator of any combustion source that is temporarily combusting fuel oil or other liquid fuel in place of natural gas pursuant to N.J.A.C. 7:27-19.25 shall keep on site a record of the number of hours such fuel has been combusted.

(f) The owner or operator of a combustion source listed in (c) or (e) above shall keep the records required under (d) and (e) above at the facility in a permanently bound log book or by an electronic method that is easily accessible on site and at the time of inspection, in a format that enables the Department to readily determine whether the combustion source is in compliance.

(g) The reporting requirements below apply to the owner or operator of any combustion source that is listed in (c) or (e) above as follows:

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, an owner or operator shall submit to the Department a quarterly report in accordance with the requirement to report excess emissions contained in the Preconstruction Permit and Operating Certificate or an Operating Permit for the equipment or source operation. For an owner or operators subject to (c) above, the information pursuant to (d) above shall be submitted with the report for each day or 30-day period of a violation. If no violations occurred during the quarter, the owner or operator should provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification should be in accordance with N.J.A.C. 7:27-1.39; or

2. If no such continuous emissions monitoring system has been installed the owner or operator shall submit to the Department on March 1 of each year an annual report for the preceding calendar year. Such annual report shall include any violations which occurred during the previous year. If no violations occurred during the year, the owner or operator shall provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification shall be in accordance with N.J.A.C. 7:27-1.39.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (d), substituted references to September 30 for references to September 15 throughout, and substituted references to October 1 for references to September 16 in the introductory paragraph and 3.
Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).
See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).
In (d)1, deleted "utility" and added "serving an electric generating unit".

7:27-19.20 Fuel switching

(a) The owner or operator of a combustion source included in a plan for fuel switching is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27-19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) A combustion source may be included in a fuel switching plan only if it will be deriving from a cleaner fuel a greater percentage of its total heat input than it derived in the base year.

7:27-19.27 (Reserved)

New Rule, R.2004 d.129, effective April 5, 2004 (Operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Repealed by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Section was "Use of NO_x budget allowances by a former DER credit user".

7:27-19.28 Sewage sludge incinerators

(a) The owner or operator of a sewage sludge incinerator shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 13 below, unless the owner or operator is complying with N.J.A.C. 7:27-19.3(f).

TABLE 13
Maximum Allowable NO_x Emission Rates for Sewage Sludge Incinerators
(pounds of NO_x per ton of dry sewage sludge)

Multiple Hearth	7.0
Fluidized Bed	2.5

(b) In lieu of complying with the maximum allowable NO_x emissions rate at (a) above, the owner or operator of a sewage sludge incinerator may comply with N.J.A.C. 7:27-19.3(f), or obtain an alternative maximum allowable NO_x emission rate approved by the Department pursuant to N.J.A.C. 7:27-19.13.

(c) The owner or operator shall demonstrate compliance with (a) or (b) above in accordance with N.J.A.C. 7:27-19.15(a)2.

New Rule, R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).

7:27-19.29 2009 HEDD Emission Reduction Compliance Demonstration Protocol

(a) This section shall apply to any owner or operator of a HEDD unit, or their successors or assigns, that operated on July 26, 2005, and that meets the following:

1. If a HEDD unit is a combustion turbine and was not controlled by water injection or SCR, or is a boiler and was not controlled by SCR or SNCR; and

2. The NO_x emission rate of a HEDD unit was 0.15 pounds per MMBTU or greater. To determine the emissions rate of the HEDD unit, the owner or operator shall obtain the emission rate, in lb/MMBtu, for the HEDD unit for July 26, 2005 from the USEPA Clean Air Markets Division (CAMD) NO_x emission data, which as of March 20, 2009 can be found at http://camddataandmaps.epa.gov/gdm/.

(b) Each owner or operator identified in (a) above shall:

1. Prepare a 2009 HEDD Emission Reduction Compliance Demonstration Protocol, hereafter referred to as the 2009 Protocol, in accordance with (d) below. Each emission reduction measure that is used to obtain emission reductions shall be included in the 2009 Protocol;

2. Submit to the Department, at the address at (b)5 below, by May 19, 2009, a 2009 Protocol;

3. Obtain the NO_x emission reductions determined by Equation 1 at (c) below, using one or more measures that meet the requirements at (d) below and that are listed in the 2009 Protocol, on each high electric demand day starting on May 19, 2009 through September 30, 2014, unless the Department has approved, pursuant to N.J.A.C. 7:27-19.22, a phased compliance plan with an initial compliance date that is after May 19, 2009;

4. Demonstrate that all NO_x emission reductions required by (b)3 above were obtained. The owner or operator shall include this demonstration in the annual report at (k) below. Conduct any demonstration using:

i. Calculations that demonstrate that the owner or operator achieved all emission reductions required at (b)3 above; or

ii. The Department-approved method of demonstrating in the 2009 Protocol that implementation of the 2009 Protocol on each high electric demand day that occurred starting January 1, 2005 through December 31, 2007 would have resulted in at least as many tons of NO_x emission reductions as would have been required by Equation 1 below. The owner or operator shall demonstrate that the owner or operator implemented the 2009 Protocol, or a modified protocol approved by the Department pursuant to (h) below, on each high electric demand day during the calendar year of the applicable annual report; and

5. Submit to the Department, at the address below, an annual report, pursuant to (k) below.

Assistant Director, Air Quality Permitting Element
Division of Air Quality
New Jersey Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

(c) The owner or operator shall obtain the NO_x emission reductions determined by Equation 1 on each high electric demand day pursuant to (b)3 above. Equation 1 is:

$$ER = (BE \div EF) \times RF$$

Where:

ER, BE, EF and RF are in units of tons of NO_x per high electric demand day (t/HEDD);

ER (Emission Reduction) = The total tons of NO_x reductions that is required from an owner or operator on each high electric demand day;

BE (Baseline Emission) = The total tons of NO_x that would be emitted on each high electric demand day, if the owner or operator did not implement any emission reduction measures. This calculation is based on total actual operation of HEDD units and total actual operation of new electric generating units installed to replace one or more HEDD units for that high electric demand day;

EF (Emission Factor) = The total tons of NO_x that were emitted by all of the owner or operator's HEDD units on July 26, 2005. In order to calculate EF, the owner or operator shall obtain the NO_x emitted, in tons, for each HEDD unit operated on July 26, 2005, from the EPA Clean Air Markets Division (CAMD) NO_x emission data, which as of March 20, 2009 can be found at http://camddataandmaps.epa.gov/gdm/; and

RF (Reduction Factor) = The HEDD NO_x emission reduction factor for each owner or operator shall be the sum of all Unit Reduction Factors (URF). A URF shall be calculated, in tons, for each HEDD unit that operated on July 26, 2005, using the following equation:

$$URF = (UE \times C)$$

Where:

URF (Unit Reduction Factor) = The reduction of NO_x emissions, in tons, emitted by a HEDD unit on July 26, 2005 that would have occurred if the unit had been controlled;

UE (Unit Emissions) = The tons of NO_x emissions emitted by a HEDD unit on July 26, 2005 obtained from the EPA Clean Air Markets Division (CAMD) NO_x emission data, which as of March 20, 2009 can be found at http://camddataandmaps.epa.gov/gdm/; and

C (Control Factor) = If the HEDD unit is a combustion turbine that was not controlled with water injection or Selective Catalytic Reduction (SCR) on July 26, 2005, and the NO_x emission rate of that unit was 0.15 lb/MMBtu or greater on July 26, 2005, then C is equal to 0.4. If the HEDD unit is a boiler that was not controlled with SCR or Selective Non-Catalytic Reduction (SNCR) controls on July 26, 2005, and the NO_x emission rate of that unit was 0.15 lb/MMBtu or greater on July 26, 2005, then C is equal to 0.3. If the HEDD unit is a combustion turbine that was controlled with water injection or SCR on July 26, 2005, or is a boiler that was controlled with SCR or SNCR on July 26, 2005, or had a NO_x emission rate of less than 0.15 lb/MMBtu on July 26, 2005, then C is equal to 0.

(d) The 2009 Protocol shall include the following:

1. The calculations performed in (c) above for EF and RF;

2. A list of measures used to obtain the required emission reductions determined by Equation 1. The measures must result in emission reductions that are real, quantifiable, enforceable, surplus, and are not required to comply with any State or Federal permit, regulation, enforceable agreement, or high electric demand day emission reduction program. Any of the following measures may be considered to achieve the required emission reductions:

i. Installation of a control apparatus on an existing HEDD unit that is located in New Jersey, Pennsylvania, Delaware, or Maryland;

ii. Reduction in the usage of any HEDD unit that is located in New Jersey, Pennsylvania, Delaware, or Maryland;

iii. Installation of a control apparatus on an existing non-HEDD unit that is located in New Jersey, Pennsylvania, Delaware, or Maryland;

iv. Commitment to combust natural gas in any HEDD unit that is permitted to combust either natural gas or fuel oil during high electric demand days when it would be economically preferred to combust fuel oil;

v. Implementation of an energy efficiency measure in New Jersey, as long as the energy efficiency measure was not committed to prior to May 19, 2009;

vi. Implementation of a demand response measure in New Jersey such as:

(1) A measure that shifts load, as long as the demand response measure was not committed to prior to May 19, 2009; or

(2) A measure that sheds load to clean distributed generation units, as long as the demand response measure was not committed to prior to May 19, 2009;

vii. Implementation of a renewable energy measure in New Jersey, as long as the renewable energy measure was not committed to prior to May 19, 2009; and

viii. Any other measure, approved by the Department, that provides NO_x emission reductions and ozone air quality benefits to New Jersey.

3. The 2009 Protocol shall include, at a minimum, the following for each measure:

i. A complete description of the measure;

ii. A quantification of the emission reductions from the measure and how the quantification was determined;

iii. The reasons why this measure is not necessary under any current State or Federal permit, regulation, enforcement agreement, or high electric demand day emission reduction program;

iv. The methods to be used to calculate and verify emission reductions;

v. Monitoring requirements to ensure that the emission reductions determined by Equation 1 are achieved. This shall include, but not be limited to, the following, as applicable, for each electric generating unit:

(1) Fuel flow/firing rate instrument to monitor fuel consumption;

(2) CEMs monitoring of NO_x emissions or monitoring of any parameter that can be used to calculate the NO_x emissions; and

(3) Stack testing; and

vi. A list of records to be maintained pursuant to the requirements of N.J.A.C. 7:27-19.19. The records maintained should be sufficient to document that the emission reductions determined by Equation 1 are achieved. This shall include, but not be limited to the records, as applicable, listed in (e) below, for each high electric demand day.

(e) The list of records to be maintained pursuant to (d)3vi above are the following:

1. The date of each high electric demand day;

2. The actions taken to reduce emissions;

3. The start and end time for operation of each EGU operated during that high electric demand day;

4. The total hours of operation for each EGU in (e)3 above;

5. The type of fuel combusted by each EGU in (e)3 above;

6. The hourly fuel use for each EGU in (e)3 above;

7. The hourly load in MW for each EGU in (e)3 above;

8. The hourly heat input in MMBtu/hr to each EGU in (e)3 above;

9. The hourly water injection rate for each EGU in (e)3 above;

10. The hourly ammonia injection rate for each EGU in (e)3 above;

11. The catalytic bed temperature for each EGU in (e)3 above;

12. The CEM values or documentation on how the baseline and actual NO_x emission rates were calculated for each EGU in (e)3 above;

13. Any other data needed to calculate baseline and actual NO_x emissions for each EGU in (e)3 above;

14. Calculations and results for the following:

i. Baseline NO_x emissions (BE in Equation 1, at (c) above);

ii. Actual NO_x emissions after 2009 Protocol control measures, calculated pursuant to the approved 2009 Protocol;

iii. Required NO_x emission reduction (ER in Equation 1, at (c) above); and

iv. Actual NO_x emission reduction (BE – actual emissions resulting from 2009 Protocol measures);

15. The fuel prices for that high electric demand day; and

16. Any other records necessary to document the emission reductions achieved.

(f) Within 30 calendar days after receiving a proposed 2009 Protocol, the Department will notify the owner or operator in writing whether the proposed 2009 Protocol includes all of the information required under (d) above. If the proposed 2009 Protocol is incomplete:

1. The Department will include in the notice a list of the deficiencies, a statement of the additional information required to make the proposed 2009 Protocol complete, and a time by which the owner or operator must submit a complete proposed 2009 Protocol;

2. The owner or operator shall correct the deficiencies listed in the Department's notice within the time stated in the Department's notice; and

3. The Department may disapprove the proposed 2009 Protocol if the owner or operator fails to correct the deficiencies within the time stated in the Department's notice.

(g) The Department may approve, revise and approve, or disapprove the proposed 2009 Protocol based on whether or not the proposed 2009 Protocol contains the contents required by (d) above. Except for (g)3 below, until the Department approves a proposed 2009 Protocol, implementation of the proposed 2009 Protocol constitutes compliance with (b)3 above. The Department will notify the owner or operator of the Department's action in writing as follows:

1. If the Department approves the proposed 2009 Protocol, the Department will notify the owner or operator in writing of the Department's approval;

2. If the Department revises the proposed 2009 Protocol and approves the revised proposed 2009 Protocol, the Department will notify the owner or operator in writing of the Department's revision and approval. In this notification the Department will list all revisions the Department made to the proposed 2009 Protocol, and include a compliance schedule if time is necessary to implement the revisions; or

3. If the Department disapproves the proposed 2009 Protocol, the Department will notify the owner or operator in writing of the Department's disapproval. In this notification the Department will include a list of the reasons for disapproval and a list of changes or additional information needed to make the proposed 2009 Protocol compliant with (d) above and approvable. If the owner or operator does not submit a revised proposed 2009 Protocol, with all information required by the Department's notification, to the Department at the address at (b)5 above

within 60 days of receiving the Department's notification, then one of the following shall apply:

i. If the owner or operator fails to submit a revised proposed 2009 Protocol by the deadline, implementation of the proposed 2009 Protocol shall no longer constitute compliance with (b)3 above after the deadline; or

ii. If the owner or operator submits a revised proposed 2009 Protocol that does not include all information required by the Department's notification, implementation of the proposed 2009 Protocol shall no longer constitute compliance with (b)3 above after the Department notifies the owner or operator that the revised proposed 2009 Protocol is still not approvable.

(h) The owner or operator may revise the 2009 Protocol at any time as follows:

1. The owner or operator shall submit to the Department, at the address at (b)5 above, a proposed revised 2009 Protocol. The proposed revised 2009 Protocol shall include all the information required by (d) above;

2. The Department will notify the owner or operator of any deficiencies pursuant to (f) above; and

3. The Department will approve, revise and approve, or disapprove the proposed revised 2009 Protocol based on whether or not the proposed 2009 Protocol contains the contents required by (d) above. The Department will notify the owner or operator of the action in writing.

(i) If the owner or operator of an electric generating unit that is included in an approved 2009 Protocol changes between May 19, 2009 and September 30, 2014, the old owner or operator shall submit a revised 2009 Protocol to the Department, at the address in (b)5 above, within 30 calendar days of the change taking place, for approval in accordance with (h) above. The revised 2009 Protocol shall demonstrate that all required emission reductions will continue to be obtained, and shall clearly define how the required emission reductions will be obtained henceforth and which owner or operator shall be responsible for achieving the required emission reductions. Any shared responsibility for the emission reductions shall be clearly defined in the revised 2009 Protocol.

(j) An owner or operator may implement any emission reduction measure that meets the requirements at (d) above if the owner or operator has obtained all necessary permit modifications pursuant to N.J.A.C. 7:27-8 and 22, submits a revised 2009 Protocol to the Department at the address at (b)5 above within 30 days of implementing the measure, and maintains compliance with all other applicable provisions of N.J.A.C. 7:27.

(k) Each owner or operator identified in (a) above shall submit an annual report for calendar years 2009 through 2014. Each annual report shall be submitted to the Department to the address at (b)5 above, by January 30th of the following year. (For example, the annual report for 2009 is due on January 30, 2010.) At a minimum, the annual report shall include the following information, as applicable, for each measure and each high electric demand day:

1. The actions taken to reduce emissions;

2. The baseline and actual emissions in total tons;

3. For measures not associated with an EGU unit, the annual report shall include any documentation required by the approved 2009 Protocol; and

4. For measures associated with an EGU unit, the annual report shall include:

i. The total hours of operation for each EGU;

ii. The type of fuel combusted;

iii. The hourly fuel use;

iv. The hourly load in MW;

v. The hourly heat input in MMBtu/hr;

vi. The hourly water injection rate;

vii. The hourly ammonia injection rate;

viii. The catalytic bed temperature;

ix. The CEM values or documentation on how the baseline and actual NO_x emission rates were calculated;

x. Any other data used to calculate baseline and actual NO_x emissions;

xi. The calculations and results for:

(1) Baseline NO_x emissions (BE in Equation 1, at (c) above);

(2) Actual NO_x emissions after emission reduction measures;

(3) Required NO_x emission reduction (ER in Equation 1, at (c) above); and

(4) Actual NO_x emission reduction (BE – actual emissions after emission reduction measures);

xii. Fuel prices; and

xiii. Any other documentation required by the Department in the approved 2009 Protocol.

New Rule, R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Administrative correction.
See: 41 N.J.R. 2470(a).

7:27-19.30 2015 HEDD Emission Limit Achievement Plan

(a) Each owner or operator of an HEDD unit shall submit to the Department at the address below, by May 1, 2010, a

2015 HEDD Emission Limit Achievement Plan, hereafter referred to as the 2015 Plan.

Assistant Director, Air Quality Permitting Element
Division of Air Quality
New Jersey Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

(b) The 2015 Plan shall describe how the owner or operator intends to comply with the 2015 HEDD maximum allowable NO_x emission rates for each HEDD unit owned or operated. The 2015 Plan shall include the following:

1. A list of HEDD units that are expected to be taken out of service by May 1, 2015, in lieu of complying by May 1, 2015 with the applicable maximum allowable NO_x emission rate(s) in Table 3 at N.J.A.C. 7:27-19.4(a) for boilers or Table 7 at N.J.A.C. 7:27-19.5(g) for turbines. The following information shall be included for each HEDD unit that is expected to be taken out of service:

i. The name of the facility at which the HEDD unit is located;

ii. The facility ID number;

iii. The emission unit ID number;

iv. The HEDD unit description;

v. The proposed schedule for taking the unit out of service;

vi. An explanation of any obstacles that may prevent this unit from being taken out of service according to the schedule at (b)1v above; and

vii. Any other documentation that would identify the unit or clarify the above information; and

2. A list of HEDD units on which the owner or operator proposes to install a control apparatus, or for which the owner or operator proposes to operate differently, in order to obtain compliance with the applicable maximum allowable NO_x emission rate(s) in Table 3 at N.J.A.C. 7:27-19.4(a) for boilers or Table 7 at N.J.A.C. 7:27-19.5(g) for turbines. The following information shall be included for each such HEDD unit:

i. The name of the facility at which the HEDD unit is located;

ii. The facility ID number;

iii. The emission unit ID number;

iv. The HEDD unit description;

v. A description of the proposed control apparatus or change to the current operation;

vi. An explanation of what the expected emission control efficiency will be and what emission rate will be achievable with the proposed control apparatus or change to the current operation;

vii. The proposed schedule for permitting, installation and operation of the proposed control apparatus or change to the current operation;

viii. An explanation of any obstacles that may prevent the installation of the proposed control apparatus or change to the current operation; and

ix. Any other documentation that would identify the unit or clarify the above information; and

3. A list of HEDD units that have demonstrated compliance, in accordance with N.J.A.C. 7:27-19.15, with the applicable maximum allowable NO_x emission rate(s) in Table 3 at N.J.A.C. 7:27-19.4(a) for boilers or Table 7 at N.J.A.C. 7:27-19.5(g) for turbines, prior to May 1, 2010. The following information shall be included for each such HEDD unit:

i. The name of the facility at which the HEDD unit is located;

ii. The facility ID number;

iii. The emission unit ID number;

iv. The HEDD unit description; and

v. The maximum allowable NO_x emission rate in the preconstruction permit or the operating permit for the HEDD unit, for each fuel combusted by the unit.

(c) The owner or operator of a HEDD unit shall prepare an update on the owner or operator's progress in complying with the 2015 Plan as follows:

1. An owner or operator of a HEDD unit shall prepare an update for each calendar year 2010 through 2014 if, on January 1 of that calendar year, any of the owner or operator's HEDD units:

i. Did not comply with the applicable maximum allowable NO_x emission rate(s) in Table 3 at N.J.A.C. 7:27-19.4(a) for boilers or Table 7 at N.J.A.C. 7:27-19.5(g) for turbines; and

ii. Was not taken out of service;

2. The owner or operator shall submit an update required by (c)1 above by January 30 after the calendar year of the update. For example, an update for calendar year 2010 shall be submitted to the Department by January 30, 2011;

3. The owner or operator shall submit each update to the Department at the address at (a) above; and

4. An update shall include the following information for each HEDD unit meeting the criteria at (c)1i through iii above:

i. The name of the facility at which the HEDD unit is located;

ii. The facility ID number;

iii. The emission unit ID number;

iv. The HEDD unit description;

v. The progress made toward achieving the proposed schedule for permitting, installation and operation at (b)2vii above;

vi. An explanation of any obstacles that have been encountered or are anticipated and how they will be overcome; and

vii. An explanation of any revisions to the 2015 Plan.

New Rule, R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).

APPENDIX

(Reserved)

New Rule, R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Repealed by R.2009 d.137, effective April 20, 2009 (operative May 19, 2009).
See: 40 N.J.R. 4390(a), 41 N.J.R. 1752(a).
Appendix was "Notice of Use of NO_x Budget Allowances".

SUBCHAPTER 20. USED OIL COMBUSTION

Authority

N.J.S.A. 13:1B-3, 13:1D-9 and 26:2C-1 et seq.

Source and Effective Date

R.1999 d.428, effective December 6, 1999 (operative January 8, 2000).
See: 30 N.J.R. 4003(a), 31 N.J.R. 4016(a).

7:27-20.1 Definitions

(a) The following words and terms, when used in this subchapter, have the meanings given below unless the context clearly indicates otherwise.

"Air quality impact analysis" means a procedure, entailing the use of an air quality simulation model, for determining whether air contaminant emissions will result in ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a mathematical procedure, taking into account the dispersive capacity of the atmosphere, meteorological data, topography, and other relevant factors, to predict the concentration of an air contaminant in the ambient air. Such procedure may entail use of a mathematical model or a physical model.

"Ash" means the residue remaining after the burning of a material as tested according to ASTM Standard Test Method for Ash from Petroleum Products by ASTM D482-91, incorporated herein by reference. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"Brake fluid" means oil drained from the braking system of a conveyance.

"Combustion unit" means a unit into which fuel is charged and heated to the point at which oxidation occurs and energy is generated.

"Commercial fuel" means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

"Crankcase oil" means oil drained from the crankcase of a conveyance.

"Do-it-yourselfer used oil collection center" means any site or facility that accepts and/or aggregates and stores used oil collected only from household do-it-yourselfer used oil generators.

"Energy recovery" means the use of heat from combustion for a useful purpose, such as the heating of air or water for space heating or wash water.

"Facility" means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons. Research and development facilities that are located with other facilities shall be considered separate and independent entities for the purposes of complying with the operating permit requirements of P.L. 1954, c.212 (N.J.S.A. 26:2C-1 et seq.) or any codes, rules, or regulations adopted pursuant thereto.

"Fluid catalytic cracking unit" means a refinery process unit in which petroleum derivatives are continuously charged. The hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed. This is meant to improve feed stock quality for additional processing, and the catalyst or contact material is continuously regenerated by burning off coke or other deposits.

"Fuel" means combustible material burned in boilers, furnaces, or other machinery to generate heat or other forms of energy. This term includes commercial fuel and non-commercial fuel.

"Fuel oil" means a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil.

"Household do-it-yourselfer used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal motor vehicles.

"Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

"Noncommercial fuel" means solid, liquid or gaseous fuel which is not ordinarily produced, manufactured, or sold for the purpose of creating heat or other forms of energy. This includes fuels which are derived from used oil or other waste materials.

"Number 1 fuel oil" means fuel oil of the grade that is classified as Number 1, according to ASTM Standard Specification for Classification of Fuel Oils by ASTM D396-84. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"Number 2 fuel oil" means fuel oil of the grade that is classified as Number 2, according to ASTM Standard Specification for Classification of Fuel Oils by ASTM D396-84. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"Number 6 fuel oil" means fuel oil of the grade that is classified as Number 6, according to ASTM Standard Specification for Classification of Fuel Oils by ASTM D396-84. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"Off-specification used oil" means used oil which is not on-specification used oil.

"On-specification used oil" means used oil which meets the specifications, established in the solid waste rules at N.J.A.C. 7:26A-6.2(a) and any amendments thereto. These specifications are currently as follows:

Constituent/Property	Allowable Level
Arsenic	5 ppmw maximum
Cadmium	2 ppmw maximum
Chromium	10 ppmw maximum
Lead	100 ppmw maximum
Flash point	100 degrees Fahrenheit minimum
Total halogens	1000 ppmw maximum

"Permit" means a permit to Construct, Install or Alter Control Apparatus or Equipment issued under N.J.S.A. 26:2C-9.1 et seq. and N.J.A.C. 7:27-8, an operating permit issued under N.J.S.A. 26:2C-9.1 et seq. and N.J.A.C. 7:27-22, or a facility-wide permit issued under N.J.S.A. 13:1D-35 et seq. and N.J.A.C. 7:1K-1.5, as applicable.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society, joint stock company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum.

"Processed used oil fuel" means on-specification used oil which has been treated to improve its combustion characteristics and is combusted consistent with an approved Air Pollution Control Permit to Construct and Certificate to Operate or is burned consistent with the provisions of N.J.A.C. 7:27-20.6(a).

"Power steering fluid" means oil drained from the power steering system of a conveyance.

"Registration" means the registering of a space heater with the Department on forms provided by the Department and containing such information as may be required in accordance with N.J.A.C. 7:27-20.3(a)2 and 3.

"Risk assessment" means a procedure for characterizing the probability that potential exposure to air contaminants will result in adverse effects on human health or welfare or the environment.

"Shipment" means, in reference to used oil, used oil delivered in a single truckload, railroad tank car, barge, or other delivery vessel.

"Space heater" means a used oil fired space heater that is self-contained, automatically controlled, indirectly fired heating appliance for warming of a non-residential area or for other energy recovery.

"Transmission fluid" means oil drained from a transmission of a conveyance.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities, or unused oil that is contaminated by physical or chemical impurities through storage or handling.

"Visible smoke" means smoke which obscures light to a degree readily discernible by visual observation.

(b) The following acronyms, when used in this subchapter, have the meanings given below:

"ASTM" means the American Society for Testing and Materials.

"BTU" means British Thermal Unit.

"C.F.R." means Code of Federal Regulations.

"CO" means carbon monoxide.

"EPA" means the United States Environmental Protection Agency.

"ppmw" means parts per million by weight.

"ppmvd" means parts per million by volume, dry basis.

Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
In definition "Registration" substituted "with" for "to" and "3" for "(b)".

7:27-20.2 General provisions

(a) No person shall combust used oil except as authorized pursuant to this subchapter.

(b) No person shall burn fuel oil, allow the burning of fuel oil, or sell fuel oil for burning, in a space heater, boiler, or other combustion unit located in a multi-family residence (such as an apartment building or a dormitory), a day care facility, a pre-school, a school, a hospital, a residence for the elderly, or a nursing home, if the fuel oil consists of used oil or has been blended with used oil.

(c) No person shall sell fuel oil for burning in a space heater, boiler, or other combustion unit located in a single-family dwelling, two-family dwelling, or a dwelling of six or less family units, one of which is owner occupied, if the fuel oil consists of used oil, or has been blended with used oil.

(d) No person shall combust used oil or any mixtures containing used oil in a space heater without first registering with the Department pursuant to N.J.A.C. 7:27-20.3, or combust used oil in any space heater or combustion unit without a permit issued by the Department pursuant to N.J.A.C. 7:27-8 or 7:27-22, whichever is applicable. The owner or operator of the space heater shall:

1. Construct, install, and operate the space heater in conformance with all applicable requirements in this subchapter and all other provisions of the New Jersey Administrative Code; and

2. Monitor the operation of the space heater and record and report the findings, as required in N.J.A.C. 7:27-20.3(b) or in the permit issued pursuant to N.J.A.C. 7:27-8 or 7:27-22, as applicable.

(e) No person shall combust used oil which has been blended with any hazardous waste, as defined pursuant to N.J.A.C. 7:26G-5, except as allowed under N.J.A.C. 7:26A-6, 7:26G-8 and 9, and 7:27-8 or 7:27-22, as applicable.

7:27-20.3 Burning of on-specification used oil in space heaters covered by a registration

(a) A person may burn used oil in a space heater pursuant to a registration provided that:

1. The total combined gross heat input of all space heaters at any one facility does not exceed 500,000 BTUs per hour. If any additional used oil space heater(s) at the facility result in the combined total gross heat input of all space heaters exceeding 500,000 BTUs per hour, then all of the space heaters shall require permits pursuant to N.J.A.C. 7:27-20.4;

2. The used oil space heater(s) covered by a registration shall be installed, operated, and maintained consistently with (b) below and the person submitting the registration shall certify that the space heater(s) is installed, operated, and maintained consistently with (b) below;

3. The registration shall be executed on forms prescribed by the Department. The registration form shall require information identifying full business name, mailing address, facility location, location of equipment on premises, facility contact, and maximum heat input rate; and confirming that the space heater meets the criteria for the registration, and operates in accordance with the registration. Registration forms may be obtained by submitting a written request to the Department at the following address:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
PO Box 27
Trenton, New Jersey 08625-0027

4. The registration form referenced in (a)3 above shall require the registrant to certify the truth and accuracy of the information on the form. The certification shall meet the requirements of N.J.A.C. 7:27-1.39; and

5. The registration shall include certifications consistent with N.J.A.C. 7:27-1.39, Certification of Information.

(b) The space heater for which a registration has been filed with the Department shall conform to the following requirements:

1. The space heater shall be used for the purpose of energy recovery only;

2. Any used oil burned in the space heater shall be:

i. Generated on-site by the owner or operator of the space heater, or by an agent of such person;

ii. Generated by a household do-it-yourselfer used oil generator; or

iii. Collected by do-it-yourselfer used oil collection centers, such as those organized by a municipality;

3. The on-specification used oil to be burned in the space heater shall conform to the following requirements:

i. The used oil shall only be from conveyances that are powered by an internal combustion engine, consisting of any combination of the following substances: used crankcase oil, used brake fluid, used transmission fluid, or used power steering fluid;

ii. None of the following shall be blended with the used oil:

(1) Anti-freeze;

(2) Carburetor cleaner;

(3) Paint thinner;

(4) Paint;

(5) Part degreaser solvents;

(6) Oil additives;

(7) Gasoline;

(8) Chlorinated solvents;

(9) Battery acid; or

(10) A hazardous waste as defined pursuant to N.J.A.C. 7:26G-5;

4. The maximum gross heat input of any one space heater at a facility shall not exceed 500,000 BTUs per hour;

5. The discharge point of the stack serving the space heater is higher than the peak of the roof of the building in which the space heater is located and that discharge point is at least 20 feet above grade;

6. The space heater shall be listed and tested by a nationally recognized laboratory in accordance with standards equivalent to the Underwriters Laboratory, Incorporated 296A Standard for Safety, UL296A "Waste Oil Burning Air Heating Appliances" or Canadian Standards Association—CSA Standard B140.4-1974 (R1991)—Oil Fired Warm Air Furnaces and FBL Notice Number 72 Requirements for Appliances Burning Used Oil in an Atomizing Burner. This listing shall be documented by the manufacturer of the used oil space heater and provided to the registrant;

7. The space heater shall be constructed, installed, and operated in conformance with all applicable requirements in this subchapter and all other provisions of the New Jersey Administrative Code;

8. The owner or operator shall adjust the combustion process of the used oil space heater within 24 operating hours after startup and annually thereafter. The adjustment shall consist of the following:

i. Adjusting the air-to-fuel ratio to the manufacturer's recommended standards and ensuring that it is correctly calibrated and functioning properly;

ii. Inspecting the space heater and cleaning or replacing any components of the space heater as necessary to minimize total emissions of carbon monoxide (CO);

iii. Taking an exhaust stream sample and analyzing it for CO and oxygen. This sampling and analysis may be done with a portable monitor. The results of the sampling and analysis shall ensure that CO emissions after adjustment pursuant to (b)8i and ii above are no more than 100 parts per million by volume, dry basis, hourly average, corrected to seven percent oxygen. Testing for less than one hour is permitted if the CO reading is no more than 100 parts per million by volume, dry basis, corrected to seven percent oxygen for five consecutive minutes of operation;

(1) Record the manufacturer and model number of the portable monitor used for the CO and oxygen measurements. The CO testing equipment shall be capable of measuring and recording the in-stack concentrations of CO, over a range of 0 to 500 parts per million by volume, with an accuracy of plus/minus five percent of the reading when measuring 100 parts per million by volume.

(2) If an exhaust stream sample exceeds the CO standard of 100 ppmvd, one hour average, corrected to seven percent oxygen, the used oil space heater shall not be operated, except for adjustment purposes, until the owner or operator corrects any mechanical problems, readjusts the space heater, and the space heater has been demonstrated to meet the carbon monoxide standard of no more than 100 ppmvd, one hour average, corrected to seven percent oxygen;

iv. Ensuring the exhaust emissions at the stack do not contain visible particulate emissions; and

v. Recording all adjustments made to the space heater, all carbon monoxide and oxygen readings, the determination of the presence of visible emissions, and the dates of each adjustment, as outlined in (b)8i, iii and iv above, respectively;

9. If the sample taken in (b)8iii above exceeds the CO standard of 100 parts per million by volume, dry basis, corrected to seven percent oxygen, one hour average, no violation shall occur if the space heater continues to be operated only as is outlined in (b)8iii above;

10. The space heater shall not be operated in a manner which will cause visible emissions, exclusive of visible condensed water vapor, except for a period of no more than three minutes in any consecutive 30 minute period. If visible emissions are observed, the following measures shall be implemented:

i. The operator manual shall be referred to for corrective measures, and the corrective actions taken shall be recorded;

ii. Except for adjustment purposes, the used oil space heater shall not be operated after visible emissions are observed, until the owner or operator corrects any mechanical problems, readjusts the air-to-fuel ratio, if necessary, and the space heater has been demonstrated to meet the no visible emission standard;

11. Commercial Number 1 fuel oil, commonly known as kerosene, and commercial Number 2 fuel oil, commonly known as home heating oil, can be blended with the used oil and charged to the used oil space heater;

12. The used oil in the storage tank for the space heater shall not exceed the following limits. The Department may obtain an oil sample to verify that the used oil is within these limits:

Constituent/Property	Allowable Level
Arsenic	5 ppmw maximum
Cadmium	2 ppmw maximum
Chromium	10 ppmw maximum
Lead	100 ppmw maximum
Flash point	100 degrees Fahrenheit minimum
Total halogens	1,000 ppmw maximum
Sulfur	5,000 ppmw maximum

13. The owner or operator of the used oil space heater shall maintain the oil filtering equipment in accordance with manufacturer's specifications and shall not operate the used oil space heater without an installed and operational filter;

14. Any operation of the space heater which may cause a release of air contaminants which might result in citizen complaints shall be reported by the registrant as required by the Air Pollution Control Act. The registrant shall immediately notify the Department of any non-compliance, including visible emissions, by calling the Department Regional Enforcement Office or the Environmental Action Hotline at (609) 292-7172;

15. All records which shall be maintained pursuant to this section shall be kept on-site in a central file in a permanently bound logbook or in readily accessible computer memories and made available for inspection by the Department for a period of three years after the date of each record. These records shall include the following:

i. Pursuant to (b)8 above, the dates of each adjustment, carbon monoxide and oxygen readings, and presence of visible emissions, if any; and

ii. Pursuant to (b)10 above, instances of when the used oil space heater caused visible emissions;

16. Consistent with the Fee Schedules at N.J.A.C. 7:27-8.6 and 22.31, a fee, which includes registration for operating a space heater, shall be submitted with each registration statement. The registration shall be renewed every five years on forms prescribed by and furnished by the Department in accordance with N.J.A.C. 7:27-8.4(n). The Department shall send renewal notifications and forms six months prior to the expiration of the registration to the registrants. The renewal fee shall be consistent with the Fee Schedules at N.J.A.C. 7:27-8.6 and 22.31; and

17. The used oil brought to the facility by household do-it-yourselfer used oil generators shall be visually inspected prior to it being charged to the used oil storage tank.

(c) Once the registration has been forwarded to the Department by United States Postal Service by registered mail and a registered receipt is obtained, the space heater may be installed and operated. The Department shall send an acknowledgment to the registrant that it has received the registration. If the registration is incomplete or deficient, the Department shall notify the registrant.

Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
In (b)16, substituted "1" for "4b" throughout and "in accordance with N.J.A.C. 7:27-8.4(n)" for "and shall be signed by the person engaging in the operation of a used oil space heater. In the registration renewal form, it shall be certified by the registrant that the information initially submitted and certified, pursuant to (a)3 above, is still valid for the space heater that had been registered. The certification shall meet the requirements of N.J.A.C. 7:27-1.39".
Administrative change.
See: 41 N.J.R. 4207(a).

7:27-20.4 Burning of on-specification used oil in space heaters covered by a permit

(a) Used oil may be burned in a space heater other than as outlined in N.J.A.C. 7:27-20.3 if a permit to combust used oil is issued by the Department pursuant to N.J.A.C. 7:27-8 or 7:27-22. Such space heaters include, but are not limited to, those at a facility in which the cumulative gross heat input of all space heaters exceeds 500,000 BTU/hr, the gross heat input of one space heater is in excess of 500,000 BTU/hr, or where any space heaters would combust used oil other than the used oils listed in N.J.A.C. 7:27-20.3(b)3i. In accordance with N.J.A.C. 7:27-8 or 7:27-22, as applicable, the application for a permit shall include the following at a minimum:

1. A protocol for conducting an air quality impact analysis, including a risk assessment;

2. Such details regarding the equipment and control apparatus as necessary to determine that the equipment and control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and the equipment or control apparatus incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted by the applicant's equipment;

3. The appropriate completed forms which are obtained from the Department by submitting to written request to the following address:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
PO Box 27
Trenton, New Jersey 08625–0027; and

4. Certifications complying with N.J.A.C. 7:27–1.39.

(b) Upon request by the Department, any person to whom the Department has issued a permit to burn used oil in a space heater pursuant to N.J.A.C. 7:27–8 or 7:27–22, as applicable, shall submit to the Department information relevant to the operation of the equipment and control apparatus including, but not limited to, the following: a diagram of the facility, records documenting any use of any equipment, and records documenting any construction, installation, or alteration;

(c) The Department may include, as a condition of approval for a permit to burn used oil in a space heater pursuant to N.J.A.C. 7:27–8 or 7:27–22, as applicable, that a person to whom the Department has issued a permit provide verification that the equipment and control apparatus is being used in compliance with the provisions and conditions of its permit. Such verification may include periodic testing; installation, operation, and maintenance of instrumentation and sensing devices; recordkeeping; and reporting.

(d) After an application for permit is filed with the Department, the space heater(s) shall not be installed and operated until an approved permit is issued by the Department pursuant to N.J.A.C. 7:27–8 or 7:27–22.

7:27–20.5 Demonstration that used oil is on-specification

(a) A permittee subject to N.J.A.C. 7:27–20.6(a) shall confirm that the used oil to be combusted is on-specification used oil, as defined in N.J.A.C. 7:27–20.1. This confirmation shall be done by either performing an analysis or obtaining copies of the analysis from the supplier, documenting that each shipment received from off-site or batch generated on-site of used oil meets the on-specification standards.

(b) The permittee shall keep copies of the analysis of used oil and other information, as required by (a) above, on-site in a central file in a permanently bound logbook or in readily accessible computer memories and make these copies available for inspection by the Department for a period of three years after the date of each record, which is consistent with N.J.A.C. 7:26A–6.9(c)2.

(c) Suppliers of used oil shall provide a copy of the analysis to the permittee upon delivery of each shipment of used oil, documenting that the used oil is on-specification.

7:27–20.6 Burning of on-specification oil in other combustion units

(a) Except as prohibited by N.J.A.C. 7:27–20.2(b) or (c), a permittee may burn on-specification used oil or processed used oil fuel in a combustion unit without having to modify the permit, provided that:

1. The rated gross heat input is greater than 20 million BTU per hour;

2. The combustion device is capable of burning Number 6 fuel oil; and

3. The Department has issued a permit which authorizes the unit to burn Number 6 fuel oil;

4. The permittee confirms, prior to burning, and pursuant to N.J.A.C. 7:27–20.5, that the used oil combusted is on-specification used oil;

5. The permittee confirms, prior to burning, that the used oil combusted meets the ash standard outlined in N.J.A.C. 7:27–20.8; and

6. The on-specification used oil or processed used oil fuel or blend of any on-specification used oil or processed used oil fuel with commercial fuel meets the applicable sulfur standard of N.J.A.C. 7:27–9.

(b) Any combustion unit which meets the provisions of (a) above may also combust a blend of on-specification used oil or processed used oil fuel and a commercial fuel oil. The blend shall meet the provisions of N.J.A.C. 7:27–20.8.

(c) Any person who sells or conveys to another party commercial fuel blended with used oil to be burned in New Jersey in a combustion unit pursuant to (a) above shall provide certification that only on-specification used oil is in the blend, consistent with N.J.A.C. 7:27–20.5 and that the ash content in the blend is less than 0.15 percent by weight, pursuant to N.J.A.C. 7:27–20.8(a).

(d) Any blends of off-specification used oil with commercial fuel oil or with on-specification used oil shall be subject to the provisions of N.J.A.C. 7:27–20.7.

7:27–20.7 Burning of off-specification used oil

(a) A person wishing to burn off-specification used oil shall apply to the Department for a permit pursuant to N.J.A.C. 7:27–8 or 7:27–22, as applicable, provided that:

1. The combustion device for which the permit is sought has air pollution control devices which control the emissions of the off-specification contaminants;

2. The combustion device for which the permit is sought is one of the following:

i. An industrial furnace, as defined at N.J.A.C. 7:26–1.4;

ii. A boiler, as defined at N.J.A.C. 7:26–1.4, which is any of the following:

(1) An industrial boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical process; or

(2) A utility boiler used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

iii. A hazardous waste incinerator subject to regulation under 40 C.F.R. Parts 264 or 265, as incorporated by reference at N.J.A.C. 7:26G–8 or 9; and

3. The combustion device for which the permit is sought complies with all applicable air pollution control regulations at N.J.A.C. 7:27.

7:27–20.8 Ash standard

(a) Except as provided in (b) below, the ash content of on-specification used oil to be combusted or processed used oil fuel to be combusted shall not exceed 0.15 percent by weight. Any blends of on-specification used oil or processed used oil fuel with commercial fuel oil shall meet the 0.15 percent by weight maximum ash content standard, except as provided by (b) below.

(b) Any person may request a different ash content limit if the combustion device incorporates air pollution control for particulates. The Department shall approve such request if compliance with all applicable air pollution control regulations is demonstrated in a permit application pursuant to N.J.A.C. 7:27–8 or 7:27–22.

(c) The ash content limit in (a) and (b) above shall be measured with ASTM Standard Test Method for Ash from Petroleum Products by ASTM D 482–91, incorporated herein by reference. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(d) The vendor or permittee shall verify the ash content standard in (a) and (b) above for on-specification used oil or processed used oil fuel or blend of any on-specification used oil or processed used oil fuel with commercial fuel by sampling and analysis.

(e) Used oil space heaters with a capacity of not greater than 500,000 BTU/hr subject to N.J.A.C. 7:27–20.3 or 20.4 that comply with N.J.A.C. 7:27–20.3(b)2, 3, 6 and 13 are exempt from this section.

7:27–20.9 Exception

The provisions of this subchapter shall not apply to any used oil charged to a fluid catalytic cracking unit at a petroleum refinery.

SUBCHAPTER 21. EMISSION STATEMENTS

Source and Effective Date

R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda. 132 N.J.L.J. No. 8, S10 (1992).

7:27–21.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Activity rate/throughput" means a measurable factor or parameter that relates directly or indirectly to the emissions of a source operation or a facility during a given time period (for example, hour, day, or year). Depending on the type of source operation(s) or facility being considered, this term may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed during the time period. It is typically the value that is multiplied against an emission factor to generate an emissions estimate for the time period.

"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified in this subchapter.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

"Air contaminant" means any substance, other than water or distillates of air, present in atmosphere as solid particles, liquid particles, vapors or gases.

"Ammonia" or "NH_3," means a colorless, pungent gas at standard conditions, having a molecular composition of one nitrogen atom and three hydrogen atoms.

"AP–42" means the January 1995, 5th edition, of the manual entitled "Compilation of Air Pollutant Emission Factors," which is published by the EPA, and including supplements A, B, C, D, E, F, and G and any subsequent revisions. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487–4650; or from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, (202) 783–3228. In addition, this document can be accessed electronically through the EPA Technology Transfer Network CHIEF site on the worldwide web at http://www.epa.gov/ttn/chief/ap42.html.

(h) With respect to the provisions of N.J.A.C. 7:27–21.5, the following shall apply to any determination of which emissions to report in an Emission Statement:

1. All emissions at the facility (for facility-wide reporting) or associated with a source operation (for source operation level reporting) shall be included in a facility's Emission Statement, including, but not limited to, the following:

i. Emissions from source operations that are classified as "significant source operations," "insignificant sources," or "exempt activities" under the permitting rules at N.J.A.C. 7:27–8 or 22;

ii. Emissions associated with any delivery vessel loading operation; and

iii. Emissions from any delivery vessel that is to be considered a stationary storage tank pursuant to N.J.A.C. 7:27–16.2(j);

2. Notwithstanding (h)1 above, the following types of emissions shall be excluded from the emissions reported in an Emission Statement:

i. Emissions from source operations that the Department accounts for, in the emissions inventory submitted by the State to the EPA for inclusion in the State Implementation Plan, other than by reliance on information in Emission Statements. Examples include emissions from the painting of structures at the facility, emissions from light-duty motor vehicles driven at the facility and emissions from delivery vessels such as locomotives and tugboats. Further examples are provided in the Department's Emission Statement Guidance Document.

Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
Rewrote the section.

Case Notes

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

7:27–21.4 Procedure for submitting an Emission Statement

(a) For an Emission Statement submitted for reporting year 2001 or earlier, the following procedures apply:

1. The Emission Statement shall be submitted to the Department on or before:

i. May 31, 1993 for a facility subject to this subchapter due to the emissions of 1992; and

ii. For each following year, April 15 of each calendar year following any calendar year in which the facility is subject to this subchapter;

2. The Emission Statement shall be submitted on a form obtained from the Department at the address listed in (c) below; and

3. Any owner or operator submitting an Emission Statement shall transmit the Emission Statement to the Department on paper. With the written prior approval of the Department, an Emission Statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an Emission Statement on paper.

(b) For an Emission Statement submitted for reporting year 2002 or later, the following procedures apply:

1. Unless the owner or operator obtains approval pursuant to (d) below to submit an Emission Statement on paper, each Emission Statement shall be submitted to the Department electronically using the Remote Access Data Information User System (RADIUS) software (or its successor software) available from the Department at the address given at (c) below;

2. If a claim of confidentiality is being asserted for any information in an Emission Statement, pursuant to (e) below, the following shall apply:

i. A version of the Emission Statement which is complete, except that it omits the information which is claimed to be confidential, shall be submitted to the Department. This document shall be submitted electronically unless the owner or operator obtains approval to submit it on paper pursuant to (d) below. Information included in any electronic submittal shall be information for which no claim of confidentiality is being made;

ii. In addition to the submittal made pursuant to (b)2i above, a complete version of the Emission Statement shall also be submitted on paper, and it shall include the information that is claimed to be confidential as well as all other information required; and

iii. The information given in both versions of the Emission Statement shall be identical, except that the information claimed to be confidential shall be omitted from the version submitted pursuant to (b)2i above; and

3. An Emission Statement shall be submitted to the Department by the following due date:

i. For submittals on paper pursuant to (d) below, by April 15 of the submittal year; and

ii. For electronic submittals (for example, those submitted by diskette or e-mail), by May 15 of the submittal year; this due date shall also apply to the paper copy of the Emission Statement submitted when certain information in the electronic version of the Emission Statement is claimed to be confidential.

(c) The Department's Bureau of Air Quality Planning shall be the Department's point of contact for the Emission Statement program. As such:

1. Emission Statements shall be submitted to the Bureau:

2. Documents useful to persons preparing Emission Statement submittals, such as the Department's Emission Statement Guidance Document, copies of forms, and instructions, may be viewed and downloaded from the Bureau's web page at http://www.state.nj.us/dep/baqp/; and

3. The Bureau may be contacted for instructions on how to download a copy of RADIUS, to obtain any documents referenced in this subchapter, or to seek answers to questions pertaining to the Emission Statement Program. The Bureau may be contacted by phone ((609) 292–6722) or e-mail at emis_statement@dep.state.nj.us. Correspondence shall be sent to the Bureau at the following address:

Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
Trenton, N.J. 08625–0418
Attn: Emission Statements

(d) If it is a hardship for an owner or operator to submit an Emission Statement electronically, the owner or operator may request approval from the Department to submit the Emission Statement on a paper form. The Department shall approve such a request provided that:

1. The request is certified by the responsible official in accordance with N.J.A.C. 7:27–1.39 and submitted to the Department no later than March 1 of the submittal year;

2. The owner or operator explains:

i. The grounds of the hardship electronic submittal would impose; and

ii. The effort(s) the owner or operator will make to ensure the facility's ability to make electronic submittals in the future; and

3. The owner or operator agrees to make every effort to become able to submit the form electronically in future years.

(e) Any person who submits information to the Department may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27–1.6. Emissions information, as established at N.J.A.C. 7:27–1.18, is not confidential. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27–1.6 through 1.30 inclusive.

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d), changed N.J.A.C. reference.
Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
Rewrote the section.

Case Notes

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

7:27–21.5 Required contents of an Emission Statement

(a) Any owner or operator who submits an Emission Statement to the Department shall include the following, as an integral part of the Emission Statement:

1. Identification of the reporting year for which the statement is being submitted;

2. A certification, in accordance with the requirements of N.J.A.C. 7:27–21.8; and

3. The date of the signature of certification, and the name, title, mailing address, and telephone number of the responsible official certifying the Emission Statement.

(b) An Emission Statement shall include the following facility identification information:

1. The full name of the facility;

2. Facility location description, including, but not limited to:

i. The facility's street address;

ii. The county in which the facility is located;

iii. The mailing address of the facility, including its zip code; and

iv. The facility's State Plane coordinates given as its New Jersey or Universal Transverse Mercator (UTM) coordinates; or its latitude and longitude;

3. The facility ID number, as assigned by the Department;

4. Classification by organization type (for example, corporation, partnership, municipality);

5. The NAICS code(s) which apply to the facility;

6. The facility type (that is, major or minor). For the purposes of this subchapter, a facility is a major facility if it is subject to operating permit rules under N.J.A.C. 7:27–22; otherwise it is a minor facility;

7. New Jersey Employer Identification Number;

8. Number of employees; and

9. The name(s) of the owner(s) or operator(s) of the facility and the Emission Statement contact person; and, for each, contact information such as title, mailing address, and telephone number.

2. If the Emission Statement is being submitted on a paper form obtained from the Department, the responsible official shall sign the certification on the paper form; and this signature shall constitute certification of the Emission Statement in accordance with the certification language at (a) above.

(c) If a claim of confidentiality is being asserted pursuant to N.J.A.C. 7:27-1.6 for any part of an Emission Statement, both of the submittals shall be certified. That is, the submittal which omits the confidential information, and which includes only the information for which no claim of confidentiality is being made, shall be certified; and also the submittal which includes all the required Emission Statement information, including the information for which a claim of confidentiality is being made, shall be certified.

Recodified from N.J.A.C. 7:27-21.7 and amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
In (a), substituted "owner of operator" for "person" in the introductory paragraph; added (b) and (c). Former N.J.A.C. 7:27-21.8, Request for extension, recodified to N.J.A.C. 7:27-21.9.
Administrative correction.
See: 35 N.J.R. 3618(a).

7:27-21.9 Request for extension

(a) If meeting the due date set forth at N.J.A.C. 7:27-21.4 for submittal of an Emission Statement would cause extreme hardship, an owner or operator may request an extension.

(b) A request for an extension shall include the following information:

1. The name of the facility; the mailing address of the facility, including its zip code; and its facility ID number, as assigned by the Department;

2. The name of the Emission Statement contact for the facility and the contact person's telephone number;

3. The name of the responsible official and the responsible official's telephone number;

4. The reasons and justifications for the inability to submit the Emission Statement by the due date and the extreme hardship that would be prevented if the Department allows an extension of the due date;

5. The revised date by which the owner or operator commits to submitting the Emission Statement. This revised date can be no later than one month from the due date; and

6. A certification, signed by the responsible official, in accordance with N.J.A.C. 7:27-1.39.

(c) A request for an extension shall be submitted, in writing, to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
Trenton, N.J. 08625-0418
ATTN: Emission Statements—Extension Request

(d) A request to extend the due date must be received by the Department by April 1 of the submittal year for a paper submittal and by May 1 of the submittal year for an electronic submittal. The Department will not consider a request for an extension it receives after these dates.

(e) Within 10 working days after receipt of a request for extension, the Department will respond with its determination as to whether the request for extension is denied or granted and, if granted, the revised date by which the Emission Statement is due. The Department will grant an extension if the extension is necessary to prevent extreme hardship.

(f) Once an owner or operator has obtained an extension of the due date for the submission of an Emission Statement pursuant to (a) through (e) above, the Department will not grant any additional extension for that Emission Statement or any continuance of the initial extension.

New Rule, R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).
Recodified from N.J.A.C. 7:27–21.8 and amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
Rewrote (a), (b) and (d); deleted (e); recodified (f) as (e); deleted (g). Former N.J.A.C. 7:27–21.9, Determination of non-applicability, recodified to N.J.A.C. 7:27–21.10.

7:27–21.10 Determination of non-applicability

(a) If the construction and/or operation of a facility is modified such that the facility's potential to emit each of the air contaminants listed in Table 1 at N.J.A.C. 7:27–21.2 is less than the applicable reporting threshold given in Table 1, the owner or operator may request approval from the Department to discontinue submission of annual Emission Statements by submitting, in accordance with this section, a claim of non-applicability.

(b) An owner or operator may not submit a claim of non-applicability until the facility's potential to emit each of the air contaminants listed in Table 1 at N.J.A.C. 7:27–21.2 has been less than the applicable reporting threshold for at least the immediately preceding full reporting year. However, an owner or operator is advised to submit a claim of non-applicability to the Department no later than February 1 of the submittal year in which the owner or operator wishes to discontinue submission of Emission Statements. For example, if throughout reporting year 2000, the facility's potential to emit each of the air contaminants listed in Table 1 at N.J.A.C. 7:27–21.2 is less than the applicable reporting threshold, and the owner or operator therefore would like approval not to submit an Emission Statement in submittal year 2001, the owner or operator should submit a claim of non-applicability no later than February 1, 2001. If a claim of non-applicability is received by the Department after February 1, the Department is under no obligation to respond to the claim until the following year.

(c) A claim of non-applicability must include the following information:

1. The name of the facility; the mailing address of the facility, including its zip code; and its facility ID number, as assigned by the Department;

2. The name of the Emission Statement contact for the facility and the contact person's telephone number;

3. The name of the responsible official and the responsible official's telephone number;

4. A demonstration that the facility no longer meets the applicability criteria set forth at N.J.A.C. 7:27–21.2. The demonstration shall show that the facility's potential to emit each of the air contaminants listed in Table 1 at N.J.A.C. 7:27–21.2 is less than the applicable reporting threshold given in Table 1 and has been for the full preceding calendar year. Determination of the facility's potential to emit shall reflect all emissions from the facility including the following:

i. The potential to emit for the significant source operations at the facility, including the fugitive emissions associated with the significant source operations;

ii. The potential to emit for the insignificant source operations at the facility, including the fugitive emissions associated with these source operations; and

iii. The facility's potential to emit any other fugitive emissions which are not accounted for pursuant to (c)4i or ii above;

5. The following statements:

i. A statement as to whether the facility is subject to operating permit requirements under N.J.A.C. 7:27–22; and

ii. A statement as to whether the owner or operator anticipates that conditions at the facility may change in such a manner so that the requirements of this subchapter may again become applicable to the facility in the future and therefore the facility may become obligated to recommence submission of Emission Statements; and

6. A certification, signed by the responsible official, in accordance with N.J.A.C. 7:27–1.39.

(d) A claim of non-applicability shall be submitted to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
Trenton, N.J. 08625–0418
ATTN: Emission Statement—Notification of Non-applicability

(e) The Department shall respond by April 1 of each calendar year to the claims of non-applicability that it received between February 2 of the preceding calendar year and February 1 of the current calendar year. The Department's response will set forth the Department's determination as to whether the Department concurs that this subchapter no longer applies to the facility (and the owner or operator therefore need not submit an Emission Statement for the prior reporting year). The Department shall not approve any claim of non-applicability unless it is satisfied that:

1. The facility has been modified so that its potential to emit each of the air contaminants listed in Table 1 at N.J.A.C. 7:27–21.2 is less than the applicable reporting threshold given in Table 1 and has been less than the

reporting threshold for at least one full reporting year; and

2. The facility will not in the foreseeable future change in such a manner that the facility's potential to emit any air contaminant listed in Table 1 at N.J.A.C. 7:27-21.2 would again exceed the applicable reporting threshold in Table 1, and the facility would therefore be obligated to recommence submission of Emission Statements.

(f) An owner or operator who has submitted a claim of non-applicability shall nonetheless continue to submit an Emission Statement in each submittal year unless the owner or operator has received a response from the Department by April 1 of that year, or earlier, that states that the Department concurs with the claim of non-applicability and approves discontinuance of submission of Emission Statements for the facility. Failure of the Department to respond by April 1 to the submission of a claim of non-applicability does not relieve the owner or operator of the responsibility to submit an Emission Statement nor does it constitute the Department's concurrence with the claim of non-applicability.

(g) Nonetheless, even if the Department approves a claim of non-applicability for a facility, if in the current reporting year, or in any subsequent reporting year, the facility's potential to emit any air contaminant listed in Table 1 at N.J.A.C. 7:27-21.2 becomes equal to or greater than the applicable reporting threshold given in Table 1, the owner or operator shall submit an Emission Statement for that reporting year and recommence submitting Emission Statements annually thereafter in accordance with this subchapter.

Recodified from 7:27-21.8 by R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).
Recodified from N.J.A.C. 7:27-21.9 and amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
Rewrote the section. Former N.J.A.C. 7:27-21.10, Severability, recodified to N.J.A.C. 7:27-21.11.

7:27-21.11 Severability

If any section, subsection, provision, clause or portion of this subchapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this subchapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

Recodified from N.J.A.C. 7:27-21.8 by R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).
Recodified from N.J.A.C. 7:27-21.10 by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).

APPENDIX 1

TABLE 1

Toxic Air Pollutants
To Be Reported In Emission Statements

Air Contaminant	CAS Number[1]
Acetaldehyde	75-07-0
Acrolein	107-02-8
Acrylonitrile	107-13-1
Arsenic and compounds	
Benzene	71-43-2
Beryllium and compounds	
1,3-Butadiene	106-99-0
Cadmium and compounds	
Carbon tetrachloride	56-23-5
Chloroform	67-66-3
Chromium and compounds	
1,3-Dichloropropene	542-75-6
1,4-Dioxane	123-91-1
Dioxins	
Ethylene dibromide	106-93-4
Ethylene dichloride	107-06-2
Ethyleneimine	151-56-4
Ethylene oxide	75-21-8
Formaldehyde	50-00-0
Hexachlorobenzene	118-74-1
Hydrazine	302-01-2
Hydrochloric acid	7647-01-0
Manganese and compounds	
Mercury and compounds	
Methylene chloride	75-09-2
Nickel and compounds	
Polychlorinated biphenyls	
Polycyclic organic matter[2]	
Propylene dichloride	78-87-5
Quinoline	91-22-5
1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene	127-18-4
1,1,1-Trichloroethane	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene	79-01-6
Vinyl chloride	75-01-4

[1] Given here for individual contaminants only, not for classes of contaminants. A CAS number is a unique identifier which is assigned to each chemical specie by the Chemical Abstract Service, a division of the American Chemical Society.

[2] A group of chemicals formed from the incomplete combustion of organic substances. Included in this group are benzo(a)pyrene, acenaphthene, anthracene, chrysene, and others.

New Rule. R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).

SUBCHAPTER 22. OPERATING PERMITS

Authority

N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq.

stringent than, that contained in an applicable requirement, provided that the alternative emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. An example of such an alternative emission limit would be an alternative nitrogen oxides emission limit developed in accordance with the emission averaging provisions of N.J.A.C. 7:27-19.6.

(n) An operating permit does not convey any property right, or any exclusive privilege.

(*o*) Any transfer of ownership or operational control of a facility covered by an operating permit, which would change the name or identity of the permittee for the facility, requires the transfer of the operating permit. An administrative amendment for such a transfer shall be submitted to the Department by the permittee prior to the transfer being made, in accordance with N.J.A.C. 7:27-22.20. No person to whom ownership or operational control is transferred shall commence operation at the facility until the application for the administrative amendment for the transfer has been received by the Department.

(p) Any approval for a change made at a facility subject to this subchapter, which constitutes a minor modification pursuant to N.J.A.C. 7:27-22.23 or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall incorporate all applicable preconstruction requirements.

(q) Any person submitting an application, notice or report to the Department pursuant to this subchapter, or any permit, approval, authorization, order or other legal document issued pursuant thereto, shall include, as an integral part of the application or report, certification in accordance with N.J.A.C. 7:27-1.39.

(r) All information submitted to the Department pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30, and the Department determines that the information is entitled to confidential treatment in accordance with N.J.A.C. 7:27-1.8 through 1.30. All information submitted to EPA pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with 40 CFR Part 2, and EPA determines that the information is entitled to confidential treatment in accordance with 40 CFR Part 2.

(s) Except as otherwise provided in this subchapter, the submittal of any information or application by a permittee including, but not limited to, an application or notice for any change to the operating permit, including any administrative amendment, any minor or significant modification, renewal, a notice of a seven-day notice change, a notice of past or anticipated noncompliance, does not stay any operating permit condition, nor relieve a permittee from the obligation to obtain other necessary permits and to comply with all applicable Federal, State, and local requirements.

(t) Application forms for operating permits, modifications to operating permits, and information pertaining to operating permits and the requirements of this subchapter are available at the following address:

Department of Environmental Protection
Air Quality Regulation Program
PO Box 027
Trenton, New Jersey 08625-0027
Attention: Operating permits
Telephone: (609) 633-8248

(u) If an additional applicable requirement becomes applicable to the facility, or an applicable requirement which was previously applicable to the facility changes, the permittee shall act to have the new applicable requirement or the change incorporated into the operating permit, in accordance with the procedures set forth in N.J.A.C. 7:27-22.25.

(v) The Department may terminate an operating permit upon request of the permittee if the Department determines that the facility is no longer subject to operating permit requirements pursuant to N.J.A.C. 7:27-22.2.

(w) Except as provided in the permit shield provisions at N.J.A.C. 7:27-22.17, an operating permit does not relieve any person from the obligation to comply with all applicable provisions of this chapter, including preconstruction requirements under this subchapter, to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(x) Notwithstanding the other provisions of this section, if any of the acid deposition control provisions of N.J.A.C. 7:27-22.29 conflicts with any other provision of the subchapter, the requirements of N.J.A.C. 7:27-22.29 shall prevail for an affected Title IV facility.

(y) The owner or operator of any facility which contains equipment or control apparatus that is subject to preconstruction permit and operating certificate requirements under N.J.A.C. 7:27-8 shall continue to obtain, maintain, and renew all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility.

(z) For a facility with an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq., the facility-wide permit shall constitute the operating permit under N.J.A.C. 7:27-22 if:

1. The air pollution control portion of the facility-wide permit meets the requirements of N.J.A.C. 7:27-22 and EPA approves the Department's request to allow a facility-wide permit to constitute a facility's operating permit; and

2. The facility-wide permit was issued after the date of such EPA approval.

(aa) The provisions of N.J.A.C. 7:27-22.20, 22.22, 22.23, and 22.24, concerning modifications to operating permits, shall not apply to repair or maintenance of a significant source operation.

(bb) This subchapter shall not preclude the owner or operator of a facility from voluntarily treating an insignificant source operation as a significant source operation for the purposes of obtaining or modifying an operating permit. Treating an insignificant source operation in such a manner shall subject it to all of the requirements in this subchapter which apply to a significant source operation.

(cc) The Department shall deny an application for an initial operating permit, minor modification, significant modification, or renewal, if approval of the application would authorize a violation of any applicable requirement, or a contravention of other criteria established by the Department by rule or pursuant to technical manuals published with public input, to protect human health and welfare and the environment, unless the Department simultaneously approves a compliance schedule to achieve compliance.

(dd) The Department will deny an application for a minor modification or significant modification of an operating permit that constitutes construction, reconstruction, or modification unless the applicant shows, to the satisfaction of the Department, that the significant source operation covered by the proposed permit provisions incorporates advances in the art of air pollution control pursuant to N.J.A.C. 7:27-22.35, Advances in the art of air pollution control.

(ee) No person shall carry out, or allow to be carried out, any change designated in this subchapter as a minor modification or significant modification to any source operation unless the changed source operation meets the requirements of N.J.A.C. 7:27-22.35, Advances in the Art of Air Pollution Control.

(ff) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(gg) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, if the applicant fails to pay any monies due and owing to the Department, and those monies are related to the fees specified in N.J.A.C. 7:27-22.31.

(hh) The Department will deny an operating permit application, or modification to an operating permit, that includes a paint spray operation that is a significant source operation, unless at a minimum the operation is served by particulate control apparatus.

(ii) No person may construct, install, or change any source operation for which a minor modification or significant modification of the operating permit is required pursuant to this subchapter other than as described in N.J.A.C. 7:27-22.23 and 22.24, respectively. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the permit.

(jj) The Department may establish conditions of approval of any operating permit, administrative amendment, minor modification, or significant modification. In the event that a discrepancy exists between the information in an application and the conditions of its approval, the conditions of approval shall prevail.

(kk) The Department may withdraw its approval of an operating permit, minor modification, or significant modification if the person to whom the Department has issued the permit or modification:

1. Does not begin construction or installation within one year from the date of approval of the permit or modification; or

2. Discontinues construction or installation for a period of more than one year.

(*ll*) Any person who is subject to the provisions of this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 or criminal penalties pursuant to N.J.S.A. 26:2C-19 or both.

(mm) Any information which the Department needs to take into consideration in making a decision on an application shall be submitted to the Department for incorporation into the application prior to the Department making a decision on the application. If the Department needs any information beyond what is submitted in the application, the Department shall request such additional information from the applicant.

(nn) An affirmative defense to liability shall be available pursuant to the conditions of this section for penalties or other sanctions for violating certain provisions or conditions of an operating permit. The affirmative defense shall be available for a violation of a provision or condition of the operating permit only if:

1. The violation occurred as a result of an equipment malfunction, an equipment start-up or shutdown, or during the performance of necessary equipment maintenance; and

2. The affirmative defense is asserted and established as required by N.J.S.A. 26:2C-19.1 through 19.5 and any implementing rules.

(*oo*) Any person who has submitted to the Department an administratively complete application for an initial operating permit or for a modification to an operating permit may, during the Department's review of the application, place the equipment or control apparatus covered by the application on the footings or foundation where it is intended to be used, provided that:

1. The person notifies the Department, via certified mail, of the intent to so place the equipment or control apparatus, at least seven days prior to commencing the placement; and

2. Such placement is not prohibited by Federal law.

(pp) If a person constructs or places equipment or control apparatus in accordance with (oo) above, and the Department determines that the equipment or control apparatus or its placement is inconsistent with applicable State law or rules, the person shall be subject to civil or criminal penalties for the inconsistent action only if the construction or placement results in air contaminant emissions. Any costs incurred by the person in connection with the construction or placement may not be used as grounds for an appeal of the Department's decision on the permit application.

(qq) No permittee shall test or operate air pollution control apparatus or process equipment that has been installed at risk, pursuant to (oo) above, until a minor modification or significant modification of the operating permit has been submitted and a preconstruction approval has been issued by the Department.

(rr) For a person seeking approval of an environmental improvement pilot test, as defined at N.J.A.C. 7:27-22.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for preconstruction approval within 30 days of receiving an administratively complete application. An administratively complete application shall meet all application contents requirements for a minor modification of the operating permit set forth at N.J.A.C. 7:27-22.23(f) and (g). The approval will be effective for 90 days. If a person wishes to extend the pilot test for 90 or fewer days, the person shall submit a new application for preconstruction approval for an environmental improvement pilot test to the Department for each additional 90-day period. The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-22.31, and shall be paid in accordance with N.J.A.C. 7:27-22.31(g).

(ss) For the purposes of this subchapter, any VOCs which are neither HAPs, nor are specified by the Department as air contaminants regulated by New Jersey pursuant to N.J.S.A. 26:2C-9.2i (P.L. 1995, c.188, § 4(i)), shall be considered as a single air contaminant, and may be used interchangeably. Such use shall not be considered installation or modification.

(tt) On and after April 25, 2004, no permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter. Notwithstanding (qq) above, a former DER credit user who used DER credits to comply with a NO_x RACT limit established pursuant to N.J.A.C. 7:27-19, and who would continue to require the use of DER credits to comply with that limit, may, on and after April 25, 2004, use NO_x budget allowances allocated for calendar year 2003 or later, as defined by the provisions of N.J.A.C. 7:27-31, to comply with that NO_x RACT limit provided that:

1. The use of such NO_x budget allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and

2. The permittee files a seven-day-notice of intent to use NO_x budget allowances as provided at N.J.A.C. 7:27-22.22, for each calendar year for which such NO_x budget allowances are used.

(uu) (Reserved)

(vv) The following information is available from the Department:

1. A list of air contaminants currently listed by EPA as HAPs pursuant to 42 U.S.C. § 7412(b) may be requested from the Department at the address set forth at N.J.A.C. 7:27-22.3(t). A list of regulated air contaminants may also be requested from the Department at that address; and

2. Technical manuals may be requested from the Department at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
PO Box 417
Trenton, New Jersey 08625-0417
Telephone: (609) 777-1039

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Amended (*l*).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Inserted new (tt) and (uu); and recodified former (tt) as (vv).
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).
Rewrote (tt); reserved (uu).
Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
In (rr), inserted "receiving", deleted ", and may be renewed by application", and inserted "If a person wishes to extend the pilot test for 90 or fewer days, the person shall submit a new application for preconstruction approval for an environmental improvement pilot test", "for each additional 90-day period", and ", and shall be paid in accordance with N.J.A.C. 7:27-22.31(g)".

7:27-22.4 General application procedures

(a) The procedures in this section apply to all applications and notices submitted to the Department pursuant to this subchapter. Specific procedures for initial operating permits, general operating permits, administrative amendments, seven-day notice changes, minor modifications, significant modifications, and renewals can be found at N.J.A.C. 7:27-

22.5, 22.14, 22.20, 22.22, 22.23, 22.24, and 22.30, respectively.

(b) Any application, general operating permit or notice of a seven-day-notice change shall be submitted to the Department according to the following schedule:

1. Prior to January 1, 2008, on forms obtained from the Department at the address at N.J.A.C. 7:27-22.3(t), or in accordance with electronic data interchange (EDI) procedures established by the Department; and

2. On or after January 1, 2008, in accordance with EDI procedures established by the Department, except for renewals. Renewals shall continue to be submitted on paper forms obtained from the Department at the address at N.J.A.C. 7:27-22.3(t).

(c) An applicant who submits an application or notice to the Department electronically, shall use an electronic method listed at http://www.state.nj.us/dep/aqpp. However, if the applicant is asserting a confidentiality claim for any element of information in the application pursuant to N.J.A.C. 7:27-1.6(a), the applicant shall omit the confidential information from the electronically submitted application, as the electronic copy of the application shall be a public copy which the Department may disclose to any person, without restriction or limitation. In such case, the applicant shall also make a paper submission of the application in accordance with N.J.A.C. 7:27-1.6 which included the confidential information. Information about RADIUS is available at the following website: www.state.nj.us/dep/aqpp.

(d) A paper or electronic copy of any application or notice submitted to the Department shall also be submitted to EPA at the following address, unless EPA waives the requirement for notice at 40 CFR 70.8, or determines that an application summary, with any relevant portion of the permit application, may be submitted in lieu of the complete application.

United States Environmental Protection Agency,
Region II
Air Compliance Branch
290 Broadway
New York, New York 10007-1866

(e) An applicant for an initial operating permit or operating permit renewal is encouraged to submit an application to the Department no less than 90 days prior to the applicable application deadline set forth at N.J.A.C. 7:27-22.5 or 22.30, respectively.

(f) Within 30 days of receipt of an application, the Department will issue a letter detailing any deficiencies in respect to administrative completeness in the application, thereby providing the applicant the opportunity to correct the deficiencies prior to the application deadline.

(g) An applicant who electronically registers one or more sources under a general operating permit shall submit the completed registration form in accordance with N.J.A.C. 7:27-22.3(b) using the appropriate electronic method listed at http://www.state.nj.us/dep/ aqpp.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1997 d.453, effective October 20, 1997.
See: 29 N.J.R. 2509(a), 29 N.J.R. 4567(a).
In (c), rewrote the first sentence as the first and third sentences, deleted the existing second sentence, and inserted a new second sentence.
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
In (c), substituted references to RADIUS for references to AIMS throughout, and updated the informational address.
Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
In (a), inserted "general operating permits," and "22.14,"; in (b), inserted "general operating permit" and "according to the following schedule:", and deleted "any" inserted (b)1 designation,; in (b)1, inserted "Prior to January 1, 2008," and substituted "; and" for a period at the end, and added (b)2; in (c), substituted "who" for "may", "submits" for "submit" and "shall use an electronic method listed at http://www.state.nj.us/dep/aqpp" for "using the Remote AIMS Data Input User System (RADIUS)"; inserted "paper or electronic" in (d); and added (g).

7:27-22.5 Application procedures for initial operating permits

(a) The application procedures in this section apply to all applications submitted to the Department for initial operating permits.

(b) The owner or operator of a facility subject to this subchapter shall submit a timely and administratively complete application for an initial operating permit. To be considered timely, an administratively complete application for an initial operating permit shall be submitted to the Department no later than the applicable deadline established in this section. An applicant for an initial operating permit is encouraged to submit the application to the Department no less than 90 days prior to the applicable application deadline set forth in this section. Within 30 days of receipt of an application, the Department will issue a letter detailing any deficiencies in respect to administrative completeness in the application, thereby providing the applicant the opportunity to correct the deficiencies prior to the complete application deadline listed at (c) below. An application shall be deemed administratively complete if the Department does not notify the applicant, within 60 days of its receipt of the application, that additional information is required.

(c) For an existing facility subject to this subchapter, the applicable deadline for submitting an administratively complete application for an initial operating permit is the earliest deadline below which applies to the facility:

1. For affected Title IV facilities with source operations subject to the acid deposition control program Phase II requirements for initial operating permits, the applicable deadline specified at N.J.A.C. 7:27-22.29(b);

(b) An application shield is in effect for a facility if:

1. The owner or operator of the facility has submitted to the Department an application for an initial operating permit or for a renewal, in accordance with N.J.A.C. 7:27-22.5 or 22.30, whichever applies; and

2. The application is administratively complete by the applicable deadline for submittal of the application, as set forth at N.J.A.C. 7:27-22.5 or 22.30, whichever applies.

(c) The protection afforded by the application shield begins the date the application is due to the Department.

(d) An application which is administratively incomplete at the time of the application deadline applicable to the facility, but which is later completed, is ineligible for coverage by an application shield. Similarly, an administratively complete application which is submitted after the applicable deadline for its submittal is ineligible for an application shield. As set forth at N.J.A.C. 7:27-22.4(e), applicants are advised to submit the application 90 days prior to the application deadline to ensure that any deficiencies may be corrected by the deadline.

(e) An application shield does not relieve an applicant of the responsibility for compliance with all other requirements of this chapter, or any permit, order, or other legal document issued pursuant thereto.

(f) An application shield terminates automatically upon either of the following:

1. The Department's final action on the application for the initial operating permit or for the renewal; or

2. Failure of the applicant to submit additional information requested by the Department within the deadline established by the Department pursuant to N.J.A.C. 7:27-22.10, Completeness review.

7:27-22.8 Air quality simulation modeling and risk assessment

(a) An applicant for an initial operating permit for a new major facility, or for a minor modification or significant modification to an existing operating permit, shall conduct air quality simulation modeling in accordance with (c) below if:

1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR 52;

2. The application is subject to the air quality impact analysis requirements set forth at N.J.A.C. 7:27-18.4;

3. The application includes relocation of a temporary facility to a site not specifically authorized in the operating permit, and air quality simulation modeling or risk assessment was required for the location(s) authorized in the operating permit; or

4. The application includes source operations which, based on screening procedures published in technical manuals by the Department, have the potential to cause any of the adverse air quality effects listed in (b)1 through 4 below.

(b) The air quality simulation modeling shall be used to determine whether the potential to emit proposed in the permit application may cause:

1. A violation of any New Jersey Ambient Air Quality Standard (NJAAQS) or National Ambient Air Quality Standard (NAAQS);

2. An exceedance of a Prevention of Significant Deterioration (PSD) increment as defined in 40 CFR 52;

3. An increase in the ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or

4. Air pollution as defined in P.L. 1954 c.212 (N.J.S.A. 26:2C-1 et seq.).

(c) The air quality simulation modeling shall be conducted using procedures published in technical manuals by the Department and in accordance with a protocol approved in advance by the Department. The protocol shall document how the air quality simulation modeling is to be conducted and how the results of the analysis are to be presented to the Department. The protocol shall be prepared in accordance with the Department's technical manuals on Air Quality Modeling (technical manual 1002) and Risk Assessment (technical manual 1003), available at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
PO Box 417
Trenton, New Jersey 08625-0417
Telephone: (609) 777-1039

(d) An applicant not subject to (a) above may voluntarily perform air quality simulation modeling and risk assessment for existing source operations and submit these to the Department, to be made available as part of the public review process for applications for initial operating permits or renewals.

1. Performance of voluntary modeling and risk assessment should be considered by the applicant if the facility's potential to emit any hazardous air pollutant exceeds the thresholds contained in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

2. Guidance on conducting air quality simulation modeling and risk assessment is available in the Department's technical manual for Risk Assessment for

Operating Permits (technical manual 1004), available at the address in (c) above.

3. An applicant for an initial operating permit or the renewal of an operating permit may voluntarily prepare a risk assessment based on ambient air quality monitoring of actual levels of hazardous air pollutants, in lieu of an assessment based on air quality simulation modeling. Guidance on conducting air monitoring is available at the following address:

New Jersey Department of Environmental Protection
Office of Air Quality Management
PO Box 418
Trenton, New Jersey 08625-0418
Attention: Air Monitoring
Telephone: (609) 292-0138

(e) Any new or revised technical manuals referenced in this section will be subject to public input prior to finalization.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.9 Compliance plans

(a) Pursuant to N.J.A.C. 7:27-22.6(f)8, an applicant for an initial operating permit shall submit a proposed compliance plan, drafted in accordance with this section and certified in accordance with N.J.A.C. 7:27-1.39, as part of an application for the initial operating permit.

(b) An applicant for a renewal, significant modification, or minor modification shall draft proposed revisions to any portion of the facility's compliance plan affected by any change to the facility made since the operating permit was issued. The proposed revisions shall be drafted in accordance with this section and submitted as part of the application for the renewal, significant modification, or minor modification.

(c) A proposed compliance plan shall include the following:

1. A description of the current compliance status of the facility with respect to all applicable requirements;

2. For each applicable requirement, a statement setting forth the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, reporting or test methods, and any other information necessary to verify compliance with or enforce any proposed permit condition or any applicable requirement. This statement shall include, but is not limited to:

i. All monitoring, analysis procedures, recordkeeping, reporting, or test methods required by any applicable requirement, including any applicable monitoring procedures or methods required under the Federal "enhanced monitoring program" set forth at 40 CFR Part 64;

ii. Where the applicable requirement does not require monitoring, recordkeeping, reporting, or test methods sufficient to demonstrate the facility's compliance with the operating permit, proposed monitoring, recordkeeping, reporting, or test methods which:

(1) Are sufficient to demonstrate compliance;

(2) Use terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(3) Can be used for enforcement of the applicable requirement;

iii. Proposed requirements concerning the use, maintenance, and installation of monitoring equipment and concerning monitoring, recordkeeping, reporting, or test methods. This shall include, but is not limited to, schedules for monitoring, recordkeeping, reporting, and source emissions testing; specification of parameters to be measured, recorded, and reported; and formats for recording and reporting; and

iv. Where the permittee proposes to use monitoring of operating parameters to demonstrate compliance (as opposed to direct emissions testing or monitoring), a proposed enforceable limit or range of operation for the parameter monitored, and how this parameter correlates to the emission limit.

3. For each applicable requirement with which the facility is in compliance at the time the application for an operating permit is submitted to the Department, a statement that the facility will continue to comply with the applicable requirement;

4. For each promulgated applicable requirement which will become applicable to the facility after the application for an operating permit is submitted to the Department, but prior to the anticipated end of the term of the operating permit:

i. The date the provision will become applicable to the facility or to any part thereof;

ii. A statement that the facility will comply with the applicable requirement on a timely basis; and

iii. A detailed compliance schedule, if such schedule is expressly required by the applicable requirement;

5. For each applicable requirement for which the facility is not in compliance at the time the application for an operating permit is submitted to the Department:

i. A narrative description of how the facility will achieve compliance with the applicable provision(s) of the applicable requirement;

ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and

iii. A schedule for submittal of progress reports, certified in accordance with N.J.A.C. 7:27-1.39, every six months, or more frequently if specified by the underlying applicable requirement, order, consent decree;

6. The following statements:

i. The permittee will ensure the compliance of the facility with the accidental release provisions at 42 U.S.C. 7412(r) and N.J.A.C. 7:31;

ii. The permittee will ensure the compliance of the facility with any employee trip reduction rules promulgated by NJDOT; and

iii. The permittee will ensure that any architectural coatings used at the facility conform with the standards set forth at N.J.A.C. 7:27-23; and

7. A schedule for the periodic submittal of compliance certifications, prepared in accordance with N.J.A.C. 7:27-22.19(f). Submittal shall be annual, or more frequent if so specified by the underlying applicable requirement or by the Department in the operating permit.

(d) If any source operation or any aspect of a facility's operation is in violation of any applicable requirement, and the facility is not subject to an order or consent decree for the violation, the owner or operator of the facility may request an administrative consent order from the Department to address the violation pursuant to N.J.A.C. 7:27A. A request to enter into an administrative consent order shall be submitted to:

Air and Environmental Quality Enforcement
NJDEP
401 E. State Street
CN 422
Trenton, New Jersey 08625-422

(e) The Department's approval of a compliance plan or compliance schedule does not constitute any approval or sanction by the Department of any noncompliance with any applicable requirement, nor does it relieve any owner or operator from liability for penalties for any noncompliance. Applicants are encouraged to seek an administrative consent order from the Department to address the possibility of penalties for noncompliance, and other enforcement actions.

7:27-22.10 Completeness review

(a) Within 30 days of receipt of an application for an initial operating permit, a renewal, a minor modification, or significant modification, the Department will:

1. Determine that the application is administratively complete, and so notify the applicant; or

2. Notify the applicant that the application is administratively incomplete, specify in writing the additional information required for the Department to commence review of the application, and provide a reasonable due date by which the applicant shall submit the information to the Department.

(b) An application shall be deemed administratively complete upon the earliest of the following dates that is applicable:

1. The date the application is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the application, that additional information is required;

2. The date upon which any additional information requested in writing by the Department is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the information, the further information is required; or

3. The date that the Department determines that the application is administratively complete.

(c) The Department may request additional information from an applicant at any time after the submittal of an application, regardless of whether or not the application is administratively complete at the time of the Department's information request. A Department request for additional information in regard to an application which has been determined to be complete pursuant to (b) above shall not alter the administrative completeness status of the application.

(d) In a request for additional information, the Department shall establish a reasonable date by which the information is due to the Department. Upon receipt of a written request for additional time, the Department may extend the due date for the submittal of the additional information.

(e) If an applicant fails to submit the information requested by the Department by its due date, the Department shall deny the application. In addition, the Department shall void any application shield in effect pursuant to N.J.A.C. 7:27-22.7(f) effective the day following the due date.

(f) If an application is denied, the applicant may reapply at any time. The new application shall meet all requirements for an operating permit application, including any fee requirement.

Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).
See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).
Substituted "any" for "the" in (f).

7:27-22.11 Public comment

(a) This section sets forth the procedures by which the Department will obtain comment from the public and affected states on each of the following:

1. A draft operating permit developed by the Department following the receipt of an administratively complete application for an initial operating permit;

2. A draft operating permit developed by the Department following the receipt of an administratively complete application for a significant modification of an operating permit;

3. A draft operating permit developed by the Department following the receipt of an administratively complete application for renewal of an operating permit; and

4. A draft general operating permit developed by the Department pursuant to N.J.A.C. 7:27-22.14(a).

(b) The Department will provide a public comment period on each draft operating permit and each draft general operating permit, during which the Department will accept written comments on the draft permit. The public comment period will be specified in the notice published pursuant to (c) and (d) below, and shall be at least 30 days.

(c) The Department will provide public notice of the opportunity for public comment on each draft operating permit. The notice will:

1. Identify the facility that will be subject to the operating permit, and provide the name and address of the owner or operator;

2. Indicate whether the draft operating permit is an initial operating permit, a significant modification, a renewal or a general operating permit;

3. Indicate the type of production processes involved in the draft operating permit and, for a significant modification, the emissions change that will result from the modification;

4. Give the name and address of the Department, including the name and telephone number of a person at the Department from whom interested persons may obtain additional information;

5. Announce the opportunity for public comment, and provide a description of the public comment procedures set forth in this section;

6. Specify the length of the public comment period; and

7. Include the time and location of any public hearing to be held on the draft operating permit. If no public hearing is scheduled, the notice shall include procedures for requesting a public hearing.

(d) The Department will provide public notice of the opportunity for public input on each draft general operating permit. The notice will include:

1. Proposed criteria for the types and sizes of source operations that may be covered by the general operating permit;

2. Proposed conditions of construction or operation, including monitoring, recordkeeping, and reporting requirements, for persons who obtain this general operating permit; and

3. The public comment information listed in (c)4 through 7 above.

(e) The Department will publish the notice for each draft operating permit in a newspaper of general circulation in the area where the facility which is the subject of the application is located and will mail the notice to persons on a mailing list developed by the Department, including to persons who request in writing to be on the mailing list. The Department will publish the notice for each draft general operating permit in the New Jersey Register to ensure that the notice is published Statewide. The Department may also provide additional notice by using any other means the Department finds appropriate for assuring adequate notice to the public of the opportunity for public comment.

(f) Whenever there is a significant degree of public interest, the Department will hold a public hearing on the draft operating permit or draft general operating permit. The Department may schedule a public hearing and include it in the notice of opportunity for public comment pursuant to (c) or (d) above or, if the Department does not schedule a hearing, any person may request that the Department hold a public hearing on the draft permit. A request for a public hearing shall be submitted in writing to the Department no later than the published date of the close of the comment period, and shall include a statement of issues to be raised at the public hearing. The issues raised shall be relevant to the draft permit under review by the Department.

Case Notes

DEP complied with all Federal and State statutory and regulatory provisions in issuance of permit. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

7:27-22.14 General operating permits

(a) The Department may promulgate a rule to issue one or more general operating permits, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-2 et seq. The Department may also publish a technical manual for each general permit, pursuant to N.J.S.A. 13:1D-111. The technical manual shall contain the information required under N.J.S.A. 13:1D-111, including, but not limited to, information that details and clarifies the Department's interpretation of standards or other requirements that are not defined by regulation. However, if the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., establishes an alternative procedure for issuing general permits without rulemaking under the Administrative Procedure Act, the Department will issue general permits in accordance with that procedure. Otherwise, in issuing a general permit, the Department shall comply with:

1. The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;

2. The public comment procedures set forth at N.J.A.C. 7:27-22.11;

3. EPA comment procedures set forth at N.J.A.C. 7:27-22.12;

4. Any other procedural requirements related to the issuance of an operating permit; and

5. N.J.S.A. 13:1D-111.

(b) In accordance with the procedures set forth in this section, an owner or operator may apply to the Department for authorization under a general operating permit to operate any source operation, group of source operations, or facility which meets the applicability criteria set forth in a general operating permit issued by the Department. A separate application for a preconstruction permit is not required. Approval of the general operating permit shall also constitute preconstruction permit approval. If the general operating permit applies to the entire facility, the general operating permit may serve as the operating permit for the facility. If the general operating permit applies to a part of the facility, the general operating permit may serve as a component of the operating permit for the facility.

(c) A general operating permit is available for the following sources:

1. Equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour, in accordance with paragraph 6 in the definition of "significant source operation" N.J.A.C. 7:27-22.1, provided the emissions of all air contaminants are less than the reporting threshold specified in the General Operating Permit. In determining the weight of the raw materials used, the weight of the following shall be excluded, in accordance with subparagraph 6ii in the definition of "significant source operation" in N.J.A.C. 7:27-22.1:

i. Air;

ii. Water;

iii. Containers, provided that the container is not consumed as part of the operation of the equipment; and

iv. Paper, metal, or plastic that is twisted, bent or folded, in the equipment, provided that the twisting, bending, or folding does not cause visible emissions or air pollution.

(d) In an application for authorization to operate under a general operating permit, the owner or operator shall demonstrate how the facility or portion thereof:

1. Meets the applicability criteria set forth in the general operating permit; and

2. Will comply with all of the conditions of the general operating permit.

(e) The Department shall grant a facility's request to operate under a general operating permit without repeating the public and EPA comment procedures specified in (a) above if the general operating permit includes applicable requirements for all relevant source operations at the facility.

(f) A permittee shall operate a facility, or any portion thereof, for which authorization to operate under a general operating permit has been obtained from the Department, according to the terms and conditions of the general operating permit.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Public Notice: General operating permit 001—drycleaning operation.
See: 35 N.J.R. 3721(a).
Public Notice: Small Emitter General Permit (SEGAP)(GOP-002).
See: 36 N.J.R. 4543(b).
Administrative change.
See: 37 N.J.R. 4912(a).
Public Notice: Opportunity for Public Comment: Draft General Operating Permit.
See: 42 N.J.R. 2640(a), 2641(a).

7:27-22.15 Temporary facility operating permits

(a) The Department may issue an operating permit to an owner or operator of a temporary facility which authorizes operation in more than one location during the term of the operating permit, provided that all locations at which the facility may be operated are listed in the operating permit.

(b) An operating permit issued for a temporary facility shall require the permittee to:

1. Comply with all applicable requirements at all locations at which the temporary facility is operated;

2. Comply with all other applicable provisions of this chapter; and

3. Provide written notice, received at least 10 days in advance of each change in location, to:

i. The mayor of the municipality, or if there is no mayor, the governing body of the municipality to which the facility will be moved;

ii. The board of chosen freeholders or other governing body of the county to which the facility will be moved;

iii. The local health agency, certified pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (CEHA), and its implementing regulations, N.J.A.C. 7:1H, in the county to which the facility will be moved; and

iv. The Department at the address given at N.J.A.C. 7:27-22.3(t) and the address given below:

NJDEP
Air and Environmental Quality Enforcement
401 E. State Street
CN 422
Trenton, NJ 08625-0422

(c) The notice required pursuant to (b)3 above shall include:

1. The location being vacated;

2. The location to which the facility will be moved;

3. The name, address, and telephone number of the permittee;

4. The Department assigned permit number, which identifies the operating permit; and

5. As to the local officials identified in (b) above, a copy of the operating permit.

(d) An operating permit issued for a temporary facility shall not relieve any person from the obligation to comply with any provision of this chapter, to obtain any other necessary authorization from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(e) In accordance with N.J.A.C. 7:27-22.29(g), a facility subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. § 7651 et seq., shall not be eligible for a temporary facility operating permit.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.16 Operating permit contents

(a) The Department will include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance.

(b) For each significant source operation at the facility, or, if applicable, for each group of source operations or for the entire facility, the operating permit shall:

1. Specify each applicable requirement and each associated permit condition, including any emission limitations and standards and any operational requirements;

2. Cite to the specific legal authority, including any State or Federal rule or regulation or any permit, which establishes the applicable requirement and any associated permit conditions;

3. Identify any difference in form between the permit condition and the applicable requirement upon which the permit condition is based;

4. Specify the compliance assurance method (including a reference, if applicable, to where the method is published) required to be used to determine compliance with the permit condition; and

5. Specifically designate as not being Federally enforceable any permit condition based on an applicable state requirement.

(c) If any other applicable Federal requirement is more stringent than an applicable requirement of EPA's acid deposition control regulations, both requirements shall be set forth in the operating permit pursuant to (b) above and both shall be enforceable by the Department and EPA.

(d) An operating permit may contain an alternative emission limit pursuant to N.J.A.C. 7:27-22.3(m), if:

1. The applicant has proposed the alternative emission limit in the application for the operating permit;

2. The applicant has proposed procedures that ensure that the alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures;

3. The Department has determined, based on an equivalency demonstration provided by the applicant, that the alternative emissions limit proposed by the applicant is equivalent to, or more stringent than, that contained in an applicable requirement; and

4. The Department determines that the alternative emission limit is consistent with the SIP.

(e) The Department shall incorporate into each operating permit the provisions of any effective preconstruction permit and operating certificate issued for the facility, or any part thereof, if the preconstruction permit or operating certificate was:

3. The applicable requirements of the acid deposition control program, consistent with 42 U.S.C. § 7651g(a);

4. The ability of EPA to obtain information from a facility pursuant to the requirements for recordkeeping, monitoring, inspections and entry at 42 U.S.C. § 7414; or

5. The Department's authority to enter and inspect a facility subject to this subchapter, pursuant to N.J.A.C. 7:27–1.

(g) A permit shield does not relieve the permittee of any liability for noncompliance with the operating permit.

7:27–22.18 Source emissions testing and monitoring

(a) This section sets forth the procedures by which the Department will implement the source emissions testing and monitoring requirements contained in an approved operating permit. Any deadline in this section may be extended through written approval by the Department, unless prohibited by Federal regulations. Such procedures shall be consistent with the federal rules for enhanced monitoring of stationary sources, set forth at 40 CFR Part 64.

(b) Within 90 days after approval of the operating permit, or within the time frame specified in the operating permit, a permittee shall submit, pursuant to this section, a request for approval of a protocol prepared in accordance with the Department's published technical manual on Air Contaminant Testing and Monitoring. The protocol shall describe how the permittee proposes to carry out any source emissions testing or monitoring, including any type of CMS monitoring, required by the operating permit. Any revisions of the technical manual will be subject to public input prior to finalization.

(c) The protocol shall, in accordance with the Department's technical manual on Air Contaminant Testing and Monitoring, include details of the implementation of the source emissions testing and monitoring practices required by the operating permit and shall specify sampling and analytical procedures, equipment specifications, example calculations, and the form in which data will be submitted.

(d) The Department will inform the permittee in writing of any deficiencies in the proposed protocol, and will provide a reasonable deadline for correction of the deficiencies. The permittee shall correct the deficiencies and resubmit the protocol to the Department within the deadline.

(e) If the operating permit requires source emissions testing, the permittee shall carry out the following initial source emissions testing procedures:

1. Contact the Department within 30 days after approval of the protocol and schedule a testing date;

2. Perform the source emissions testing within 180 days after the Department's approval of the operating permit; and

3. Submit the source emissions test report to the Department, within 45 days after completion of the source emissions testing. The test report shall include all raw field and laboratory data, as well as the operating and production parameters required by the approved protocol, so that the Department may reproduce the calculations and verify the findings of the test report. The test report shall be reviewed and certified pursuant to (h) before it is submitted to the Department.

(f) After completion of the initial source emissions testing required pursuant to (e) above, the permittee shall perform periodic source emissions testing in accordance with any applicable schedule in the operating permit, the approved protocol, and this section.

(g) If the operating permit requires monitoring using a CMS, the permittee shall perform the following initial procedures in accordance with the approved monitoring protocol:

1. Install the CMS by the date specified in the operating permit;

2. Calibrate, operate and maintain all components of the CMS to measure continuously and record continuously the parameters specified in the operating permit;

3. For facilities required to install CEMs, contact the Department within 30 days after approval of the monitoring protocol and schedule a date for a performance specification test to verify that the CEM is operating according to the requirements of the operating permit;

4. Perform the performance specification test prior to any required source emissions testing and within 90 days after the latter of the following events:

i. Installation of the CMS;

ii. The commencement of operation of the equipment being monitored; or

iii. Department approval of the testing protocol; and

5. Submit to the Department the performance specification report within 30 days after the completion of the performance specification test. The performance specification report shall include all raw field and laboratory data necessary for the Department to reproduce the test results as specified by the approved protocol and shall be reviewed and certified pursuant to (h) before it is submitted to the Department.

(h) Each source emissions test report or performance specification test report shall be reviewed and certified, pursuant to N.J.A.C. 7:27–1.39, by a licensed professional engineer or by an industrial hygienist certified by the American Board of Industrial Hygiene.

(i) The owner or operator of a facility subject to this subchapter shall, upon request of the Department, provide

testing facilities, exclusive of instrumentation and sensing devices, as may be necessary for the Department to determine the kind and amount of air contaminants emitted from any significant source operation at the facility. During testing by the Department, the significant source operation shall be operated, within their capacities, under conditions requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the owner or operator of the facility, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

(j) Each permittee shall meet all requirements of the approved protocol during the term of the operating permit.

(k) A permittee may seek the approval of the Department for a delay in testing required pursuant to a permit and/or this section. In such case, the following shall apply:

1. The permittee shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27–22.3(t) and to the appropriate regional enforcement office indicated in (k)1 i through iv below;

i. If the permitted source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, PO Box 407
Robbinsville, NJ 08625–0407.

ii. If the permitted source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place
West Orange, NJ 07052–5504.

iii. If the permitted source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2
Parsippany–Troy Hills, NJ 07054–4191.

iv. If the permitted source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08103.

2. A request for a delay in testing shall include the following information, at a minimum:

i. Justification why the delay in testing is necessary;

ii. A proposed test date or a proposed set of conditions that would define a future test date; and

iii. Certification signed by the responsible party at the facility and in accordance with the certification procedures at N.J.A.C. 7:27–1.39.

3. The Department shall approve each initial request for a delay in testing of up to 90 days, and any subsequent request for a delay in testing, only if one of the following criteria is met:

i. The test was delayed due to a Departmental delay, such as if the protocol is still under review/negotiation, but only if the protocol was submitted in a timely fashion;

ii. The equipment which is to be tested had not been installed;

iii. The requirement for testing is a Federal requirement, and the EPA has given its approval in writing of the delay in testing; or

iv. The permittee has described in writing an impediment to the testing, which, based on its review of documentation submitted by the permittee, the Department has determined is a valid reason for further delaying the testing.

(*l*) In a request for a delay of testing, submitted pursuant to (k) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Added (k) through (m).
Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).
See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).
In (k)3, rewrote the introductory paragraph, added new iii, recodified and rewrote former iii as iv.
Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).
See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).

Deleted (m).

7:27–22.19 Recordkeeping, reporting and compliance certification

(a) Each permittee shall maintain records of all source emissions testing or monitoring performed at the facility and required by the operating permit in accordance with this section. Records shall be maintained, for at least five years from the date of each sample, measurement, or report. Each permittee shall maintain all other records required by the operating permit for a period of five years from the date each record is made.

(b) Source emissions testing or monitoring records shall contain, at a minimum, the following information, unless alternative types of records or recordkeeping are expressly approved in the operating permit:

1. The date, source operation, and time of sampling or measurements;

2. The date(s) analyses were performed;

3. The company and the name of the person representing that company who was responsible for performing the sampling, measurements or analyses;

4. The analytical techniques or methods used;

5. The results of such analyses;

6. The operating conditions, as specified in the operating permit, existing at the time of sampling or measurement. If the record indicates a deviation from applicable requirements at a facility equipped with a CMS, the permittee shall include all CMS data recorded beginning one hour before the recorded deviation and continuing through one hour after the recorded deviation.

7. All calibration and maintenance records, and all original strip-chart recordings, or the equivalent for continuous monitoring instrumentation;

8. Copies of all reports required by the operating permit; and

9. Any other information required by the Department to interpret the monitoring data.

(c) A permittee shall submit reports of all source emissions testing and monitoring required by the operating permit, and supporting information, to the Department in accordance with (d) and (e) below. The reports shall conform to a format acceptable to the Department. The reports shall be certified pursuant to N.J.A.C. 7:27–1.39 by a responsible official.

(d) A report submitted pursuant to (c) above shall be submitted:

1. For a source emissions test report, within 45 days after the completion of the sampling, unless a longer period for submittal is approved in advance in writing by the Department; and

2. For a CMS report, within 30 days of completion of each calendar quarter for the calendar quarter; and

3. For any other report or supporting information relating to testing or monitoring required by the operating permit to be performed from January 1 through June 30, by July 30 of the same calendar year; or from July 1 through December 31, by January 30 of the following calendar year.

(e) Any report submitted pursuant to (c) above shall clearly identify all deviations from operating permit requirements, including those attributable to emergencies, startup, shutdown and maintenance, the probable cause of such deviations, and any corrective actions or preventive measures taken.

(f) Each permittee shall submit to the Department, at the address given in N.J.A.C. 7:27–22.9(d), and to EPA at the address given in N.J.A.C. 7:27–22.4(d), a periodic compliance certification, in accordance with the schedule for compliance certifications set forth in the compliance plan in the operating permit. This periodic compliance certification shall include the following:

1. For each applicable requirement, a statement that the facility is:

i. In compliance with the applicable requirement and, if so, whether the compliance is continuous or intermittent, as defined in the Federal rules for the enhanced monitoring of stationary sources set forth at 40 CFR Part 64;

ii. In compliance with a compliance schedule, included in the operating permit pursuant to N.J.A.C. 7:27–22.9(c)7ii, which includes a sequence of actions with milestones leading to compliance with the applicable requirement;

iii. In compliance with an order or consent decree not incorporated into a compliance schedule; or

iv. Not in compliance;

SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS

Authority

N.J.S.A. 13:1B–3 and 26:2C–1 et seq., specifically N.J.S.A. 26:2C–8.

Source and Effective Date

R.1989 d.119, effective February 21, 1989 (operative March 26, 1989). See: 20 N.J.R. 2002(a), 21 N.J.R. 462(a).

Subchapter Historical Note

Notice of Rule Invalidation: Provisions of N.J.A.C. 7:27–23 held to require repromulgation and remanded to Commissioner, Department of Environmental Protection, for action consonant with the Administrative Procedure Act. In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27–23, ___ *N.J. Super.* ___, *Dkt. No. A–1226–89T1 (App. Div. February 26, 1990).* See: 22 N.J.R. 1134(b).

7:27–23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the VOC content of, and using, architectural coatings.

(b) As set forth at N.J.A.C. 7:27–17.4(c), this subchapter's requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II Toxic Substances (TXS).

(c) Except as provided in (d) and (e) below, this subchapter is applicable to any person who:

1. Manufactures, blends, repackages, supplies or distributes an architectural coating for sale within the State of New Jersey;

2. Sells or offers for sale an architectural coating within the State of New Jersey; and

3. Applies an architectural coating for compensation within the State of New Jersey.

(d) The provisions of this subchapter shall not apply to:

1. An architectural coating that is sold or manufactured for use outside of the State of New Jersey or for shipment to other manufacturers for reformulation or repackaging, provided that documentation indicating the final destination of such architectural coating shall be made available to representatives of the Department upon request;

2. An aerosol coating product; or

3. An architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

(e) The provisions of N.J.A.C. 7:27–23.3(a) shall not apply to any person who applies an architectural coating for compensation within the State of New Jersey provided that either (e)1 or 2 below is met:

1. The architectural coating was purchased from a location within the State of New Jersey or within a state, as identified at (f) below, that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey; or

2. The coating was purchased and delivered by the manufacturer or distributor to a location in the State of New Jersey or to a state, as identified at (f) below, that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey. For a coating sold in this manner, it is the responsibility of the seller to ensure compliance with these rules;

(f) The Department shall publish in the New Jersey Register a notice of administrative change revising the list of states below when any state promulgates maximum allowable VOC content limits for architectural coatings that are identical with or more stringent than the VOC content limits set forth in this subchapter. This list is for informational purposes only. The most current list of states can be obtained from the Department's Office of Air Quality Management at 401 East State Street, 7th floor, PO Box 418, Trenton, New Jersey 08625–0418.

1. Delaware;

2. Pennsylvania;

3. New York; and

4. Maryland.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Language added specifying architectural coatings are the subject of regulations.
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

Rule requiring reduction in volatile organic substances (VOS) content in certain air fresheners. Matter of Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27–23, 239 N.J.Super. 407, 571 A.2d 971 (A.D.1990).

7:27–23.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"All other architectural coatings" means any architectural coating which does not meet any of the other architectural coating definitions contained within this section.

"Adhesive" means a chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications.

"Antenna coating" means a coating formulated and recommended exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

"Antifouling coating" means a coating formulated and recommended for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating must be registered as an antifouling coating under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

"Appurtenance" means an accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks and fire escapes; and window screens.

"Architectural coating" means a coating to be applied at the site of installation to the following: stationary structures or their appurtenances, portable buildings, pavements, or curbs. This term does not include adhesives and coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles.

"ASTM" means the American Society for Testing and Materials.

"BAAQMD" means the Bay Area Air Quality Management District, one of 35 air pollution control agencies in California, which regulate air quality in California by jurisdiction of the district, and are overseen by the California Air Resources Board (CARB).

"Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

"Bituminous coating" or "bituminous sealer" means a coating material, consisting mainly of hydrocarbons and soluble in carbon disulfide, that is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is formulated and recommended exclusively for roofing.

"Bituminous roof primer" means a primer that incorporates bitumens and that is formulated and recommended exclusively for roofing.

"Bond breaker" means a coating that is formulated and recommended for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

"CARB" means the California Air Resources Board, which oversees all air pollution control efforts in California, including the activities of 35 independent local air districts. California state law vests CARB with direct authority to regulate pollution from motor vehicles, fuels, and consumer products.

"CARB SCM" means the California Air Resources Board Suggested Control Measure for Architectural Coatings, adopted June 22, 2000.

"CARB survey" means the California Air Resources Board's 1998 Architectural Coatings Survey Results Final Report, dated September 1999, or any subsequent CARB survey, which is incorporated by reference herein. A copy of this survey can be found on the CARB website at http://www.arb.ca.gov.

"Calcimine recoater" means a flat solvent-borne coating formulated and recommended on its label specifically for recoating calcimine painted ceilings and other calcimine painted substrates.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

"Colorant" means a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete curing compound" means a coating formulated and recommended for application to freshly poured concrete to retard the evaporation of water.

4. The coating contains no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

(i) Table 1 contains the VOC content limits for architectural coatings:

TABLE 1

VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Coating Category	VOC Content[1]		
	State Limit Operative Date 2/28/90-12/31/04[2]		State Limit Operative Date 1/1/05
	Pounds VOC per gallon[3]	Grams VOC per liter	Grams VOC per liter
Antenna coating			530
Anti-fouling coating			400
Bituminous pavement sealer	0.8	100	100
Bituminous roof coating			300
Bituminous roof primer			350
Bond breaker	5.0	600	350
Calcimine recoater			475
Concrete curing compounds	2.9	350	350
Concrete surface retarder			780
Conversion varnish			725
Dry fog coating	3.3	400	400
Faux finishing coating			350
Fire-resistive coating			350
Fire-retardant coating			
clear			650
opaque	4.2	500	350
all others	7.1	850	NA1
Flat coating	2.1	250	100
Floor coating			250
Flow coating			420
Form release compound			250
High temperature coating	5.4	650	420
Impacted immersion coating			780
Industrial maintenance coating	3.8	450	340
Lacquer, clear brushing	5.7	680	680
Lacquer (including lacquer sanding sealer)			550
Low solids coating			120
Magnesite cement coating			450
Mastic texture coatings	1.7	200	300
Metallic pigmented coatings	4.2	500	500
Multi-colored coating	5.0	600	250
Nonflat coating:	3.2	380	150
Nonflat high gloss coating			250
Nuclear coating			450
Pretreatment wash primer			420
Primer, Sealer, and Undercoater	2.9	350	200
Quick-dry enamel			250
Quick-dry Primer, Sealer, Undercoater	4.2	500	200
Recycled Coating			250
Roof coating	2.5	300	250
Rust preventative coating			400
Sanding sealer (other than lacquer sanding sealer)			350
Shellac			
clear	6.1	730	730
opaque	4.6	550	550
Sign paint (Graphic arts coating)	3.8	450	500
Specialty Primer, Sealer, and Undercoater			350
Stain			250
semitransparent	4.6	550	NA2
opaque	2.9	350	NA2
Swimming pool coating	5.0	600	340
Swimming pool repair and maintenance coating			340
Temperature-indicator safety coating			550
Thermoplastic rubber coating and mastic			550
Tile-like glaze coating	4.6	550	550
Traffic marking coating	2.1	250	150
Varnish	3.8	450	350
Waterproofing sealer	5.0	600	250
Waterproofing concrete/masonry sealer			400
Waterproof mastic coating	2.5	300	NA3
Wood preservative coating	4.6	550	350
All other architectural coatings	2.1	250	NA4

Notes:

1. Limits are expressed in grams of VOC per liter or pounds of VOC per gallon of coating thinned to the manufacturer's maximum recommendation, excluding the volume of water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.
2. On or after January 1, 2005, the state limits operative February 28, 1990 will no longer be applicable.
3. Conversion factor one pound VOC per gallon (U.S.) - 119.95 grams per liter.

NA1. The fire retardant "all others" category shall be "not applicable" and is being replaced with the "clear" category.

NA2. The "semi-transparent" and "opaque" stain categories shall be "not applicable" and are being replaced with one category "Stains."
NA3. The "Waterproof mastic coating" category shall be "not applicable" and is being replaced with the "Mastic texture coating" category.
NA4. The "All other architectural coating" category shall be "not applicable" and is being replaced with N.J.A.C. 7:27-23.3(g).

(j) The provisions of (a) above shall not apply to an architectural coating if the coating and/or manufacturer has been granted a limited timeframe variance or exemption by another state or one of the California air quality management districts that has promulgated a rule substantially equivalent to, and that has product categories and VOC content limits identical to, N.J.A.C. 7:27–23. The variance or exemption shall be used in New Jersey to comply with this subchapter only if:

1. The variance or exemption is in effect (the Department shall consider a variance to be in effect if the issuing agency deems the variance to be in effect);

2. The product for which the variance or exemption is being used to comply with this subchapter meets the following:

i. The product belongs to a category that is subject to a VOC content limit set in Table 1 in (i) above; and

ii. The VOC content limit promulgated for this product by the agency that issued the variance or exemption, is equal to the most stringent applicable VOC content limit in Table 1 in (i) above;

3. Prior to relying on a variance or exemption for compliance with this subchapter, the manufacturer submits to the Department, at the address in (k) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this subchapter under a variance or exemption rather than meet the applicable VOC content standards in Table 1 in (i) above;

ii. The brand name of the product, and the specific category in Table 1 in (i) above to which the product belongs;

iii. A copy of the document(s) setting forth the variance or exemption; the issuing agency's approval; the issuing agency's conditions of its approval; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the variance or exemption;

iv. The number of gallons sold, in containers greater than 1 liter, annually, in New Jersey; and

v. The VOC content of the coating; and

4. The manufacturer includes in its electronic registration, submitted pursuant to N.J.A.C. 7:27–24.6(c), an indication that, for the specified product, it is complying with this subchapter under a variance or exemption.

(k) Information required to be submitted to the Department pursuant to (j)3 above shall be submitted to the following address:

Attn: Architectural Coating Variance
Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625–0418

Petition for Rulemaking: grandfathering of existing stock of architectural coatings.
See: 21 N.J.R. 2132(d), 21 N.J.R. 2403(c).
Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
Coatings categorized by groups and exemption for small containers at (c)2.
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Subsection (b) added, effective February 28, 1993.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC"; at Table 1, Group II, Stain: semitransparent, maximum changed to 4.6 from 4.5.
Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

7:27–23.4 Compliance provisions and test methods

(a) For the purpose of determining compliance with the VOC content limits contained in N.J.A.C. 7:27–23.3(i) Table 1, the VOC content of a coating shall be determined by using the following procedures. The VOC content of a tint base shall be determined prior to the addition of any colorant which is added after packaging in sale units by a person other than the manufacturer.

1. For all coatings, with the exception of low solids coatings, the VOC content in grams of VOC per liter of coating, thinned to the manufacturer's maximum recommendation, excluding the volume of water and exempt compounds, shall be determined as follows:

$$\text{VOC Content} = (Ws - Ww - Wec)/(Vm - Vw - Vec)$$

Where:

VOC content	= grams of VOC per liter of coating
Ws	= weight of volatiles, in grams
Ww	= weight of water, in grams
Wec	= weight of exempt compounds, in grams

7:27–23.5 Labeling requirements

(a) The manufacturer of an architectural coating subject to this subchapter shall display on the coating container's label, bottom or lid, the date the coating was manufactured, or a date code representing the date of manufacture. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code in accordance with N.J.A.C. 7:27–23.6(c).

(b) The manufacturer of an architectural coating subject to this subchapter shall display the following information on the coating container label or lid:

1. A statement of the manufacturer's recommendation regarding thinning of the coating, except that:

i. This requirement does not apply to the thinning of architectural coatings with water; and

ii. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning;

2. The maximum or the actual VOC content of the coating in accordance with N.J.A.C. 7:27–23.4, which includes the manufacturer's maximum recommendation for thinning, shall be provided as follows:

i. For a coating manufactured prior to January 1, 2005, the VOC content shall be displayed in grams of VOC per liter of coating or pounds of VOC per gallon of coating; and

ii. For a coating manufactured on or after January 1, 2005, the VOC content shall be displayed in grams of VOC per liter of coating;

3. For an industrial maintenance coating, one or more of the following statements:

i. "For industrial use only";

ii. "For professional use only"; and/or

iii. "Not for residential use" or "Not intended for residential use";

4. For clear brushing lacquers manufactured on and after January 1, 2005, the statements "For brush application only" and "This product must not be thinned or sprayed" shall be prominently displayed;

5. For rust preventative coatings manufactured on and after January 1, 2005, the statement "For metal substrates only" shall be prominently displayed;

6. For a specialty primer, sealer, or undercoater manufactured on and after January 1, 2005, one or more of the following statements shall be prominently displayed:

i. "For blocking stains";

ii. "For fire-damaged substrates";

iii. "For smoke-damaged substrates";

iv. "For water-damaged substrates"; and/or

v. "For excessively chalky substrates";

7. For a quick dry enamel manufactured on or after January 1, 2005, the following:

i. The statement "Quick dry" shall be prominently displayed; and

ii. A statement of the time it takes for the enamel to dry hard; and

8. For a non-flat high gloss coating manufactured on or after January 1, 2005, the statement "High gloss" shall be prominently displayed.

(c) For a coating manufactured on or after January 1, 2005, the manufacturer of an architectural coating, that is "formulated and recommended" for a specific use as specified in the definition of the particular architectural coating in N.J.A.C. 7:27–23.2, shall display such recommended use on the coating container's label.

(d) Prior to January 1, 2005 only, the provisions of this subchapter shall not apply to any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., provided that:

1. The manufacturer has filed an application for any registration amendment necessary for compliance with this subchapter with EPA;

2. A copy of this application was submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, PO Box 027, Trenton, New Jersey 08625–0027 by August 31, 1990;

3. Within 30 calendar days of receipt of notice of EPA action on an amendment request, a copy of that notice was supplied to the Assistant Director, Enforcement Element, at the address specified above; and

4. Within 180 calendar days of the receipt of an approval of any necessary change, the manufacturer began use of the complying product or label.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
New (c) added and (c) recodified to (d) with provisions for applications for amended registrations to be filed with EPA.
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Location and print size of information specified; (a)2 and (b) deleted; new (a)2, (b) and (c) added; FIFRA manufacturers required to submit data to DEP; six months between approval and use of labels allowed in (e).
Administrative Correction in (a)2 changing the date from February 28 to August 9, 1991 for the statement; and change type size from 12 to eight.
See: 23 N.J.R. 303(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC".

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

7:27–23.6 Administrative and reporting requirements

(a) Each manufacturer and distributor of an architectural coating subject to N.J.A.C. 7:27–23.3 shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the architectural coatings included on that shipping document and subject to N.J.A.C. 7:27–23.3, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than five years and shall be made available by the document recipient to the Department or its representatives upon request.

(b) For a coating that is sold or manufactured in New Jersey for use outside of New Jersey, or for shipment to other manufacturers for reformulation or repackaging, documentation indicating the final destination of the coating shall be made available to the Department or its representatives upon request. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than three years and shall be made available by the document recipient to the Department or its representatives upon request.

(c) A manufacturer who uses a date code on the coating container, in lieu of using the date of manufacture on the container, or a manufacturer who is complying with this subchapter with the use of a limited timeframe variance or exemption in accordance with N.J.A.C. 7:27–23.3(j), shall submit a registration with the Department as follows:

1. The information shall be submitted electronically, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department approves a request from the manufacturer to submit the information on paper pursuant to (c)7 below;

2. The registration shall be submitted to the Department in accordance with guidance on the Department's website at http://www.state.nj.us/dep/baqp.

3. The registration shall be submitted in accordance with the following schedule:

i. For a coating sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after July 20, 2004 and prior to January 1, 2005; and

ii. For a coating sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, the registration shall be submitted prior to selling the coating in New Jersey;

4. A manufacturer who, after the submission of its registration, begins to manufacture a coating for sale in New Jersey which changes the original registration information, or if any of the information provided in the registration changes, shall submit a revised registration including the new information within 90 days of the change;

5. The information shall include the following:

i. The name of the manufacturer;

ii. The full mailing address of the manufacturer;

iii. The name, telephone number and email address of a contact person;

iv. The date code explanation for each coating; and

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through a variance or exemption, the following:

(1) The product brand name;

(2) The category in N.J.A.C. 7:27–23.3(i) Table 1 to which the product belongs; and

(3) The state or California air quality management district that approved the variance or exemption and the approval date;

6. Notwithstanding (i) below, any information submitted as part of the registration pursuant to this subsection shall not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27–1.6 through 1.29; and

7. A manufacturer who claims that electronic submission of its registration will impose a hardship shall submit a request to the Department to submit its registration on paper, rather than electronically, as follows:

i. The request shall include an explanation of the hardship that electronic submission would impose on the manufacturer;

ii. The Department shall not approve a manufacturer's request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer; and

iii. The manufacturer shall submit the request to the Department at the following address:

Attn: Architectural Coating Registration
Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625–0418

(d) Upon request, a manufacturer of an architectural coating shall submit to the Department a report concerning the coatings it sold in New Jersey which are subject to this subchapter. Such report shall be submitted within 90 days of the request. The request may include any or all of the following:

1. The name of the manufacturer;

2. The full mailing address of the manufacturer;

3. The name and telephone number of a contact person;

4. The name of each coating as described on its label;

5. The category of each coating sold;

6. Whether the coating is marketed for interior or exterior purposes;

7. The color category of each coating (such as white, pastel, medium or deep base for flat and non-flat coatings, and clear, semi-transparent or opaque for stains and varnishes);

8. The number of gallons sold in containers greater than one liter;

9. The number of gallons sold in containers less than or equal to one liter;

10. A list of VOC's used in each coating;

11. A list of exempt compounds used in the coating; and

12. The following information (as defined in the CARB 1998 Architectural Coatings Survey Results Final Report, September 1999, or subsequent CARB surveys, which is incorporated by reference herein and which can be found by accessing the CARB website):

i. The actual and regulatory VOC content (as defined in the CARB survey) in grams per liter. If products less than or equal to one liter have a different VOC content, list them separately;

ii. The actual and regulatory VOC content in grams per liter after recommended thinning. If products sold in containers less than or equal to one liter have a different VOC content list them separately; and

iii. The percent by volume solids.

(e) Records sufficient to provide the information listed in (d) above shall be maintained by each manufacturer for a minimum of three years.

(f) Each manufacturer of a coating subject to a VOC content limit in this subchapter shall keep records demonstrating compliance with the applicable VOC content limit. Such records shall consist of the results of testing and/or calculations in accordance with N.J.A.C. 7:27–23.4. These records are required to be kept by the manufacturer for a period of at least five years. Such records shall be made available by the manufacturer to the Department or its representatives within 30 days of the Department's request.

(g) If the Department requests any manufacturer of an architectural coating to test any of its coatings that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the coating, the manufacturer shall submit the test report to the Department within 30 days of the receipt of the request from the Department.

(h) A person who holds for sale, offers for sale, or sells any coating subject to this subchapter shall, upon request, identify to the Department or its representatives, the distributor or company from whom the coating was obtained.

(i) Except as provided at (c)6 above, any person who is required to submit information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27–1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27–1.6 through 1.29.

(j) Variance or exemption documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27–23.3(j).

Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Recordkeeping requirements revised.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC".
Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

7:27–23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a coating will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or any person who applies coatings for compensation shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of architectural coating at the facility are available on site, these equipment or facilities shall be made available for Department use.

Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Requirements for manufacturing facilities separated from those for distributors and retailers.
Amended by R.2004 d.236, effective June 21, 2004 (effective July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
In (c), substituted "any person who applies coatings for compensation" for "indirect consumer" in the first sentence, deleted "by the indirect consumer or at the retail or distribution outlet" at the end of the second sentence.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

7:27–23.8 Penalties for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C–19(f)1 and 2.

(b) If a product that is subject to this subchapter is determined to fail to comply with the applicable VOC content requirements at N.J.A.C. 7:27–23.3, the Department may issue an order including any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27–23.3;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall by taking back any of the product it has supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration, satisfactory to the Department, that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27–23.3.

New Rule, R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

Authority

N.J.S.A. 13:1B–3 and 26:2C–1 et seq., in particular 26:2C–8.

Source and Effective Date

R.1995 d.567, effective November 6, 1995 (operative December 2, 1995).
See: 27 N.J.R. 1077(a), 27 N.J.R. 4291(a).

7:27–24.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Adhesive" means a product that is used to bond one surface to another by attachment. This term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

3. The manufacturer or distributor makes the shipping documentation available to the Department, upon written request, for any product it has shipped or received;

4. The manufacturer or distributor demonstrates, to the satisfaction of the Department, that it has taken reasonably prudent precautions to ensure that the product is not offered for sale, held for sale, sold, or otherwise supplied to a retail outlet or a consumer located in New Jersey; and

5. The manufacturer or a distributor does not offer for sale, hold for sale, sell, or otherwise supply any quantity of the product to a retail outlet located in New Jersey, and has not knowingly allowed or enabled another person to do so.

(h) No manufacturer shall be held liable for the sale of a consumer product that does not comply with the requirements of this subchapter to a consumer in New Jersey if:

1. The product was manufactured for use exclusively outside of New Jersey; and

2. The manufacturer meets each of the obligations listed in (g)2 through 5 above.

(i) A retailer who sells, offers for sale, or holds for sale in New Jersey a chemically formulated consumer product that violates the standards at N.J.A.C. 7:27-24.4 or a portable fuel container and/or spout that violates the certification requirements at N.J.A.C. 7:27-24.8(a) may demonstrate compliance with the applicable provisions of this subchapter, if the retailer provides any one or more of the following types of documentation with respect to its purchase of the consumer product, portable fuel container and/or spout in question:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only consumer products for sale in New Jersey that comply with N.J.A.C. 7:27-24;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufacturers and distributors commit to supply to the retailer only consumer products that comply with N.J.A.C. 7:27-24; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept consumer products that comply with N.J.A.C. 7:27-24.

Amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).
Rewrote the section.
Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).
See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).
In (a), inserted the second sentence; in (d)3, deleted "air freshener or any" following "Any" and substituted "that" for "which"; added new (d)4; recodified former (d)4 and (d)5 as (d)5 and (d)6; in (d)6ii, deleted "and" at the end; in (d)6iii(2), inserted "and" at the end; added (d)6iv; recodified former (d)6 and (d)7 as (d)7 and (d)8; in (e)1, substituted "CFR 1910.106" for "C.F.R. 1926"; in (e)3i, inserted "motor sports, such as car racing and"; in (e)3iii, deleted "or" at the end; in (e)4, inserted "; or" at the end; added (e)5; added new (f); recodified former (f), (g) and (h) as (g), (h) and (i); in (h)2, substituted "(g)2" for "(f)2"; and rewrote (i).

7:27-24.3 General provisions

(a) Compliance with this subchapter does not exempt a manufacturer, distributor, or retailer of a product regulated under this subchapter from the obligation to also comply with any and all other applicable Federal and State laws and rules, including State fire codes, safety codes, and other safety regulations. Any finding by the Department that a manufacturer, distributor, or retailer of a product is in compliance with this section shall not be construed to be a determination of compliance with such other laws and rules.

(b) Upon the written request of the Department, any person who is subject to this subchapter shall:

1. Identify the distributor, manufacturer, or other person from whom the product identified in the written request was obtained; and

2. Make the shipping documentation for the product identified in the written request available to the Department for any product it has shipped or received.

(c) Except as provided at N.J.A.C. 7:27-24.5(b), any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(d) A non-electronic submittal required pursuant to this subchapter shall be sent to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

(e) Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

(f) In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).
Former N.J.A.C. 7:27-24.3, VOC content standards, recodified to N.J.A.C. 7:27-24.4.

7:27-24.4 Chemically formulated consumer products: standards

(a) Except as provided at N.J.A.C. 7:27-24.2 and in (c), (d) and (j) below, no person shall sell, offer for sale, hold for sale, distribute for sale, supply for sale, or manufacture for sale in New Jersey a chemically formulated consumer product that belongs to a chemically formulated consumer product category listed in Table 1 below, that was manufactured on or after the operative date in Table 1 below, and that contains a VOC content in excess of the applicable limit specified in Table 1 below.

TABLE 1
VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

		Maximum Allowable VOC Content (percent by weight,[1] unless otherwise indicated)[2]		
Chemically Formulated Consumer Product Category	Form	State Standard Operative Date 4/30/96-12/31/04[3]	State Standard Operative Date 1/1/05	State Standard Operative Date 1/1/09
Adhesive Remover:	Floor or wall covering			5
	Gasket or thread locking			50
	General purpose			20
	Specialty			70
Adhesives	Aerosol:	75		
	Mist spray		65	
	Web spray		55	
	Special purpose spray adhesives:			
	Mounting, automotive engine compartment, and flexible vinyl		70	
	Polystyrene foam and automotive headliner		65	
	Polylolefin and laminate repair/ edgebanding			60
	Contact:	80	80	N/A[5]
	Contact general purpose			55
	Contact special purpose			80
	Construction, panel, and floor covering	40	15	
	General purpose	10	10	
	Structural waterproof	(Reserved)	15	
Air fresheners	Single-phase aerosols	70	30	
	Double-phase aerosols	30	25	
	Liquids/pump sprays	18	18	
	Solids/semisolids	3	3	
Antiperspirants	Aerosols	60 HVOC	40 HVOC 10 MVOC	
	Non-aerosols	0 HVOC	0 HVOC 0 MVOC	
Anti-static products, non-aerosol				11
Automotive brake cleaners			45	
Automotive rubbing or polishing compounds			17	
Automotive waxes, polishes, sealants or glazes	Hard paste waxes		45	
	Instant detailers		3	
	All other forms		15	
Automotive windshield washer fluids				35
Bathroom and tile cleaners	Aerosols	7	7	
	All other forms		15	
Bug and tar removers			40	
Carburetor or fuel-injection air intake cleaners	Aerosols	75	45	
	Non-aerosols	75	45	

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i. A copy of the test report prepared pursuant to (a)1 above with the certification contained therein; or

ii. The certification in writing on the invoice, bill of lading, or other transfer document; and

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the RVP of the gasoline; shipment quantity; shipment date; and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including the RVP of the gasoline; delivery quantity; date of delivery; and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter for determining the RVP of gasoline shall be conducted in accordance with the following methods:

1. For manual sampling: ASTM D4057; or

2. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987).

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. "Method 1—Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;

2. "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E;

3. "Method 3—Grabner Method" promulgated at 40 CFR 80, Appendix E; or

4. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e) All records and documentation required to be made or maintained in accordance with this section, including any calculations performed, shall be maintained by each refiner, importer, blender, distributor, retailer, and wholesale purchaser-consumer, as applicable, for not less than three years from the date the record is made. Records made within the past year (the previous 12 months) shall, upon request of the Department or its authorized representatives, be immediately available for review. Records made in previous years shall, upon the request of the Department or its authorized representatives, be available for review within five business days.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
In (a)1, changed "September 1" to "September 15"; added reference to State and Federal regulations. In (c), stylistic revisions. In (d), added 1, 2, 3.
Amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Changes reflect oxygen content requirements.
Amended by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).
Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).
See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).
Provisions of emergency amendment, R.1995 d.129, adopted without change.
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency amendment R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).
Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Rewrote the section.

Case Notes

Private inspection center license not suspended; licensee did not improperly certify repairs. Division of Motor Vehicles v. Joe's Auto Service, 92 N.J.A.R.2d (MVH) 1.

7:27–25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, any exemption, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of gasoline being provided, stored, transported, exchanged in trade, sold, or offered for sale at that refinery, import facility, blending facility, retail, wholesale purchaser-consumer or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
In (a) added "any exemption".

7:27–25.6 Petition for rulemaking in the case of imminent supply shortage

If at any time a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B–4(f) and N.J.A.C. 1:30–3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B–4.4 and N.J.A.C. 1:30–4.5.

7:27–25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use non-conforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
PO Box 422
Trenton, New Jersey 08625–0422

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;

2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27–25.3 standards;

3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:

i. To be used from May 1 through September 15; and

ii. To be stored at the facility during the May 1 through September 15 period;

4. A calculation of the maximum potential additional VOC emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:

i. Stored at the facility; and

ii. Consumed that day in research, product development, or trial use;

2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;

3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

(j) The Department may deny an application for an exemption if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-25.8 within 60 days after receipt of a fee invoice.

(*l*) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1991 d.462, effective September 3, 1991.
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Administrative change to (b).
See: 25 N.J.R. 309(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27-25.8 Owner and operator responsibility

The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Recodified from 7:27-25.11 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Recodified from N.J.A.C. 7:27-25:10 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Former N.J.A.C. 7:27-25.8, Labeling, repealed.

7:27-25.9 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-25.7 shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27-25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of $500.00 for each year that the exemption remains in effect.

New Rule, R.1991 d.462, effective September 3, 1991.
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Recodified from N.J.A.C. 7:27-25.8 and amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
New subsections (c) and (d) added.
Recodified from 7:27-25.12 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency amendment by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).
Recodified from N.J.A.C. 7:27-25:11 and amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Deleted former (c) and (d). Former N.J.A.C. 7:27-25.9, Variance for shortage of supply, repealed.

7:27-25.10 (Reserved)

Recodified to N.J.A.C. 7:27-25:8 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Section was "Owner and operator responsibility".

7:27-25.11 (Reserved)

Recodified to N.J.A.C. 7:27-25:9 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Section was "Service fees".

SUBCHAPTER 26. PREVENTION OF AIR POLLUTION FROM ADHESIVES, SEALANTS, ADHESIVE PRIMERS AND SEALANT PRIMERS

7:27-26.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Acrylonitrile-butadiene-styrene" or "ABS welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerospace component" means for the purposes of this subchapter, the fabricated part, assembly of parts or completed unit of any aircraft, helicopter, missile, or space vehicle, including passenger safety equipment.

"Aerosol adhesive" means an adhesive packaged as an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for handheld application without the need for ancillary hoses or spray equipment.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes, and their appurtenances. Appurtenances to an architectural structure include, but are not limited to: hand railings, cabinets, bathoom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to the installation of the glass using an adhesive/sealant. This primer improves adhesion to the pinch weld and blocks ultraviolet light.

"Bituminous" means a material, consisting mainly of hydrocarbons and soluble in carbon disulfide, that is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"CARB" means the California Air Resources Board.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic" or "CPVC plastic" means a polymer of the vinyl chloride monomer that contains 67 percent chlorine and is normally identified with a CPVC marking.

"Chlorinated polyvinyl chloride welding adhesive" or "CPVC welding adhesive" means an adhesive labeled for the welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used to remove a loosely held uncured (that is, not dry to the touch) adhesive or sealant from a substrate, or to clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is allowed to dry before the two surfaces are placed in contact with each other;

3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

This term does not include rubber cements that are primarily intended for use on paper substrates and vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of a cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95 percent by weight.

"Department" means the Department of Environmental Protection.

Where

Ws = weight of volatile compounds, in grams

Ww = weight of water, in grams

We = weight of exempt compounds, in grams

Vm = volume of material, in liters

(*l*) Percent VOC by weight shall be calculated according to the following equation:

% VOC by weight = [*(Wv / W)*] x 100

Where

Wv = weight of VOCs in grams

W = weight of material in grams

Administrative correction.
See: 41 N.J.R. 584(a).

7:27-26.7 Container labeling

(a) On and after January 1, 2009, each manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this subchapter shall display the following information on the product container or label:

1. A statement of the manufacturer's recommendation regarding thinning, reducing, or mixing of the product, except that:

i. This requirement does not apply to the thinning of a product with water; and

ii. If thinning of the product prior to use is not necessary, the recommendation must specify that the product is to be applied without thinning;

2. The maximum or the actual VOC content of the product in accordance with N.J.A.C. 7:27-26.6, as supplied, displayed in grams of VOC per liter of product; and

3. The maximum or the actual VOC content of the product in accordance with N.J.A.C. 7:27-26.6, which includes the manufacturer's maximum recommendation for thinning, as applied, displayed in grams of VOC per liter of product.

(b) Except as provided at (c) below, a manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this subchapter shall clearly display, on each product package, the day, month, and year in which the product was manufactured, or a code indicating such date (that is, a date-code). The date or date-code shall be located on the packaging, or inside the cover or cap, so that it is readily observable or obtainable without irreversibly disassembling any part of the packaging, such as by simply removing the cover or cap. Use of the following code to indicate the date of manufacture in compliance with the requirements of this subsection will exempt the manufacturer from the requirements of (c) below, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD

Where:

"YY" = two digits representing the year in which the product was manufactured, and

"DDD" = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (also known as the "Julian date").

(c) If for any adhesive, sealant, adhesive primer or sealant primer the manufacturer uses a date-code other than the YY DDD format to comply with (b) above, the manufacturer shall submit an explanation of the date portion of the product code to the Department. The explanation shall be submitted with the electronic registration of the date code, in accordance with the requirements of N.J.A.C. 7:27-26.8.

(d) Subsection (c) above does not apply to a product if:

1. The product contains no VOC; or contains 0.10 percent VOC, or less, by weight; or

2. The product is offered to consumers free of charge for the purpose of sampling the product.

7:27-26.8 Registration

(a) The manufacturer of an adhesive, sealant, adhesive primer or sealant primer who uses a date-code other than the YY DDD format as described at N.J.A.C. 7:27-26.7(b) to comply with N.J.A.C. 7:27-26.7(b) shall register that product and an explanation of the date-code with the Department as follows:

1. The registration shall include the following information:

i. The name of the manufacturer;

ii. The full mailing address of the manufacturer;

iii. The name and telephone number of a contact person;

iv. The product category and subcategory (as listed in Table 1 at 7:27-26.3) to which the manufacturer's product belongs (for example: sealants:marine deck); and

v. An explanation of the date-code system;

2. The registration shall be submitted to the Department on the form provided by the Department at http://www.state.nj.us/dep/baqp, and shall be submitted electronically, by email, on diskette, or on CD-ROM, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department is satisfied that a hardship exists and approves a written request from the manufacturer to submit the information on paper pursuant to (c) below;

3. The registration shall be submitted in accordance with the following schedule:

i. For an adhesive, sealant, adhesive primer or sealant primer sold in New Jersey prior to January 1, 2009, the registration shall be submitted on or after December 29, 2008, and prior to January 1, 2009; and

ii. For an adhesive, sealant, adhesive primer or sealant primer sold in New Jersey on or after January 1, 2009, that was not sold in New Jersey prior to January 1, 2009, the registration shall be submitted prior to selling the product in New Jersey; and

4. If, subsequent to the submission of a registration, any information provided in the registration changes, the manufacturer shall submit a revised registration including the new information within 90 days of the change.

(b) No information submitted as part of the registration may be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(c) If a manufacturer seeks approval to submit its registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Adhesives/Sealants Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer;

3. Any submittal to the Department other than a registration shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information;

4. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer; and

5. Once the Department has approved submission of a non-electronic submission, the manufacturer shall send the submission to the address provided at (c)1 above.

SUBCHAPTER 27. CONTROL AND PROHIBITION OF MERCURY EMISSIONS

below. Compliance with this standard shall be measured pursuant to (b) below.

1. The emissions of mercury from any coal-fired boiler shall not exceed 3.00 mg/MW-hr, based on an annual weighted average of all valid stack emission tests performed for four consecutive quarters weighted by megawatt hours produced each quarter; or

2. The reduction efficiency for control of mercury emissions of the air pollution control apparatus for control of mercury of any coal-fired boiler shall be at least 90 percent, based on the annual weighted average of all valid stack emission tests performed for four consecutive

quarters weighted by megawatt hours produced each quarter.

(b) On and after December 15, 2007, the owner or operator of any coal-fired boiler determining compliance with (a)1 above shall conduct stack emission testing every quarter to measure mercury in the gas stream in the stack. On and after December 15, 2007, the owner or operator of a coal-fired boiler determining compliance with (a)2 above shall conduct stack emission testing every quarter to measure mercury in the gas stream at the inlet of the air pollution control apparatus serving each coal-fired boiler, and simultaneously conduct stack emission testing every quarter to measure mercury in the gas stream at the exit of the air pollution control apparatus. There shall be at least three valid stack emission tests per quarter and at least 45 days between the stack emission testing performed for a given quarter and the stack emission testing performed for the preceding quarter, unless a shorter period is approved by the Department. The stack emission testing shall be conducted in accordance with a stack emission test protocol approved pursuant to N.J.A.C. 7:27-27.8(a) and (b). Compliance is to be determined by averaging three stack emission test runs per quarter for four consecutive quarters, measuring the net megawatt hours for each quarter, and then calculating annual weighted averages using the quarterly averages and the net megawatt hours generated. If the steam produced by two or more coal-fired boilers is used to run a common electric generator, the stack emission testing of all of the boilers shall be done simultaneously. The relative contribution to the amount of electricity generated from each of the coal-fired boilers shall be determined during stack emission testing for the purpose of determining compliance with the mercury emission limit in mg/MW-hr. For combined heat and power facilities, the MW-hr shall include useful heat which is not used for electric generation in determining mercury emission per MW-hr.

(c) Notwithstanding the provisions of (b) above, any owner or operator who achieves and maintains compliance with (a) above for eight consecutive quarters for all applicable coal-fired boilers located at a facility, may reduce the frequency of stack emission testing from each quarter to stack emission testing performed every fourth quarter after the eighth quarter test in which annual weighted average compliance was determined. However, if annual stack emission testing fails to demonstrate compliance with (a) above, then the frequency of stack emission testing shall revert to that indicated in (b) above.

(d) The mercury emissions standard specified in (a) above are applicable on and after December 15, 2012, for each owner or operator of a coal fired boiler who has entered into an enforceable agreement with the Department by December 15, 2007, to install and operate air pollution control systems to meet the following standards by December 15, 2012, provided compliance with (a) above is achieved by December 15, 2007 for approximately 50 percent of the total New Jersey coal-fired megawatt capacity of the company:

1. The emissions of nitrogen oxides shall not exceed 0.100 pounds per million BTU for dry bottom utility boilers and 0.130 pounds per million BTU based on 30-day rolling average for wet bottom utility boilers;

2. The emissions of sulfur dioxide shall not exceed 0.150 pounds per million BTU based on 30-day rolling average; and

3. The emissions of particulate matter shall not exceed 0.030 pounds per million BTU based on the average of three test runs USEPA Test Method 5, incorporated herein by reference, available from the USEPA's website at www.epa.gov/ttn/emc/promgate/m-05.pdf.

(e) The December 15, 2007 deadline for compliance with the mercury emissions standards specified in (a) above is not applicable to an owner or operator of any coal-fired boiler who has entered into an enforceable agreement by December 15, 2007, with the Department to shut down the coal-fired boiler by December 15, 2012.

(f) The Department may authorize an owner or operator of any coal-fired boiler to comply with an averaging plan approved by the Department pursuant to this section. An owner or operator in compliance with such an approved averaging plan is not required to have each coal-fired boiler comply with any emission limit set forth in this subchapter that would be applicable in the absence of an approved averaging plan. An owner or operator of two or more coal-fired boilers at the same facility may request the Department to authorize an averaging plan for two or more coal-fired boilers designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department at the following address:

Chief, Bureau of Pre-Construction Permits
Air Quality Permitting Element
Division of Air Quality
Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, NJ 08625-0027

(g) The person seeking approval under (f) above shall include the following information in the application for averaging:

1. The maximum energy generation rate of each coal-fired boiler in the averaging plan, expressed in MW-hr; average energy generated by each coal-fired boiler in the averaging plan, expressed in MW-hr;

2. The type of coal and any other fuel, if any, combusted in each coal-fired boiler;

3. The proposed method to calculate the weighted average mercury emissions per MW-hr for the coal-fired boilers on a site;

4. A certification of the application, satisfying the requirements of N.J.A.C. 7:27-1.39; and

5. Any other information which the Department requests, which is reasonably necessary to enable it to determine whether the coal-fired boilers designated by the owner or operator will comply with the requirements of this section.

(h) The Department shall approve an averaging plan only if the owner or operator of the coal-fired boilers to be included in the averaging plan enters into an enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits or operating certificates, or both) requiring the annual weighted average of mercury emissions from the coal-fired boilers at a facility to not exceed 3.00 mg/MW-hr, based on the net megawatt generated each quarter and mercury emissions using the results of the valid stack emission tests required at (b) above.

(i) The owner or operator of the coal-fired boilers included in the averaging plan shall maintain the records listed below for five years from the date on which each record was made. The owner or operator shall maintain such records in a permanently bound log book or an electronic method, in a format that enables the Department to readily determine whether the coal-fired boilers included in the averaging plan are in compliance. The owner or operator shall maintain the following records:

1. The identifier for each coal-fired boiler included in the averaging plan specified in (g)1 above;

2. The time period for which the data is being recorded;

3. The date upon which the data was recorded;

4. The amount of coal and/or other fuels, if any, consumed over the subject time period;

5. The actual annual weighted average of mercury (expressed in mg/MW-hr) emitted and the net megawatt generated by each coal-fired boiler in the averaging plan over the subject time period;

6. The weighted average of the amounts listed in (i)5 above for all coal-fired boilers at a facility in the averaging plan; and

7. Any other information required to be maintained as a condition of approval granted pursuant to (f) above.

(j) Within 30 days after the end of each quarter, the owner or operator of a facility with an approved averaging plan shall provide the Department with a report setting forth the information required to be kept under (i)1 through 7 above.

(k) The Department may approve a facility-specific mercury control plan for a coal-fired boiler, which will apply to the boiler in lieu of the standards in (a) above. An exceedance of the standards in (a) above shall not be considered a violation of those standards during the term of the Department's approval of the plan, if there is full compliance with the plan during that term.

1. The plan shall apply to the boiler for a one-year period.

2. The owner or operator of a coal-fired boiler seeking the Department's approval of a plan shall submit an application for approval no later than 90 days before the compliance deadline applicable to the boiler under (a) or (d) above. The owner or operator shall send the application to the Department at the following address:

Chief, Bureau of Preconstruction Permitting
Department of Environmental Protection
401 East State Street
PO Box 027
Trenton, New Jersey 08625-0027

3. In the application, the owner or operator shall include:

i. A brief description of the coal-fired boiler(s) that are the subject of the application, air pollution control permit number(s), and any other identifying numbers;

ii. A list of all air pollution control technologies and measures that have been installed and are operating to control emissions of air contaminants from each coal-fired boiler;

iii. For each of the technologies and measures listed in (k)3ii above, the date of installation and commencement of operation;

iv. For each of the technologies and measures listed in (k)3ii above, an explanation of how the technology and measure was installed properly and is being operated properly;

v. A list of any air pollution control technologies or measures not listed in (k)3ii above that the owner or operator proposes to install and operate to control emissions of air contaminants from the coal-fired boiler(s);

vi. A summary of how the coal-fired boiler is expected to be operated and maintained during the term of the Department's approval of the plan, including any associated air pollution control equipment and measures, which are designed to maintain compliance with all applicable air pollution control requirements other than those in (a) above, and which are designed and operated to minimize emissions of mercury to the extent practicable;

vii. A summary of additional efforts that are to be undertaken to achieve compliance with the standards in (a) above before the expiration of the Department's approval of the plan;

viii. The results of each mercury stack test and other emissions measurements for the coal-fired boiler following the installation and commencement of operation

of the air pollution control technologies and measures listed in (k)3ii above;

ix. Any other information which the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (k)6 below; and

x. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-1.39.

4. Within 30 days after receiving an application for approval of a plan, the Department shall notify the owner or operator in writing whether the submission includes all of the information required under (k)3 above. If the application is incomplete, then:

i. The Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the proposed plan or request complete, and a time by which the owner or operator must submit a complete proposed plan or request;

ii. The owner or operator shall correct the deficiencies listed in the Department's notice within the time stated in the Department's notice; and

iii. The Department may deny the application if the owner or operator fails to correct the deficiencies within the allotted time.

5. The Department may approve, approve and modify, or disapprove the plan proposed in the application. The Department will notify the owner or operator of the action in writing.

6. The Department shall approve a plan only if the application satisfies the following requirements:

i. The application contains all of the information required under (k)3 above;

ii. The Department determines that the owner or operator has properly installed air pollution control technologies and implemented measures that could reasonably have been expected to enable the boiler(s) to comply with the standards in (a) above. The Department shall consider this requirement to have been met if, in taking action under N.J.A.C. 7:27-8 or 7:27-22 to permit the installation of air pollution control technology on the boiler(s), the Department confirmed that the boiler's air pollution control technologies and measures are expected to achieve at least a 90 percent reduction in mercury emissions or less than three mg/MWhr;

iii. The Department determines that the technologies and measures described in (k)6ii above are being properly implemented;

iv. The Department determines that the technologies and measures described in (k)6ii above were implemented at a time that made it reasonable to expect that the boiler could comply with the standards in (a) above by the applicable deadline for compliance;

v. The Department determines that the operation and maintenance described in (k)3vi above are reasonably likely to maintain compliance with all applicable air pollution control requirements other than those in (a) above, and will reasonably minimize emissions of mercury to the extent practicable; and

vi. The Department determines that the efforts that are to be undertaken to achieve compliance with the standards in (a) above, as described in (k)3vii above, have a reasonable possibility of success.

7. During the term of the plan, the Department may issue written notice requiring the owner or operator to provide an explanation of additional efforts that are to be undertaken to achieve compliance with the standards in (a) above, beyond the efforts described in (k)3vii above, if the efforts described in (k)3vii above no longer appear to have a reasonable possibility of success. The written notice shall include the time by which the owner or operator is required to provide this explanation.

8. The Department may revoke its approval of a plan by written notice to the owner or operator, if the Department determines that its decision to approve was materially affected by a misstatement or omission of fact in the application or in any supporting documentation, or if the owner or operator fails to provide an explanation of additional efforts and implement those additional efforts within the time allotted in the Department's notice under (k)7 above.

New Rule, R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).
Amended by R.2006 d.309, effective September 5, 2006 (operative November 4, 2006).
See: 37 N.J.R. 2783(a), 38 N.J.R. 3572(a).
In (a), substituted "(e), or (k)" for "and (e)"; and added (k).

7:27-27.8 Stack emission testing, permit applications and continuous emission monitoring

(a) Stack emission testing performed pursuant to this subchapter shall be conducted in accordance with a test protocol approved by the Department. To obtain the approval of the Department of a test protocol, the owner or operator of any source subject to this subchapter shall submit to the Department a proposed test protocol setting forth all test methods, including, but not limited to, sampling and analytical procedures; a description of sampling equipment and the source sampling locations; and provide sample calculations that will be used to determine the concentration of mercury in the gas stream, mercury in milligrams per ton of iron or steel production, and mercury in mg/MW-hr, as appropriate. The owner or operator of a source subject to this subchapter shall submit for review and approval a proposed test protocol each year, no fewer than 90 calendar days prior to conducting its first quarter stack emission testing, to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection
PO Box 437
Trenton, New Jersey 08625-0437

(b) The Department shall not approve any proposed stack emission test protocol submitted pursuant to (a) above unless the stack emission test method proposed to measure mercury is:

1. The USEPA Reference Method 29 incorporated herein by reference, including all supplements and amendments thereto. This method can be downloaded from the USEPA website: http://www.epa.gov/ttn/emc/methods/method29.html;

2. An equivalent method demonstrated to the satisfaction of the Department to be as conservative and reliable as the USEPA Reference Method 29 for measuring mercury; or

3. A continuous emission monitoring (CEM) approval pursuant to (c) below.

(c) When a Federal performance specification is developed and published in the Federal Register, and a mercury continuous emission monitoring system capable of meeting the Federal specifications is available, an owner or operator of a source regulated by this subchapter may propose and install a mercury continuous emission monitoring system to determine compliance with this subchapter if approved by the Department. The owner or operator must demonstrate that the mercury continuous emission monitoring system that is installed complies with the quality assurance requirements detailed in the Federal specifications. After the Department determines conformance with quality assurance requirements, the owner or operator may thereafter use the CEM to demonstrate compliance with the emission standards of this subchapter in accordance with the conditions of approval for the CEM. Thereafter, quarterly stack testing is not required.

(d) The owner or operator of any source subject to this subchapter that has a reagent based mercury emission control system shall conduct optimization tests for mercury emissions control apparatus to determine the optimized reagent feed rate at which emissions of mercury for those sources are reasonably minimized below the applicable limits, as follows:

1. The optimization tests shall be performed as follows:

i. For iron and steel melters and coal-fired boilers, optimization testing shall be conducted within one year after the compliance date;

ii. For MSW incinerators, optimization testing shall be conducted by February 4, 2006, except if the owner or operator has demonstrated to the Department that it has achieved at least 95 percent control in all tests over the preceding two years;

2. If the owner or operator of any source subject to this subchapter owns or operates more than one identical applicable source at the same facility, the optimization tests may be performed on one source selected in the test protocol, and the results applied to the other identical sources at that facility;

3. Within 60 calendar days of the conclusion of the optimization tests, the owner or operator shall submit to the Department for approval a proposed optimized reagent feed rate which minimizes mercury emissions below the applicable limits, while considering the amount of reagent used; and

4. The owner or operator shall operate each applicable source at or above the optimized reagent feed rate approved by the Department.

(e) Any owner or operator of a source subject to this subchapter who is required to make changes to a current preconstruction permit or to an operating permit in order to operate in conformance with any requirements of this subchapter shall obtain an air pollution control permit for any required preconstruction permit actions, or for any required operating permit actions.

New Rule, R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

7:27-27.9 Reporting and recordkeeping

(a) Unless prior approval is granted by the Department for later submittal, the owner or operator of any source subject to this subchapter shall submit a copy of the report of the results of the stack emission testing, including all test runs, conducted within 60 calendar days after completion of the stack emission testing required for that quarter to the regional air compliance and enforcement office for the county in which the facility is located and the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection
PO Box 437
Trenton, New Jersey 08625-0437

(b) Unless prior approval is granted by the Department for later submittal, the owner or operator of any source subject to the optimization requirements of N.J.A.C. 7:27-27.8(d) shall submit a copy of the report of the results of optimization tests conducted pursuant to this subchapter within 60 calendar days after completion of the required tests, to the following address:

Chief
Bureau of Pre-construction Permits
Department of Environmental Protection
PO Box 27
Trenton, NJ 08625-0027

(c) If compliance is based on annual averages pursuant to N.J.A.C. 7:27-27.4(a)1, 2ii and iii or (c), or annual weighted average pursuant to N.J.A.C. 7:27-27.6 and 27.7, an owner or operator of any source subject to this subchapter shall report, for the preceding year, the annual average or annual weighted average mercury emissions within 60 calendar days after the end of the last quarter of the preceding year. If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27-27.4(a)2i, an owner or operator of a MSW incinerator shall report the quarterly average control efficiency within 60 calendar days after completion of each calendar quarter. An owner or operator of an HMIW incinerator subject to this subchapter shall report mercury emissions test results within 60 calendar days after the end of the stack emission testing. Such reports shall be submitted to the regional air compliance and enforcement office for the county which the facility is located.

(d) Any owner or operator of any source subject to this subchapter that submits to the Department a report of stack emission testing, including all test runs, shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial Hygiene.

(e) Any owner or operator of any source subject to this subchapter shall maintain at the facility a complete record, including all test reports of all stack emission testing, including all test runs, conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of any source subject to this subchapter who submits to the Department a report of stack emission testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27-1.39.

(g) The owner or operator of any source subject to this subchapter shall make any record made pursuant to (e) above available to the Department, or its authorized representatives, for inspection for a period of five years after the date the record is made.

Amended by R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).
Rewrote the section.

7:27-27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil administrative penalties in accordance with N.J.A.C. 7:27A-3 and applicable civil and criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19.

Amended by R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).
Inserted "administrative" preceding "penalties", "civil and" preceding "criminal penalties" and amended the N.J.S.A. reference.

7:27-27.11 Severability

If any portion of this subchapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this subchapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

New Rule, R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).
See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

SUBCHAPTER 28. HEAVY-DUTY DIESEL NEW ENGINE STANDARDS AND REQUIREMENTS PROGRAM

7:27-28.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency or its successor agency established and empowered to regulate sources of air pollution in the State of California, including motor vehicles, pursuant to section 39003, California Health & Safety Code, 1999, as amended or supplemented.

"Certification" means a finding by CARB or the USEPA that a motor vehicle, motor vehicle engine, or air contaminant emission control system has satisfied the criteria for the control of specified air contaminants from motor vehicles, adopted by CARB or the USEPA, respectively, as set out in their respective regulations at Title 13, California Code of Regulations, as amended or supplemented, and 40 CFR Part 86, as amended or supplemented.

"Department" means the New Jersey Department of Environmental Protection.

"Diesel engine" means a compression ignition type of internal combustion engine, without regard to fuel type.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty diesel engine" means a diesel engine that is used to propel a heavy-duty diesel vehicle.

"Heavy-duty diesel vehicle" means a motor vehicle with a GVWR greater than 14,000 pounds that is equipped with a heavy-duty diesel engine.

"Lease" means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.

"Model year" or "MY" means the manufacturer's annual production period, which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices that run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New complete HDDV" means a newly manufactured, ready-to-operate HDDV, equipped with an HDDE, offered for sale or lease by a manufacturer or dealer, the equitable or

Section 2143	Failure Levels Triggering Recall
Section 2144	Emission Warranty Information Report
Section 2145	Field Information Report
Section 2146	Emissions Information Report
Section 2147	Demonstration of Compliance with Emission Standards
Section 2148	Evaluation of Need for Recall
Section 2149	Notification of Subsequent Action

Chapter 3
Surveillance Testing

Section 2150	Assembly-Line Surveillance
Section 2151	New Motor Vehicle Dealer Surveillance

Chapter 4.4
Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks

Section 2235	Requirements

(h) Any of the documents in (e) above may be obtained by contacting:

Department of Environmental Protection
Division of Air Quality
Bureau of Motor Vehicle Inspection and Maintenance
PO Box 437
Trenton, New Jersey 08625-0411
Attention: LEV Program

They may also be obtained by contacting:

State of California
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814-4339

or at the California Office of Administrative Law website at www.oal.ca.gov.

7:27-29.14 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

SUBCHAPTER 30. CAIR NO_x TRADING PROGRAM

7:27-30.1 Purpose and scope

(a) This subchapter establishes New Jersey's NO_x allocation for the Federal Clean Air Interstate Rule (CAIR) cap and trade program starting in 2009 pursuant 40 CFR Part 97 Subpart EE Appendix A and 40 CFR Part 97 Subpart EEEE Appendix A. The annual NO_x CAIR cap and trade program covers from January 1 to December 31 of each year. The ozone season NO_x CAIR cap and trade program covers from May 1 to September 30 of each year and replaces the NO_x Budget Program. This subchapter also describes the allocation of the compliance supplement pool and the additional reporting requirement for output based data related to NO_x.

(b) This subchapter satisfies the requirements of an abbreviated SIP pursuant 40 CFR Part 97 for the CAIR Federal Implementation Plan (FIP). This subchapter addresses only the allocation of the annual and ozone season NO_x allowances and the compliance supplement pool. All other aspects and requirements of the CAIR program are regulated under the Federal rules at 40 CFR Part 97.

7:27-30.2 Definitions

The following words and terms, as used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Alternate CAIR designated representative" means the person who is authorized by the owners and operators of the unit, in accordance to 40 CFR Part 97 Subpart AA through Subpart HH for the CAIR NO_x Annual Trading Program and 40 CFR Part 97 Subpart AAAA through Subpart HHHH for the CAIR NO_x Ozone Season Trading Program, to act on behalf of the CAIR designated representative in matters pertaining to the trading programs.

"Base emission budget" means the CAIR NO_x annual State budget and the CAIR NO_x ozone season State budget minus the New Source/Growth Reserve and the Incentive Reserve.

"CAIR" means the Federal Clean Air Interstate Rules at 40 CFR Part 97.

"CAIR designated representative" means the person who is authorized by the owners and operators of the unit, in accordance to 40 CFR Part 97 Subpart AA through Subpart HH for the CAIR NO_x Annual Trading Program and 40 CFR Part 97 Subpart AAAA through Subpart HHHH for the CAIR NO_x Ozone Season Trading Program, to represent and legally bind each owner and operator in matters pertaining to the trading programs.

"CAIR NO_x allocation rate" means the emission rate on which the emissions caps of the Federal CAIR program are based. For vintage years 2009 through 2014, the allocation rate is 0.15 pounds per MMBtu. For vintage years 2015 and thereafter, the allocation rate is 0.125 pounds per MMBtu.

"CAIR NO_x annual allowance" means a tradable allowance that represents the limited authorization to emit one ton of NO_x during an annual control period pursuant 40 CFR Part 97 Subpart AA through Subpart HH. CAIR NO_x annual allow-

ances can be used only in the CAIR NO_x Annual Trading Program.

"CAIR NO_x annual State budget" means the 12,670 CAIR NO_x annual allowances for years 2009 through 2014 and the 10,558 CAIR NO_x annual allowances for years 2015 and thereafter given annually to New Jersey by the USEPA pursuant 40 CFR Part 97 Subpart EE to be allocated to CAIR units.

"CAIR NO_x Annual Tracking System" means the system by which the USEPA records allocations, deductions, and transfers of CAIR NO_x annual allowances under the CAIR NO_x Annual Trading Program.

"CAIR NO_x Annual Trading Program" means an annual multi-state oxides of nitrogen air pollution control and emissions reduction program established by the USEPA in accordance with 40 CFR Part 97 Subpart AA through Subpart HH.

"CAIR NO_x annual unit" means a unit that generates electricity and that is subject to the CAIR NO_x Annual Trading Program pursuant 40 CFR Part 97 Subpart AA through Subpart HH.

"CAIR NO_x ozone season allowance" means a tradable allowance which represents the limited authorization to emit one ton of NO_x during an ozone season control period pursuant 40 CFR Part 97 Subpart AAAA through Subpart HHHH. CAIR NO_x ozone season allowance can only be used in the CAIR NO_x Ozone Season Trading Program.

"CAIR NO_x ozone season State budget" means the 6,654 CAIR NO_x ozone season allowances for years 2009 through 2014 and the 5,545 CAIR NO_x ozone season allowances for years 2015 and thereafter given annually to New Jersey by the USEPA pursuant 40 CFR Part 97 Subpart EEEE to be allocated to CAIR units.

"CAIR NO_x Ozone Season Tracking System" means the system by which the USEPA records allocations, deductions, and transfers of CAIR NO_x ozone season allowances under the CAIR NO_x Ozone Season Trading Program.

"CAIR NO_x Ozone Season Trading Program" means a multi-state oxides of nitrogen air pollution control and emissions reduction program for the ozone season established by the USEPA in accordance with 40 CFR Part 97 Subpart AAAA through Subpart HHHH.

"CAIR NO_x ozone season unit" means a unit that is subject to the CAIR NO_x Ozone Season Trading Program pursuant 40 CFR Part 97 Subpart AAAA through Subpart HHHH.

"CAIR unit" means a CAIR NO_x annual unit for the annual trading program and a CAIR NO_x ozone season unit for the ozone season trading program.

"Control period" means, for the CAIR NO_x Annual Trading Program, the period beginning January 1 of a calendar and ending on December 31 of the same year, inclusive. For the CAIR NO_x Ozone Season Trading Program, the period beginning May 1 of a calendar and ending on September 30 of the same year, inclusive.

"Department" means the New Jersey Department of Environmental Protection.

"Hazardous air pollutant" means an air contaminant listed in or pursuant to 42 U.S.C. §7412(b).

"Incentive reserve" means the allowances set aside so that they are available for distribution after the control period to persons who claim incentive allowances, based on their saving or generation of electricity through the implementation of certain environmentally beneficial techniques.

"MMBtu" means one million British Thermal Units.

"MWh" means megawatt-hour.

"Net electrical output" means the amount of gross electrical output less the electrical energy consumed at the generating station(s) for station service or auxiliaries consumed during the time the plant was operating (such as net busbar energy leaving the plant). Electricity required for pumping at pumped-storage plants is regarded as electricity for station service and is deducted from gross electrical output.

"Net useful heat output" means one-half of the useful thermal output not associated with either the energy requirements for auxiliaries and emission controls or the net electric output performed by the steam generated; that is, one-half of the heat output associated with the steam delivered to an industrial process.

"New source/growth reserve" means the allowances set aside so that they are available for distribution to new CAIR units. Remaining allowances would be held for CAIR units that have lower NO_x emission rates than the CAIR NO_x allocation rates. These allowances, if any, would be available for distribution to any of these low NO_x emission rate units that emit more tons of NO_x than the number of allowances allocated to the units for the control period.

"New unit" means a unit:

1. For which an operating permit has been issued; and

2. For the years 2009 through 2011, that did not operate prior to 2009 and does not have three full control periods worth of data to be used for allocation calculation, and for years 2012 and thereafter, that has not commenced operation.

"Output allocation rate" means CAIR NO_x allocation rate converted to an output basis by multiplying it by 10 MMBtu per MWh, which is the average heat rate expressed in MMBtu per MWh corresponding to a baseline gross electrical generating efficiency of 32 percent. For vintage years 2009 through 2014, the output allocation rate is 1.5 pounds per MWh. For

received by the Department within 30 days of the control period in which the electricity savings or generation occurred.

(c) The following persons are eligible to submit a claim for incentive allowances:

1. A New Jersey consumer of electricity who:

i. Purchases its electricity from an electricity supplier licensed in New Jersey; and

ii. Reduces its electricity consumption at a facility located in New Jersey through implementation of an energy efficiency measure, initiated in 1992 or thereafter, which:

(1) Belongs to a class to which the "New Jersey Clean Energy Program – Protocols to Measure Resource Savings (New Jersey Clean Energy Protocols)," issued by New Jersey's Board of Public Utilities in September, 2004, as supplemented or amended (http://www.state.nj.us/bpu/home/BO_CE.shtml), applies;

(2) Does not result in the construction, installation, or operation of a new emission unit or increase the emissions of any existing emission unit at the facility;

(3) Does not cause an increase in emissions of any hazardous air pollutant; and

(4) Does not cause an increase greater than five tons per year in the emissions of any air contaminant regulated under N.J.A.C. 7:27 or the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., other than NO_x;

2. The owner or operator of equipment that is not a CAIR unit, that commenced operation in 1992 or thereafter, and that generates electricity through one of the following environmentally beneficial techniques:

i. Generation through the burning of landfill gas or digester gas;

ii. Generation by a fuel cell; or

iii. Generation by using solar energy or wind power;

3. The owner or operator of equipment that generates electricity by another environmentally beneficial technique that results in a net reduction in NO_x emissions in New Jersey; and

4. The New Jersey Board of Public Utilities, for the electricity saved or generated in environmentally beneficial techniques through New Jersey's Clean Energy Program.

i. After the New Jersey Board of Public Utilities receives the incentive allowances from the Department, the New Jersey Board of Public Utilities will retire the allowances to benefit the environment.

ii. The sources covered by the New Jersey Board of Public Utilities' claim cannot separately claim incentive allowances.

(d) Prior to filing a claim under this section, a person shall establish an account in the CAIR NO_x Tracking System and/or the CAIR NO_x Ozone Season Tracking System pursuant to CAIR.

(e) A claim for incentive allowances shall include:

1. Documentation indicating that the person submitting the claim is eligible to submit a claim for incentive allowances pursuant to (c) above;

2. Identification of the control period (annual or ozone season) for which the claim is being made. A separate claim shall be submitted for each control period;

3. The amount of electric generation or savings during the control period that is being claimed, expressed in MWh as calculated pursuant to (f) below;

4. The calculations made to determine the amount of electricity generation or savings being claimed and a report of the data and the methods on which the calculations are based;

5. The unique identification number assigned to the account held by the claimant in the CAIR NO_x Tracking System and/or the CAIR NO_x Ozone Season Tracking System; and

6. Certification in accordance with N.J.A.C. 7:27-1.39.

(f) The amount of electric generation or savings being claimed shall be determined as follows:

1. For energy measures, the amount of electricity claimed to be saved shall be calculated pursuant to the guidance document: "New Jersey Clean Energy Program – Protocols to Measure Resource Savings (New Jersey Clean Energy Protocols)," issued by New Jersey's Board of Public Utilities in September, 2004, as supplemented or amended (http://www.state.nj.us/bpu/home/BO_CE.shtml), incorporated herein by reference; and

2. For energy generation using an environmentally beneficial technique listed in (c)2 or 3 above, if the technique entails the supplemental use of conventional fuels (such as oil, gas, or coal), the total amount of electricity generated shall not include any amount of electricity generated by the use of such fuels.

(g) A claim shall be submitted to the Department at the following address within 30 days after the control period for which the claim is sought:

Attn: NJ CAIR Incentive Allowance Claim
New Jersey Department of Environmental Protection

Bureau of Air Quality Planning
401 East State Street, 7th Floor
P.O. Box 418
Trenton, NJ 08625-0418

(h) No incentive allowances shall be allocated unless the Department approves the claim. The Department shall disapprove of a claim if:

1. The claim was not received by the Department within 30 days of the control period for which the claim is sought;

2. The claim does not include all the items required at (d) and (e) above;

3. The amount of electricity claimed to have been generated or saved was calculated incorrectly;

4. The person submitting the claim is not eligible as specified at (c) above; or

5. The person submitting the claim did not establish an account in the CAIR NO_x Tracking System and/or the CAIR NO_x Ozone Season Tracking System pursuant to (d) above.

(i) The Department will notify the claimant in writing whether the incentive claim has been approved or denied.

7:27-30.6 Reporting requirements

(a) The owner or operator of a CAIR unit shall submit the following information on an electronic form available from the Department at www.nj.gov/dep/baqp:

1. Information identifying the CAIR unit and type of combustion unit;

2. The rated fuel capacity of the unit, expressed in MMBtu per hour;

3. Whether a restriction on heat input or hours of operation exists, and if so, how much fuel or how many hours, and the period of time for which the restriction applies; and

4. For each control period:

i. For each type of fuel burned, the heat input, expressed in MMBtu;

ii. For each type of fuel burned, the total actual NO_x emission, expressed in pounds;

iii. For each type of fuel burned, the net electrical output, expressed in MWh; and

iv. For each type of fuel burned at a co-generation unit, the net useful heat output, expressed in MMBtu;

v. For each type of fuel burned, the most stringent applicable allowable NO_x emission rate, expressed in pounds per MMBtu;

vi. Any other information requested by the Department for allocating allowances pursuant to N.J.A.C. 7:27-30.3; and

vii. Certification pursuant to N.J.A.C. 7:27-1.39.

(b) On or before September 1, 2007, the owner or operator of a CAIR unit shall submit to the Department the annual and the ozone season information specified in (a) above for calendar years 2003, 2004, 2005, and 2006. On or before July 1, 2008 and on or before July 1 of each year thereafter, the owner or operator of a CAIR unit shall submit the annual and the ozone season information specified in (a) above for the calendar year preceding the submission date. For example, the information for 2007 is due July 1, 2008, the information for 2008 is due July 1, 2009, and so forth.

(c) In addition to the requirement of (a) above, the owner or operator of a new CAIR unit shall submit the following information on an electronic form available from the Department at www.nj.gov/dep/baqp:

1. By October 1 of the control period for the CAIR NO_x Annual Trading Program:

i. Information identifying the CAIR unit;

ii. The total actual NO_x emission from January 1 to August 31 of the current control period, expressed in pounds;

iii. A reasonable estimate of a projected total NO_x emission from September 1 to December 31 of the current control period, expressed in pounds; and

iv. Certification pursuant to N.J.A.C. 7:27-1.39; and

2. By July 1 of the control period for the CAIR NO_x Ozone Season Trading Program:

i. Information identifying the CAIR unit;

ii. The total actual NO_x emission from May 1 to May 31 of the current control period, expressed in pounds;

iii. A reasonable estimate of a projected total NO_x emission from June 1 to September 30 of the current control period, expressed in pounds; and

iv. Certification pursuant to N.J.A.C. 7:27-1.39.

(d) The information requested in (a) through (c) above shall be submitted to the Department electronically on an electronic form available from the Department at www.nj.gov/dep/baqp. If it is a hardship for an owner or operator to submit the requested information electronically, the owner or operator may annually request approval from the Department to submit the information requested in (a) through (c) above on a paper form. The Department shall approve such a request provided that:

1. The request is certified by the responsible official in accordance with N.J.A.C. 7:27-1.39 and submitted to the Department no later than March 1 of the submittal year;

2. The owner or operator explains:

i. The hardship that electronic submittal would impose; and

ii. The steps the owner or operator will take to ensure the facility's ability to make electronic submittals in the future; and

3. The owner or operator agrees to take reasonable steps to become able to submit the form electronically in future years.

(e) Information submitted to the Department in accordance with (a) through (d) above shall be emailed to njdep-bapq@dep.state.nj.us, followed by a mailing containing a paper copy of the data and a properly signed certification pursuant to N.J.A.C. 7:27-1.39. The Department's mailing address is:

Attn: NJ CAIR Program
New Jersey Department of Environmental Protection
Bureau of Air Quality Planning
401 East State Street, 7th Floor
P.O. Box 418
Trenton, NJ 08625-0418

(f) After a CAIR unit permanently shuts down, the authorized account representative for the unit may obtain from the Department an exemption from the reporting requirements of this section in accordance with the following procedure:

1. To obtain an exemption, the authorized account representative shall submit a written request to the Department for exemption at the address:

Attn: NJ CAIR Program – Shut down
New Jersey Department of Environmental Protection
Bureau of Air Quality Planning
401 East State Street, 7th Floor
P.O. Box 418
Trenton, NJ 08625-0418

2. A request for an exemption shall include identification of the CAIR unit and the date the CAIR unit shut down.

3. Upon verification that the unit has been permanently shut down, the Department shall approve the request and shall send written approval of the exemption from the reporting requirements of this section pertaining to the unit to the authorized account representative and the USEPA. The approval shall contain any conditions deemed necessary by the Department.

4. If the Department verifies that the unit has not been permanently shut down, the Department shall deny the request and shall send written notification of such denial to the authorized account representative of the unit.

(g) The owner or operator of a CAIR unit subject to this subchapter is responsible for ensuring compliance with all requirements of this section. An owner or operator who fails to submit the information required under this section shall be subject to civil administrative penalties in accordance with N.J.A.C. 7:27A-3. Compliance with the reporting requirements under this section does not relieve any owner or operator of a CAIR unit from the responsibility to comply with any other applicable reporting requirements set forth in any Federal or State law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

SUBCHAPTER 31. NO_X BUDGET PROGRAM

7:27-31.1 Purpose and scope

This subchapter establishes a NO_x Budget Program in New Jersey which, beginning in 1999, limits emissions from stationary sources of NO_x. It sets forth requirements for the monitoring, recordkeeping, and reporting of NO_x emissions and for certification of compliance with this program. It makes available a trading mechanism, which allows intrastate trading as well as interstate trading. In order to support the trading mechanism, this subchapter establishes rules and procedures for the allocation of the tradeable units (that is, allowances); the transfer, use, and retirement of the allowances; and the tracking of the allowances. The NO_x Budget Program set forth in this subchapter is intended to confirm with and meet USEPA's NO_x Budget rules at 40 CFR 96 and meets USEPA's requirements at 40 CFR 51.121 for mitigating the interstate transport of both ozone and nitrogen oxides, a precursor to the formation of ground-level ozone.

Amended by R.2000 d.351, effective August 21, 2000 (operative September 29, 2000).
See: 31 N.J.R. 2100(a), 32 N.J.R. 3119(a).
Added the last sentence.

7:27-31.2 Definitions

The following words, terms, and abbreviations used in this subchapter have the following meanings, unless the context clearly indicates otherwise:

"AAR" means authorized account representative.

"Account" means the place in the NO_x Allowance Tracking System where allowances are held for a specific person or purpose. Such a place may be a compliance account, a general account, or a retirement account.

"Account certificate of representation" means the completed and signed submission required by N.J.A.C. 7:27-31.13 for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent

the owners and operators of such NO_x Budget source or sources with regard to matters under this subchapter.

"Account number" means the identification number given by the NATS Administrator to an account in which allowances are held in the NO_x Allowance Tracking System pursuant to N.J.A.C. 7:27-31.13, NO_x Allowance Tracking System.

"Acid Rain emissions limitation" means the term as defined at 40 CFR 72.2, which is a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the Clean Air Act.

"Acquiring account" means the account in an allowance transfer to which allowances are conveyed.

"Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

"Allocate" or "allocation" means:

1. In respect to New Jersey, the assignment of allowances pursuant to N.J.A.C. 7:27-31.7, Annual allowance allocation; or in respect to another jurisdiction, the assignment of allowances pursuant to that jurisdiction's comparable rules; and

2. The recording of the assigned allowances by the NATS Administrator in the appropriate NO_x Allowance Tracking System compliance account or general account.

"Allowance" means a tradeable unit which represents the limited authorization to emit one ton of NO_x during a control period.

"Allowance deduction" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a retirement account. As prescribed in the procedures at N.J.A.C. 7:27-31.17 and 31.19, allowance deduction events relating to end-of-season reconciliation and penalty deductions may only be made from compliance accounts. As prescribed at N.J.A.C. 7:27-31.10, allowance deduction events relating to voluntary retirement may be made from a compliance account or a general account.

"Allowance transfer" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a different general account or compliance account.

"Allowance transfer deadline" means the deadline by which an allowance transfer request may be submitted to the NATS Administrator to effect an allowance transfer for the purpose of meeting the requirement of N.J.A.C. 7:27-31.3(i) for the year's control period. For each year from 1999 through 2002, this deadline shall be midnight December 31. For the year 2003 and each year thereafter, this deadline shall be midnight November 30, except that for the year 2003 and each year thereafter, if November 30 is not a business day, then the deadline shall be midnight of the first business day after November 30.

"Alternative monitoring system" means a monitoring system other than a CEMS, or component of such a system, that is designed to determine mass emissions per time period, air contaminant concentrations, or volumetric flow of a given source or group of sources, as provided for in N.J.A.C. 7:27-31.14, Emissions monitoring.

"Authorized account representative (AAR)" means the responsible individual designated in writing by the person who holds an account. This individual (or his or her alternate) is the sole person who has the authority, on behalf of the account, to:

1. Submit allowance transfer requests to the NATS Administrator;

2. Certify and submit information required in this subchapter, including reports to the NATS and the NETS; and

3. With respect to a budget source, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Program.

"Banked allowance" means an allowance in a general account or a compliance account which has been neither used to reconcile emissions in the year it was originally allocated nor retired, and which is therefore carried forward in the account into the next year or into successive future years. The NATS Administrator shall flag such an allowance as "banked."

"Base budget" or "base emission budget" means the emissions budget for each control period as prescribed by the USEPA at 40 CFR 51.121, or that has been developed by applying the emission limits, jointly agreed to by the jurisdictions who are signatories of the OTC MOU, to the baseline sources' baseline emissions, whichever is less. This term when used in respect to:

1. A specific jurisdiction, is the emission budget so established for that jurisdiction; and

2. The interstate trading program as a whole, is the sum of the emission budgets so established for all jurisdictions in the region.

"Banking" means the retention in a general account or a compliance account of one or more allowances that were allocated for use in the current or in a previous control period, but have been neither used nor retired. Such allowances may be used or retired in a future control period.

"Baseline" means, when used in reference to the emissions or productivity of a source, one of the following:

1. For an opt-in source, the average emissions or average productivity of that source during the two consecutive May 1 through September 30 periods on which the increase

(d) The person performing the inspection shall certify on the compliance form, in accordance with N.J.A.C. 7:27-1.39, whether the retrofit requirement has or has not been met, based on verification of (c)1 through 3 above.

(e) If the owner of the regulated vehicle is a licensed diesel emissions inspection center or is otherwise authorized to self-inspect his or her vehicles, the owner may perform the inspection and provide the certification required pursuant to (d) above.

(f) Each regulated vehicle must be inspected one time, in accordance with this section, to confirm installation of the required best available retrofit technology. If the inspector is unable to confirm that the required best available retrofit technology has been installed, the owner of the regulated vehicle shall ensure the installation of the required best available retrofit technology no later than the installation deadline established for the owner of the regulated vehicle in accordance with N.J.A.C. 7:27-32.18(a) and shall have compliance verified in accordance with this section within 30 days after installation.

7:27-32.22 Recordkeeping requirements

(a) Each owner of a regulated school bus, regulated vehicle or regulated equipment shall keep in a single location at his or her place of business, available for Department inspection, the following:

1. The current and completed original compliance form pursuant to N.J.A.C. 7:27-32.20 for each vehicle or piece of equipment, or any other document that may be issued or required pursuant to N.J.S.A. 26:2C-8.45 to verify compliance;

2. Maintenance records for the CCVS or best available retrofit technology;

3. For each vehicle or piece of equipment required to use modified fuel or fuel additives pursuant to N.J.A.C. 7:27-32.8, or the approved fleet plan or approved supplement or approved modification thereto, as applicable, records of fuel purchases since the use of the retrofit and fuel additive or fuel began, or for the two preceding calendar years, whichever is of shorter duration;

4. The original, approved fleet plan, any supporting documentation submitted to the Department, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable;

5. Maintenance records of the usage or documentation demonstrating permanent removal of the engine from service of any vehicle or piece of equipment retired from the fleet and included in a fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan or combined fleet averaging plan; and

6. Any other documentation pertinent to fleet averaging plan approvals.

(b) The Department may call upon the State Police to assist with inspections pursuant to this section, if necessary.

(c) The owner of a regulated school bus, regulated vehicle or regulated equipment shall retain the records listed in (a) above for a minimum of five years.

7:27-32.23 Program support

(a) Any person seeking further information concerning this program or specific technical guidance for the preparation of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto may contact the Department as follows:

1. Visit the Diesel Risk Reduction Program's website at http://www.state.nj.us/dep/stopthesoot/;

2. Write the Department at Diesel Risk Reduction Program, 401 E. State St., P.O. Box 418, Trenton, NJ 08625-0418; or

3. Call the Diesel Risk Reduction Program at (609) 292-7953.

7:27-32.24 Application for reimbursement

(a) The State Treasurer will reimburse the authorized installer of a retrofit device or closed crankcase ventilation system for the purchase and installation costs incurred in installing the retrofit device or closed crankcase ventilation system pursuant to the requirements of this subchapter.

(b) The authorized installer will be responsible for the purchase and installation of the retrofit devices or closed crankcase ventilation systems. An authorized installer who is reimbursed for the costs associated with the purchase and installation of a closed crankcase ventilation system or retrofit device may not impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of said device.

(c) To receive reimbursement, the authorized installer shall complete and submit to the Department a reimbursement application on a form or in a format supplied by the Department. The Department will make the reimbursement application available electronically on the Department's website at http://www.state.nj.us/dep/stopthesoot/. The authorized installer shall include the following information and support documentation in the reimbursement application:

1. Proof of purchase, such as purchase order, receipt or invoices for the retrofit device or closed crankcase ventilation system, that demonstrates actual costs incurred. The authorized installer shall also include the vehicle identification number or serial number of the regulated vehicle or regulated equipment;

2. Proof of installation to include an itemized listing or work order of the parts, materials, labor and actual costs,

and written authorization by the vehicle owner indicating the vehicle owner's approval to perform the specified work;

3. The authorized installer certification that purchase and installation were in accordance with the manufacturer's instructions and N.J.A.C. 7:27-32.5, if applicable, and warranty requirements at N.J.A.C. 7:27-32.9;

4. The vehicle owner's certification that the installation was completed and that access will be provided to vehicles or equipment to determine compliance with the terms and conditions of the reimbursement award;

5. The authorized installer certification that he or she did not provide false information or withhold information on the application for reimbursement such that the processing of the application based on the false or withheld information could result in the reimbursement of the authorized installer:

i. Where the authorized installer was ineligible for reimbursement;

ii. In an amount greater than that for which the authorized installer would otherwise be eligible; or

iii. In an amount in excess of the actual costs of the installation or the amount to which the authorized installer is legally eligible; and

6. Justification for any difference between the actual cost provided pursuant N.J.A.C. 7:27-32.20(d) or (e) and the estimated cost provided pursuant to N.J.A.C. 7:27-32.4(d), 32.12(a)3 or 32.16(d)3.

(d) The Department will review and approve or deny each application for reimbursement and will forward the approved applications for reimbursement to the State Treasurer for payment. The State Treasurer will pay the reimbursement to the authorized installer only after the installation of the retrofit device or closed crankcase ventilation system, as approved by the Department.

(e) The Department will deny an application for reimbursement upon a finding that the applicant for reimbursement:

1. Provided false information on an application in support of reimbursement from the fund for which he or she was not otherwise eligible; or

2. Withheld information on an application that renders the applicant ineligible for reimbursement from the fund or ineligible for the amount of reimbursement applied for.

(f) Nothing in this section shall be construed to require the Department, the State Treasurer, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in (e) above.

(g) During the review of the application, the Department may request additional information related to the purchase and installation cost estimates, and any support documentation needed from the applicant to warrant and support payment in accordance with Treasury Circular Letter No. 98-17-OMB, as supplemented or amended, available at http://www.state.nj.us/infobank/circular/circindx.htm.

(h) The State Treasurer shall pay the reimbursement amount within 30 days after receipt of the approved application for reimbursement from the Department.

7:27-32.25 Recovery of reimbursement

(a) The State Treasurer may recover any reimbursement from the fund, upon a finding that:

1. The purchase or installation of a CCVS or BART on the vehicle or equipment for which the application for reimbursement was filed was not completed; or

2. The applicant for reimbursement:

i. Provided false information or withheld information on an application that renders the applicant ineligible for reimbursement from the fund;

ii. Received a larger reimbursement from the fund than the applicant would otherwise be eligible; or

iii. Received payments from the fund in excess of the actual costs incurred by the applicant or received reimbursement in excess of the amount for which the applicant is legally eligible.

(b) Nothing in this section shall be construed to require the State Treasurer, the Department, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in (a) above.

SUBCHAPTER 33. (RESERVED)

SUBCHAPTER 34. TBAC EMISSIONS REPORTING

7:27-34.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"AP-42" means the January 1995, 5th edition of the manual entitled "Compilation of Air Pollutant Emission Factors," which is published by the EPA, including supplements A through G and any subsequent revisions, as amended and supplemented, incorporated herein by reference. The manual may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487-4650; or from the Superintendent of Documents, Government Printing Office, Washington, D.C.,

20402, (202) 783-3228. In addition, the manual can be accessed electronically through the EPA Technology Transfer Network CHIEF site at http://www.epa.gov/ttn/chief/ap42/index.html.

"Continuous emissions monitor" or "CEM" means a device that continuously measures the emissions from one or more source operations.

"Department" means the New Jersey Department of Environmental Protection.

"Emission year" means the calendar year during which emissions reported were emitted.

"EPA" means the United States Environmental Protection Agency.

"Manufacturer" means a person who manufactures, imports, assembles, processes, produces, packages, repackages, or re-labels a product. Manufacturer also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label. Manufacturer also includes any person who hires another person to manufacture a product for compensation.

"Ozone season" means the portion of each year beginning May 1 and ending September 30.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reasonably available" means, with respect to a method of quantification, a method that utilizes data or information that is already in the possession of a person at the time of reporting, or that can be obtained by such person through public sources. For example, a quantification method utilizing emission factors set forth in an AP-42 document is a reasonably available method.

"Reporting year" means the calendar year during which emissions are reported. This is the year immediately following the emission year.

"Responsible official" has the same meaning as defined at N.J.A.C. 7:27-1.4.

"State" means the State of New Jersey.

"TBAC" means tertiary butyl acetate or t-butyl acetate (CAS #540-88-5).

7:27-34.2 Applicability

(a) This subchapter applies to any person who:

1. Manufactures TBAC or a product containing TBAC, within the State; or

2. Manufactures a product containing TBAC for sale in the State.

7:27-34.3 Reporting requirements

(a) Each in-State manufacturer of TBAC, each manufacturer of a product containing TBAC for sale in the State, and each manufacturer who uses TBAC in a manufacturing process in the State, shall submit the following information regarding TBAC to the Department:

1. The name of the manufacturer;

2. The full mailing address of the manufacturer;

3. For an in-State manufacturing facility, the full street address of the facility where the product was manufactured;

4. The name, telephone number, and email address of a contact person;

5. The name, telephone number, and email address of the responsible official;

6. For each in-State manufacturer of TBAC or a product containing TBAC, the amount of TBAC emissions in pounds per ozone-season day and pounds per year from the facility;

7. For each manufacturer of a product containing TBAC, the TBAC emissions in pounds per ozone-season day and pounds per year from the use of the product in New Jersey;

8. The method used to estimate actual emissions, in accordance with N.J.A.C. 7:27-34.4;

9. The brand name of the product containing TBAC;

10. If the product containing TBAC is subject to the provisions of N.J.A.C. 7:27-16, 23, 24 or 26, the category to which the product belongs; and

11. If the product containing TBAC is not subject to the provisions of N.J.A.C. 7:27-23, 24 or 26, a description of the use for which the product is intended.

(b) The information shall be submitted to the Department in a format in accordance with guidance on the Department's website at http://www.nj.gov/dep/baqp and shall:

1. Be submitted to the Department on a CD-ROM, diskette, or any other compatible electronic media unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department approves a request from the manufacturer to submit the information on paper pursuant to (e) below;

2. Include properly signed certification in accordance with N.J.A.C. 7:27-1.39;

3. Include the emissions report and the certification and be submitted to the Department at the following address:

Attn: TBAC Emissions Report
Bureau of Air Quality Planning
Department of Environmental Protection
P.O. Box 418
401 East State Street
Trenton, New Jersey 08625-0418; and

4. Be submitted annually to the Department by April 30 of the reporting year.

(c) Any information submitted pursuant to this section shall not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(d) A manufacturer who claims that electronic submission of its emissions report will impose a hardship shall submit annually a request to the Department to submit its emissions report on paper, rather than electronically, as follows:

1. The request shall include an explanation of the hardship that electronic submission would impose on the manufacturer;

2. The request shall include a statement of commitment from the manufacturer to obtaining the required resources to report future emissions reports electronically;

3. The Department shall not approve a manufacturer's request to submit its emissions report on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer; and

4. The manufacturer shall submit the request to the Department at the following address:

Attn: TBAC Emissions Report
Bureau of Air Quality Planning
Department of Environmental Protection
P.O. Box 418
401 East State Street
Trenton, New Jersey 08625-0418

7:27-34.4 Methods to estimate actual emissions

(a) The method that shall be used to estimate actual emissions for a TBAC emissions report is the best available estimation method selected from Table 1 below. The best available estimation method is a method listed in Table 1 that is reasonably available and provides the most accurate estimation of the actual emissions from the emission source. A manufacturer submitting a TBAC emission report shall presume that the highest-ranked, reasonably available method in Table 1 is the best available estimation method and shall use that method, unless a different method is selected pursuant to (b) below.

TABLE 1: RANKING OF METHODS FOR ESTIMATING ACTUAL EMISSIONS

Ranking	Methods	
1	Continuous Emissions Monitoring	
2	Predictive Emissions Monitoring	
3	Department-Approved and Supervised Source Emission Testing Performed during the Reporting Year	
4	Department-Approved and Supervised Source Emission Testing Performed in a Prior Year	
5	Mass/Material Balance	
6	AP-42 Emission Factor or Other EPA-Approved Emission Estimation Methodology or Selection of a Source Emission Test for a Similar Size Unit from the AP-42 Basis and Background Documents	
7	Manufacturer's Estimate	
8	Others (including):	• Industry Council or Organization Emission Factor • Source Emission Testing Not Approved or Supervised by the Department • Good Engineering Judgment/Factor

(b) A method listed in Table 1 that is ranked lower than the highest-ranked reasonably available method may be used to estimate emissions for a TBAC emissions report if:

1. The manufacturer can demonstrate that use of the lower-ranked method results in more accurate estimation of emissions than would have been achieved using any higher-ranked, reasonably available method; or

2. Use of the lower-ranked method is consistent with EPA's guidance, including its hierarchy for emission calculation methods and/or its identification of preferred methods for specific types of emission sources, as set forth in the EPA's Emissions Inventory Improvement Program (EIIP) Guidance for Emissions Inventory and Development, as supplemented or amended, which is incorporated by reference herein, and which is available from the EPA website at http://www.epa.gov/ttn/chief/eiip/techreport/.

(c) For each emissions calculation method used in a TBAC emissions report that is a lower-ranked method being used pursuant to (b) above, a written justification shall be prepared documenting the basis for the use of the lower-ranked method. This justification shall be maintained on-site and be provided to the Department upon request. The justification shall:

1. Identify the estimation method that was the highest-ranked reasonably available method pursuant to the rankings in Table 1;

2. Identify the method selected by the manufacturer pursuant to (b) above; and

3. Explain how selection of this method conforms to the applicable condition(s) in (b) above.

7:27-34.5 Recordkeeping requirements

(a) For each TBAC emissions report submitted to the Department, the manufacturer shall maintain the following records for a period of five years from the date each submittal is due:

1. An electronic copy and a paper copy of the TBAC emissions report submitted to the Department; and

2. Records indicating how the information submitted in the TBAC emissions report was determined, including any calculations, data, measurements, and estimates used.

(b) Upon the request of the Department, the manufacturer shall make these records available for inspection by any representative of the Department during normal business hours.

(c) Upon receipt of a written request from the Department, the manufacturer shall timely submit a copy of the records specified in (a) above to the Department by mail or by other means agreed to by the Department.