

CHAPTER 27

AIR POLLUTION CONTROL

Authority

N.J.S.A. 26:2C-1 et seq. and N.J.S.A. 26:2D-1 et seq.

Executive Order No. 66(1978) Expiration Date

Chapter 27, Air Pollution Control, is exempt from Executive Order No. 66(1978).

Chapter Historical Note

Chapter 27, Air Pollution Control, was filed and became effective prior to September 1, 1969.

Law Review and Journal Commentaries

Air Pollution Regulations and Trends. I. Leo Motiuk, Joan E. Pearson, 133 N.J.Law. 34 (Mag.) (March/April 1990).

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**APPENDIX. CHEMICALS DEFINING SYNTHETIC
ORGANIC CHEMICAL AND POLYMER
MANUFACTURING**

SUBCHAPTER 1. GENERAL PROVISIONS

7:27-1.1 Scope

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Air Pollution Control and shall govern the emitting of and such activities as result in the introducing of contaminants into the ambient atmosphere.

7:27-1.2 Construction

(a) These rules shall be construed so as to permit the Department, the Bureau of Air Pollution Control and its various agencies to discharge its statutory functions.

(b) The Commissioner and the Director of the Division of Environmental Quality may amend, expand or repeal these rules after public hearing. Such actions shall be filed with the Secretary of State as required by law.

7:27-1.3 Practice where rules do not govern

The Commissioner, the Director of the Division of Environmental Quality or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

7:27-1.4 Definitions

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

"Air pollution" means the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

"ASTM" means the American Society for Testing and Materials.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Carbon monoxide" or "CO" means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

"CFR" means the Code of Federal Regulations.

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:27-1.17, for a class of information.

"Commissioner" means the State Commissioner of Environmental Protection who is the chief administrative officer of the State Department of Environmental Protection.

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 person who is aggrieved with respect to any of the following 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, as follows:

1. If the person is an applicant, registrant, or permittee, and is aggrieved with respect to a decision made by the Department to:

i. 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;

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

iii. Revoke or withdraw a previously issued approval; or

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

2. If the person is the generator or holder of a discrete emission reduction (DER) credit generated pursuant to N.J.A.C. 7:27-30, and is aggrieved with respect to a finding made by the Department that the credit is invalid.

(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 08625-0402

(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).

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).

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).

7:27-1.34 through 7:27-1.35 (Reserved)**7:27-1.36 Applicability**

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.

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.

SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 26:2C-8 and 26:2C-9 and were filed and became effective prior to September 1, 1969. Subsequent revisions were filed January 4, 1973, as R.1973 d.10 to become effective on March 5, 1973. See: 4 N.J.R. 184(b), 5 N.J.R. 38(a). Additional revisions were filed March 29, 1976, as R.1976 d.96 to become effective on June 1, 1976. See: 7 N.J.R. 308(a), 8 N.J.R. 221(c). See section annotations for subsequent rulemakings.

Law Review and Journal Commentaries

Transition Game: NJDEP's Air Pollution Control Program. James Sherman, 162 N.J.L.J. 301 (2000).

7:27-8.1 Definitions

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

"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 by the Department.

"Agricultural commodity" means any vegetable matter or animal matter.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Air quality impact analysis" means a procedure, entailing the use of air quality simulation modeling, 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.

"Air stripping equipment" means equipment used to transfer any air contaminant from water or other liquids directly or indirectly into the outdoor atmosphere including, but not limited to, packed columns and water spray equipment.

"Ambient air monitoring" means the measurement of concentrations of one or more air contaminants in the outdoor atmosphere.

"Amendment" means a change made to a permit and certificate under N.J.A.C. 7:27-8.21, Amendments.

"AP-42" means the January 1995, 5th edition version 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, DC 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>.

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

"Category I" means a class of applications which require less review and are therefore subject to a lower fee than Category II applications. A Category I application is an application which covers a significant source which includes the following types of equipment:

1. Metalworking equipment including, but not limited to, welders, grinders, and drill presses;
2. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum removal efficiency of 99 percent and the particulate control apparatus serving the equipment;
3. Plastics machining or extruding equipment;
4. An open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP; and
5. Used oil space heaters which burn on-specification used oil and have a capacity of 500,000 British Thermal Units per hour or less for which a registration has not been filed pursuant to N.J.A.C. 7:27-20.3. The terms space heater, on-specification used oil, and registration are as defined in N.J.A.C. 7:27-20.1.

"Category II" means a class of applications for a preconstruction permit or certificate for certain types of significant sources. Category II applications are subject to different fees than Category I applications. Applications which are not defined above as belonging to Category I are Category II applications.

"Certificate" means either an operating certificate or a temporary operating certificate, which is legally valid.

"CFR" means the United States Code of Federal Regulations.

"Class I substance" means an air contaminant that is listed in 42 U.S.C. § 7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.

"Class II substance" means an air contaminant that is listed in 42 U.S.C. § 7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

"Clean Air Act" or "CAA" means the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq.; and any subsequent amendments or supplements to that act.

"Commercial fuel" means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

"Compliance inspection" means the on-site examination by representatives of the Department of equipment or control apparatus to determine if the requirements of this subchapter and other applicable laws have been and are being complied with.

"Compliance plan change" means a change made to a permit and certificate under N.J.A.C. 7:27-8.19, Compliance plan changes.

"Construct" or "construction" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used, but shall not include the dismantling of existing equipment or control apparatus, site preparation, or the ordering, receiving, temporary storage, or installation of equipment or control apparatus. Unless otherwise prohibited by Federal law, this term shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used.

"Consumer Price Index" or "CPI" means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Conveyorized surface cleaner" means a surface cleaner through which the parts to be cleaned are moved by means of a continuous, automatic system.

"Criteria pollutant" means any air contaminant for which a national ambient air quality standard has been promulgated under 40 CFR 50 or for which a State ambient air quality standard has been promulgated in N.J.A.C. 7:27-13.

"Delivery vessel" means any vehicle designed and constructed or converted to be capable of transporting liquid VOC cargo such as gasoline or fuel oil. This term includes, but is not limited to, tank trucks, tank trailers, railroad tank cars, and marine tank vessels.

"Department" means the New Jersey Department of Environmental Protection.

"Distillates of air" means helium (He), nitrogen (N₂), oxygen (O₂), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO₂).

"Domestic treatment works" means a publicly or privately owned treatment works and includes a treatment works processing primarily domestic wastes together with any ground water, surface water, storm water, or industrial process wastewater that may be present.

"Domestic waste" means waste derived from humans, animals, households, restaurants, cafeterias, hotels, hospitals, markets, and similar installations.

"Dry cleaning equipment" means equipment, located at a commercial establishment, used for cleaning textiles or garments, in which the cleaning agent is a chemical or petroleum solvent.

"Dump" means a land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors and scavengers.

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

"Effluent limitation" means any restriction on quantities, quality, discharge rates, concentration of chemical, physical, thermal, biological, or other constituents of a pollutant. This term shall have the same meaning as defined for the term "effluent limitation" at N.J.A.C. 7:14A-1.9.

"Emergency" means any situation which arises from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emissions limitation set forth in its preconstruction permit and certificate in effect. This term shall not include non-compliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions" means any air contaminant or category of air contaminants discharged directly or indirectly into the outdoor atmosphere.

"Emissions unit" means any part of activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under 42 U.S.C. § 7412(b).

"Emit" means to cause or release emissions.

"Environmental improvement pilot test" means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

"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.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Farm" means any land which meets the eligibility requirements of the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 et seq.) for land deemed in agricultural use.

"Federally enforceable" means any limitation or condition on operation, production, or emissions which can be enforced by the EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60 or promulgated under 42 U.S.C. § 7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;
3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or

4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit and certificate issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

"Fuel cell system" means an electrochemical device that converts the chemical energy in its fuel directly into electricity and heat. This term also includes any associated fuel processor, such as a reformer, that produces the fuel.

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

"General permit" means a type of standardized permit and certificate, issued by the Department under N.J.A.C. 7:27-8.8.

"Graphic arts operation" means the application of one or more surface coating formulations non-uniformly across a surface, using one or more printing units, together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

"Greenhouse gas" or "GHG" means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons (HFC-23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310mee); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulphur hexafluoride (SF₆).

"Group 1 TXS" means an air contaminant that is found on the list of Group 1 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of June 12, 1998, the following is the complete list of Group 1 TXS: Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide; 1,4-Dioxane), Ethylenimine (Aziridine), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), and Trichloroethylene (Trichloroethene).

"Group 2 TXS" means an air contaminant that is found on the list of Group 2 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of June 12, 1998, the following is the complete list of Group 2 TXS: Methylene chloride (Dichloromethane), 1,1,1-Trichloroethane (Methyl chloroform).

"Hazardous air pollutant" or "HAP" means an air contaminant listed in or pursuant to 42 U.S.C. § 7412(b).

"Hazardous waste" means those materials defined as hazardous waste under N.J.A.C. 7:26-8.

"Hazardous waste landfill" means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

"Identical" means, in relation to the replacement of equipment or control apparatus, that the equipment or control apparatus is of the same type and size as the equipment or control apparatus being replaced, and is used in the same process, with the same materials.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment.

"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.

"Insignificant source" means, for the purposes of this subchapter, any equipment or source operation that does not need a permit and certificate under N.J.A.C. 7:27-8.2.

"Install" or "installation" means to carry out final setup activities necessary to provide equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, connection of equipment or control apparatus, associated utilities, piping, ductwork or conveyor systems. This term does not include construction, as defined above, nor the reconfiguration of equipment or control apparatus to an alternate configuration specified in a permit application and approved by the Department. This term includes relocation of existing equipment or control apparatus.

"Intermediate product" means one or more desired results of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term "intermediate product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations.

"Land treatment facility" means a facility, or part of a facility, at which waste is applied onto or incorporated into the soil surface so as to change the physical, chemical, or biological characteristics or composition of the waste.

"Liquid particles" means particles which have volume but are not of rigid shape.

"MACT standard" or "Maximum Achievable Control Technology standard" means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. § 7412; or
2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. § 7412(g) or (j).

"Major facility" means a facility which has the potential to emit any of the air contaminants listed below in an amount which is equal to or exceeds the applicable major facility threshold level given below. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxides	100 tons per year
NO _x	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year
Any other air contaminant	100 tons per year

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

"Modify" or "modification" means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of actual emissions of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. Also, for the purposes of this definition, "air contaminant" shall have the meaning of "category of air contaminants" in a case where the regulatory limit is placed on a grouping of contaminants (such as VOCs) rather than on a single species of contaminant.

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR Part 61 or 40 CFR Part 63.

"New Jersey ambient air quality standard" or "NJAAQS" means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

"Nonattainment area" means any area of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds a NAAQS or NJAAQS; or

2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

"Non-commercial fuel" means solid, liquid or gaseous fuel not normally produced or manufactured, and sold for the purpose of creating useful heat.

"Non-reactive process" means a process in which no chemical reaction is occurring. The air contaminants emitted by the process are the same as those emitted by the raw materials involved in the process, and no reaction by-products are produced or emitted.

"Nonproduct output" or "NPO" means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. NPO includes fugitive releases. This term shall have the same meaning as defined for the term "nonproduct output" at N.J.A.C. 7:1K-1.5.

"NO_x" means all oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"112(r) contaminant" means an air contaminant that is listed by EPA pursuant to 42 U.S.C. § 7412 as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

"Operating certificate" or "certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., and in particular N.J.S.A. 26:2C-9.2, and this subchapter.

"Operating permit" means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

"Operational parameter" means a measurable characteristic of the operation of a piece of equipment or control apparatus.

"Order" means any and all orders issued by the Department including, but not limited to, Administrative Orders, and Administrative Consent Orders.

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

"Performance test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Periodic compliance inspection" means any compliance inspection carried out in accordance with a schedule included in the conditions of approval of a permit or certificate. This term does not include a compliance inspection which the Department may carry out as part of its consideration as to whether to approve or renew an operating certificate.

"Permit" means a preconstruction permit as defined in this section.

"Permit revision" means a change made to a permit and certificate under N.J.A.C. 7:27-8.18, Permit revisions.

"Permittee" means, for the purpose of this subchapter, any person to whom the Department has issued a permit or certificate pursuant to this subchapter.

"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.

"Plume rise" means the vertical distance from the point at which an effluent stream is discharged into the outdoor atmosphere to the highest point attained by the center line of the effluent stream.

"PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

"Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term "Pollution Prevention Assessment" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K-1.5.

"Pollution prevention process modification" means any physical or operational change to a process which reduces air contaminant emissions to the environment. This definition is solely for purposes of at risk construction or operation in accordance with N.J.S.A. 26:2C-9.4 and this subchapter and shall not be deemed to amend or otherwise affect the definition of "pollution prevention" set forth in the New Jersey Pollution Prevention Act at N.J.S.A. 13:1D-37.

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, source-related fugitive emissions shall be included in the determination of potential to emit. If the owner or operator is using DER credits pursuant to the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period. However, the determination shall not include the holding of any of the following by the owner or operator: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, DER credits generated pursuant to N.J.A.C. 7:27-30.4, or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7.

"Preconstruction permit" or "permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9.2, and this subchapter.

"Private entity" means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include any municipal, county, or State agency or authority or any agency, authority or subdivision created by any municipal, county or State government.

"Process material testing" means the testing of any solid, liquid, or gaseous substance involved in a manufacturing process or other operation. This term includes, but is not limited to, fuel and other feed material, process intermediates, products, by-products, and wastes, but excludes any source emission testing.

"Process unit" means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of making reconstruction determinations. Product recovery equipment shall be considered to be part of the process unit, not part of the control apparatus.

"Product" means one or more desired result(s) of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator. This term shall have the same meaning as defined for the term "product" at N.J.A.C. 7:1K-1.5.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques, used to produce a product or reach a planned result. This term shall have the same meaning as defined for the term "production process" at N.J.A.C. 7:1K-1.5.

"PSD" or "prevention of significant deterioration" means the requirements pursuant to 40 CFR 51.166, administered through the Department's permitting process, which apply to a new or modified major facility located in an attainment area. The Department accepted delegation of the administration of the PSD program from EPA on February 22, 1983.

"Publicly owned treatment works" (POTW) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State or municipality." This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Rate of production" means the quantity per unit time of any process intermediate, product, by-product, or waste generated through the use of any equipment, source operation, or a process.

"Raw material" means any input to equipment, control apparatus, or a process, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds and elemental substances.

"Reconfiguration" means a change in the setup of equipment or control apparatus, or both, to an alternate configuration. This term also includes reorientation or reconnection into an alternate pattern of equipment or control apparatus, or both. This term does not include a change in the location of equipment or control apparatus from that specified in the preconstruction permit.

"Reconstruct" or "reconstruction" means the replacement of part(s) of equipment included in a process unit, or the replacement of part(s) of control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit; or, if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new control apparatus; and
2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index (CPI).

"Repair or maintenance" means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the reconstruction of equipment or control apparatus.

"Research" means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

"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.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Sanitary landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it does not include any waste facility approved for disposal of hazardous waste.

"Seven-day-notice change" means a change made to a permit and certificate under N.J.A.C. 7:27-8.20, Seven-day-notice changes.

"Significant net emission increase" means an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

"Significant source operation" or "significant source" means a source that is classified as a significant source pursuant to N.J.A.C. 7:27-8.2(c) and that is not exempted from being a significant source pursuant to N.J.A.C. 7:27-8.2(d) or (e).

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

"Solid waste facility" means any system, site, equipment, or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovery, or disposal of solid waste.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Source operation" or "source" means any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or utilized for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees centigrade) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State implementation plan" or "SIP" means a plan or portion thereof, prepared by a state and approved by the EPA pursuant to 42 U.S.C. § 7410, which includes enforceable emission limitations or other control measures, means or techniques, and provides for implementation, maintenance, and enforcement of one or more NAAQS.

"Stationary storage tank" means any immobile storage tank. This term also includes any delivery vessel, excluding a sealed vessel, such as a railroad tank car or similar container, used for storing VOC remaining on site at a facility for more than 30 days.

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and

2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

“Stratospheric ozone depleting substance” means any Class I substance or any Class II substance.

“Surface cleaner” means a device to remove unwanted foreign matter from the surfaces of materials by using VOC or HAP solvents in liquid or vapor state.

“Surface coating operation” means the application of one or more surface coating formulations uniformly across a surface, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web. This term does not include any graphic arts operation.

“Surface impoundment” or “impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

“Surface stripping” means the removal of paints and other coatings from the surface of materials.

“Temporary facility” means a facility which, by design, is intended to be operated at more than one location and which is relocated more than once in five years.

“Temporary operating certificate” means an operating certificate with a term shorter than five years, issued under N.J.A.C. 7:27-8.7(d).

“Testing” means a procedure for the determination of the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

“Test run” or “run” means a single integrated measurement or procedure used for the purpose of collecting a sample of any air contaminant emitted during a specified time interval.

“Total fixed capital cost” means the total sum, in dollars, paid to purchase and install equipment or control apparatus, including any design costs incurred. This term does not include any costs of operation or startup. This term also does not include the costs of dismantling any equipment or control apparatus being replaced, site preparation, placement of any footings or foundation upon which the structural elements of the equipment or control apparatus rest. This term also does not include any charges for legal services, governmental taxes or fees, or any patent or licensing costs.

“Total suspended particulate matter” or “TSP” means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

“Use” means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods, or which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA’s definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
 1,1,1,2-tetrafluoroethane (HFC-134a)
 1,1-dichloro-1-fluoroethane (HCFC-141b)
 1-chloro-1,1-difluoroethane (HCFC-142b)
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
 pentafluoroethane (HFC-125)
 1,1,2,2-tetrafluoroethane (HFC-134)
 1,1,1-trifluoroethane (HFC-143a)
 1,1-difluoroethane (HFC-152a)
 parachlorobenzotrifluoride (PCBTF)
 cyclic, branched, or linear completely methylated siloxanes
 acetone
 perchloroethylene (tetrachloroethylene)
 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
 1,1,1,2,3,4,4,5,5-decafluoropentane (HFC 43-10mee)
 difluoromethane (HFC-32)
 ethylfluoride (HFC-161)
 1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
 1,1,2,2,3-pentafluoropropane (HFC-245ca)
 1,1,2,3,3-pentafluoropropane (HFC-245ea)
 1,1,1,2,3-pentafluoropropane (HFC-245eb)
 1,1,1,3,3-pentafluoropropane (HFC-245fa)
 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
 1,1,1,3,3-pentafluorobutane (HFC-365mfc)
 chlorofluoromethane (HCFC-31)
 1-chloro-1-fluoroethane (HCFC-151a)
 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane; (C₄F₉OCH₃)
 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCF₂CH₃)
 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅)
 methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

Amended by R.1985 d.96, effective March 4, 1985 (operative April 5, 1985).

See: 16 N.J.R. 167(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).

Definitions added and technical revisions made.

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).

Amended "source operation" and "surface cleaner"; added "volatile organic compound VOC" and deleted "mathematical combination" and "volatile organic substance".

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).

Added definitions for "carbon monoxide", "federally enforceable", "lead or Pb", "major facility", "oxides of nitrogen or NO_x", "Ozone or O₃", "PM-10", "potential to emit", "significant net emission increase", "State implementation plan (SIP)", "sulfur dioxide or SO₂", and "total suspended particulate matter or TSP".

Amended by 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).

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.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).

Administrative Correction.

See: 27 N.J.R. 1406(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).

Rewrote the section.

Administrative change.

See: 31 N.J.R. 639(b).

Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

Inserted "Fuel cell system".

Amended by 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).

In "Category I", added 5.

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 "Greenhouse gas" definition as "Greenhouse gas" or "GHG"; and in "Potential to emit", inserted a new fifth sentence, and rewrote 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 the section.

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).

7:27-8.2 Applicability

(a) This subchapter applies to certain sources of air contaminant emissions. Some of the sources are pieces of equipment; others are source operations or processes. A source that is required to have a permit and certificate under this subchapter is called a "significant source." A source that is not required to have a permit and certificate under this subchapter is called an "insignificant source."

(b) A significant source located at a facility covered by an operating permit issued by the Department under N.J.A.C. 7:27-22 is not subject to this subchapter. However, the following requirements apply to sources at operating permit facilities:

1. Until an operating permit is issued for a source subject to operating permit requirements, the source remains subject to this subchapter, and any permits or certificates required by this subchapter must be obtained and maintained.

2. If a new source which is subject to operating permit requirements elects under N.J.A.C. 7:27-22.5(g) to obtain a preconstruction permit and certificate under this subchapter prior to obtaining an operating permit, the source shall comply with this subchapter and with any Federal preconstruction requirements that apply; and

3. In some cases, a portion of an operating permit facility (such as a research and development operation) is not subject to operating permit requirements. In such a case, the portion of the facility that is not subject to operating permit requirements would remain subject to this subchapter.

(c) Any equipment or source operation that may emit one or more air contaminants directly or indirectly into the outdoor air and belongs to one of the categories listed below, is a significant source (and therefore requires a preconstruction permit and an operating certificate), unless it is exempted from being a significant source pursuant to (d) or (e) below.

1. Commercial fuel burning equipment that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber;

2. Any source operation of equipment that has the potential to emit any Group 1 or Group 2 TXS (or a combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

3. Dry cleaning equipment;

4. A surface cleaner which uses a cleaning solution containing five percent or more VOCs, HAPs, or VOC and HAP combined and which is:

i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;

ii. A heated open top surface cleaner;

iii. A conveyORIZED surface cleaner; or

iv. A stationary spray cleaning or surface stripping operation using one half gallon or more of cleaning solution in any one hour;

5. Equipment that is used in a graphic arts operation including, but not limited to, newspaper, lithographic, gravure, flexographic, letterpress and screen printing, in which the quantity of ink, fountain solution, or cleaning material used in any one hour is equal to or greater than one half gallon;

6. Any tank or vessel which has a capacity of more than 100 gallons and which is used:

i. In etching, pickling, or plating; or

ii. In chromium electroplating or chromium anodizing;

7. A transfer operation involving gasoline or other VOCs that is regulated under N.J.A.C. 7:27-16.3 or 16.4, or a marine tank vessel loading or ballasting operation that is regulated under N.J.A.C. 7:27-16.5, if the operation is required to have a control device other than bottom fill or submerged fill;

8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air;

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of a VOC or mixture of VOCs having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1.0 millimeters of mercury) or greater at standard conditions;

10. Tanks, reservoirs, containers and bins which have a capacity in excess of 2,000 cubic feet and which are used for the storage of solid particles;

11. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which emissions occur;

1. The equipment or source operation is one of the following:

i. A mixer, cutter, molder, conveyer, blender, filler, or cooking kettle which processes material intended as food for direct human consumption, provided that the temperature of the food does not exceed 225 degrees Fahrenheit;

ii. Equipment that sands, drills, buffs, polishes, mills, carves, presses, or planes metal or metal products, except metal products containing stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium;

iii. Equipment that sands, drills, cuts, or planes untreated and unpainted wood or wood products;

iv. Equipment that cuts, trims, perforates, folds, or molds paper or paper products;

v. A vessel with a capacity of 1,000 gallons or greater in which the mixing or blending of liquids takes place in a non-reactive process, provided that:

(1) The operating temperature of the vessel is not greater than 350 degrees Fahrenheit; and

(2) The vapor pressure of the liquid, excluding the vapor pressure of water, is less than 0.02 pounds per square inch absolute at the liquid's actual temperature, or at 70 degrees Fahrenheit, whichever temperature is higher;

vi. A vessel with a capacity of less than 1,000 gallons in which the mixing or blending of liquids takes place in a non-reactive process, provided that the vapor pressure of the liquid, excluding the vapor pressure of water, is less than 1.5 pounds per square inch; or

vii. A vessel with a capacity of less than 1,000 gallons in which the mixing or blending of either solids and liquids or solids only takes place in a non-reactive process, provided that:

(1) The vapor pressure of any liquid, excluding the vapor pressure of water, is less than 1.5 pounds per square inch; and

(2) The vessel is equipped with a control apparatus designed to remove particulate emissions at a minimum efficiency of 99 percent or is located inside a room that is equipped with a control apparatus designed to remove particulate emissions at a minimum efficiency of 99 percent; and

2. The following criteria are met:

i. The source has no visible emissions, exclusive of water vapor, to the outdoor atmosphere;

ii. The source does not emit any air contaminant which may cause an odor detectable outside the property boundaries of the facility;

iii. The source meets one of the following criteria:

(1) The source is located in an enclosed work area equipped with heating and ventilation; emissions from the source are vented directly into the work area where the equipment is located and are free

from the influence of any local exhaust ventilation system; and the work area meets an OSHA indoor air quality standard for occupancy even though the emissions are being released into the work area; or

(2) The source is a mixing or blending vessel which meets the criteria set forth in (e)1v through vii above and is vented directly to the outdoor atmosphere;

iv. The source is not subject to any NSPS, NESH-APS, or MACT air pollution control standard;

v. The source's potential to emit each TXS and each HAP does not exceed the de minimis reporting thresholds as specified in N.J.A.C. 7:27-8, Appendix 1, Table A for each TXS and Table B for each HAP; and

vi. The percentage by weight of all HAPs collectively in the raw material is less than 1.0 percent; and

3. The owner or operator of the source has readily available upon Department request a statement certified in accordance with N.J.A.C. 7:27-1.39, signed by the responsible official, as defined at N.J.A.C. 7:27-1.4, that:

i. Specifies the contents of the source, if the source is a mixing or blending vessel;

ii. Affirms that the source meets all the criteria listed in (e)2 above; and

iii. Attests that the source is in compliance with all other applicable State or Federal air pollution requirements.

(f) Control apparatus serving a significant source shall be included in the preconstruction permit and operating certificate for the significant source.

(g) Although an insignificant source does not require a permit, emissions information from an insignificant source may be required on an application under N.J.A.C. 7:27-8.4 if the insignificant source vents to a control device, stack or chimney which also serves a significant source.

(h) A permit and certificate are not required for equipment, control apparatus, or a source operation at a facility which is covered by a facility-wide permit issued by the Department pursuant to N.J.S.A. 13:1D-35 et seq. However, the holder of the facility-wide permit must comply with N.J.A.C. 7:27-8.27, Special facility-wide permit provisions.

(i) This subchapter shall not preclude the owner or operator of a facility from voluntarily obtaining a preconstruction permit and operating certificate for a source not otherwise required to obtain a permit.

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).

Heading changed from "Permits and certificates required" to "Applicability".

Clarification of types of equipment and control apparatus reported in permit and certificate process.

Added (a)17(b)1 and 2.

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).

VOC parameters added at (a)9 and (a)15i.

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).

Administrative change in (a)15.

See: 26 N.J.R. 4184(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).

Rewrote the section.

Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

In (d), added 11.

Amended by 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).

Rewrote (c)13.

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 (c) and (d); added new (e) and (f); recodified existing (e) through (g) as (g) through (i).

Case Notes

Orders to cease violation in 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).

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.

7:27-8.3 General provisions

(a) No person may construct, reconstruct, install, or modify a significant source or control apparatus serving the significant source without first obtaining a preconstruction permit under this subchapter.

(b) No person shall operate (nor cause to be operated) a significant source or control apparatus serving the significant source without a valid operating certificate.

(c) No permittee may take any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit, under any applicable provision at N.J.A.C. 7:27-8.17 through 8.23, without complying with that applicable provision.

(d) Any person holding a permit or certificate shall make said permit or certificate, together with any amendments, seven-day-notices, or other documents related to the permit and certificate, readily available for Department inspection on the operating premises.

(e) No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.

(f) A preconstruction permit or certificate shall not be transferable either from the location authorized in the preconstruction permit or certificate in effect to another location, or from any one piece of control apparatus or equipment to another piece of control apparatus or equipment.

(g) Once a permit and certificate is issued, the permittee is fully responsible for compliance with this subchapter and with the permit and certificate, including adequate design, construction, and operation of the source, even if employees, contractors, or others work on or operate the permitted source. If the Department issues any other requirement with the force of law, such as an order, which applies to the source, the permittee is also responsible for compliance with that requirement.

(h) Preconstruction permits and certificates issued under this subchapter do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.

(i) A person conducting only normal repair or maintenance of control apparatus or equipment, as defined at N.J.A.C. 7:27-8.1, need not comply with (a), (b) or (c) above.

(j) No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy. In determining whether an odor unreasonably interferes with the enjoyment of life or property, the Department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances.

(k) No approval by the Department of a change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 30.14(g), the permit must specifically allow such use.

(l) In accordance with N.J.A.C. 7:27-30.14(a)5 and 6, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing in accordance with N.J.A.C. 7:27-8.28 of the VOC and/or NO_x emissions of equipment or control apparatus; and
2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.

(m) The Department and its representatives have the right to enter and inspect any facility or property in accordance with N.J.A.C. 7:27-1.31.

(n) There shall be an affirmative defense to liability for penalties for a violation of a preconstruction permit or certificate, occurring as a result of an equipment malfunction, an equipment startup, an equipment shutdown, or during the performance of necessary equipment maintenance. The affirmative defense shall be asserted and established as required by P.L. 1993, c.89 (adding N.J.S.A. 26:2C-19.1 through 2C-19.5) and any rules that the Department promulgates thereunder, and shall meet all of the requirements thereof. There shall also be an affirmative defense to liability for penalties or other sanctions for noncompliance with any technology based emission limitation in the preconstruction permit or certificate, if the noncompliance was due to an emergency as defined at N.J.A.C. 7:27-22.1, provided that the affirmative defense is asserted and established in compliance with 40 CFR 70.6(g) and meets all the requirements thereof.

(o) Notwithstanding (c) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-8.20;
3. If the use is a "permit insurance" use, the permittee conforms with the conditions for "permit insurance" uses set forth at N.J.A.C. 7:27-30.14(d); and
4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

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).

Replaced (b) and (c). Added (j).

Clarification of procedural requirements for permit process.

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 subsection (k) added.

Amended by 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).

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: Temporary enforcement response policy and permit amnesty program.

See: 26 N.J.R. 4225(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.

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 (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".

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).

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 Applications

(a) An application for a preconstruction permit and certificate, permit revision, compliance plan change, environmental improvement pilot test approval, or for a renewal thereof, as well as a general permit registration, or a seven-day-notice, shall be submitted to the Department on forms obtained from the Department, in accordance with this section.

(b) Application forms and information may be obtained in the following ways:

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

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
Telephone: (609) 292-6716 or 1-800-441-0065
Website: www.state.nj.us/dep/aqpp
E-mail: AIRFORMS@dep.state.nj.us; 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) An application, registration, or notice shall be submitted to the Department in one of the following ways:

1. On paper, sent or delivered to the address listed on the application form; or
2. Electronically, through RADIUS or e-NJEMS.

(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, an application for renewal of an operating certificate shall be made to the Department on forms obtained from the Department not less than 90 days prior to the expiration date of the operating certificate.

(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) If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27-18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. 7:27-30.14(g).

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

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".

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.

7:27-8.16 Revocation

(a) The Department may revoke a permit or certificate if the permittee:

1. Uses, or allows to be used, equipment or control apparatus not in compliance with the permit or certificate, or with any applicable Federal, or State law, regulation, or rule;

2. Takes any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit under any applicable provision at N.J.A.C. 7:27-8.17 through 22, without complying with the applicable provision;

3. Fails to allow lawful entry by authorized representatives of the Department, pursuant N.J.A.C. 7:27-1.31;

4. Fails to pay any penalty assessed pursuant to a final order issued by the Department;

5. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.6, within 60 days of receipt of a fee invoice or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed;

6. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a preconstruction permit or certificate; or

7. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

(b) The Department may withdraw its approval of a preconstruction permit or permit revision, if the permittee:

1. Does not begin the activities authorized by the permit or permit revision within one year from the date of its approval; or

2. Discontinues the activities authorized by the permit or permit revision for a period of more than one year.

(c) The Department may revoke its approval of an application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.

(d) A notice of revocation issued by the Department shall be in writing.

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.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).

Recodified from N.J.A.C. 7:27-8.10 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).

Rewrote the section.

7:27-8.17 Changes to existing permits and certificates

(a) There are several ways to change a permit and certificate once it is issued. They are described in N.J.A.C. 7:27-8.18 through 8.23. Some require prior approval from the Department, while others merely require notice to the Department, before or after the change.

(b) If an action or change fits under more than one of the sections listed at (b)1 through 4 below, it shall be submitted and reviewed through the most comprehensive of the sections which apply. The list of permit change sections at (b)1 through 4 below has the most comprehensive section listed first, and the others arranged in descending order. For example, if a permittee plans a change which fits under both the compliance plan change section (paragraph (b)2 below) and the seven-day-notice change section (paragraph (b)3 below), the change shall be submitted as a compliance plan change, because that is listed first, as it is the more comprehensive of the two sections. The permit change sections are:

1. Permit revisions (N.J.A.C. 7:27-8.18);
2. Compliance plan change (N.J.A.C. 7:27-8.19);
3. Seven-day-notice change (N.J.A.C. 7:27-8.20);
4. Amendment (N.J.A.C. 7:27-8.21).

(c) To submit an application for a permit revision or compliance plan change, or to submit a seven-day-notice or amendment, a form shall be obtained from the Department at the address in N.J.A.C. 7:27-8.4(b). The completed form shall be submitted to the Department in accordance with the application requirements in N.J.A.C. 7:27-8.4, with the fee, if any, required under N.J.A.C. 7:27-8.6. If a permittee wishes to document the date upon which a completed form is submitted, the permittee may choose to submit the form in a way that will provide documentation of the submittal date, such as by certified mail. The completed form may be submitted to the Department by mail, hand delivery, or electronic submittal, as follows:

1. If on paper, submit to:

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; or

2. If in electronic form, submit through the Department's Remote AIMS Data Input User System (RADIUS), which can be accessed at the following website: www.state.nj.us/dep/aqpp.

(d) If a permittee wishes to submit a change to an existing permit electronically, the permittee may do so only if:

1. The permit was originally applied for electronically through RADIUS; or

2. Complete application information for the permitted source is submitted electronically, through RADIUS, prior to, or simultaneously with, submittal of the permit change.

(e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 7:27-30.14(g), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27-8.18 is required.

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 (e), 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 (c), rewrote 2; in (d)1 and 2, substituted "RADIUS" for "AIMS".

7:27-8.18 Permit revisions

(a) The following actions require prior approval from the Department through a permit revision:

1. A request for an increase in a maximum allowable emission limit, including correction of a typographical error or inaccurate calculation, if the correction would result in a higher maximum allowable emission limit;

2. An action that shall:

i. Increase actual emissions, to a rate or concentration greater than a maximum allowable emission limit; or

ii. Cause the emission of a new air contaminant not specified in the permit and certificate. If the permit and certificate allows emission of a group of air contaminants, such as "total VOCs," or "total particulates," then any non-HAP air contaminant in that group is considered to be specified in the permit and certificate;

3. Use of a new raw material not specified in the permit, if the use would cause any of the following results (If the use would not cause any of these results, it shall be processed as a seven-day-notice under N.J.A.C. 7:27-8.20, or as an amendment under N.J.A.C. 7:27-8.21):

i. An increase in actual emissions, to a rate or concentration greater than a maximum allowable emission limit;

ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold in Appendix 1, Tables A and B, incorporated herein by reference; or

iii. The source to become subject to a requirement that did not previously apply;

4. A reconstruction, as described in N.J.A.C. 7:27-8.23, unless the reconstructed source has the potential to emit each of the air contaminants listed in Table A and B of Appendix 1 in amounts less than the applicable SOTA threshold level; in that case, the owner or operator of the source shall notify the Department of the reconstruction using the amendment procedures set forth at N.J.A.C. 7:27-8.21;

5. Any of the following changes, if the change would cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;

i. The replacement of an existing stack or chimney with a shorter stack or chimney;

ii. A change in the number of stacks or chimneys serving a source, which results in any discharge height less than that of the tallest stack or chimney existing prior to the change;

iii. An increase in the diameter of a stack or chimney; or

iv. A decrease in the exit temperature or volume of gas emitted from a stack or chimney;

6. Except as allowed at N.J.A.C. 7:27-8.21(b)6, the replacement of an entire permitted significant source with a replacement source. For the purposes of this section, replacement means that the replacement source will take the place of the replaced source in the manufacturing process, and the replaced source will be permanently shut down; or

7. Construction or installation of a new significant source (including a control apparatus), if there are existing, permitted sources onsite, and the new source could, under N.J.A.C. 7:27-8.4(h), be combined on one permit application with the existing permitted sources. If the new source could not be combined under one permit with existing permitted sources under N.J.A.C. 7:27-8.4(h), installation of the new source would require a new permit of its own.

(b) To obtain Department approval of a permit revision, the applicant shall demonstrate that the source shall meet the requirements of N.J.A.C. 7:27-8.11, Standards for issuing permits.

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.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 4.

7:27-8.19 Compliance plan changes

(a) The following actions require prior Department approval of a compliance plan change:

1. A decrease in the frequency of testing, monitoring, recordkeeping or reporting, to below the frequency specified in the permit and certificate;

2. A change in monitoring method;

3. A change in a level, rate, or limit for an operational parameter if:

- i. The change would cause the source to operate outside of the range set by the permit for that parameter;

- ii. The parameter is required under the permit and certificate to be tested, monitored, recorded, or reported to the Department; and

- iii. The level, rate, or limit is not an emission limit; and

4. A reduction in a source's potential to emit, through any of the actions listed at i through iii below. The permittee may take these actions without contacting the Department, but the reduction in potential to emit does not take effect until the Department approves the compliance plan change, making the emission decrease Federally enforceable. Until Department approval, the source's potential to emit remains unchanged. The following types of actions may be taken to reduce potential to emit under this paragraph:

- i. A decrease in a maximum allowable emission rate;

- ii. A decrease in maximum allowable hours of operation per time period (number of batches per time period for batch operations); or

- iii. A decrease in maximum allowable production rate (production amount per batch for batch operations).

(b) The applicant may not proceed with a compliance plan change until the Department issues a written approval of the change, except for emission decreases that are not reflected in a change to a source's potential to emit made under (a)4 above.

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).

7:27-8.20 Seven-day-notice changes

(a) A seven-day-notice change allows a permittee to proceed with a change seven days after the notice of the change is submitted to the Department. A person acting under the authority of a seven-day-notice does so at risk. Should the Department determine that an action was incorrectly processed as a seven-day-notice change, and should have been processed as a compliance plan change or permit revision, the permittee may be subject to penalties for noncompliance with this subchapter.

(b) A seven-day-notice may be used for the following:

1. A change made to a permitted source which meets all three of the following requirements:

- i. The action is a physical or operational change that is outside the scope of activities allowed by the permit;

- ii. The action has the potential to result in an increase in actual emissions, but will not increase emissions over the allowable limits in the permit and certificate; and

- iii. The action will not alter stack parameters or characteristics so as to cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;

2. Notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27-8.24 or 8.25; or

3. Notice of a potential increase in the actual emissions of an air contaminant included in the permit due to compliance using DER credits under N.J.A.C. 7:27-30, such as for "permit insurance" pursuant to N.J.A.C. 7:27-30.14(d).

(c) A permittee shall submit a seven-day-notice for construction or installation of a new insignificant source (as defined at N.J.A.C. 7:27-8.1), if the emissions from the insignificant source shall be released through the same control device as emissions from an existing, permitted significant source.

(d) A permittee shall not under (b)1 above use a seven-day-notice for a change which shall:

1. Result in emissions exceeding permit limits; or

2. Result in emission of a new air contaminant at a level which would cause the source's potential to emit to exceed reporting thresholds in Table A or B in Appendix 1.

(e) The Department shall separately evaluate each change submitted under (b)1 above to determine its effect

on actual emissions. If a change, evaluated alone, would cause an increase in actual emissions (but not to a level over permit allowables), it shall be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions (but not to a level over permit allowables), and one reducing emissions by the same amount, the change which increases emissions shall be processed through a seven-day-notice. Similarly, the Department shall separately evaluate each change submitted under (b)1 above to determine its effect on allowable emissions. If a change, evaluated alone, would cause a permit limit to be exceeded, it may not be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions over a permit limit, and one reducing emissions by the same amount, the change which increases emissions may not be processed through a seven-day-notice. Instead, the change shall be submitted as a permit revision under N.J.A.C. 7:27-8.18.

(f) The Department shall send an acknowledgment when a seven-day-notice, including the appropriate fee, is received. However, the acknowledgment only indicates the date upon which the Department received the notice. It does not mean that the Department has reviewed or approved the notice. Therefore, if the notice is incomplete or deficient, the Department's acknowledgment does not in any way relieve the owner or operator from liability for penalties for any unauthorized activities.

(g) If all of the requirements of this section are met, the permittee may begin the actions proposed in the seven-day-notice starting seven days after the notice has been submitted to the Department.

(h) The permittee shall maintain a copy of each seven-day-notice with the permit and certificate maintained at the facility.

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).

Rewrote (b); in (d) and (e), inserted references to (b)1; and deleted a former (i).

7:27-8.21 Amendments

(a) An amendment allows a permittee to proceed with a change to a permitted source, or to its permit or certificate, provided that the permittee submits a notice of the change within 120 days after the start of the change.

(b) A permittee shall notify the Department of the following changes as an amendment:

1. A change in the permit and certificate information which allows the Department to identify and contact the permittee, including company name or mailing address; division name; plant name or address; name or address of any owner's agent; or name or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27-1.4);

2. A transfer of ownership or operational control of the source or the facility;

3. A change to the name, number, or designation given to any equipment or stack in the permit or certificate;

4. Any of the following changes to a permitted source's stack or chimney or the use thereof, if the change complies with EPA stack height regulations at 40 CFR Part 51:

- i. A change in the number of stacks or chimneys serving the source, if the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

- ii. A decrease in the diameter of a stack or chimney, if the exhaust is vented upward;

- iii. The replacement of an existing stack or chimney with a taller stack or chimney, if this results in an effective stack height which is no less than that existing before the change; or

- iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney;

5. The use in a permitted source of a new raw material not specified in the permit (including a change in the contents of a storage tank or container), or a change in the source's use of a raw material outside the limits in the permit, if the change shall not cause any of the following:

- i. An increase in actual emissions;

- ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold in Appendix 1, Tables A and B; or

- iii. The source to become subject to a requirement that did not previously apply;

6. Replacement of an entire permitted source with a replacement source which performs the same function as the replaced source and which, for each air contaminant listed in Table A and B of Appendix 1 that the replacement source may emit, has a potential to emit the air contaminant in an amount that is less than the applicable SOTA threshold level in Appendix 1, Tables A and B;

7. Correction of a typographical error, unless the correction would result in an increase in the actual or allowable emissions. If the correction would result in such an increase, the permittee shall:

i. File a permit revision under N.J.A.C. 7:27-8.18(a)1ii; or

ii. If the change does not meet the criteria for a permit revision at N.J.A.C. 7:27-8.18(a)1ii, the permittee shall submit a seven-day-notice under N.J.A.C. 7:27-8.20; and

8. A reconstruction, as described in N.J.A.C. 7:27-8.23, provided that the reconstructed source has the potential to emit each air contaminant listed in Table A and B of Appendix 1 in amounts less than the applicable SOTA threshold level.

(c) The permittee shall maintain a copy of each amendment with the permit and certificate maintained at the facility.

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.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 6 and added 8.

7:27-8.22 Changes to sources permitted under batch plant, pilot plant, and dual plant permitting procedures

(a) To make a change to a permit issued using the NJDEP Batch Production Plant Permit Procedure, refer to the procedures in technical manual number 1301, which covers certain batch plant permits. Technical manual 1301 is available at the address listed in N.J.A.C. 7:27-8.4(b).

(b) To make a change to a permit issued using the NJDEP Pilot Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain pilot plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27-8.4(b).

(c) To make a change to a permit issued using the NJDEP Dual Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain dual plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27-8.4(b).

(d) If the applicable technical manual referenced in (a) through (c) above does not provide a procedure for making the desired change, the change shall be processed through the applicable provisions of N.J.A.C. 7:27-8.17 through 8.21.

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).

7:27-8.23 Reconstruction

(a) A reconstruction is a replacement of part(s) of a significant source included in a process unit, or the replacement of part(s) of a control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit; or, if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new control apparatus; and

2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index. The Department shall publish this threshold dollar amount each November in the same New Jersey Register notice in which it publishes the current CPI and annual emission fee as required by N.J.A.C. 7:27-22.31(j);

(b) When evaluating whether a replacement of part(s) amounts to a reconstruction, the process unit and the control apparatus are considered separately. Thus, when determining the fixed capital cost of reconstructing a new process unit, the control apparatus serving the process unit is not included.

(c) The replacement of an entire significant source operation or control apparatus is not a reconstruction, regardless of its cost. Rather, it is construction, as defined at N.J.A.C. 7:27-8.1, and must be authorized through one of the following:

1. Department issuance of a new permit or

2. If allowed under N.J.A.C. 7:27-8.21(b)6, an amendment.

(d) A reconstruction of a permitted source shall be submitted and reviewed under the procedures for a permit revision at N.J.A.C. 7:27-8.18. If a replacement of part(s) of a permitted source does not constitute a reconstruction under (a) above, it may still require notice to the Department under the seven-day-notice or amendment provisions or Departmental approval of a permit revision, if the replacement meets one or more of the other criteria requiring either notice or a permit revision under N.J.A.C. 7:27-8.18 through 8.23.

(e) If a source is not covered by a permit and certificate, and a reconstruction is planned, the owner or operator of the source shall obtain a permit and certificate for the source pursuant to N.J.A.C. 7:27-8.3(a). If a replacement of part(s) of an unpermitted source does not constitute a reconstruction under (a) above, it would still require a permit if the replacement would result in an increase in actual emissions or would otherwise meet one or more of the other criteria set forth at N.J.A.C. 7:27-8.18 through 8.23 which determine when a permit revision is required. In that case, the replacement would constitute a modifica-

tion and a permit shall be obtained for the source as required at N.J.A.C. 7:27-8.3(a).

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).

Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.

See: 30 N.J.R. 4079(a).

Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.

See: 32 N.J.R. 116(a).

Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.

See: 32 N.J.R. 4478(a).

Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.

See: 34 N.J.R. 782(c).

Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.

See: 34 N.J.R. 4474(b).

7:27-8.24 Special provisions for construction but not operation

(a) As provided in N.J.S.A. 26:2C-9.2j, an applicant may construct, reconstruct, install, and/or put in place a source, including a control apparatus, while the Department reviews an application if:

1. The applicant has submitted a complete application to the Department, proposing the construction, reconstruction, installation, and/or placement of the source;
2. The applicant only constructs, reconstructs, installs, and/or places the source on footings or a foundation, and does not test or operate it;
3. The construction, reconstruction, installation, and/or placement is carried out as proposed in the application;
4. The construction, reconstruction, installation, and/or placement is not prohibited by any Federal law or requirement, including but not limited to PSD requirements, offsets requirements set forth at N.J.A.C. 7:27-18, MACT requirements, or acid rain requirements at 40 CFR Part 72; and
5. All other requirements of this section are met.

(b) To act under the authority of this section, the applicant shall notify the Department in writing seven days prior to beginning the activities listed in (a) 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.

(c) This section does not limit the Department in establishing construction, installation, maintenance, or operating standards, nor in reviewing any application.

(d) 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.

(e) If the Department determines that the applicant has acted inconsistently with applicable law by any action taken under this section, the applicant shall be subject to penalties if the action has caused emissions of any air contaminant.

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).

7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications

(a) As provided at N.J.S.A. 26:2C-9.3 and 9.4, a private entity, as defined at N.J.A.C. 7:27-8.1, may proceed with the following activities while an application covering those activities is being reviewed by the Department:

1. Construction, installation, reconstruction or operation of control apparatus serving an existing source; or
2. Implementation of a pollution prevention process modification, as defined at N.J.A.C. 7:27-8.1, involving one or more existing sources.

(b) This section does not authorize any activities which:

1. Are prohibited under the Federal Clean Air Act;
2. Shall result in increased emissions;
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. Any emission reduction resulting from the disapproved activities shall not be used as the basis for generating a DER credit under the Open Market Emission Trading Program at N.J.A.C. 7:27-30.

(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).

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-28.3 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.

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).

(c) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)5, pursuant to which the permittee may be required to provide compensation through use of DER credits.

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.

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

¹If 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.

²If 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.

³Any 112(r) contaminant; any stratospheric ozone depleting substance, or any greenhouse gas.

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

CAS Number

Air Contaminant

CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Threshold (lbs/yr)
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
111444	Dichloroethyl ether	12	120
542756	1,3-Dichloropropene	200	2,000
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-Dimethoxybenzidine	20	200
60117	4-Dimethyl aminoazobenzene	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	1,600
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	Hexachlorocyclopentadiene	20	200
67721	Hexachloroethane	1,000	10,000
822060	Hexamethylene-1,6-diisocyanate	4	40
680319	Hexamethylphosphoramide	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
60344	Methyl hydrazine	12	120
74884	Methyl iodide	200	2,000
108101	Methyl isobutyl ketone	2,000	10,000

CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Threshold (lbs/yr)	CAS Number	Air Contaminant	Reporting Threshold (lbs/yr)	SOTA Threshold (lbs/yr)
624839	Methyl isocyanate	20	200		Arsenic and inorganic arsenic compounds	1	10
80626	Methyl methacrylate	2,000	10,000				
1634044	Methyl tert butyl ether	2,000	10,000	7784421	Arsine	1	10
101144	4,4-Methylene bis(2-chloraniline)	40	400	—	Beryllium compounds ¹⁵	1.6	16
75092	Methylene chloride	2,000	10,000	—	Beryllium salts	0.004	0.04
101688	4,4-Methylene diphenyl diisocyanate	20	200	130618	Cadmium compounds	2	20
101779	4,4'-Methylene dianiline	200	2,000	—	Cadmium oxide	2	20
91203	Naphthalene	2,000	10,000	—	Chromium compounds ¹⁶	1000	10,000
98953	Nitrobenzene	200	2,000	—	Hexavalent chromium compounds	0.4	4
92933	4-Nitrobiphenyl	200	2,000	10025737	Trivalent chromium compounds	1000	10,000
100027	4-Nitrophenol	1,000	10,000	744084	Chromic chloride	2.0	20
79469	2-Nitropropane	200	2,000	10210681	Cobalt metal and compounds ¹⁷	20	200
684935	N-Nitroso-N-methylurea	0.04	0.4	62207765	Cobalt carbonyl	20	200
62759	N-Nitrosodimethylamine	0.2	2	—	Fluomine	20	200
59892	N-Nitrosomorpholine	200	2,000	—	Coke oven emissions	6	60
56382	Parathion	20	200	0151508	Cyanide compounds	1,000	10,000
82688	Pentachloronitrobenzene	60	600	143339	Potassium cyanide	20	200
87865	Pentachlorophenol	140	1,400	—	Sodium cyanide	20	200
108952	Phenol	20	200	110805	Glycol ethers ¹⁹	1,000	10,000
106503	p-Phenylenediamine	2,000	10,000	111762	2-Ethoxy ethanol	2,000	10,000
75445	Phosgene	20	200	108864	Ethylene glycol monobutyl ether	2,000	10,000
7803512	Phosphine	1,000	10,000	—	2-Methoxy ethanol	2,000	10,000
7723140	Phosphorus	20	200	78002	Lead and compounds ²⁰	2	20
85449	Phthalic anhydride	1,000	10,000	75741	Tetraethyl lead	2	20
1336363	Polychlorinated biphenyls	1.8	18	7439965	Tetramethyl lead	2	20
1120714	1,3-Propane sultone	6	60	12108133	Manganese and compounds ²¹	160	1,600
57578	beta-Propiolactone	20	200	—	Methylcyclopentadienyl manganese	20	200
123386	Propionaldehyde	1,000	10,000	—	Mercury compounds ²²	2	20
114261	Propoxur	2,000	10,000	—	Elemental mercury	2	20
78875	Propylene dichloride	200	2,000	748794	Mercuric chloride	2	20
75569	Propylene oxide	1,000	10,000	10045940	Mercuric nitrate	2	20
75558	1,2-Propylenimine	0.6	60	62384	Phenyl mercuric acetate	2	20
91225	Quinoline	1.2	120	—	Nickel compounds ²³	200	2,000
106514	Quinone	1,000	10,000	13463393	Nickel carbonyl	20	200
100425	Styrene	200	2,000	12035722	Nickel refinery dust	16	160
96093	Styrene oxide	200	2,000	—	Nickel subsulfide	8	80
1746016	2,3,7,8-TCDD	.00012	.0012	56553	Polycyclic organic matter ²⁴	2	20
79345	1,1,2,2-Tetrachloroethane	60 ¹⁰	600	225514	Benz(a)anthracene	2	20
127184	Tetrachloroethylene	N/A ¹¹	10,000	50328	Benz(c)acridine	2	20
7550450	Titanium tetrachloride	20	200	205992	Benzo(a)pyrene	2	20
108883	Toluene	2,000	10,000	218019	Benzo(b)fluoranthene	2	20
95807	2,4-Toluene diamine	4	40	53703	Chrysene	2	20
584849	2,4-Toluene diisocyanate	20	200	189559	Dibenz(a,h)anthracene	2	20
95534	o-Toluidine	200	2,000	57976	1,2,7,8-Dibenzopyrene	2	20
8001352	Toxaphene	2	20	—	7,12-Dimethylbenz(a) anthracene	2	20
120821	1,2,4-Trichlorobenzene	2,000	10,000	193395	Indeno(1,2,3-c,d)pyrene	2	20
79005	1,1,2-Trichloroethane	N/A ¹²	2,000	7782492	Selenium compounds ²⁵	20	200
79016	Trichloroethylene	N/A ¹³	10,000	7783075	Hydrogen selenide	20	200
95954	2,4,5-Trichlorophenol	200	2,000	7488564	Selenium sulfide (mono and di)	20	200
88062	2,4,6-Trichlorophenol	1,200	10,000	13410010	Sodium selenate	20	200
121448	Triethylamine	2,000	10,000	10102188	Sodium selenite	20	200
1582098	Trifluralin	1,800	10,000	—	Total dioxin and furans ²⁶	0.00012	0.0012
540841	2,2,4-Trimethylpentane	1,000	10,000				
108054	Vinyl acetate	200	2,000				
593602	Vinyl bromide	120	1,200				
75014	Vinyl chloride	40	400				
75354	Vinylidene chloride	80	800				
1330207	Xylenes	2,000	10,000				
95476	o-Xylenes	2,000	10,000				
108380	m-Xylenes	2,000	10,000				
106423	p-Xylenes	2,000	10,000				
CHEMICAL COMPOUND CLASSES							
	Antimony compounds ¹⁴	1000	10,000				
7783702	Antimony pentafluoride	20	200				
8300745	Antimony potassium tartrate	200	2,000				
1309644	Antimony trioxide	200	2,000				
1345046	Antimony trisulfide	20	2,000				

³The reporting threshold for this air contaminant is based on hourly, rather than annual, emissions. Because this air contaminant is a TXS subject to the reporting threshold in Table A, the reporting threshold for this contaminant is 0.01 pounds per hour.

⁴See footnote 3.

⁵See footnote 3.

⁶See footnote 3.

⁷Emissions of this air contaminant must be reported if emissions exceed either the hourly emissions reporting threshold for a TXS in Table A (.01 pounds per hour), or the annual emissions threshold listed above in Table B.

⁸See footnote 3.

⁹See footnote 7.

¹⁰See footnote 7.

¹¹See footnote 3.

¹²See footnote 3.

¹³See footnote 3.

¹⁴Some compounds or subgroups included in this chemical group are also individually named in this table. If a compound or subgroup is individually listed, the threshold listed for the compound or subgroup takes precedence over the threshold listed for the chemical group as a whole. If a compound or subgroup is not individually listed, the threshold for the entire chemical group applies to each compound or subgroup included in the chemical group.

¹⁵See footnote 14.

¹⁶See footnote 14.

¹⁷See footnote 14.

¹⁸See footnote 14.

¹⁹See footnote 14.

²⁰See footnote 14.

²¹See footnote 14.

²²See footnote 14.

²³See footnote 14.

²⁴See footnote 14.

²⁵See footnote 14.

²⁶As defined in EPA/625/3-87/012, Interim Procedures for Estimating Risks Associated with Exposure to Mixtures of Chlorinated-p-Dioxins and Dibenzofurans.

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 appendix.

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).

Updated Table B.

SUBCHAPTER 9. SULFUR IN FUELS

Subchapter Historical Note

Amendments to this subchapter which replaced the earlier numbering and text were adopted pursuant to authority of N.J.S.A. 13:1D-1 et seq. and were filed on August 10, 1978, as R.1978 d.276 to become effective on October 12, 1978. See: 10 N.J.R. 234(a), 10 N.J.R. 383(c). Amendments which changed the effective date of these rules to December 31, 1978, or such earlier date as formal federal approval is granted was filed on October 10, 1978 as R.1978 d.361. See: 10 N.J.R. 479(c). Further amendments which changed the effective date to July 12, 1979, were filed and became effective on January 10, 1979, as R.1979 d.10. See: 11 N.J.R. 63(c).

This subchapter was previously amended by R.1976 d.81, effective March 12, 1976 (See: 8 N.J.R. 181(a)) and R.1976 d.100, effective March 31, 1976 (See: 8 N.J.R. 222(a)). Formal federal approval for these amended rules was obtained on June 4, 1979.

7:27-9.1 Definitions

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

“Aerodynamic downwash” means the rapid descent of a plume to ground level with little dilution and dispersion as a result of alteration of background air flow characteristics caused by the presence of buildings or other obstacles in the vicinity of the emission point.

“Air quality simulation model” means a mathematical procedure for predicting the ambient air concentration of pollutants resulting from the dispersive properties of the atmosphere.

“Ambient air quality standard” means a limit on the concentration of a contaminant in the general outdoor atmosphere, which cannot be exceeded without causing or tending to cause injury to human health, welfare, animal or plant life, or property, or unreasonably interfering with the enjoyment of life and property, excluding all aspects of employer-employee relationship as to health and safety hazards.

“Carbon dioxide (CO₂)” means a colorless, odorless gas at standard conditions, having a molecular composition of one carbon atom and two oxygen atoms.

“Fuel” means gaseous, liquid, or liquefiable petroleum product (excluding coal) which is produced, manufactured, used or sold for the purpose of creating useful heat.

“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.

“Mathematical combination” means the summation of the emissions from two or more stacks or chimneys and the regulation of those emissions as if they came from the same sources venting through a single stack.

“Motor vehicle” means any vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks.

“Municipal solid waste (MSW)” means residential, commercial, and institutional non-hazardous solid waste.

“Solid fuel” means solid material or any substance derived from solid material used or to be used for the purpose of creating useful heat and includes, but is not limited to, coal, gasified coal, liquified coal, solid solvent-refined coal, municipal solid waste, refuse-derived fuel, and wood.

“SSU viscosity” means the number of seconds it takes 60 cubic centimeters of an oil to flow through the standard orifice of a Saybolt Universal viscometer at 100 degrees Fahrenheit.

“Stack or chimney” means a flue, conduit or opening designed, constructed, and/or utilized for the purpose of emitting air contaminants into the outdoor air.

“Sulfur dioxide (SO₂)” means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms.

“Viscosity” means the measure of a fluid’s resistance to flow.

"Zone 1" means Atlantic, Cape May, Cumberland, and Ocean Counties.

"Zone 2" means Hunterdon, Sussex, and Warren Counties.

"Zone 3" means Burlington, Camden, Gloucester, and Mercer Counties except those municipalities included in Zone 6.

"Zone 4" means Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties.

"Zone 5" means Salem County.

"Zone 6" means in Burlington County, the municipalities of Bass River Township, Shamong Township, Southampton Township, Tabernacle Township, Washington Township, Woodland Township, and in Camden County, Waterford Township.

As amended, R.1982 d.456, effective December 6, 1982 (operative February 4, 1983).

See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).

"Air quality simulation model", "Mathematical combination", "Municipal solid waste", and "solid fuel" defined.

Administrative correction to delete definition "Oxygen".

See: 23 N.J.R. 1166(b).

7:27-9.2 Sulfur content standards

(a) No person shall store, offer for sale, sell, deliver or exchange in trade for use in New Jersey fuel which contains sulfur in excess of a percentage by weight set forth in Table 1 of this section, except as provided in (c), (d) and (e) below, and N.J.A.C. 7:27-9.5.

(b) No person shall use fuel which contains sulfur in excess of a percentage by weight set forth in Table 1 of this section, except as provided in (c), (d), and (e) below, and N.J.A.C. 7:27-9.5.

TABLE 1

MAXIMUM ALLOWABLE SULFUR IN FUEL

Typical Grades of Fuel Oil	Classification by SSU Viscosity at 100°F	Percent Sulfur by Weight			
		Zone 1	Zone 2 & Zone 5	Zone 3	Zone 4 & Zone 6
No. 2 & lighter	Less than or equal to 45, in- cluding gases	0.3%	0.3%	0.2%	0.2%
No. 4	Greater than 45 but less than 145	2.0%	0.7%	0.3%	0.3%
No. 5, No. 6 & heavier	Equal to or greater than 145	2.0%	1.0%	0.5%	0.3%

(c) The provisions of (a) and (b) above shall not apply to fuels whose combustion causes sulfur dioxide emissions from any stack or chimney into the outdoor atmosphere which are demonstrated to the Department as not exceeding, at any time, those quantities of sulfur dioxide expressed in pounds per 1,000,000 British Thermal Units (BTU) gross heat input, set forth in Table 2 of this section.

TABLE 2
MAXIMUM ALLOWABLE SULFUR
DIOXIDE EMISSIONS

Typical Grades of Fuel Oil	Classification by SSU Viscosity at 100°F	SO ₂ Emissions (lbs./10 ⁶ BTU)			
		Zone 1	Zone 2 & Zone 5	Zone 3	Zone 4 & Zone 6
No. 2	Less than or equal to 45	0.32	0.32	0.21	0.21
No. 4	Greater than 45 but less than 145	2.10	0.74	0.32	0.32
No. 5, No. 6 & heavier	Equal to or greater than 145	2.10	1.05	0.53	0.32

(d) The provisions of (a) and (b) above shall not apply to fuels included in an alternative emission control plan based on a mathematical combination approved by the Department. Application for such approval shall be made to the Department in writing and must include:

1. Certification that all source operations to be included in the mathematical combination are under the control of, or operated by, one person; and
2. Certification that the total sulfur dioxide emissions from the mathematical combination during each 24-hour period will not exceed the quantity of sulfur dioxide expressed in pounds per million BTU gross heat input set forth in Table 2 of this section; and
3. Certification that the total sulfur dioxide emissions from the mathematical combination during each 24-hour period will not exceed the maximum total weight of sulfur dioxide that all the sources in the mathematical combination were allowed to emit at the time of applying; and
4. Identification of each fuel burning unit and stack to be included in the mathematical combination; and
5. Identification of the grades of fuel to be burned in each unit, the maximum sulfur content of each fuel to be burned in each unit, the maximum gross heat input rate for each unit, the higher heating value of each fuel, and the annual fuel use and operating hours per year for each unit; and

APPENDIX

The following table highlights the provisions of N.J.A.C. 7:27-15.5(g) to show generally the exhaust emissions test or OBD inspection to be administered to each category of vehicle inspected or reinspected:

Test/model year idle	1980 and older all	1981-1995 GVWR > 8500	1996 and newer* GVWR > 8500
2,500.RPM	—	all-wheel drive, low mileage, etc. school bus	all-wheel drive, low mileage, etc. school bus
ASM5015	—	all others not cov- ered above	all others not cov- ered above
OBD (after 6/1/2003)	—	—	all OBD-equipped and eligible

* Note: On and after June 1, 2003, an OBD-equipped and eligible motor vehicle will receive an OBD inspection.

New Rule, R.2003 d.47, effective January 21, 2003 (operative February 18, 2003).

See: 34 N.J.R. 1811(a), 35 N.J.R. 429(a).

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

Subchapter Historical Note

Subchapter 16 was adopted as R.1975 d.377, effective March 1, 1976. See: 7 N.J.R. 47(c), 8 N.J.R. 15(b). The subchapter was amended by R.1979 d.414, effective December 17, 1979. See: 10 N.J.R. 477(b), 11 N.J.R. 544(b). Further amendments were filed as R.1982 d.3, effective February 1, 1982 (operative, March 1, 1982). See: 13 N.J.R. 127(a), 14 N.J.R. 145(b). See section annotations for further rulemaking activity.

7:27-16.1 Definitions

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

“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.

“Agitator” means an apparatus with an external seal used to shake, stir, or mix material in an enclosed vessel.

“Air contaminant” means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

“Airless cleaning system” means a solvent cleaning machine that operates under vacuum and seals at a differential pressure of 0.50 pounds per square inch or less, prior to the introduction of solvent or solvent vapor into the cleaning

chamber, and maintains this differential pressure under vacuum during all cleaning and drying cycles.

“Airless spray” means a spray coating method in which the coating is atomized by forcing it through a small nozzle opening at high pressure. The coating is not mixed with air before it exits from the nozzle opening.

“Air-tight cleaning system” means a solvent cleaning machine that seals at a differential pressure of 0.50 pounds per square inch or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber, and maintains this differential pressure during all cleaning and drying cycles.

“Applicable VOC” means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.

“Asphalt” means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

“ASTM” means the American Society for Testing and Materials.

“Automated parts handling system” means, with respect to a solvent cleaning machine, a mechanical device that carries parts and/or baskets containing parts at a controlled speed from the initial loading of soiled or wet parts through the removal of the cleaned or dried parts.

“Automobile or light duty truck surface coating operation” means the application, flash-off, and curing of the primer, topcoat, and repair coat on the main body and other exterior sheetmetal of any passenger car or passenger car derivative capable of seating 15 or fewer passengers, or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross vehicle weight or less which is designed primarily for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. This term includes the entire coating application system, including all spray booths, flash-off areas, and ovens in which surface coating formulations within the same spray primer, topcoat, or repair operation category are applied, dried and cured.

“Automotive elastomeric coating” means a coating designed for application over surfaces of flexible mobile equipment and mobile equipment components, such as elastomeric bumpers.

“Automotive impact resistant coating” means a coating designed to resist chipping caused by road debris.

“Automotive jamming clear coat” means a fast-drying, ready-to-spray clear coat applied to surfaces such as door jambs and trunk and hood edges to allow for quick closure.

"Automotive lacquer" means a thermoplastic coating applied directly to the bare metal surfaces of mobile equipment and mobile equipment components which dries primarily by solvent evaporation, and which is resoluble in its original solvent.

"Automotive low-gloss coating" means a coating which exhibits a gloss reading less than or equal to 25 on a 60(glossmeter.

"Automotive multi-colored topcoat" means a topcoat that exhibits more than one color, is packaged in a single container, and camouflages surface defects on areas of heavy use, including, but not limited to, cargo beds and other surfaces of trucks and other utility vehicles.

"Automotive pretreatment" means a primer that contains a minimum of 0.5 percent acid, by weight, that is applied directly to the bare metal surfaces of mobile equipment and mobile equipment components to provide corrosion resistance and to promote adhesion of subsequent coatings.

"Automotive primer-sealer" means a coating applied to mobile equipment and mobile equipment components prior to the application of a topcoat to provide corrosion resistance, to promote adhesion of subsequent coatings, to promote color uniformity, and to promote the ability of the undercoat to resist penetration by the topcoat.

"Automotive primer-surfacer" means a coating applied to mobile equipment and mobile equipment components prior to the application of a topcoat for the purpose of:

1. Filling surface imperfections in the substrate;
2. Providing corrosion resistance; and
3. Promoting adhesion of subsequent coatings.

"Automotive specialty coating" means a coating which has been determined by the Department to have only specialized, relatively low-volume uses. This term includes, but is not limited to, elastomeric coatings, adhesion promoters, low gloss coatings, bright metal trim repair coatings, jamming clear coats, impact resistant coatings, rubberized asphaltic underbody coatings, uniform finish blenders, or weld-through primers applied to automotive surfaces and lacquer topcoats applied to a historic motor vehicle.

"Automotive topcoat" means a coating or a series of coatings applied over an automotive primer-surfacer, automotive primer-sealer or existing finish on the surfaces of mobile equipment and mobile equipment components for the purpose of protection or beautification.

"Automotive touch up repair and refinish" means an application of automotive topcoat to cover minor finishing imperfections which are equal to or less than one inch in diameter.

"Background concentration" means, with respect to the measurement of the emission of VOC from a component, the concentration of VOC in the ambient air as determined within the facility and at least one meter upwind of the component being tested.

"Ballasting" means the loading of water or other liquid into a marine tank vessel's cargo tank to obtain proper propeller, rudder, and hull immersion.

"Batch" means the material retained in a batch operation, measured at any instant prior to, during, or at the completion of the conversion.

"Batch cycle emission rate" means the total emissions of air contaminants per batch divided by the batch cycle time in hours.

"Batch cycle time" means the total elapsed time per batch in any single manufacturing process vessel, including all phases of the operation during which the vessel contains process materials, excluding time waiting for removal from the vessel.

"Batch operation" means a type of manufacturing process in which fixed amounts of one or more process materials are introduced into a manufacturing process vessel where they are retained for a prescribed amount of time during which they are converted. Starting materials for a batch are not introduced into the vessel until the previous batch has been removed.

"Batch mix asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Batch vapor cleaning machine" means a vapor cleaning machine in which the individual parts or a set of parts that are being cleaned move through the entire cleaning cycle before new parts are introduced into the cleaning machine. The term includes, but is not limited to, solvent cleaning machines, such as ferris wheel cleaners or cross rod machines, that clean multiple loads simultaneously and that are manually loaded.

"Blowdown event" means the non-emergency release of natural gas from a pipeline for the purposes of inspection, maintenance, or repair and where, in the absence of control, more than 2,000 pounds of VOC could be released to the atmosphere.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Calendar day" means the 24 hour period from 12 o'clock midnight to 12 o'clock midnight the following day.

"Can coating" means exterior and interior spray coating in two-piece can lines; interior and exterior coating in sheet coating lines for three-piece cans; side seam spray coating and interior spray coating in can fabricating lines for three-piece cans; and sealing compound application and sheet coating in end coating lines.

"Capture efficiency" means the amount of VOC entering a capture system and delivered to a control device expressed as a ratio of the total VOC generated by a source of VOC.

"CARB" means the California Air Resources Board.

"Carbon adsorber" means a bed of activated carbon into which an air/solvent, gas/vapor or liquid stream is routed and which adsorbs certain compound(s) found in the stream onto the carbon.

"Carbon monoxide" or "CO" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Cartridge filtration system" means a system in which perforated canisters containing filtration paper and/or activated carbon are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent.

"Catalytic oxidizer" means a type of control apparatus which reduces the emission of air contaminants by causing the air contaminant molecules to decompose by oxidation, accomplished by preheating the gases being emitted to a predetermined temperature, which is less than required for thermal oxidation, and contacting the preheated gases with catalysts to promote decomposition.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

"Chemical plant" means any facility, or any part thereof, classified within the Standard Industrial Code (SIC) Major Group 28, "Chemical and Allied Products."

"Clear coating" means a coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color and any coating used as an interior protective lining on any cylindrical metal shipping container of greater than one gallon capacity.

"Clear topcoat" means the final coating, which contains binders by not opaque pigments and which is specifically formulated to form a transparent or translucent solid protective film on wood furniture.

"CO" means carbon monoxide.

"Coating of flat wood paneling" means the coating of hardwood, plywood, particle board, and hardboard paneling,

excluding the coating of exterior siding, tile board, or particle board used in furniture manufacturing.

"Coating of miscellaneous metal parts and products" means the application of any coating, excluding an adhesive, to any metal part or product including, but not limited to, large and small farm machinery, small appliances, office machinery, vending machines, industrial machinery, metal-covered doors, door frames, and electrical machinery.

"Coating of wood furniture" means the application of any surface coating formulation to any furnishing made of wood or a composite of wood including, but not limited to, kitchen cabinets, equipment cabinets, household furniture and office furniture.

"Coil coating" means the coating of any flat metal sheet or strip available in rolls or coils.

"Cold cleaning machine" means a solvent cleaning machine, containing and/or using an unheated liquid which contains greater than five percent VOC or five percent HAP by weight, into which parts are placed for the purpose of removing dirt, grease, oil or other contaminants and coatings from the surfaces of the parts. This term includes both immersion cold cleaning machines and remote reservoir cold cleaning machines. The term does not include vapor cleaning machines and machines which do not have a solvent/air interface, such as airless and air-tight cleaning systems.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for commencing technical review of the application. Designating an application complete for purposes of commencing technical review does not preclude the Department from requesting or accepting any additional information.

"Component" means, with respect to leak detection and repair, any part of a source operation, including any equipment and control apparatus, from which emissions of air contaminants may be released into the ambient air. This term includes, but is not limited to, any agitator, valve, flange, fitting, gasket, seal, joint, pump, compressor, pressure relief device, diaphragm, manhole, hatch, sight-glass, instrument connection or other connection, meter, or associate equipment. This term does not include a designed emission point of a stack or chimney.

"Compressor" means a device used to compress gases or vapors by the addition of energy, and includes all associated components used to make connections or seals.

"Conductive ink" means an ink used in screen printing which contains material that permits electric current to flow through printed lines or patterns.

"Conservation vent" means any valve designed and used to reduce evaporation losses of any VOC by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

"Construction ballast" means the filling of an underground storage tank with any VOC, including gasoline, to provide stability during construction.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Conveyorized surface cleaner" means a surface cleaner through which the parts to be cleaned are moved by means of a continuous, automatic system.

"Custom topcoating" means, with respect to automobiles and light duty trucks, the application of surface coating formulations, except during original equipment manufacturing, to the main body or other exterior areas of any passenger car or any motor vehicle capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans, to achieve a finish that meets individual specifications, including, but not limited to, custom color, design, or gloss. It shall not include the use of adhesion promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.

"Cutback asphalt" means any paving asphalt which has been liquefied by blending with petroleum solvents, or produced directly from the distillation of petroleum having vaporization properties similar to the blended and liquefied asphalt.

"Day" means calendar day.

"Delivery vessel" means any vehicle designed and constructed or converted to be capable of transporting liquid VOC cargo such as gasoline or fuel oil. This term includes, but is not limited to, tank trucks, tank trailers, railroad tank cars, and marine tank vessels.

"Department" means the New Jersey Department of Environmental Protection.

"Destruction efficiency" means the amount of VOC destroyed or removed by a control device expressed as a ratio of the total VOC entering the device.

"Development" means investigations in a laboratory or pilot plant directed toward the structuring or establishment of methods of manufacture or of specific designs of salable substances, devices or procedures, based upon previously discovered facts, scientific principles or substances. Development shall not include production for sale of established products through established processes; nor shall it include production in plant, works or semi-works equipment for distribution through market-testing channels.

"Difficult to monitor component" means any component located over 15 feet above ground when access is required from the ground, or any component located 9.6 feet away from a platform when access is required from a platform.

"Dilution gas" means air or gas from any source whatsoever added to the source gas emitted from a source operation.

"Distillates of air" means helium (He), nitrogen (N₂), oxygen (O₂), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO₂).

"DOT" means the United States Department of Transportation.

"Double seal floating roof" means a floating roof with two complete and separate seal-envelope combinations, one above the other, containing an enclosed space between them. At least one of the seals must be supported by a mechanism which maintains constant seal contact with the inner surface of the vessel walls, despite surface and altitude irregularities.

"Down time" means, with respect to a solvent cleaning machine, the period when a solvent cleaning machine is not cleaning parts and the sump heating coils, if present, are turned off.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Dwell" means, with respect to the operation of a solvent cleaning machine, the holding of parts after cleaning within the freeboard area and above the solvent vapor zone of a solvent cleaning machine, to allow solvent to drain from the parts or the basket holding the parts back into the solvent cleaning machine.

"Dwell time" means, with respect to the operation of a batch vapor cleaning machine or an in-line vapor cleaning machine, the period of time which begins when a parts basket is placed above the vapor zone of the vapor cleaning machine and which ends when solvent dripping ceases.

"Emission statement" means a report of the actual annual emissions of a facility submitted by the owner or operator to the Department pursuant to the requirements of N.J.A.C. 7:27-21.

"Emulsified asphalt" means asphalt which has been liquefied by mixing with water and an emulsifying agent.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Exclusion rate" means that rate at or below which the emission of an air contaminant into the outdoor atmosphere is not required to be controlled.

"Exempt organic substance" means an organic substance which is one of the chemical compounds specifically not included in the term "volatile organic compound" or "VOC" as defined in this section.

"External floating roof" means a movable roof in an otherwise open top storage vessel consisting of a floating deck resting on the surface of the liquid contents, a continuous seal supported against the inner surface of the tank shell, and an envelope closing the gap between the floating deck and the seal, the entire deck-seal-envelope combination free to rise and fall with the surface of the liquid during filling and emptying of the storage vessel.

"Extreme performance coating" means a coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all of the time, or temperatures consistently above, 95(C, or temperatures consistently below 0(C, or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Fabric coating" means the application of any surface coating formulation, except ink and plastisol, to a textile substrate in a fabric coating line.

"Fabric printing operation" means the decorative enhancement of knit or woven cloth including webs, sheets and towels, by applying a pattern or colored design with inks, dyes, or print pastes by techniques including, but not limited to, roller, flat screen, rotary screen, and silk screen printing.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. For the

purposes of this definition, each natural gas pipeline compressor or pump station and each section of natural gas pipeline between such compressor or pump station shall constitute a separate natural gas pipeline facility.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions that can be enforced by EPA. The foregoing limitations and conditions that can be enforced by EPA include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP;
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or
5. Any permit or order issued pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or this chapter.

"Fill pipe" means a device through which liquid is transferred into a receiving vessel.

"First attempt at repair" means rapid action taken for the purpose of stopping or reducing a leak. First attempts at repair include, but are not limited to, the following practices where practicable: tightening of packing gland nuts, tightening of flanges, and ensuring that the seal flush is operating at design pressure and temperature.

"Fitting" means a component used to attach or connect pipes or piping details including, but not limited to, flanges and threaded connections.

"Flare" means a device used for the destruction of waste or by-product gases by passing them through a flame and

then directly into the outdoor atmosphere. Thermal oxidizers are not flares.

"Flexographic printing operation" means a system of transferring images onto a substrate through first applying ink to an inking roller which in turn transfers the ink onto the raised image areas of a rubber or elastomeric plate secured to a second roller, which then transfers the ink onto the substrate.

"Floating roof" means an external or internal pontoon type or double-deck type roof resting on the surface of the liquid contents in a storage vessel, and equipped with a mechanism providing one or more tight seals in the space between the floating roof rim and the vessel shell throughout the entire vertical travel distance of the roof, or any other floating type mechanism approved by the Department for the purpose of preventing air contaminants from being discharged into the outdoor atmosphere.

"Fountain solution" means an aqueous solution used in graphic arts operations to dampen the plate and prevent the non-image areas of the plate from accepting the hydrophobic inks used.

"Freeboard height" means, with respect to a solvent cleaning machine, the vertical distance determined as follows:

1. For a cold cleaning machine, the distance from the solvent-containing liquid to the top edge of the machine; or
2. For a vapor cleaning machine, the distance from the top of the solvent vapor layer to the top edge of the machine.

"Freeboard ratio" means, with respect to a solvent cleaning machine, a ratio of the machine's freeboard height to the width of its tank (that is, to the tank's narrower dimension at the tank lip).

"Freeboard refrigeration device" means a set of secondary coils mounted in the freeboard area of a solvent cleaning machine that carries a refrigerant or other chilled substance to provide a chilled air blanket above the solvent vapor. This term includes a solvent cleaning machine's primary condenser, if it is capable of maintaining a temperature in the center of the chilled air blanket of not more than 30 percent of the boiling point for the solvent used.

"Fuel" means solid, liquid or gaseous materials used to produce useful heat by burning.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the atmosphere which do not pass through a stack or chimney.

"Gaseous leak" means the emission of applicable VOC directly or indirectly to the atmosphere as a gas or vapor from a hole, crevice, or other opening in a component, other than an emission that is in accordance with the component's design during normal operations.

"Gaseous service" means contact with applicable VOC that is in the gaseous state at operating conditions.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenated blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, and commonly or commercially known or sold as gasoline.

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, in which blades are driven by combustion gases, and which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Glass coating" means the application of any surface coating formulation to a glass surface, such as those of glass lamps or bulbs.

"Graphic arts operation" means the application of one or more surface coating formulations across portions of a surface using one or more rotogravure or flexographic printers used to produce published material and packaging for commercial or industrial purposes, or any rotogravure or flexographic printers used to produce vinyl or urethane coated fabric or sheets, or any sheet-fed gravure, screen printing, or fabric printing operations together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

"Gravure printing operation (sheet-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed in single sheets, onto the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Hatch" means a system, including a cover which may be opened or closed, that provides access to the interior of a tank or other enclosed container.

"Hazardous air pollutant" or "HAP" means an air contaminant listed in or pursuant to subsection (b) of section 112 of the Clean Air Act (42 U.S.C. § 7412).

"Historic motor vehicle" means any motor vehicle which is at least 25 years old and which is owned as a collectors item and used solely exhibition and education purposes by the owner.

"Hydrocarbons" or "HC" means any compound or mixture of compounds whose molecules consist of atoms of hydrogen and carbon only.

"Idle time" means, with respect to a solvent cleaning machine, the period when a solvent cleaning machine is not actively cleaning parts, but the sump heating coil, if present, is turned on.

"Immersion cold cleaning machine" means a cold cleaning machine in which the part or parts to be cleaned are immersed in the solvent during the cleaning process.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis to oxidize, reduce or salvage any material or substance. "Incinerator" does not include thermal or catalytic oxidizers used as control apparatus on equipment, but it does include (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.

"Industrial wastewater treatment system" means any structure or structures by means of which industrial liquid waste or sludges are subjected to any treatment process requiring the issuance of an individual NJPDES permit regulated by the Department pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Ink transfer" means a decal, printed using screen printing onto a special release carrier, that will be transferred from the carrier to a substrate. Final transfer of the decal to the substrate may or may not occur at the screen printing facility.

"In-line vapor cleaning machine" means a vapor cleaning machine that uses an automated parts handling system, typically a conveyor, to automatically provide a supply of parts to be cleaned and which is fully enclosed except for the conveyor inlet and exit portals.

"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations.

"Large appliance coating" means the application of any coating to the component parts of large appliances including, but not limited to, doors, cases, lids, panels, and interior supports of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other associated products.

"Leak" means a gaseous leak or a liquid leak of applicable VOC.

"Leather coating" means the application of any surface coating formulation to a leather substrate in a leather coating line.

"Light liquid" means a fluid with vapor pressure greater than 0.044 pounds per square inch absolute (2.27 millimeters of mercury) at 68(F).

"Light liquid service" means contact with a fluid that is 10 percent or greater by weight light liquid.

"Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16, other than a release of liquid VOC in accordance with the component's design during normal operations. The presence of a drop, drip, accumulation, pool, or other visible evidence of a liquid, applicable VOC demonstrates that a liquid leak has occurred.

"Liquid particles" means particles which have volume but are not of rigid shape.

"Liquid service" means contact with applicable VOC that is in the liquid state at operating conditions.

"Lithographic printing operation" means printing by a planographic method in which the image and nonimage areas are on the same geometric plane.

"Local exhaust ventilation" means a system for capturing air contaminants within 36 inches (91.4 centimeters) of the points at which they emerge from a source operation.

"Magnet wire coating" means the application of electrically insulating varnish or enamel to aluminum or copper wire.

"Major VOC facility" means any facility which has the potential to emit 25 or more tons of VOC per year.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders,

mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, or absorbers.

"Manufacturing process vessel" means any container wherein a manufacturing process, or any part thereof, takes place.

"Marine tank vessel" means any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to be capable of carrying liquid cargo in tanks.

"Marine terminal" means any facility, or part thereof, at which liquid cargo is loaded into or unloaded out of marine tank vessels.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the combustion source. This term is expressed in BTUs per hour, based on the highest BTU value of the fuels combusted.

"Metal furniture coating" means the coating in a metal furniture coating line of any metal part which will be assembled with other metal, wood, fabric, plastic, or glass parts to form a piece of furniture.

"Mobile equipment" means equipment which may be driven or is capable of being driven or pulled on a roadway including, but not limited to, automobiles, trucks, including truck cabs, truck bodies and truck trailers, buses, motorcycles, camper shells, mobile cranes, bulldozers, street cleaning machines, golf carts, ground support vehicles used in support of aircraft activities at airports, and farm equipment.

"Natural gas/gasoline processing plants" means facilities engaged in the separation of natural gas liquids from field gas and/or fractionation of the liquids into natural gas products such as ethane, propane, butane, and natural gasoline. Excluded from the definition are compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems unless these facilities are located as a gas plant.

"New Jersey's coastal waters" means the Atlantic Ocean area and all areas under tidal influence within three nautical miles (5,566 meters) of the mean high water line as measured from the New Jersey coast, except that, if at any point along the line of measurement, within or beyond three nautical miles (5,566 meters), there is a meeting of waters under the exclusive jurisdiction of any other State or the United States of America, New Jersey's jurisdiction shall end at that point. Any point of measurement shall be taken from a point of New Jersey land, permanent or nonpermanent, and extended azimuthally to a distance of three nautical miles (5,566 meters) or to the point where another State or the United States of America has jurisdiction.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"Offset lithography" means a planographic method of printing in which the image and nonimage areas are on the same plane and where the ink is transferred from an image plate on one cylinder to an image blanket on a different cylinder. The ink is finally transferred from the image blanket to the surface to be printed.

"Opaque stain" means all stains that contain pigments but are not classified as semitransparent stains, and includes stains, glazes, and other opaque material applied to wood surfaces.

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

"Open top tank" means any vessel in which a manufacturing process, or any part thereof, takes place during which there is an opening to the atmosphere greater than 25 percent of the surface area of any liquid substance contained therein.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Operating permit" means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

"Order" means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

"Other wastewater treatment system" means any structure or structures by means of which liquid waste or sludges (other than industrial liquid waste or sludges) are subjected to any treatment process requiring the issuance of an individual NJPDES permit pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Paper coating" means:

1. The application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of the substrate, including paper, fabric, or plastic film;

2. Related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film, and magnetic tape; or

3. Decorative coating on metal foil including, but not limited to, gift wrap and packaging.

This term does not include any graphic arts operation.

"Pipe coating" means the application of any coating to a pipe comprised of any material except plastic.

"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.

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

"Penetrating prime coat" means a low-viscosity liquid asphalt applied to a surface in order to prepare it for paving with an asphalt concrete.

"Permit" means preconstruction permit, operating permit, or facility-wide permit.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of VOC produced by condensing vapors of petroleum during distillation, including, but not limited to, naphthas, aviation gasoline, motor gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum solvents.

"Petroleum solvent dry cleaning" means a process in which textile and fabric articles are washed in a solution of organic material, and then dried by exposure to a heated air stream. The organic material is produced by petroleum distillation and is comprised of a hydrocarbon range of 8 to 12 carbon atoms per organic molecule.

"Pigmented coat" means opaque coatings that contain binders and colored pigments and are formulated to conceal the wood surface either as an undercoat or topcoat.

"Planography" means any method of printing from a flat surface.

"Plastic part" means a piece made from a substance that has been formed from a natural or synthetic resin through the application of pressure or heat or both.

"Plastisol" means a surface coating formulation that is a dispersion of finely divided polymeric resin in a high boiling solvent or softening agent that is added to increase flexibility or toughness and includes plastisols to which volatile solvent has been added.

"Platform" means any elevated horizontal surface, either temporary or permanent, used for the purpose of gaining access to a component.

"Positive pressure ventilation" means any ventilation system in which pressurized air from a compressed air manifold, fan, or similar device is blown into a work area.

"Potential to emit" means the maximum capacity of a source operation or a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is Federally enforceable. If there is no Federally enforceable limitation on the hours of operation of a source operation, then any determination of the maximum design capacity shall be based on a presumption of operation at 8760 hours per year. This term includes the fugitive emissions emitted by the source operation or facility as calculated in a manner consistent with the provisions of N.J.A.C. 7:27-21 and current guidance issued by the Department pursuant thereto.

"Pollution prevention" shall have the same meaning as defined for this term at N.J.A.C. 7:1K-1.5.

"Ppm" means parts per million.

"Ppmvd" means parts per million by volume, dry basis. This is the number of parts in a mixture, by volume, which are of the specified substance, not including the number of parts contributed by water.

"Preconstruction permit" means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C.

"Pressure relief device" means a type of component which is installed for safety to relieve elevated pressure within equipment, or within a conduit or duct serving equipment. Such a component is designed to release material contained within the system when the pressure within the system exceeds a set level.

"Pressure relief valve" means a type of pressure relief device which consists of a valve that automatically opens when the pressure within the system exceeds a set level and closes when the pressure drops below that level.

"Primary condenser" means, with respect to a vapor cleaning machine, a series of circumferential cooling coils located in the machine through which a chilled substance is circulated or recirculated to provide continuous condensation of rising solvent vapors, to create a concentrated vapor zone.

"Process emission rate" means the mass rate of air contaminants emitted from the final source operation of a process, exclusive of any type of control apparatus or product recovery device.

"Process unit shutdown" means a regularly scheduled work practice or operational procedure that stops production from a process unit or part of a process unit for 24 hours or such other longer time as the owner or operator of the unit establishes to be necessary for the removal of the process material so that repairs to the unit can be carried out in a safe manner. The use of spare equipment without stopping production is not a process unit shutdown.

"Psi" means pounds per square inch.

"Pump" means a device used to transport fluids by the addition of energy, and includes all associate components used to make connections or seals.

"Receiving vessel" means any vessel into which an applicable VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

"Reduce room draft" means, with respect to the operation of a solvent cleaning machine, to decrease the flow or movement of air across the top of the freeboard area of the solvent cleaning machine to less than 50 feet per minute (15.2 meters per minute) by methods including, but not limited to, redirecting fans and/or air vents, moving the machine to a corner or other area in the room where there is less flow or movement of air, or constructing a partial or complete enclosure around the machine.

"Refinishing" means, with respect to automobiles and light duty trucks, the recoating of the main body or other exterior areas of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transportation, of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. It shall not include the use of adhesive promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Regulated leak" means any gaseous leak of applicable VOC at a concentration or level above any applicable limit established in Tables 18A and 18B and any liquid leak of an applicable VOC.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (or kilopascals) at 100 degrees Fahrenheit ((F) (37.8 degrees Celsius ((C)) as measured by "Method 3 Evacuated Chamber Method" promulgated at 40 CFR 80, Appendix E; or any other equivalent test method approved in advance in writing by the Department and the EPA.

"Remote reservoir cold cleaning machine" means a cold cleaning machine in which liquid solvent is pumped into a sink-like work area where the cleaning of parts occurs, and from which the solvent is immediately drained back into an enclosed container or reservoir, so that no solvent is allowed to pool in the work area.

"Repair" means, with respect to a VOC leak, a corrective action taken to eliminate the leak or reduce the leak to below regulated levels.

"Research" means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

"Rotogravure printing operation (web-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming an image or a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed from a continuous roll, over the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Rupture disc" means a type of pressure relief device which is designed to fracture, rupture, or burst under pressure when the pressure within the system exceeds a set level. Such a device is commonly a diaphragm held between flanges, which under conditions of normal operation remains intact and prevents gases from being released from the system.

"Screen printing operation" means a system of transferring images onto a substance in which the printing ink passes through a fabric to which a stencil has been applied. The openings in the stencil determine the form and dimensions of the imprint.

"Seal-envelope combination" means a barrier to the passage of VOC vapors between a floating roof and the inner surface of a storage vessel wall, consisting of a seal which maintains constant contact with the wall as the floating roof rises and descends with the level of the stored VOC, and a membrane, diaphragm, fabric, or blanket, known as an envelope, which spans the gap between the floating roof and the seal and which is vapor-tight.

"Sealer" means coatings containing binders that seal a wood surface prior to application of subsequent coatings.

"Semitransparent stain" means stains that contain dyes and/or semitransparent pigments and are formulated to enhance wood grain and to change the color of the surface, but not to conceal the surface; including sap stain, toner, nongrain raising stains, pad stain, spatter stain, and other semitransparent stains.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Small appliances" means devices used primarily in households and offices including, but not limited to, fans, mixers, blenders, dehumidifiers, toasters, toaster-ovens, slow pot cookers, food processors, portable heaters, lamps, typewriters, staplers, and paper punches.

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

"Solvent/air interface" means, with respect to a solvent cleaning machine, the interface between the concentrated solvent vapor layer and the air. For a vapor cleaning machine, this contact point is defined as the plane at the midline height of the primary condenser coils. For a cold cleaning machine, this contact point is defined as the plane of contact between the liquid solvent and the air.

"Solvent cleaning machine" means a device or piece of equipment that uses solvent, in a liquid or vapor state, to remove contaminants, such as dirt, grease, oil, and coatings, from the surfaces of materials. Types of solvent cleaning machines include, but are not limited to, vapor cleaning machines, cold cleaning machines, and airless and air-tight cleaning systems.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to liquefy and recover solvent vapors evaporated in a closed-loop, recirculating stream of heated air.

"Source gas" means air or gases passed through, or generated by, a source operation and discharged from the source operation.

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus.

"Special purpose screen printing inks and coatings" means inks and coatings used in screen printing which are used to print ink transfers, or are designed to resist or withstand any of the following: more than two years of outdoor exposure, exposure to chemicals, solvents, acids, detergents, oil products or cosmetics, temperatures in excess

of 170 degrees Fahrenheit, vacuum forming, embossing or molding.

"Stack or chimney" means a flue, conduit or opening designed, constructed or utilized for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit ((F) (21.1 degrees Celsius ((C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Standard Industrial Classification Code" or "SIC Code" means the system devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

"State implementation plan" or "SIP" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 U.S.C., § 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine, or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts fuel for the purpose of producing steam.

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and
2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Submerged fill pipe" means a fill pipe whose point of discharge into the receiving vessel is entirely submerged when the liquid level is no more than 6 inches (15.2 centimeters) above the vessel bottom or, in the case of a top or side-entering fill pipe, when the liquid level is no more than three times the inside radius of the fill pipe plus 5

inches (12.7 centimeters), but no more than 42 inches (106.7 centimeters), above the vessel bottom.

"Superheated vapor system" means, with respect to a vapor cleaning machine, a system that heats the solvent vapor to a temperature that is at least ten degrees Fahrenheit above the solvent's boiling point. In such a system parts are held in the superheated vapor and then exit the machine.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of non-porous or non-absorbent materials by using VOC solvents in liquid or vapor state.

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, paint, varnish, ink, or adhesive, applied to or impregnated into a substrate. This term includes such material whether used in a surface coating or graphic arts operation.

"Surface coating formulation as applied" or "coating as applied" means the volume, in gallons or liters, of any surface coating formulation used in a surface coating operation, including any diluents or thinners added.

"Surface coating operation" means the application of one or more surface coating formulations across an entire surface, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web. This term does not include any graphic arts operation.

"Synthetic organic chemical or polymer" means one or more of the substances listed in Appendix I.

"Tablet coating" means the application of any surface coating formulation to a formed pharmaceutical product.

"Tank" means any container whose walls are constructed of material which is rigid and self-supporting.

"Temporary operating certificate" means an operating certificate with a term shorter than five years, issued pursuant to N.J.A.C. 7:27-8.7(d).

"Thermal oxidizer" means a type of control apparatus which reduces the emission of air contaminants by subjecting the gases being emitted to elevated temperatures which cause the air contaminant molecules to decompose within an enclosed space. For the purposes of this subchapter, this term includes catalytic and non-catalytic thermal oxidizers.

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17.3.

"Transfer efficiency" means the percent by weight, on a dry basis, of the total coating solids applied to an object which adhere to the object.

"Transfer operation" means the moving of any substance from any storage tank, manufacturing process vessel, or delivery vessel into any receiving vessel.

"Unihose" means, with respect to a gasoline dispenser at a gasoline dispensing facility, a dispenser which has only one hose and one nozzle per dispenser side which is used for dispensing all grades of gasoline.

"Urethane coating" means the application of any surface coating formulation, except plastisol, to urethane coated fabric or urethane sheets that are more than 0.002 inches (50 micrometers) thick, except resilient floor covering and flexible packaging.

"Utility boiler" has the meaning defined in N.J.A.C. 7:27-19.

"Vacuum service" means equipment operating at an internal pressure which is at least 0.725 pounds per square inch (37.5 millimeters of mercury) below ambient pressure.

"Valve" means a device that regulates or isolates the fluid flow in a pipe, tube, or conduit by means of an external actuator.

"Vapor" means the gaseous form of substances which, under standard conditions, are in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Vapor balance system" means a system for controlling vapor losses during the transfer of a VOC liquid from one vessel to another vessel or tank by means of the simultaneous counter-transfer of displaced vapors from the receiving vessel to the vessel supplying the liquid.

"Vapor cleaning machine" means a solvent cleaning machine that uses either solvent vapor generated by boiling liquid solvent or heated liquid solvent as part of the cleaning or drying cycle. This term includes both batch vapor cleaning machines and in-line vapor cleaning machines, but does not include cold cleaning machines and machines which do not have a solvent/air interface, such as airless and air-tight cleaning systems.

"Vapor control system" means a system for preventing the emission of organic vapors into the outdoor atmosphere.

"Vapor-mounted primary seal" means a seal-envelope combination which is mounted so that underneath the seal there is an annular vapor space which is bounded by the bottom of the seal, the vessel wall, the liquid surface, and the floating roof.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

"Vapor-tight" means not capable of allowing the passage of gases at the pressures encountered.

"Vapor up control switch" means, with respect to a vapor cleaning machine, a thermostatically controlled switch which shuts off or prevents condensate from being sprayed when there is no vapor. On in-line vapor cleaning machines the switch also prevents the conveyor from operating when there is no vapor.

"Vinyl coating" means the application of any surface coating formulation, except ink and plastisol, to vinyl-coated fabric or vinyl sheets.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)

2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)

1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)

1-chloro-1,1-difluoroethane (HCFC-142b)

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

pentafluoroethane (HFC-125)

1,1,2,2-tetrafluoroethane (HFC-134)

1,1,1-trifluoroethane (HFC-143a)

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)

1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

1,1,1,3,3,3-hexafluoropropane (HFC-236fa)

1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)

1,1,1,2,3-pentafluoropropane (HFC-245eb)

1,1,1,3,3-pentafluoropropane (HFC-245fa)

1,1,1,2,3,3-hexafluoropropane (HFC-236ea)

1,1,1,3,3-pentafluorobutane (HFC-365mfc)

chlorofluoromethane (HCFC-31)

1-chloro-1-fluoroethane (HCFC-151a)

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃)

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40CFR 51.100(s)(1) shall control.

"Working mode cover" means, with respect to a solvent cleaning machine, any cover or other element of the machine's design that shields the machine's openings from outside air disturbances while parts are being cleaned in the machine.

"Wash coat" means a coating containing binders that raise wood surfaces, prevent undesired staining, and control penetration.

"Worst case operating conditions" means the conditions of operation which result in the maximum VOC emission rate for any hour period for a continuous operation or the maximum VOC batch cycle emission rate for a batch operation, considering any enforceable limitations on the operation including those set forth in any applicable rule or regulation, permit, or operating certificate.

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 21, 1988).

See: 19 N.J.R. 1938(a), 20 N.J.R. 186(b).

Added definition "Gasoline dispensing facility".

Amended by R.1989 d.62, effective February 6, 1989.

See: 20 N.J.R. 1866(a), 21 N.J.R. 321(a).

Added "barges as tankers" to "Delivery vessel" and added definition "marine delivery vessel".

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).

Added definition for "custom topcoating of automobiles and light duty trucks", amended "refinishing of automobiles and light duty trucks" by referencing those coatings and finishes to be excluded and change number of passenger seating from 12 to 15 in "surface coating of automobiles and light-duty trucks".

Public Notice: Petition for rulemaking concerning a Volatile Organic Substance.

See: 22 N.J.R. 1632(c).

Public Notice: Action on Petition for rulemaking concerning a Volatile Organic Substance.

See: 22 N.J.R. 2041(a).

Public Notice: Amend definition of volatile organic compounds to exclude four halogenated chlorofluorocarbons.

See: 22 N.J.R. 3165(c).

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).

Amended definitions for "air contaminant", "conservation vent", "control apparatus", "conveyorized surface cleaner", "department", "equipment", "facility", "freeboard chiller", "freeboard height", "gasoline", "liquid particles", "particles", "person", "petroleum distillate", "receiving vessel", " Reid vapor pressure", "seal-envelope combination", "source operation", "stack or chimney", "standard conditions", "storage tanks", "surface coating of automobiles and light-duty trucks", "surface cleaners", "surface coating formulation" and "surface coating operation"; added new definitions for "capture efficiency", "certificate", "destruction efficiency", "distillates of air", "EPA", "exempt organic substance", "indirect emissions", "operating certificate", "partial pressure", "permit", "surface coating formulation as applied", "temporary operating certificate", "vapor pressure", "volatile organic compound (VOC)", and "worst case operating conditions"; deleted definitions for "high performance architectural coating" and "volatile organic substances".

Administrative corrections to "cutback asphalt", "Department", "fabric printing operation", "graphic arts", "storage tank" and "vapor balance system".

See: 24 N.J.R. 1889(a).

Amended by 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).

Administrative Correction.

See: 27 N.J.R. 1406(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).

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).

Inserted "Facility-wide permit", "Operating permit", and "Preconstruction permit"; and rewrote "Permit".

Administrative change.

See: 31 N.J.R. 639(b).

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.

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

Explaining the facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, S4 (1994).

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).

7:27-16.1A Purpose, scope, applicability, and severability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds (VOC). The general purposes of this subchapter are as follows:

1. To require any stationary source operation or group of source operations located at a facility to utilize reasonably available control technology (RACT) to control VOC emissions. RACT is the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology and/or pollution prevention measures which are reasonably available considering technological and economic feasibility. Specific applicability thresholds are provided throughout the subchapter. Carbon monoxide limits are included for combustion sources, in order to control VOC emissions, which are also products of incomplete combustion; and

2. To establish standards and emission limits for certain vessels which contain VOCs and which may be carried or transported or are otherwise capable of being moved, including delivery vessels.

(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 TXS until the Department amends this rule in response to EPA rulemaking or otherwise.

(c) Whenever persons, equipment, control apparatus or any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(d) Whenever a VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of the chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

(e) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(f) The owner or operator of a source operation subject to a VOC emissions limit under this subchapter may comply with the limit through the use of discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30.

(g) If any provision of this subchapter or the application thereof to any person or circumstance is adjudicated to be invalid or unenforceable to any extent, the remainder of this subchapter or its application to any person or circumstance other than those that are the subject of the adjudication shall continue to be unaffected by the adjudication.

Recodified from 7:27-16.11 and 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.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 (f) and designated former (f) as (g).

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).

7:27-16.2 Stationary storage tanks

(a) The provisions of this section shall apply to stationary storage tanks.

(b) No person shall cause, suffer, allow, or permit the following:

1. The storage of any applicable VOC in any stationary storage tank that has a maximum capacity of 2,000 gallons (7,570 liters) or greater and is exposed to the rays of the sun unless:

i. The external surface of the tank is painted and maintained white, except that this provision shall not apply to words and logograms applied to the external surface of the storage tank for purposes of identification provided such symbols do not cover more than 20 percent of the external surface area of the tank's sides and top or more than 200 square feet (18.6 square meters), whichever is less; or

ii. An equivalent method of emission control approved by the Department is used; or

2. The storage of any applicable VOC in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedures for using Table 2A or as approved by the Department as being equally or more effective in preventing the emission of a VOC into the outdoor atmosphere.

Procedure for Using Table 2A

- Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC to be stored.
- Step 2: Select the appropriate line in Table 2A for the vapor pressure determined in Step 1.
- Step 3: Determine the maximum tank capacity in thousands of gallons.
- Step 4: Find the tank capacity range classification for the vapor pressure determined under Step 1.
- Step 5: Determine the control requirements in accordance with the following:
 - Range I: No control apparatus required under this subsection.
 - Range II: Conservation vent required.
 - Range III: Floating roof required.

TABLE 2A

**DETERMINANTS OF TYPE CONTROL APPARATUS
REQUIRED FOR STORAGE OF VOLATILE
ORGANIC COMPOUNDS**

Vapor Pressure in PSIA @ 70°F		Tank Capacity in Thousands of Gallons			
Greater than	But not Greater than	Range I	Range II		Range III
		Not Greater than	Greater than	But not Greater than	Greater than
*0.02	0.03	4,500	4,500	14,000	14,000
0.03	0.04	4,500	4,500	11,000	11,000
0.04	0.06	3,500	3,500	8,000	8,000
0.06	0.08	2,500	2,500	6,000	6,000
0.08	0.10	2,000	2,000	4,500	4,500
0.10	0.15	1,600	1,600	3,500	3,500
0.15	0.2	1,050	1,050	2,500	2,500
0.2	0.3	750	750	1,600	1,600
0.3	0.4	550	550	1,250	1,250
0.4	0.5	475	475	1,075	1,075
0.5	0.6	400	400	900	900
0.6	0.7	350	350	750	750
0.7	0.8	300	300	650	650
0.8	1.0	260	260	550	550
1.0	1.2	210	210	475	475
1.2	1.4	190	190	400	400
1.4	1.6	170	170	350	350
1.6	1.8	150	150	300	300
1.8	2.1	125	125	260	260
2.1	2.4	110	110	225	225
2.4	2.7	100	100	200	200
2.7	3.0	90	90	180	180
3.0	3.5	80	80	160	160
3.5	4.0	70	70	145	145
4.0	4.5	60	60	130	130
4.5	5.0	50	50	115	115
5.0	5.5	50	50	105	105
5.5	6.0	50	50	95	95
6.0	6.5	40	40	85	85
6.5	7.0	40	40	75	75
7.0	7.5	40	40	70	70
7.5	8.0	35	35	65	65
8.0	8.5	35	35	60	60
8.5	9.5	30	30	55	55
9.5	10.5	25	25	50	50
10.5	11.5	20	20	45	45
11.5	13.0	10	10	40	40

* Any VOC which has a vapor pressure of 0.02 pounds per square inch absolute at standard conditions is included in this line.

(c) No person shall cause, suffer, allow, or permit the storage of any VOC having a vapor pressure of greater than 13.0 pounds per square inch absolute (672 millimeters of mercury) at the actual temperature existing at or near the liquid surface in any stationary storage tank having a maximum capacity of 1,000 gallons (3,785 liters) or greater unless such tank is equipped with a vapor control system to reduce the rate of VOC emissions to the outdoor atmosphere by at least 90 percent by weight of the uncontrolled VOC emissions from the tank.

(d) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank subject to the provisions of either (b) above in Ranges II and III or (c) above and equipped with gauging and/or sampling systems unless such systems are vapor-tight except when gauging or sampling is taking place.

(e) The provisions of (b) and (c) above shall not apply to a stationary storage tank in Range II located underground at a depth of no less than eight inches (20.3 centimeters) below the surface measured to the highest point of the tank shell, or installed in other manner approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(f) The provisions of (b) above shall not apply to a stationary storage tank, if the tank is:

1. Maintained under a controlled elevated temperature; or
2. Equipped with a vapor control system reducing by at least 98 percent the weight of VOC emissions to the outdoor atmosphere.

(g) Any stationary storage tank in Range III as determined from Table 2A, constructed or installed on or after December 17, 1979, shall be provided with a double seal floating roof or other control apparatus approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(h) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof, unless any such storage tank containing a VOC having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere. For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter. Any secondary seal shall be intact, with no visible holes, tears or other openings.

(i) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof unless all openings in such roof, excluding emergency roof drains, are covered when not in active use.

(j) Any delivery vessel that contains any applicable VOC and is located at a facility and is vented to the atmosphere for more than 30 consecutive days shall be considered a stationary storage tank for the purposes of this section.

(k) Any person responsible for the emission of any applicable VOC from any storage tank pursuant to this section shall maintain, for each tank, records specifying each VOC stores and the vapor pressure of each VOC at standard conditions.

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

Addressed EPA-identified deficiencies; eliminated "bubble" provisions.

Administrative correction to (a); (m)1, i and 3.

See: 24 N.J.R. 1889(a).

Recodified from 7:27-16.6 and 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).

In (b), added the second sentence; in (g), rewrote 2.

7:27-16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:

1. Is located at a major VOC facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. Is not regulated elsewhere in this subchapter; and

ii. Is not specifically exempted elsewhere in this subchapter because the source operation is within a category that is exempted or because the source operation operates below exclusion rates or threshold levels for control; or

2. If the owner or operator of a source operation regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21 seeks approval of an alternative VOC control plan, which would apply to the equipment or source operation notwithstanding any control requirement or emission limit which would otherwise apply under this subchapter.

(b) Except as provided at (t) below, the owner or operator of any facility that contains a source operation subject to (a)1 above shall:

1. By October 24, 1994, submit a demonstration for all source operations to the Department at the address listed in (s) below. This demonstration shall include one of the following for each source operation subject to (a)1 above:

i. Information, pursuant to (e) below, that demonstrates the source operation is currently served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator has implemented pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions;

ii. Information, pursuant to (e) below, that demonstrates by May 31, 1995 the source operation will be served by control apparatus that collects at least 90

percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator will implement pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions; or

iii. A proposed alternative VOC control plan prepared in accordance with (d) below.

2. Beginning on May 31, 1995, comply with either (b)2i or ii below:

i. Use control apparatus that the Department has determined (pursuant to (1) below) 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

ii. Operate the facility in accordance with an alternative VOC control plan approved by the Department pursuant to (j) below.

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in (s) below a proposed alternative VOC control plan prepared in accordance with (d) below. Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment or source operation facility from complying by May 31, 1995 for source operations first regulated under this subchapter as amended operative July 26, 1994 or compliance dates in other sections of this subchapter. If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii or (c) above shall include the following information in the plan:

1. A list of each source operation at the facility to be included in the plan:

i. For a submission pursuant to (b)1iii above, the list shall include each source operation that is not regulated under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21, and has the potential to emit at least three pounds of VOC per hour; or

ii. For a submission pursuant to (c) above, the list shall include each source operation for which the owner or operator seeks an alternative to compliance under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21;

2. The following information for each source operation listed pursuant to (d)1 above:

- i. A brief description of the source operation, and its permit number and any other identifying numbers;
- ii. The maximum rated capacity of the source operation;

- iii. The source operation's potential to emit VOC;
- iv. A list of all VOC control technologies available for use with the source operation;

v. A list of all alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions;

vi. An analysis of the technological feasibility of installing and operating each control technology and process alternative identified in (d)2iv and v above;

vii. For each control technology and process alternative which is technologically feasible to install and operate, an estimate of the cost of installation and annual operation;

viii. An estimate of the remaining useful life of the existing source operation;

ix. An estimate of the reduction in VOC emissions attainable through the use of each control technology and process alternative identified in (d)2iv and v above;

x. The VOC control technology or technologies or process alternatives which the owner or operator proposes to employ;

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for each permit required. The permit may be a pre-construction permit and certificate under N.J.A.C. 7:27-8, an operating permit under N.J.A.C. 7:27-22, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5;

xii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

xiii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (j) below; and

4. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-1.39.

(e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:

1. A list of each source operation at the facility within the scope of (a)1 above;

2. The following information for each source operation listed pursuant to (e)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A description of the control apparatus that serves the source operation (for demonstrations pursuant to (b)1i above) or that the owner or operator states will serve the source operation (for demonstrations pursuant to (b)1ii above);

v. An analysis of how 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;

vi. A description of any pollution prevention measures that the owner or operator has implemented (for demonstrations pursuant to (b)1i above) or will implement (for demonstrations pursuant to (b)1ii above), and analysis of how such measures will control VOC emissions to the extent required under (b)1i and ii above;

vii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

viii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. A complete application for each new permit required and for each change to an existing permit for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;

4. Any other information which the Department may request which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (1) below; and

5. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-1.39.

(f) Notwithstanding the provisions of (b) above, the owner or operator of a facility that had actual annual emissions of VOC in 1990 and each year thereafter of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to (f)1 below, obtain the Department's approval of the plan pursuant to (k) below, and implement the plan pursuant to (f)2 below.

1. The owner or operator shall submit to the Department a proposed compliance plan that includes the following information, and is certified by the owner or operator pursuant to N.J.A.C. 7:27-1.39;

i. Documentation establishing that the actual annual emissions of VOC from the facility in 1990 and each year thereafter were less than 25 tons. If the facility did not commence operations until after 1990, the documentation shall address each year beginning with the year that operations commenced. The documentation shall include records maintained at the facility and

any report of actual emissions, including any emission statement, submitted for the facility to the Department for the relevant years;

ii. A statement of the owner or operator's intent to reduce the facility's potential to emit VOC to less than 25 tons per year;

iii. A description of how the reduction of the facility's potential to emit is to be achieved;

iv. Complete applications for amendments to any existing permit or for any new permit required to achieve the reduction of the facility's potential to emit VOC to less than 25 tons per year; and

v. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan.

2. By May 31, 1995, the owner or operator of the facility shall reduce the facility's potential to emit VOC to less than 25 tons per year and achieve compliance with all new or amended permits.

(g) Within 30 days after receiving a demonstration submitted pursuant to (b)1 above, a proposed alternative VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to (f) above, the Department shall notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the Department.

(h) Failure by an owner or operator to submit the additional information requested by the Department pursuant to (g) above within the time stated in the Department's notification shall constitute a violation of this subchapter. In such case, the Department may deny the request for approval of the submission and pursue its other remedies.

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA for approval as a revision to New Jersey's State Implementation Plan.

(j) Within six months after receiving a complete proposed alternative VOC control plan, the Department shall approve, approve and modify, or disapprove the proposed plan 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;

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

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

i. Would be less effective in controlling VOC emissions from the equipment or source operation than the proposed measures;

ii. Is unsuitable for use with the source operation, or duplicative of control technology or pollution prevention measure which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the VOC emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in VOC 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 VOC emissions from the same type of source operations used by all other persons in the owner or operator's industry;

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

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

6. For any pollution prevention or other emission reduction measures proposed by the owner or operator, the proposed plan demonstrates that the measures:

i. Result in actual reductions in VOC emissions;

ii. Result in VOC emission reductions which are quantifiable; and

iii. Result in VOC emission reductions which are Federally enforceable.

(k) Within six months after receiving a complete compliance plan submitted pursuant to (f) above, the Department shall approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required under (f) above;
2. The compliance plan demonstrates to the Department's satisfaction that actual emissions of VOC, including fugitive VOC emissions, in 1990 (or the first year of the facility's operations, if operations commenced after 1990) and each year thereafter are less than 25 tons;
3. The proposed recordkeeping requirements are sufficient to enable the Department to verify that the owner or operator is complying with the plan; and
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. As a condition of an approval of any application for an alternative VOC control plan submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reduction (DER) credits in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under this subchapter.

(n) Before altering any source operation which is included in an approved alternative 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 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 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 a 60 day extension of the deadline set forth in (b)1 above, provided that such a request shall include a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for extension, the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request for renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for an extension, that the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Written requests for the extension of a deadline submitted shall be submitted to the address listed below:

Assistant Director, Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
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 VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection
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).

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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.

Air contaminant	Threshold level
Carbon Monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Nitrogen oxides	25 tons per year
VOC	25 tons per year
Lead	10 tons per year; or

2. The emission increase of an air contaminant, proposed in the application, by itself equals or exceeds the threshold level for that air contaminant set forth in (a)1 above.

(b) For a facility which meets the criteria at (a)1 or 2 above, an application is subject to this subchapter if any allowable emissions proposed in the application would result in a significant net emission increase of any air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, and if the facility for which the construction, reconstruction, or modification is proposed is located at an area which is any of the following:

1. Nonattainment for the respective criteria pollutant corresponding to that air contaminant. The respective criteria pollutant for each air contaminant is listed in the definition of the term "respective criteria pollutant" at N.J.A.C. 7:27-18.1;

2. Attainment for the respective criteria pollutant, and both (b)1i and ii below are true:

i. The proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.5; and

ii. The increase in the ambient concentration of the respective criteria pollutant equals or exceeds the significant air quality impact level specified in Table 1 in N.J.A.C. 7:27-18.4, in the nonattainment area for the respective criteria pollutant; or

3. Attainment for the respective criteria pollutant, and the proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant that would:

i. Equal or exceed the significant air quality impact level; and

ii. Result in a violation of an applicable NAAQS or NJAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.5.

(c) For a facility which meets the criteria at (a)1 above, an application is subject to N.J.A.C. 7:27-18.3(b)1 (LAER) and 2 (compliance certification), if:

1. Emission offsets for an air contaminant have been previously required at the facility for which the permit is sought;

2. The construction, reconstruction, or modification proposed in the application would, within the contemporaneous period, result in a net emission increase, which is not a significant net emission increase, of the same air contaminant for which offsets were required. A net emission increase shall be calculated pursuant to N.J.A.C. 7:27-18.7; and

3. The nonattainment area in which the facility is located (or, in the case of a facility located in an attainment area, the nonattainment area whose air quality would have been impacted by emissions from the facility had emission offsets not been secured) has not been redesignated as being in attainment for the respective criteria pollutant as of the date the permit application is submitted to the Department.

(d) This subchapter shall not apply to any person applying for a permit, if the allowable emissions proposed in the application would result in no net emission increase, as calculated pursuant to N.J.A.C. 7:27-18.7(a).

Amended by R.1985 d.25, effective February 4, 1985.

See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).

(d): Deleted "a NAAQS" and substituted "an ambient air quality standard".

(e): Deleted "100 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is most restrictive" and substituted "a significant emission increase".

Repeal and 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).

Former rule entitled "General provisions".

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).

In (b), changed N.J.A.C. references in 2i and 3ii.

Case Notes

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).

7:27-18.2A Use of DERs

Notwithstanding any other provision of this subchapter to the contrary, a person may use discrete emission reductions (DERs) as emission offsets in accordance with N.J.A.C. 7:27-30.13(c).

New Rule, 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).

7:27-18.3 Standards for issuance of permits

(a) The Department shall not authorize the construction, reconstruction, or modification of any equipment or control apparatus which is subject to this subchapter unless the owner or operator of the facility has demonstrated that the

facility will be in compliance with all of the applicable requirements of this subchapter at that time of initiation of operation of the newly constructed, reconstructed, or modified equipment.

(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:

1. Demonstrate that air contaminant emissions from the equipment proposed to be constructed, reconstructed, or modified will be controlled to the degree which represents the lowest achievable emissions rate (LAER); and

2. Certify, in accordance with N.J.A.C. 7:27-1.39, that all existing facilities in New Jersey, which are owned or operated by the person applying for the permit, or by any entity controlling, controlled by, or under common control with such person, are operating:

- i. In compliance with the provisions of this chapter and with all applicable emission limitations and standards promulgated pursuant to the Federal Clean Air Act; or

- ii. In conformance with an enforceable compliance schedule approved by the Department.

(c) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1 or 2 shall:

1. Secure emission offsets, in accordance with N.J.A.C. 7:27-18.5, for each air contaminant having a significant net emission increase at the facility; and

2. Submit to the Department an analysis of alternative sites within New Jersey, and of alternative sizes, production processes, including pollution prevention measures, and environmental control techniques, demonstrating that the benefits of the newly constructed, reconstructed, or modified equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction, reconstruction or modification and operation of such equipment.

(d) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)3 shall secure emission offsets, sufficient to eliminate the proposed significant net emission increase that has been predicted to result in a violation of the NAAQS or NJAQS.

(e) Any applicant required to secure emission offsets pursuant to (c)1 or (d) above shall submit to the Department, as a part of the application, an emission offset demonstration that specifies:

1. The sources of the air contaminant emission reductions to be applied as emission offsets;

2. How the emission reductions shall be effected;

3. How the owner or operator of the facility generating the emissions offsets will make the permanent reduction of the emissions to be used as emission offsets Federally enforceable on or before the date that the Department will issue to the applicant the authorization required under N.J.A.C. 7:27-8 or 22;

4. How the applicant shall ensure that the permanent reduction of emissions shall be in effect on or before the initiation of operation of the newly constructed, reconstructed, or modified equipment or control apparatus; and

5. How the emission offsets to be secured will comply with N.J.A.C. 7:27-18.5.

(f) Emission offsets required pursuant to (c)1 or (d) above shall be secured and the permanent reduction of emissions represented by the emission offsets shall have occurred, prior to initiation of operation of any newly constructed, reconstructed, or modified equipment or control apparatus.

(g) A person who, prior to November 15, 1992, has submitted a complete application to the Department for a permit which is subject to this subchapter may elect, under the conditions given below, to have the provisions of this subchapter which were in effect prior to April 20, 1993, rather than the provisions of the subchapter which are in effect on or after April 20, 1993, apply to the application. The emission offset postponement provisions, set forth at N.J.A.C. 7:27-18.6, shall apply to all permits issued on or after November 15, 1992, regardless of the date on which the permit application was submitted. To elect to have the provisions which were in effect prior to April 20, 1993 apply, a person shall:

1. Have received from the Department in writing, prior to November 15, 1992, a determination that the application is complete;

2. Commence the new construction, reconstruction, or modification as proposed in the application no later than 18 months from the date the permit is issued by the Department;

3. Not discontinue the new construction, reconstruction, or modification for a period of 18 months or more; and

4. Pursue the new construction, reconstruction, or modification with due diligence and complete the new construction or alteration within a reasonable time.

(h) Notwithstanding the provisions of (c) or (d) above, no person is required to secure emission offsets for temporary emission increases that occur during and result directly from the construction, reconstruction, or modification of the newly constructed, reconstructed, or modified equipment or control apparatus.

7:27-18.10 Exemptions

(a) If a person demonstrates that a proposed significant net emission increase of an air contaminant which results from the use of alternative fuels in existing fuel burning equipment will not cause an exceedance of the significance level for the respective criteria pollutant in a nonattainment area for that pollutant, and will not prevent reasonable further progress toward attaining any NAAQS, the Department may, in its discretion, exempt the person from compliance with the provisions of this subchapter. No exemption shall be granted unless the person demonstrates, at a minimum, that:

1. The equipment was capable of burning the alternative fuel before December 21, 1976; or

2. The equipment must use such fuel by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792 et seq.) or under any superseding legislation, or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act of 1978 (16 U.S.C. 791a et seq.); or

3. The alternative fuel is derived from municipal solid waste; or

4. The alternative fuel is to be used by reason of an order or rule issued under Section 125 of the Clean Air Act.

(b) N.J.A.C. 7:27-18.3(c)1 does not apply to any person submitting an application for:

1. Portable facilities which will be relocated outside of a nonattainment area within six months of initiation of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of initiation of operation.

(c) The exemption in (b) above may not be applied to the same portable facility or temporary source operation more than once within the lifetime of the portable facility or temporary source operation.

Recodified from 18.9 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).

7:27-18.11 Procedures for interstate and intrastate trading

(a) The Open Market Emissions Trading Program at N.J.A.C. 7:27-30 establishes the rules for the generation, trading, use, and voluntary retirement of DER credits. Emission reductions banked pursuant to N.J.A.C. 7:27-18.8

may be converted to DER credits under the following conditions:

1. The person converting the emission reductions is their holder of record in the New Jersey emission offset bank;

2. The change which caused the emission reductions to commence was first implemented after August 2, 1996;

3. The person who applied for the banking of the emission reductions under N.J.A.C. 7:27-18.8 would be eligible under N.J.A.C. 7:27-30.4(a) to be the generator of DER credits based on those emission reductions;

4. The emission reductions are eligible under N.J.A.C. 7:27-30 to be the basis for a DER credit. (Emission reductions that result from a shutdown or curtailment, for example, may not be used as the basis of a DER credit);

5. The last day of the generation period is no earlier than 90 days before the date of submission of the Notice of Generation (the provisions for late submittal at N.J.A.C. 7:27-30.7(b) shall not apply; for example, to convert emission reductions realized during a generation period that ends on January 1, 1999, a complete Notice of Generation must be submitted by April 1, 1999);

6. The holder of the emission reductions submits to the Department's emission offset bank and the registry a Notice of Generation which meets the requirements of N.J.A.C. 7:27-30.7; and

7. The number of DER credits generated is calculated in accordance with N.J.A.C. 7:27-30.5 and the following:

i. In determining the lowest allowable emission rate which applies in accordance with N.J.A.C. 7:27-30.7(d)1i, a limit established in a permit shall not be taken into account, unless it is required by an underlying Federal or State rule, including (if applicable) the requirement at N.J.A.C. 7:27-8.12 to document state of the art or the requirement at N.J.A.C. 7:27-22.35 to incorporate advances in the art of air pollution control; and

ii. The historic baseline rate used in the calculation shall be determined in accordance with N.J.A.C. 7:27-30.7(d)3; except that the five years prior to the banking of the reductions as emission offsets (rather than the five years prior to the generation period) may be used as the basis for deriving the historic baseline rate if:

(1) The emission reductions were banked for future application as emission offsets pursuant to N.J.A.C. 7:27-18.8 prior to June 6, 2000; and

(2) The Notice of Generation for the first generation period is submitted no later than September 4, 2001.

(b) The provisions at N.J.A.C. 7:27-18.8(e), which require that the amount of emission reductions be reduced to

reflect any new emission limits applicable to the generator source that are established under a State or Federal statute, rule, or regulation, shall be applied to emission reductions which were banked pursuant to N.J.A.C. 7:27-18.8 and which are being converted to DER credits.

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).

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).

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-18.12 Civil or criminal penalties for failure to comply

The owner or 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 or operator 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. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil penalties.

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).

SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

Authority

N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular 26:2C-9(c) and 19.

Source and Effective Date

R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).

See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

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Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

Explaining the Facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, 54 (1994).

7:27-19.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27-13 or 40 CFR 50.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" means one of the following changes to equipment or control apparatus, or to a source operation, for which a permit has been issued:

1. If the equipment, control apparatus, or source operation is subject to preconstruction permit requirements, a change which requires a permit revision under N.J.A.C. 7:27-8.18; or
2. If the equipment, control apparatus, or source operation is at a facility for which an operating permit has been issued, a change which requires a minor modification or a significant modification of the permit under N.J.A.C. 7:27-22.23 or 24.

"Alternative maximum allowable emission rate" means a maximum allowable emission rate, set by the Department on a site-specific basis pursuant to N.J.A.C. 7:27-19.13.

"Anthracite coal" means coal that is classified as anthracite according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77, incorporated herein by reference. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

"ASTM" means the American Society for Testing and Materials.

"Averaging" means complying with the requirements of this subchapter pursuant to N.J.A.C. 7:27-19.6, Emissions averaging.

"Averaging unit" means an individual source operation or item of equipment which is included in a designated set for the purpose of averaging pursuant to N.J.A.C. 7:27-19.6.

"Base year" means calendar year 1990 or other calendar year determined pursuant to N.J.A.C. 7:27-19.20(d)1, in connection with a plan for seasonal fuel switching.

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Bituminous coal" means coal that is classified as bituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Borosilicate recipe" means a formula for making glass using 60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides.

"British thermal unit (BTU)" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Calendar day" means the 24 hour period from 12:00 o'clock midnight to 12:00 o'clock midnight the following day.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"Cleaner fuel" means a fuel other than a combustion source's primary fuel, the combustion of which results in a rate of NO_x emissions that is less than the rate of NO_x emissions when the primary fuel is combusted, all other circumstances being equal.

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS.

"CFR" means the Code of Federal Regulations.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and/or subbituminous coal.

"Coke" means a fused, cellular, porous substance that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by heating it in the absence of air or with a limited supply of air.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Commercial container glass" means clear or colored glass made of soda-lime recipe, which is formed into bottles, jars, ampoules or other containers, but does not include specialty container glass.

"Commercial fuel" means solid, liquid, or gaseous fuel which is ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Comparable demand day" means, for any day in which an averaging unit is not operating, a day on which demand for electric power was within 10 percent of the demand on the day in question.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a New Jersey Ambient Air Quality Standard has been promulgated in N.J.A.C. 7:27-13.

"Cyclone-fired boiler" means a boiler which combusts fuel in a horizontal water-cooled cylinder before releasing the combustion gases into the boiler.

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks or railroad tank cars. This term does not include marine tank vessels.

"Department" means the New Jersey Department of Environmental Protection.

"Designated set" means the averaging units which an owner or operator is authorized by the Department to include in an averaging plan pursuant to N.J.A.C. 7:27-19.6.

"Distillates of air" means helium (He), nitrogen (N₂), oxygen (O₂), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO₂).

"Dry bottom utility boiler" means a utility boiler equipped with an ash disposal hopper bottom with sufficient cooling surface so that ash particles, when removed from the hopper, are in a solid state.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Duct burner" means an item of equipment used with a combined cycle gas turbine or a stationary internal combustion engine to increase the steam generating capacity of heat recovery steam generators. A duct burner consists of pipes and small burners that are placed in the exhaust duct upstream of the heat recovery steam generator; the duct burner allows firing of additional fuel to increase the exhaust heat energy. A duct burner is a type of indirect heat exchanger.

"Electric generating unit" means a combustion source used for generating electricity that delivers all or part of its power to the electric power distribution grid for commercial sale.

"Electric generating utility" means any person who is subject to regulation as a public utility (as defined in N.J.S.A. 48:2-13) for its provision of electric power to

another person or any person who would be subject to such regulation were it not for that person's status as a municipality.

"Emergency capacity" means the generation of electricity by an electric generating unit at a rate in excess of the unit's maximum normal power output rating. This maximum normal power output rating shall be that agreed upon by PJM and the owner or operator of the unit, and published by the owner or operator.

"Emergency generator" means a combustion source used to provide mechanical, thermal or electrical energy only when the facility's primary source of that energy has been rendered inoperable by circumstances beyond the control of the owner or operator of the facility. The term does not include equipment used in circumstances other than emergencies, such as during high electric demand days. The term also does not include equipment which continues to be used after the primary energy source either has become operable again or should have become operable had the owner or operator made reasonable efforts to repair it.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Face-fired boiler" means a furnace firing design in which the burners are mounted on one or more walls of the furnace.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. This term does not include delivery vessels.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the

definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP;
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or
5. Any permit issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and this chapter.

"Fixed capital cost" means the capital needed to provide all the depreciable components of a facility, item of equipment or source operation.

"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 the generation of light, heat or power and derived directly or indirectly from crude oil.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Glass" means a hard, amorphous inorganic substance made by fusing silicates, and sometimes borates and phosphates, with certain basic oxides.

"Glass manufacturing furnace" means equipment which uses heat for the production of glass.

"Heat input" means heat derived from the combustion of fuel put into any boiler, furnace or other piece of equipment. This term does not include the heat from preheated combustion air, recirculated flue gases or exhaust gases from other sources.

"Higher heating value" means the total heat obtained from the complete combustion of a fuel which is at 60 degrees Fahrenheit when combustion begins, and the combustion products of which are cooled to 60 degrees Fahrenheit before the quantity of heat released is measured.

"Horsepower hour" means a unit of energy or work, equal to the work done by a mechanism with a power output of one horsepower over a period of one hour.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment. For the purposes of this subchapter, this term includes (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

"Indirect heat exchanger" means equipment in which heat from the combustion of fuel is transferred by conduction through a heat-conducting material to a substance being heated, so that the latter is not contacted by, and adds nothing to, the products of combustion. Examples of indirect heat exchangers include boilers, duct burners and process heaters.

"Innovative control technology" means a NO_x control measure that has a substantial likelihood of achieving lower continuous levels of NO_x emissions than are required under this subchapter, but has not been adequately demonstrated and is not available to be implemented before May 31, 1995. An item of equipment or control apparatus, a change in a process, or a pollution prevention strategy may qualify as an innovative control technology.

"Interim period" means the period of time beginning on May 31, 1995, and ending when phased compliance under N.J.A.C. 7:27-19.21, 19.22 or 19.23 (as applicable) is to be completed.

1. For purposes of phased compliance for repowering pursuant to N.J.A.C. 7:27-19.21, the interim period ends on the date when repowering of a combustion source is to be completed.

2. For purposes of phased compliance for reasons of practicability pursuant to N.J.A.C. 7:27-19.22, the interim period ends on the date when a combustion source is to attain full compliance with this subchapter.

3. For purposes of phased compliance for innovative control technology pursuant to N.J.A.C. 7:27-19.23, the interim period ends on the date when the innovative control technology is to be fully implemented.

"Lb/MMBTU" means pounds per million British Thermal Units.

"Lean-burn stationary internal combustion engine" means a stationary internal combustion engine which operates at an air-to-fuel ratio fuel-lean of stoichiometric and cannot operate with an exhaust oxygen concentration less than one percent.

"Lignite" means coal that is classified as lignite A or B according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Liquid particles" means particles which have volume but are not of rigid shape.

"Load dispatcher" means the employee or agent of the electric power distribution network, to which the electric generating unit is connected, who is responsible for determining that an MEG alert is the only feasible means of preventing or mitigating either a voltage reduction or an interruption in electric service or both.

"Major NO_x facility" means any facility which has the potential to emit 25 or more tons of NO_x per year.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

"Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the combustion source. This term is expressed in BTUs per hour, based on the higher heating value of the fuel.

"MEG alert" means a period in which one or more electric generating units are operated at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:

1. An alert begins when one or more electric generating units are operated at emergency capacity after receiving notice from the load dispatcher, directing the electric generating unit to do so; and
2. An alert ends when the electric generating unit ceases operating its electric generating units at emergency capacity.

"MMBTU" means million British Thermal Units.

"National Ambient Air Quality Standard (NAAQS)" means an ambient air quality standard promulgated at 40 CFR 50.

"Natural gas reburning" means a control technology where natural gas is injected into a boiler downstream of the main combustion zone in order to reduce the amount of NO_x in the exhaust gas.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

"Nitrogen dioxide (NO₂)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

"Nitrogen oxide (NO)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

"Nonbanded coal" means coal that is classified as non-banded according to the ASTM Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coals, ASTM D 2796-77, incorporated herein by reference. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Non-commercial fuel" means solid, liquid or gaseous fuel which is not ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Operating permit" means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., and in N.J.A.C. 7:27-22. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

"Oxides of nitrogen (NO_x)" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60 Appendix A Method 7E.

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

"Peak daily heat input rate," for a combustion source or for a designated set that has no operating history, means the maximum gross heat input rate of the source or of all the sources in the designated set. For a combustion source or for a designated set that has an operating history, "peak daily heat input rate" means the average of the daily heat inputs to a combustion source or to a designated set on the five days on which the heat input was highest, over the following period:

1. For a combustion source or for a designated set that has been operating for at least five years, the five years preceding the date on which the owner or operator applied to the Department for approval of an emissions averaging plan, pursuant to N.J.A.C. 7:27-19.6; and
2. For a combustion source that has been operating for less than five years, the entire period during which the combustion source has been operating.

"Pennsylvania-New Jersey-Maryland Interconnection" or "PJM" means the combination of electric generating utilities, linked physically and through contractual arrangements, for coordinated electricity planning and operation in an area that as of 1994 includes New Jersey, Maryland, Pennsylvania, Virginia, Delaware and the District of Columbia.

"Permit" means preconstruction permit, operating permit, or facility-wide permit.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

"Ppmv" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, including the number of parts contributed by water.

"Ppmvd" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, not including the number of parts contributed by water.

"Preconstruction permit" means a legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

"Primary fuel" means the fuel that provided the greatest heat input (expressed in BTU) to a combustion source in the base year.

"Process heater" means an item of equipment in which heat from fuel combustion is transferred to fluids contained in tubes without coming into contact with the fluid. A process heater is a type of indirect heat exchanger.

"Rebricking" means the replacement of damaged or worn bricks of a glass manufacturing furnace while the furnace does not contain molten glass.

"Reconstruction" means the replacement of components of an existing facility, item of equipment or source operation to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entirely new facility, item of equipment or source operation.

"Refinery fuel gas" means gaseous fuel derived from the refining process and used as a fuel at the refinery where it was produced.

"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil (or derivatives of crude oil) in order to produce petroleum products.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Repowering" means the series of actions described in 1 and 2 below by an owner or operator:

1. The permanent ceasing of the operations of the steam generator in a steam generating unit, the gas turbine in a simple-cycle or combined-cycle gas turbine, or any other combustion source; and
2. The installation in the State of a new combustion source or the purchase of heat or power from the owner of a new combustion source that is located in the State that:

- i. Has a maximum gross heat output rate that is at least 50 percent of the maximum gross heat output rate of the combustion source that is shut down under 1 above, or has a power output rate that is at least 50 percent of the power output rate of the combustion source that is shut down; and

ii. Incorporates technology capable of controlling multiple combustion emissions simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

"Rich-burn stationary internal combustion engine" means a stationary internal combustion engine in which the concentration of oxygen in the exhaust is no greater than one percent.

"Rotary dryer" means a cylindrical device, which rotates about an axis, through which hot gases are passed for the purpose of removing moisture from any solid.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Selective noncatalytic reduction" or "SNCR" means a noncombustion technology that reduces NO_x emissions without a catalyst by injecting a reducing agent (such as ammonia, urea or cyanuric acid) into the flue gas, downstream of the combustion zone; the injection of the reducing agent converts NO_x to molecular nitrogen, water, and (if the reducing agent is urea or cyanuric acid) carbon dioxide (CO_2).

"Significant air quality impact level" means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27-18.4, in the ambient air concentration of a criteria pollutant.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Soda lime recipe" means a formula for making glass using 60 to 75 percent silicon dioxide and 25 to 40 percent other oxides and no lead oxides.

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

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Specialty container glass" means clear or colored glass made of soda-lime recipe, which is produced to meet the specifications of any standard set forth by The United States Pharmacopeia or The National Formulary, incorporated herein by reference, and which is used for pharmaceutical, cosmetic or scientific purposes. The referenced specifica-

tions can be obtained from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or used for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees Celsius) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC § 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts commercial fuel for the purpose of producing steam.

"Subbituminous coal" means coal that is classified as subbituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Tangential-fired boiler" means a furnace firing design where the burners are mounted at the corners of the furnace chamber.

"Testing" means a procedure for determining the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Use" means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

"Utility boiler" means a steam generating unit owned by an electric generating utility which is used for generating electricity for commercial use.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon

dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched, or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)

ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
chlorofluoromethane (HCFC-31)
1-chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅)
methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wet bottom utility boiler" means a utility boiler in which the ash is removed from the boiler in a molten state.

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).

Inserted "Facility-wide permit", "Operating permit" and "Preconstruction permit"; and rewrote "Alteration" and "Permit".

Administrative change.
See: 31 N.J.R. 639(b).

7:27-19.2 Purpose, scope and applicability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by oxides of nitrogen. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons of NO_x per year, to implement reasonably available control technology (RACT) to control NO_x emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility.

(b) The following types of equipment and source operations are subject to the provisions of this subchapter:

1. Any utility boiler;
2. Any non-utility boiler or other indirect heat exchanger which has a maximum gross heat input rate of at least 20 million BTUs per hour;
3. Any stationary gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour;
4. Any stationary internal combustion engine capable of producing an output of more than 500 horsepower;
5. Any rotary dryer having the potential to emit at least 25 tons of NO_x per year, and located at an asphalt plant;
6. Any glass manufacturing furnace producing commercial container glass, and having a maximum potential production rate of at least 14 tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year;
7. Any glass manufacturing furnace producing specialty container glass, and having a maximum potential production rate of at least seven tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year; and
8. Any glass manufacturing furnace producing borosilicate recipe glass, and having a maximum potential production rate of at least five tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year.

(c) Any major NO_x facility containing any equipment or source operation not specifically listed in (b) above, which equipment or source operation has the potential to emit more than 10 tons of NO_x per year, is subject to the provisions of this subchapter.

(d) Notwithstanding the provisions of (b) and (c) above, any emergency generator which is subject to a Federally enforceable limitation or condition restricting its operations to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit at

least 25 tons of NO_x during its annual period of operations, is not subject to this subchapter.

(e) Notwithstanding the provisions of (b) and (c) above, this subchapter does not apply to any equipment or source operation for which the EPA determines (when the EPA approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from such equipment or source operation.

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The following conditions apply to such exemptions:

1. An owner or operator shall apply for such an exemption in accordance with the procedures set forth in N.J.A.C. 7:27-19.14;
2. The Department shall approve an exemption only if the facility satisfies the following requirements:
 - i. The facility's potential to emit NO_x is less than 25 tons per year; and
 - ii. The facility's potential to emit NO_x on any calendar day from May 1 to September 30 is less than 137 pounds per day; and
3. If an exemption was approved for any equipment prior to June 6, 2000, but that equipment no longer qualifies for such an exemption due to amendments in this section operative on June 6, 2000, the owner or operator of such equipment shall comply with the requirements in this subchapter applicable to that equipment by October 6, 2001.

Administrative Correction.

See: 27 N.J.R. 1406(a).

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).

Rewrote (f).

7:27-19.3 General provisions

(a) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner and operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(b) The emission limitations specified in this subchapter become operative on May 31, 1995, except as provided in N.J.A.C. 7:27-19.4(c) and 19.10(d).

(c) For any alteration of equipment or source operations necessary to comply with the NO_x emission limits in this subchapter, which alteration does not involve a reconstruc-

tion of the equipment or source operation, the use of control measures which incorporate current advances in the art of air pollution control for those types of control measures shall be deemed to satisfy the requirements of N.J.A.C. 7:27-8.12 or 22.35. For example, if a utility boiler achieves compliance with an emission limit under this subchapter by installing a low-NO_x burner, the requirements of N.J.A.C. 7:27-8.12 or 22.35 are satisfied if the low-NO_x burner installed incorporates current advances in the art of air pollution control for low-NO_x burners.

(d) By April 23, 1994, the owner or operator of any facility, equipment or source operation which is in operation prior to January 23, 1994 and is subject to this subchapter shall:

1. Apply for permits for all equipment and control apparatus necessary for compliance with this subchapter; and
2. If the owner or operator seeks to comply with this subchapter pursuant to the facility-specific NO_x emission limit provision of N.J.A.C. 7:27-19.13, submit to the Department a facility-specific NO_x control plan pursuant to N.J.A.C. 7:27-19.13.

(e) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (d) above or the deadline set forth at N.J.A.C. 7:27-19.13(b), the Department may authorize a 60-day renewable extension, provided that the request includes a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request of the renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27-1.39, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:

Assistant Director, Air and Environmental Quality
Enforcement
Division Of Enforcement Field Operations
Department of Environmental Protection
PO Box 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625-0422

(f) In lieu of complying with the applicable emission limits set forth at N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, the owner or operator of a utility boiler, stationary gas turbine, non-utility boiler, indirect-fired heat exchanger, stationary internal combustion engine, asphalt plant or glass manufacturing furnace may comply with one of the following, or with a combination of (f)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

(g) The owner or operator of a source operation subject to a NO_x emissions limit under this subchapter may comply with the limit through the use of discreet emission reductions (DERs) in accordance with N.J.A.C. 7:27-30.

(h) The owner or operator of any facility, equipment or source operation which commences operation on or after January 23, 1994 shall ensure that such facility, equipment of source operation complies with the requirements of this subchapter from the date of commencement of operation.

(i) A person required to provide notice to the Department under this subchapter shall send the notice to the applicable address listed below:

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

Central Regional Office
Horizon Center
PO Box 407
Robbinsville, NJ 08625-0407

2. If the notice concerns a combustion source located in Bergen County, Essex County, Hudson County or Union County, the person shall send the notice to:

Metro Regional Office
2 Babcock Place
West Orange, NJ 07052-5504

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

Northern Regional Office
1259 Route 46 East
Parsippany, NJ 07054-4191

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

Southern Regional Office
20 East Clementon Road
3rd Floor, Suite 302
Gibbsboro, NJ 08026-1175

5. If the notice concerns an averaging plan, 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 (i)1 through 4 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.

7:27-19.4 Utility boilers

(a) The owner or operator of a utility boiler shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 1 below, unless the owner or operator of the utility boiler is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the boiler, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 1
Maximum Allowable NO_x Emission
Rates for Utility Boilers
(pounds per million BTU)

Fuel/Boiler Type	Firing Method		
	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

(b) The owner or operator of any utility boiler subject to this subchapter shall install on the boiler a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18.

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).

7:27-19.5 Stationary gas turbines

(a) No stationary simple cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 2 below, unless the owner or operator is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.13;
3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or
4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 2
Maximum Allowable NO_x Emission Rate for
Simple Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.4
Gas	0.2

(b) No combined cycle gas turbine or regenerative cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 3 below, unless the owner or operator is complying with one of the following, or with a combination of (b)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;
2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

TABLE 3

Maximum Allowable NO_x Emission Rate for
Combined Cycle or Regenerative Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.35
Gas	0.15

(c) In lieu of complying with the emission limits set forth in (a) and (b) above, the owner or operator of a stationary gas turbine may elect to comply with the requirements of this subsection. The owner or operator of the turbine shall satisfy all of the requirements listed in (c)1 through 6 below:

1. The owner or operator of the stationary gas turbine shall apply for and obtain the Department's written approval, in accordance with N.J.A.C. 7:27-19.14 and based on the standards in N.J.A.C. 7:27-19.14 and (c)2 and 3 below;

2. The owner or operator shall establish that there is an insufficient supply of water to the turbine suitable for NO_x emission control, due to either of the following circumstances beyond the control of the owner or operator:

i. A legally enforceable limit on the amount of water which the owner or operator's facility may use; or

ii. The need to provide for an alternate supply of water, because the existing supply is insufficiently filtered and de-ionized to be suitable for injection;

3. The owner or operator shall establish that there is no commercially available dry low-NO_x combustor suitable for use in the specific stationary gas turbine;

4. The owner or operator shall maintain the Department's approval in effect;

5. The owner or operator shall comply with all conditions of the Department's approval; and

6. The owner or operator annually shall adjust the combustion process of the turbine in accordance with N.J.A.C. 7:27-19.16, before May 1 of each year.

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).

7:27-19.6 Emissions averaging

(a) The Department may authorize an owner or operator to comply with an averaging plan approved by the Department pursuant to this section and N.J.A.C. 7:27-19.14. An owner or operator in compliance with such an approved averaging plan is not required to have each averaging unit comply with any emission limit set forth in this subchapter which would be applicable in the absence of an approved averaging plan.

(b) An owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department in accordance with N.J.A.C. 7:27-19.14(a), (b) and (c). The owner or operator shall include the following information in the application:

1. Information sufficient to identify each averaging unit, including its location, a brief description of the unit (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the applicant;

2. The maximum gross heat input rate of each averaging unit, expressed in BTUs per hour;

3. The type of fuel or fuels combusted in each averaging unit;

4. The maximum allowable NO_x emission rate which the owner or operator proposes to impose upon each averaging unit, expressed in pounds per million BTU;

5. The peak daily heat input rate of each averaging unit or of the designated set, expressed in MMBTU;

6. A demonstration that in operating at the peak daily heat input rate of all the averaging units together or of the designated set would satisfy the following equation:

$$TPEE \leq TPAE$$

where:

i. TPEE means total peak estimated emissions and is equal to the sum of the peak estimated emissions for each averaging unit or the peak estimated emission of the designated set. The peak estimated emissions for each averaging unit equals the maximum emission rate listed in (b)4 above for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The peak estimated emissions of the designated set equals the sum of the maximum emission rates listed in (b)4 above for each averaging unit multiplied by the daily heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set as listed in (b)5 above; and

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.13;

3. A seasonal fuel switching plan for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and 19.20; or

4. A plan for phased compliance for the furnace, approved by the Department pursuant to N.J.A.C. 7:27-19.14 and N.J.A.C. 7:27-19.21, 19.22 or 19.23.

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).

7:27-19.11 through 7:27-19.12 (Reserved)

7:27-19.13 Facility-specific NO_x emissions limit

(a) This section establishes procedures and standards for the establishment of facility-specific NO_x emissions limits in the following circumstances:

1. If a major NO_x facility contains any source operation or item of equipment of a category not listed in N.J.A.C. 7:27-19.2(b) (that is, any source operation or item of equipment other than a utility boiler, a non-utility boiler, a stationary gas turbine, a stationary internal combustion engine, a rotary dryer located at an asphalt plant, or a glass manufacturing furnace) which has the potential to emit more than 10 tons of NO_x per year, except as provided in (p) below; or

2. If the owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) seeks approval of an alternative maximum allowable emission rate, which would apply to the equipment or source operation in lieu of the emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of a major NO_x facility described in (a)1 above shall obtain the Department's written approval of a facility-specific NO_x control plan in accordance with this section. For any facility, equipment or source operation which is in operation prior to January 23, 1994, the owner or operator shall submit to the Department in writing a proposed NO_x control plan for the facility by April 23, 1994 or by a later date approved by the Department pursuant to N.J.A.C. 7:27-19.3(e). In the proposed NO_x control plan, the owner or operator shall include:

1. A list of each source operation or item of equipment at the facility which has the potential to emit more than 10 tons of NO_x per year and is not listed in N.J.A.C. 7:27-19.2(b). In the list, the owner or operator shall briefly describe the source operation or item of equip-

ment, and list its permit number and any other identifying numbers; and

2. The information listed in (d) below.

(c) The owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) may request approval of an alternative maximum allowable emission rate in accordance with this section. In the request, the owner or operator shall include:

1. A brief description of the equipment or source operation which is the subject of the request, and its permit number and any other identifying numbers;

2. A demonstration that the source operation or item of equipment is not reasonably able to comply with this subchapter through any alternative means of compliance established under this subchapter (for example, through seasonal combustion of natural gas pursuant to N.J.A.C. 7:27-19.4(b), or through compliance with an averaging plan under N.J.A.C. 7:27-19.6); and

3. The information listed in (d) below.

(d) In addition to the information required under (b) or (c) above, as applicable, the owner or operator shall include the following information in a proposed NO_x control plan or request for an alternative maximum allowable emission rate:

1. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a list of all NO_x control technologies available for use with the equipment or source operation;

2. An analysis of the technological feasibility of installing and operating each control technology identified in (d)1 above;

3. For each control technology which is technologically feasible to install and operate, an estimate of the cost of installation and operation;

4. An estimate of the remaining useful life of each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable;

5. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate;

6. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, the NO_x control technology or technologies which the owner or operator proposes to employ;

7. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a proposed NO_x emission limit;

8. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (g) below; and

9. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-1.39.

(e) Within 30 days after receiving a proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall notify the owner or operator in writing whether the submission includes all of the information required under (d) above and under (b) or (c) above, as applicable. If the proposed NO_x control plan or request for an alternative maximum allowable emission rate is incomplete, the following shall apply:

1. 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;

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

3. The owner or operator shall submit a complete proposed plan or request within the time stated in the Department's notification;

4. If the owner or operator fails to submit a complete proposed plan within the time stated in the Department's notification, the failure is a violation of this subchapter; and

5. If the owner or operator fails to submit a complete request for an alternative maximum allowable emission rate within the time stated in the Department's notification, the Department may deny the request.

(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 maximum allowable emission rate. 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 maximum allowable emission rate, 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 rate 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 rate 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 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 emissions limit pursuant to N.J.A.C. 7:27-19.13(c) or NO_x Control Plan pursuant to 7:27-19.13(b) 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)1 or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any application for an alternative maximum allowable NO_x emission rate submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and under the emission limit which would otherwise apply under this subchapter.

(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 maximum allowable emission rate 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 maximum allowable emission rate 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 maximum allowable emission rate, applies for and obtains the Department's approval of:

- i. A revised alternative maximum allowable emission rate 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 rate 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 4 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 limits set forth in the plan) approved by the Department by May 31, 1995, 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 maximum allowable emission rate shall cause it to emit NO_x at a rate no greater than the approved alternative rate.

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

Chief, Bureau of Air Quality Engineering
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 non-utility boilers or 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.

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 gas 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 Air Quality Engineering
Air Quality Regulation
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 gas 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

In (e)4, substituted a reference to owners and operators of the electric generating units for a reference to electric generating utilities.

7:27-19.23 Phased compliance—use of innovative control technology

(a) The owner or operator of a combustion source included in a phased compliance plan 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) By June 22, 1995, an owner or operator seeking approval of an innovative control technology plan shall **submit** to the Department an application pursuant to N.J.A.C. 7:27-19.14 and the plan itself pursuant to (c) below. If an owner or operator fails to submit the application by June 22, 1995, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, whether the owner or operator advised the Department before the application due date that a late application would be submitted, and the extent of the emission reductions promised in the late application. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source would be subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the innovative control technology plan with respect to each combustion source included in the plan:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), 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. A description of the NO_x control measures that the owner or operator proposes to employ as innovative control technology;

3. The rate of NO_x emissions that the owner or operator expects that the source will attain in employing the proposed innovative control technology, and the basis for that expectation;

4. Information establishing that the proposed innovative control technology is technically sound and sufficiently developed to be implemented by May 1, 1999;

5. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

- i. Submitting applications for all necessary permits and certificates;

- ii. Obtaining all necessary permits and certificates;

- iii. Awarding contracts for the implementation of the innovative control technology, or placing orders for the purchase of any component parts, equipment and/or control apparatus associated with the innovative control technology;

- iv. Awarding contracts and initiating implementation of the innovative control technology (including any construction and/or installation, if applicable); and

- v. Completing the implementation of the innovative control technology.

6. Specific procedures and schedules for implementing interim measures for control of NO_x emissions for the combustion source during the interim period;

7. A list of all NO_x control technologies available for interim use with the combustion source during the interim period;

8. An analysis of the technological feasibility of installing and operating each NO_x emission control technology identified in (c)7 above for the interim period;

9. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

10. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate. If a control technology installed before the innovative control technology is implemented cannot be used after that time, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

11. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)9 above and the estimated emission reductions under (c)10 above;

12. The NO_x control measures that the owner or operator proposes to employ during the interim period;

13. The proposed interim NO_x emission limit with which the source will comply during the interim period;

14. The method to be used to measure the actual NO_x emission rate of the combustion source;

15. The name and business telephone number of the person responsible for recordkeeping and reporting under N.J.A.C. 7:27-19.19 and under (e)8 below; and

16. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources

included in the plan will comply with the requirements of this section.

(d) The Department shall approve an innovative control technology plan only if the following requirements are satisfied:

1. The application satisfies all the requirements of N.J.A.C. 7:27-19.14 and (c) above, including the requirement that the plan consider all control technologies available for the control of NO_x emissions during the interim period from each type of combustion source included in the plan;

2. The innovative control technology proposed for each combustion source in the plan:

- i. Has a substantial likelihood of enabling the source to achieve greater continuous NO_x emissions reductions than are required to meet the applicable limit under N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10. If the expected extent of NO_x emission reductions is only marginally greater than are required to meet the applicable limit, the proposed innovative control technology will not be deemed to meet this standard;

- ii. Is technically sound;

- iii. Is sufficiently developed so that it can be implemented by May 1, 1999; and

- iv. Cannot practicably be implemented by May 31, 1995.

3. The completion date listed in (c)5v above is no later than May 1, 1999;

4. For any control technologies described in (c)7 above that the owner or operator does not propose to use with the combustion source during the interim period, the proposed plan demonstrates that the control technology:

- i. Would be ineffective in controlling NO_x emissions from the combustion source;

- ii. Is unsuitable for use with the combustion source, 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 rate that the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions that the control technology is likely to achieve during the interim period; or

- iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of combustion sources used by other persons in the owner or operator's industry who are also subject to the NO_x RACT requirements of P.L. 101-549, 182(f).

5. For each combustion source included in the plan, the interim emission limit proposed under (c)13 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)4iii and iv above;

6. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)13 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

7. The owner or operator has entered into an agreement with the Department in accordance with the requirements of (h) below.

(e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet the compliance milestones in the approved plan;

3. Implement the innovative control technology for the combustion sources included in the plan by the date specified in the approved plan;

4. Beginning on May 31, 1995, determine the actual NO_x emissions from each combustion source included in the innovative control technology plan in accordance with N.J.A.C. 7:27-19.15(a);

5. If the approved plan provides for the owner or operator to annually adjust the combustion process for a combustion source included in the plan, do so in accordance with the general procedures set forth at N.J.A.C. 7:27-19.16 before May 1 of each calendar year beginning with 1995, until the innovative control technology is implemented;

6. Beginning on May 31, 1995, comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27-19.19;

7. Within 15 days after the date specified in the approved innovative control technology plan for completion of a milestone listed in (c)5 above, notify the Department in writing that the milestone has or has not been completed. If the milestone has not been completed, the owner or operator shall include in the notice the reason for the delay and the expected date on which the milestone will be completed;

8. Incorporate advances in the art of air pollution control into each source included in the plan, as required in the preconstruction permit for the replacement equipment;

9. If the innovative control technology for any combustion source included in the plan is not implemented by May 1, 1999, cease operating the combustion source by May 1, 1999; and

10. Compensate, through use of DER credits in accordance with N.J.A.C. 7:27-30, for the amount (if any) by which the source's actual NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in (c)5v above) exceed the emissions which would have resulted if the source had attained the rate of NO_x emissions stated in (c)3 above.

(f) Except as provided in (g) below:

1. The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed innovative control technology plan. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which each combustion source included in the plan is located;

2. The Department shall submit any innovative control technology plan (and agreement under (h) below) approved under this section to EPA, as a proposed revision to New Jersey's State Implementation Plan; and

3. Upon EPA's approval of the revision to New Jersey's State Implementation Plan, the innovative control technology plan and agreement under (h) below shall be federally enforceable. Plans listed under (g) below shall be federally enforceable upon the issuance of the Department's approval.

(g) An innovative control technology plan approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:

1. Fuel switching under N.J.A.C. 7:27-19.20;
2. The use of selective non-catalytic reduction.

(h) Before the Department approves an innovative control technology plan, the owner or operator shall enter into a Federally enforceable agreement containing the following provisions:

1. Information sufficient to identify the owner or operator;
2. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), 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;

3. The owner or operator's undertaking of the following duties:

- i. Completing the milestones listed in (c)5 above by specified dates;
- ii. Implementing interim measures to control NO_x emissions from each combustion source during the interim period;
- iii. Causing each combustion source to emit NO_x at a rate no greater than a specified interim NO_x emission limit applicable during the interim period;
- iv. Using a specified method to measure the actual NO_x emission rate of the combustion source; and
- v. Maintaining the Department's approval in effect;

4. A provision for delay of compliance caused by a "force majeure" event beyond the control of and without the fault of the owner or operator;

5. A provision under which the Department can terminate the agreement and its approval of the innovative control technology plan if the owner or operator materially fails to complete implementation of the innovative control technology or any other milestone by the date specified in the approved plan, or if the innovative control technology program fails to achieve the required reduction levels. By the date specified by the Department in the agreement, in its approval of the plan, or in the notice of termination, the owner or operator shall attain compliance with the NO_x emissions limit under this subchapter that would apply to the combustion source in the absence of an approved plan. Termination of the agreement and the approval of the plan is in addition to any other remedies the Department has under this chapter and N.J.A.C. 7:27A; and

6. Other provisions necessary to make the agreement federally enforceable, to accomplish the purposes of this subchapter, or to allow the agreement to be administered effectively.

New Rule, 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 (e)10.

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 (e)10, inserted "through use of DER credits in accordance with N.J.A.C. 7:27-30," following "Compensate".

7:27-19.24 MEG alerts

(a) During a MEG alert that occurs on or before November 15, 2005, an electric generating unit that is operating at emergency capacity may exceed the NO_x emissions limits applicable under this chapter, including any limits set forth in the unit's permit. This exemption includes up to 12

hours per year of performance testing per boiler or gas turbine, provided this testing is not performed during the ozone season. This exemption is available only if the owner or operator of an electric generating unit complies with the requirements of this section.

(b) Within two working days after the end of the MEG alert, the owner or operator of the electric generating unit shall notify the Department by way of a report confirming the occurrence of the MEG alert. The owner or operator of the electric generating unit shall certify the report in accordance with N.J.A.C. 7:27-1.39. In the report, the owner or operator of the electric generating unit shall include the following information:

1. Information sufficient to identify each electric generating unit that operated at emergency capacity, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment also owned or operated by the owner or operator of the electric generating unit;

2. The date and time at which the owner or operator of the electric generating unit received notice from the load dispatcher, directing the owner or operator to operate one or more electric generating units at emergency capacity;

3. For each electric generating unit listed in (b)1 above, the date and time at which the electric generating unit began to operate the electric generating unit at emergency capacity;

4. The date and time at which the owner or operator of the electric generating unit received notice from the load dispatcher, advising the owner or operator that it could cease operating its electric generating units at emergency capacity;

5. For each electric generating unit listed in (b)1 above, the date and time at which the owner or operator ceased operating the electric generating unit at emergency capacity;

6. For each electric generating unit listed in 1 above, the amount by which the unit's NO_x emissions (expressed in pounds) during the MEG alert exceeded the maximum quantity of NO_x emissions allowed under this chapter. The excess NO_x emissions shall be calculated as follows for each day that the MEG alert continued:

$$E = (ER - M) \times H$$

where:

i. E is the excess NO_x emissions from the electric generating unit;

ii. ER is the average rate at which the electric generating unit emitted NO_x during the day of the MEG alert, determined in accordance with N.J.A.C. 7:27-19.15(a) and expressed in lb/MMBTU;

iii. M is the most stringent applicable NO_x emissions limit established under this chapter; and

iv. H the actual daily heat input to the electric generating unit during the MEG alert, expressed in MMBTU;

7. A copy of the calculations performed under (b)6 above; and

8. A description of the method by which the owner or operator of the electric generating unit has provided or will provide compensatory reductions in NO_x emissions as required under (c) below.

(c) The owner or operator of the electric generating unit shall use DER credits in accordance with N.J.A.C. 7:27-30 to compensate for the excess NO_x emissions during the MEG alert. The ratio of the amount of NO_x emission increases required to be compensated for with credits to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1.

New Rule, 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 (c).

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 N.J.A.C. reference.

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), substituted references to owners and operators of electric generating units for references to electric generating utilities throughout; and rewrote (c).

7:27-19.25 Exemption for emergency use of fuel oil

(a) If a combustion source temporarily combusts fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner or operator is not required to have the combustion source comply with the applicable NO_x emission limits in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, or an applicable NO_x emission limit established under N.J.A.C. 7:27-19.13, 19.20, 19.21, 19.22 or 19.23, while the fuel oil or other liquid fuel is burned. On each day that this exemption applies, for purposes of calculating daily or annual NO_x emissions the combustion source will be deemed to have emitted no NO_x and to have derived a heat input of 0.0 BTU.

(b) The exemption under (a) above is available only for a combustion source that uses natural gas as its primary fuel, or is seasonally combusting natural gas pursuant to a plan approved under N.J.A.C. 7:27-19.14 and 19.20. For a combustion source that uses natural gas as its primary fuel, the exemption under (a) above is available at any time during the year. For a combustion source that is seasonally combusting natural gas, the exemption under (a) above is available only from May 1 through September 30. This exemption is also available for those combustion sources which combust refinery gas as a primary fuel.

(c) The owner or operator of the combustion source is eligible for the exemption under (a) above only if the following requirements are met:

1. The owner or operator is not practicably able to obtain a sufficient supply of natural gas;
2. The owner or operator's inability to obtain natural gas is due to circumstances beyond the control of the owner or operator, such as a natural gas curtailment;
3. The combustion source ceases using fuel oil or other liquid fuel in place of natural gas and resumes using natural gas as soon as a sufficient supply of natural gas becomes practicably available;
4. The use of fuel oil or liquid fuel does not exceed 500 hours during any consecutive 12-month period; and
5. The owner or operator satisfies the recordkeeping requirements of N.J.A.C. 7:27-19.19(d) and (e), and the reporting requirements of (d) below.

(d) The owner or operator shall keep records of curtailment periods and incorporate such records into the required quarterly reports submitted to the Department. Such records shall include the following information:

1. Information sufficient to identify each combustion for which the owner or operator claims an exemption under this section, including a brief description of the source (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment also owned or operated by the owner or operator of the electric generating unit;
2. A statement that the owner or operator is not practicably able to obtain a sufficient supply of natural gas;
3. The date and time at which the owner or operator first became practicably unable to obtain natural gas; and
4. A description of the circumstances causing the owner or operator's inability to obtain natural gas.

New Rule, 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 (b), substituted a reference to September 30 for a reference to September 15; and in (d)1, substituted a reference to owners and operators of electric generating units for a reference to electric generating utilities.

7:27-19.26 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator 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-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

Recodified from 7:27-19.20 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).

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.

Source and Effective Date

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).

Cross References

Application of N.J.A.C. 7:27-18 to applications submitted pursuant to this subchapter, see N.J.A.C. 7:27-18.2.

Law Review and Journal Commentaries

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

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).

7:27-22.1 Definitions

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

"Accountable" means, in respect to compliance with an emissions limit, verifiable through the keeping, maintenance, and accessibility of clear, appropriately comprehensive, and reliable records.

"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 by the Department.

"Administrative amendment" means the type of change made at a facility, and incorporated into an operating permit, through the procedures for administrative amendments at N.J.A.C. 7:27-22.20.

"Administratively complete application" means an application which includes sufficient information for the Department to commence review of the application. This information shall include all of the information required by this subchapter for the type of application being submitted, submitted on or with forms obtained from the Department and in accordance with the instructions accompanying the application forms. To be complete, an application shall include all preconstruction permits issued for the facility as of the date of the operating permit application. An application which is administratively complete may require supplementary information in order for the Department to take final action on the application.

"Affected state" means, in respect to an application for an operating permit, operating permit renewal, minor modification, or significant modification, any state in the United States that:

1. Is contiguous to New Jersey; or
2. Is located within 50 miles of the facility which is the subject of the application.

"Affected Title IV facility" means a facility that includes one or more "affected units," as that term is defined in the acid deposition control provisions (commonly known as "acid rain" provisions) of Title IV of the CAA, 42 U.S.C. § 7651 et seq. This term has the same meaning as the term "affected source" as defined in 40 CFR 70.

"Affected Title IV unit" has the same meaning as the term "affected unit" in the regulations promulgated by EPA under the acid deposition control program, set forth at Title IV of the CAA.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Air quality impact analysis" means a procedure entailing the use of air quality simulation modeling, 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.

"Allowance" means an authorization granted to an affected Title IV unit by the EPA under acid deposition control requirements at Title IV of the CAA. The authorization allows the unit to emit one ton of SO₂ during or after a specified calendar year.

"Ambient air monitoring" means the measurement of concentrations of one or more air contaminants in the outdoor atmosphere.

"Applicable Federal requirement" means any of the following standards, provisions or requirements as they apply to any source operation in a facility which is subject to this subchapter. Applicable requirements include requirements that have been promulgated or approved by EPA through rulemaking but have future-effective compliance dates:

1. Any standard or other requirement provided for in New Jersey's approved SIP (or FIP, if applicable), including any approved revisions;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I of the CAA, including Parts C or D;
3. Any NSPS or other standard or requirement under 42 U.S.C. § 7411 including 42 U.S.C. § 7411(d);
4. Any standard or other requirement concerning HAPs under 42 U.S.C. § 7412, including any requirement

concerning accident prevention under 42 U.S.C. § 7412(r)(7);

5. Any standard or other requirement of the acid deposition control program under Title IV of the CAA or the regulations promulgated thereunder;

6. Any requirement established pursuant to the provisions for monitoring in Title V of the CAA at 42 U.S.C. § 7661c(b) or pursuant to the monitoring requirements at 42 U.S.C. § 7414(a)(3);

7. Any standard or other requirement governing solid waste incineration under 42 U.S.C. § 7429;

8. Any standard or other requirement for consumer and commercial products under 42 U.S.C. § 7511b(e);

9. Any standard or other requirement for marine tank vessels under 42 U.S.C. § 7511b(f);

10. Any standard or other requirement of the program to prevent or control the emission of air contaminants from outer continental shelf sources under 42 U.S.C. § 7627;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless EPA has determined that such a requirement need not be contained in an operating permit;

12. Any of the following, but only as it would apply to temporary facilities permitted pursuant to the provisions for temporary facilities at 42 U.S.C. § 7661c(e):

i. A NAAQS; or

ii. An increment under the PSD provisions at 42 U.S.C. § 7473; or

iii. A visibility requirement under 42 U.S.C. § 7491 or 7492.

"Applicable requirement" means any requirement which is an applicable State requirement or an applicable Federal requirement or both.

"Applicable State requirement" means any provision, standard or requirement in any statute or rule, as it applies to air contaminant emissions from a facility or source operation which is subject to this subchapter, except an applicable Federal requirement. This term includes requirements that have been promulgated by the Department and submitted to EPA as SIP revisions but have not yet been approved by EPA.

"Applicable VOC" means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.

"Application shield" means the protection from enforcement action set forth at N.J.A.C. 7:27-22.7.

"Area source" means, in respect to MACT and GACT standards, any stationary source of hazardous air pollutant that is not a major HAP facility.

"Attainment area" means any area of the State which is not a nonattainment area.

"BACT" or "best available control technology" has the meaning set forth for this term in the PSD regulations at 40 CFR 52.21.

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Category I" means the class of modification application for the following types of significant source operations:

1. Any gasoline vapor recovery system constructed, installed, or operated at any gasoline dispensing facility; this does not include gasoline vapor recovery systems at bulk terminals;

2. Any woodworking equipment including, but not limited to, saws, planers, and sanders, that has particulate control apparatus which achieves a minimum collection efficiency of 99 percent, and the particulate control apparatus serving the equipment;

3. Any metal working equipment including, but not limited to, welders, grinders, and drill presses, that has particulate control apparatus that achieves a minimum collection efficiency of 99 percent, and the particulate control apparatus serving the equipment.

4. Fossil fuel burning equipment used only for the burning of liquid or gaseous commercial fuel and having a designed heat input rate of less than 10 million BTU per hour; this does not include any equipment used for the burning of coal or other solid fuel, non-commercial fuel, crude oil or process by-products in any form;

5. Stationary storage tanks which have a capacity of less than 20,000 gallons and which are used for the storage of liquid substances and any control apparatus serving such tanks; this does not include any tank used to store a substance which is a TXS;

6. Emergency diesel generators with less than 10 megawatts of electrical output that operate less than 500 hours per year;

7. Any tank, reservoir, container or bin that is used for the storage of solid particles and has particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any tank, reservoir, container or bin that is used for the storage of any TXS;

8. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any equipment used to handle any material which is a TXS;

9. Any paint spray operation or other surface coating operation that has particulate control and that uses less than one half gallon of paint per hour and the particulate control apparatus serving the spray booth; this does not include any paint spray operation or surface coating operation which emits any TXS;

10. Any enclosed sandblasting equipment that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;

11. Any plastics grinding equipment; and

12. Any open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

"Category II" means the class of modification application for any type of significant source operation except those types which are defined above as belonging to Category I.

"CFR" means the United States Code of Federal Regulations.

"Chemical Abstract Service number" or "CAS number" means a number assigned to a chemical by the American Chemical Society's Chemical Abstract Service Registry.

"Class I substance" means an air contaminant that is listed in 42 U.S.C. § 7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.

"Class II substance" means an air contaminant that is listed in 42 U.S.C. § 7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

"Clean Air Act" or "CAA" or "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., and any subsequent amendments or supplements to that act.

"Commercial fuel" means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

"Compliance plan" means a plan meeting the requirements of N.J.A.C. 7:27-22.9, which is developed and submitted as part of an application for an operating permit, renewal, or significant modification.

"Compliance schedule" means the portion of a compliance plan which fulfills the requirements of N.J.A.C. 7:27-22.9(c)5ii.

"Construct" or "construction" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used, but shall not include the dismantling of existing equipment or control apparatus, site preparation, or the ordering, receiving, temporary storage, or installation of equipment or control apparatus. Unless otherwise prohibited by federal law, this term shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used.

"Construction of a major HAP facility" means, when used at N.J.A.C. 7:27-22.26, the fabrication (on site), erection, or installation of a new major HAP facility, or the fabrication (on site), erection, or installation of a new source operation at an existing facility if the new construction in and of itself constitutes a major HAP facility.

"Consumer Price Index" or "CPI" means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

"Continuous data recorder" means a mechanism which continuously records the information gathered by a CEM, CPM, COM, or other continuous measurement device.

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS. Ambient monitors, which measure the impact or concentration of air contaminants emitted by the source operation or facility in nearby areas, are not considered part of a facility's CMS.

"Continuous opacity monitor" or "COM" means a device which continuously measures opacity of flue gases.

"Continuous process monitor" or "CPM" means an instrument or system which continuously measures an operational parameter at a facility, such as temperature or air flow rate.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Co-product" means one or more incidental results of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered nonproduct output. Increases in quantities of co-products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term "co-product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-5 shall control.

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a NJAQS has been promulgated at N.J.A.C. 7:27-13.

"Designated Title IV representative" means a responsible natural person authorized by the owners and operators of an affected Title IV facility and of all affected units at the Title IV facility, as evidenced by a certificate of representation submitted to EPA in accordance with Subpart B of 40 CFR Part 72, and to the Department, to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Federal Acid Rain Program. Whenever the term "responsible official" is used in this subchapter with regard to any matter under the federal Acid Rain Program, it shall be deemed to refer to the "designated Title IV representative."

"DOT" means the New Jersey Department of Transportation.

"Draft general operating permit" means the version of a general operating permit which is developed by the Department and released for public input and an opportunity for a public hearing pursuant to N.J.A.C. 7:27-22.11. After receiving and considering the comments on the draft general operating permit, the Department will develop a proposed general operating permit for submittal to EPA for approval prior to issuing a final general operating permit.

"Draft operating permit" means the version of an operating permit which is developed by the Department after the Department's receipt of an administratively complete application, and released for public comment and an opportunity for a public hearing pursuant to N.J.A.C. 7:27-22.11. After receiving and considering the comments on the draft operating permit, the Department will develop a proposed operating permit for submittal to EPA for approval prior to issuing a final operating permit.

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation, and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emission limitation set forth in its operating permit. This term shall not include noncompliance caused by **improperly** designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emission fee" means an annual fee that is based on the emissions of any regulated air contaminant.

"Emission statement" means an annual reporting of actual emissions of air contaminants as prescribed by the Department at N.J.A.C. 7:27-21.

"Emissions" means any air contaminant or category of air contaminants discharged directly or indirectly into the atmosphere.

"Emissions cap" means an emissions limit, or limits, established in a permit for a group of source operations, which establishes the maximum quantity of emissions which may be released, in the aggregate, from a specified group of source operations.

"Enforceable" means, in respect to an emissions limit, based on sufficient statutory and regulatory authority to be recognized in a court of law.

"Environmental improvement pilot test" means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Exempt activity" means one of the following:

1. Source operations which have no potential for emitting any air contaminant, including but not limited to:
 - i. Stationary storage tanks which are used for the storage of water or distillates of air; and

- ii. Enclosed stationary material handling equipment using pneumatic, bucket or belt conveying systems from which no emissions of air contaminants occur;
- 2. Any of the following activities, if the activity supports the one or more production processes of the facility, and does not itself constitute a facility production process or a part thereof:
 - i. Office activities and the equipment and implements used therein, such as typewriters, printers, and pens;
 - ii. Interior maintenance activities and the equipment and supplies used therein, such as janitorial cleaning products and air fresheners; this does not include any cleaning of production equipment;
 - iii. Bathroom and locker room ventilation and maintenance;
 - iv. (Reserved);
 - v. The activities of maintenance shops, such as welding, gluing, and soldering, performed indoors or outdoors;
 - vi. First aid or emergency medical care provided at the facility, including related activities such as sterilization and medicine preparation;
 - vii. Laundry operations that service uniforms or other clothing used at the facility, not including:
 - (1) Any dry cleaning process; and
 - (2) Any dryer that is fuel burning equipment having a maximum rated heat input of 1,000,000 BTU per hour or greater;
 - viii. Architectural maintenance activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing, and sandblasting;
 - ix. Exterior maintenance activities conducted to take care of the grounds of the facility, including lawn maintenance;
 - x. Food preparation to service facility cafeterias and dining rooms;
 - xi. The use of portable space heaters which reasonably can be carried and relocated by an employee; and
 - xii. Any laboratory hood used for research and development, quality assurance and quality control testing and sampling activities;
- 3. The engine of any vehicle, including but not limited to any marine vessel, aircraft, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment;
- 4. Storage tanks, reservoirs, containers, or bins used on any farm for the storage of agricultural commodities

produced by or consumed in the farm's own operations. This does not include storage tanks, reservoirs, containers or bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production;

- 5. Potable water treatment equipment, not including air stripping equipment;
- 6. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;
- 7. Equipment used in copying and duplication activities, including any microfiche copier, photocopier, xerography machine, or other photographic processing equipment by which an image is reproduced upon material sensitized by radiant energy;
- 8. A fuel cell system that uses hydrogen without a fuel processor, or a fuel cell system that uses a natural gas fuel processor and that has a power output no greater than 500 kilowatts;
- 9. Hand held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal or plastic. For the purposes of this paragraph, "hand held" means "can reasonably be carried and used by one person for the purpose for which the equipment was designed";
- 10. Equipment at a battery charging station, except at a battery manufacturing plant;
- 11. Electric, plasma, or gaseous-fuel cutting equipment used to cut metal or metal products, provided the metal or metal product does not contain stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium;
- 12. Equipment that blends or mixes potting soil (including, but not limited to, soil, compost, artificial media or soil-less media, and/or peat moss) which is used on site in a commercial or non-commercial greenhouse or nursery operation for plant propagation and which is not for commercial sale;
- 13. Equipment or a source operation being used in a site remediation process that is being carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. §§ 9601 et seq.;
- 14. Equipment or a source operation, which satisfy 14i through iii below:
 - i. The equipment or source operation is one of the following:
 - (1) A mixer, cutter, molder, conveyor, blender, filler, or cooking kettle which processes material intended as food for direct human consumption, provided that the temperature of the food does not exceed 225 degrees Fahrenheit;

(2) Equipment that sands, drills, buffs, polishes, mills, carves, presses, or planes metal or metal products, except metal products containing stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium;

(3) Equipment that sands, drills, cuts, or planes untreated and unpainted wood or wood products; or

(4) Equipment that cuts, trims, perforates, folds, or molds paper or paper products;

ii. The following criteria are met:

(1) The source has no visible emissions, exclusive of water vapor, to the outdoor atmosphere;

(2) The source does not emit any air contaminant which may cause an odor detectable outside the property boundaries of the facility;

(3) The source is located in an enclosed work area equipped with heating and ventilation; emissions from the source are vented directly into the work area where the equipment is located and are free from the influence of any local exhaust ventilation system; and the work area meets an OSHA indoor air quality standard for occupancy even though the emissions are being released into the work area;

(4) The source is not subject to any NSPS, NESH-APS, or MACT air pollution control standard;

(5) The source's potential to emit each TXS and each HAP does not exceed the de minimis reporting thresholds as specified in N.J.A.C. 7:27-8, Appendix 1, Table A for each TXS and Table B for each HAP; and

(6) The percentage by weight of all HAPs collectively in the raw material is less than 1.0 percent; and

iii. The owner or operator of the source has readily available upon Department request a statement certified in accordance with N.J.A.C. 7:27-1.39, signed by the responsible official, as defined at N.J.A.C. 7:27-1.4, that:

(1) Specifies the contents of the vessel, if the source is a mixing or blending vessel;

(2) Affirms that the source meets all the criteria listed in 14ii above; and

(3) Attests that the source is in compliance with all other applicable State or Federal air pollution requirements.

"Existing facility" means a facility which is in operation as of the applicable date of the provision for which this term is being used.

"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 N.J.S.A. 26:2C-1 et seq., or any codes, rules, or regulations adopted pursuant thereto.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Federally enforceable" means any limitation or condition on operation, production, or emissions that can be enforced by EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60, or promulgated under 42 U.S.C. § 7411;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;

3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or

4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit and certificate issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

"Federal Implementation Plan (FIP)" means a plan, or portion thereof, promulgated by EPA pursuant to the CAA to address or otherwise correct all or a portion of an inadequacy in a SIP.

"Final general operating permit" means the version of the general operating permit issued by the Department after completion of the procedures required by this subchapter for a draft general operating permit and a proposed general operating permit.

"Final operating permit" means the version of an operating permit issued by the Department after completion of the procedures required by this subchapter for a draft operating permit and a proposed operating permit.

"Fiscal year" or "FY" means the period from July 1 through June 30. Each fiscal year is designated according to the calendar year in which the end of the period falls. For example, the period from July 1, 1998 through June 30, 1999 is fiscal year 1999, or FY99.

"Fuel cell system" means an electrochemical device that converts the chemical energy in its fuel directly into electricity and heat. This term also includes any associated fuel processor, such as a reformer, that produces the fuel.

"Fugitive emissions" means any air contaminant emissions released directly or indirectly into the outdoor atmosphere which can not reasonably pass through a stack or chimney.

"GACT standard" or "Generally Available Control Technology standard" means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of area sources that emit hazardous air pollutants (HAPs), which NESHAP has been promulgated by EPA pursuant to 42 U.S.C. § 7412.

"General operating permit" means a standardized operating permit, which may be used to provide authorization to operate numerous similar source operations, groups of source operations, or facilities, each of which meets the applicability criteria set forth in the general operating permit, and is issued pursuant to the procedures in N.J.A.C. 7:27-22.14.

"Grandfathered" means, in reference to equipment or control apparatus, that construction, reconstruction, or modification occurred prior to the enactment of N.J.S.A. 26:2C-9.2 on June 15, 1967, the initial promulgation of the rules codified at N.J.A.C. 7:27-8, or any subsequent applicable revisions to the rules; and there has been no construction, reconstruction or modification of the equipment or control apparatus.

"Hazardous air pollutant" or "HAP" means an air contaminant listed in or pursuant to 42 U.S.C. § 7412(b).

"Initial operating permit" means the first operating permit issued pursuant to this subchapter which applies to a particular facility, or a portion thereof.

"Insignificant source operation" means equipment or a source operation which is one of the following:

1. Equipment or a source operation which is the same type as is included within a category described in paragraphs 1, 3, 4, 5, 7, 8, 9, 11, 14, 16, 17, 18, or 19 in the definition of "significant source operation," but which is excluded from the category because it does not meet an applicability threshold set forth in the description of the category. That is, the equipment or source operation has a lower capacity, weight of materials processed, vapor pressure, or consumption of BTUs, or otherwise falls outside a parameter that is included in the description of the category;

2. A stationary storage tank or mixing or blending vessel, provided that 2i, ii and iii below are satisfied:

- i. The tank or vessel is one of the following:

- (1) A tank used solely to store a food-grade liquid, which in its stored form is intended as food for direct human consumption. For the purposes of this subparagraph, food-grade liquids do not include liquids stored in a concentrated form; vitamins and drugs; or food additives, preservatives, or other ingredients that in their stored or manufactured form are not intended for direct human consumption;

- (2) A tank used to store liquids, provided that:

- (A) The operating temperature of the tank is not greater than 350 degrees Fahrenheit; and

- (B) The vapor pressure of the liquid, excluding the vapor pressure of water, is less than 0.02 pounds per square inch absolute at the liquid's actual temperature or at 70 degrees Fahrenheit, whichever temperature is higher; or

- (3) Any of the following vessels used to mix and blend liquids, if the vessel would otherwise be classified as a significant source solely because it meets the criteria in paragraph 6 of the definition of "significant source":

- (A) A vessel with a capacity of 1,000 gallons or greater in which the mixing or blending of liquids takes place in a non-reactive process, provided that:

- I. The operating temperature of the vessel is not greater than 350 degrees Fahrenheit; and

- II. The vapor pressure of the liquid, excluding the vapor pressure of water, is less than 0.02 pounds per square inch absolute at the liquid's actual temperature or at 70 degrees Fahrenheit, whichever temperature is higher;

- (B) A vessel with a capacity of less than 1,000 gallons in which the mixing or blending of liquids takes place in a non-reactive process, provided that the vapor pressure of the liquid, excluding the vapor pressure of water, is less than 1.5 pounds per square inch; or

(C) A vessel with a capacity of less than 1,000 gallons in which the mixing or blending of either solids and liquids or solids only takes place in a non-reactive process, provided that:

I. The vapor pressure of any liquid, excluding the vapor pressure of water, is less than 1.5 pounds per square inch; and

II. The vessel is equipped with a control apparatus designed to remove particulate emissions at a minimum efficiency of 99 percent or is located inside a room that is equipped with a control apparatus designed to remove particulate emissions at a minimum efficiency of 99 percent;

ii. The following criteria are met:

(1) The tank or vessel has no visible emissions, exclusive of water vapor, to the outdoor atmosphere;

(2) The tank or vessel does not emit any air contaminant which may cause an odor detectable outside the property boundaries of the facility;

(3) The tank or vessel is not subject to any NESH-APS, MACT, or NSPS air pollution control standards, excluding the NSPS requirements to maintain a record of the contents of the tank or vessel, the period of storage of these contents, and the maximum true vapor pressure of the liquid stored;

(4) The tank's or vessel's potential to emit each TXS and each HAP does not exceed the de minimis reporting thresholds as specified in N.J.A.C. 7:27-8, Appendix 1, Table A for each TXS and Table B for each HAP;

(5) The percentage by weight of all HAPs collectively in the raw material stored in the tank, or mixed or blended in the vessel, is less than 1.0 percent; and

iii. The owner or operator of the tank or vessel has readily available upon Department request a statement certified in accordance with N.J.A.C. 7:27-1.39, signed by the responsible official, as defined at N.J.A.C. 7:27-1.4, that:

(1) Specifies the contents of the tank or vessel;

(2) Affirms that the tank or vessel meets all of the criteria listed in 1 and 2 above; and

(3) Attests that the tank or vessel is in compliance with all other applicable State or Federal air pollution requirements; or

3. Any equipment or a source operation which may emit air contaminant(s) directly or indirectly into the outdoor air and which is not defined either as a significant source operation or an exempt activity.

"Install" or "installation" means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, duct work or conveyor systems. This term does not include the construction or reconfiguration of equipment or control apparatus to an alternate configuration specified in the permit application and approved by the Department.

"Intermediate product" means one or more desired results of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term "intermediate product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Lead" or "Pb" means elemental lead or any compound containing lead measured as elemental lead.

"Lowest achievable emission rate" or "LAER" has the meaning assigned to this term at N.J.A.C. 7:27-18.1.

"MACT standard" or "Maximum Achievable Control Technology standard" means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. § 7412; or
2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. § 7412(g) or (j).

"Major facility" means a facility which constitutes a major source, as defined by EPA at 40 CFR § 70.2 or any subsequent amendments thereto, and that has the potential to emit any of the air contaminants listed below in an amount that is equal to or exceeds the applicable major facility threshold level. The major facility threshold levels are as follows:

<u>Air Contaminant</u>	<u>Major Facility Threshold Level</u>
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year

<u>Air Contaminant</u>	<u>Major Facility Threshold Level</u>
Any other air contaminant	100 tons per year

"Major Hazardous Air Pollutant (HAP) facility" means a major facility, or part thereof, which emits or has the potential to emit:

1. Ten tons or more per year of any HAP;
2. Twenty five tons or more per year of any combination of HAPs; or
3. Such lesser quantity, or different criterion, as the EPA may establish by rule.

"Manufacturing process" means any action, operation, or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, and absorbers.

"Maximum allowable emissions" means, for the purpose of this subchapter, the maximum amount of an air contaminant allowed to be emitted, as specified in the final operating permit issued by the Department.

"Minor modification" means a change made at a permitted facility in accordance with N.J.A.C. 7:27-22.23.

"Modification of a major HAP facility" means, when used at N.J.A.C. 7:27-22.26, any physical change in, or change in the method of operation of, a major HAP facility, which:

1. Increases the facility's actual emissions of any HAP by more than an amount established by EPA as de minimis for that HAP at 40 CFR 63; or
2. Results in the emission of any HAP not previously emitted, in more than the amount established by EPA as de minimis for that HAP at 40 CFR 63.

"Modify" or "modification" means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of actual emissions of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. A modification may be incorporated into an operating permit through a significant modification, a minor modification, or a seven-day-notice change.

"Monitoring" means to evaluate a facility's processes, operations, emissions or other aspects over a period of time. Monitoring can be accomplished using CEMs, COMs, CMS, CPMs, or other measurement or evaluation mechanisms.

"NAICS code" means the North American Industrial Classification System code, assigned by the United States Office of Management and Budget, which classifies establishments according to the type of economic activity in which they are engaged. An NAICS manual is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR Part 61 or 40 CFR Part 63.

"New facility" means a facility which has not commenced operation as of the applicable date of the provision for which this term is being used.

"New Jersey ambient air quality standard" or "NJAAQS" means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

"Nonattainment area" means any area of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds a NAAQS or NJAAQS; or
2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

"Nonproduct output" or "NPO" means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. Nonproduct output includes fugitive releases. This term shall have the same meaning as defined for the term "nonproduct output" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"NSPS" means Standards of Performance for new stationary sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" or "certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., and in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8. An operating certificate is generally issued for new or altered equipment at non major facilities for which operating permits are not required and for new or altered equipment at major facilities which are not yet required to have a final operating permit.

"Operating permit" means the permit described in Title V of the federal Clean Air Act, 42 U.S.C. § 7661 et seq., and in this subchapter. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

"Operating scenario" means a plan for operating a facility or a portion thereof in a way, or according to a method, or using methods or processes, which are different from other methods or processes used at the facility, or portion thereof. An operating scenario may be incorporated into a permit through issuance of an initial operating permit, minor modification, significant modification, or authorized through a seven-day-notice.

"Order" means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60, Appendix A, Methods 7 through 7E.

"Permittee" means, for the purpose of this subchapter, any person to whom the Department has issued an operating permit.

"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.

"Phase I" means a time period designated pursuant to the Title IV acid deposition control program as commencing January 1, 1995, and ending December 31, 1999.

"Phase II" means a time period designated pursuant to the Title IV acid deposition control program as commencing January 1, 2000, and continuing indefinitely.

"PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

"Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term "Pollution Prevention Assessment" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K-1.5.

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR § 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, fugitive emissions shall be included in the determination of potential to emit. If the owner or operator is using DER credits pursuant to the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period. However, the determination shall not include the holding of any of the following by the owner or operator: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, DER credits generated pursuant to N.J.A.C. 7:27-30.4, or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7.

"Preconstruction permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8.

"Prevention of significant deterioration" or "PSD" means the requirements pursuant to 40 CFR 51.166, administered through the Department's permitting process, which apply to a new or modified major facility located in an attainment area. The Department accepted delegation of the administration of the PSD program from EPA on February 22, 1983.

"Process unit" means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of making reconstruction determinations. Product recovery equipment shall be considered to be part of the process unit, not part of the control apparatus.

"Product" means one or more desired results of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator. This term shall have the same meaning as defined for the term "product" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, method or techniques, used to produce a product or reach a planned result. This term shall have the same meaning as defined for the term "production process" at N.J.A.C. 7:1K-1.5.

"Proposed general operating permit" means the version of a general operating permit which is developed by the Department pursuant to N.J.A.C. 7:27-22.12, after receipt and consideration of public comments on the draft general operating permit. The Department forwards the proposed general operating permit to EPA for review, pursuant to the procedures at N.J.A.C. 7:27-22.12, prior to the issuance by the Department of the final general operating permit.

"Proposed operating permit" means the version of an operating permit which is developed by the Department pursuant to N.J.A.C. 7:27-22.12, after receipt and consideration of public comments on the draft operating permit. The Department forwards the proposed operating permit to EPA for review, pursuant to the procedures at N.J.A.C. 7:27-22.12 prior to the issuance by the Department of the final operating permit.

"Quantifiable" means measurable with an acceptable degree of accuracy and reliability.

"Rate of production" means the quantity per unit of time of any process intermediate, product, by-product, or waste generated through the use of any significant source operation.

"Raw material" means any input to a significant source operation, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds, and elemental substances.

"Reconstruct" or "reconstruction" means the replacement of part(s) of equipment included in the process unit, or the replacement of part(s) of control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit; or, if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new control apparatus; and
2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index (CPI).

"Reconstruction of a major HAP facility" means, when used at N.J.A.C. 7:27-22.26, the replacement of components at a facility to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to replace the facility at which the components are being replaced.

"Regulated air contaminant" means the same as the term "regulated air pollutant" as defined by EPA at 40 CFR § 70.2 or any subsequent amendments thereto.

"Renewal" means the procedure set forth at N.J.A.C. 7:27-22.30 by which an applicant may seek reissuance of an operating permit prior to its expiration date.

"Replace" means, in respect to equipment or control apparatus, to remove equipment or control apparatus and place or install a different piece of equipment or control apparatus at the same location and at the same point in the manufacturing process, provided that the newly placed equipment or control apparatus serves the same function, in the same manner.

"Replicable procedure" means a procedure, including any sampling, source emissions testing, or other monitoring procedure, which gives the same result when administered on a different occasion or by a different person.

"Reporting year" means the calendar year during which emissions reported in an Emission Statement were emitted, except that carbon monoxide emissions emitted in December of the preceding calendar year shall also be reported as part of the peak carbon monoxide season emissions in a given year.

"Research and development facility" means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

"Responsible official" has the meaning defined for this term at N.J.A.C. 7:27-1.4.

"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.

"Seven-day notice change" means, for the purpose of this subchapter, a change made at a facility covered by an operating permit in accordance with N.J.A.C. 7:27-22.22.

"Shutdown" means to discontinue use of a process, piece of equipment, control apparatus, or a source operation.

"SIC code" means the Standard Industrial Classification code, assigned by the United States Office of Management and Budget, which classifies establishments according to the type of economic activity in which they are engaged. An SIC manual is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Significant modification" means a change made at a facility covered by an operating permit and incorporated into the operating permit in accordance with N.J.A.C. 7:27-22.24.

"Significant net emission increase" means an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

"Significant source operation" means any source operation which is one of the following unless the source operation is explicitly specified, in the definition of "exempt activity," as an exempt activity, and unless the source operation is explicitly specified, in paragraphs 1 or 2 of the definition of "insignificant source," as an insignificant source:

1. Equipment that is used in a surface coating operation including, but not limited to, spray or dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning in which the quantity of coating or cleaning material used in any one hour is equal to or greater than one half gallon;

2. Dry cleaning equipment;

3. A surface cleaner that uses a cleaning solution containing five percent or more VOCs, HAPs, or VOC and HAP combined, and which is:

- i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;

- ii. A heated open top surface cleaner;

- iii. A conveyORIZED surface cleaner; or

- iv. A stationary spray cleaning or surface stripping operation using one half gallon or more of cleaning solution in any one hour;

4. Equipment that shreds wood, if the engine powering the equipment has a maximum rated gross heat input of 1,000,000 BTU per hour or greater; or

5. Equipment, in addition to a surface cleaner as set forth in paragraph 3 above that has a capacity of more than 100 gallons and that is used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, plating, chromium electroplating, or chromium anodizing;

6. Equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour, provided:

- i. Such equipment shall not include equipment which is the same type as is included within a category described in paragraphs 1, 3, 4 or 5 above, or in paragraphs 7, 8, 9, 11, 14, 16, 17, 18, or 19 below; but which is excluded from the category because it does not meet an applicability threshold set forth in the description of the category. That is, the equipment has a lower capacity, weight of materials processed, vapor pressure, or consumption of BTUs, or otherwise falls outside a parameter that is included in the description of the category;

- ii. In determining the weight of the raw materials used, the weight of the following shall be excluded:

- (1) Air;

- (2) Water;

- (3) Containers, provided that the container is not consumed as part of the operation of the equipment; and

- (4) 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;

7. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air, not including a storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

8. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of a VOC or mixture of VOCs having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (one millimeter of mercury) or greater at standard conditions, not including a storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

9. Tanks, reservoirs, containers and bins which have a capacity in excess of 2,000 cubic feet and which are used for the storage of solid particles;

10. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which direct or indirect emissions of air contaminants occur;

11. Commercial fuel burning equipment that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber;

12. Except where a registration has been filed pursuant to N.J.A.C. 7:27-20.3, any equipment that is used for the burning of noncommercial fuel, crude oil or process by-products in any form. This includes off-specification used oil, processed used oil fuel, or on specification used oil as defined in N.J.A.C. 7:27-20.1;

13. Any incinerator, except incinerators constructed, installed or used in one or two-family dwellings or in multi-occupied dwellings containing six or less family units, one of which is owner occupied;

14. Any waste or water treatment equipment which may emit air contaminants including, but not limited to, air stripping equipment, aeration basins, surface impoundments, lagoons, sludge tanks, dewatering equipment, soil cleaning equipment, conveying equipment, digesters, thickeners, flocculators, driers, fixation equipment, composting equipment, pelletizing equipment and grit classifying equipment. For water treatment equipment, the concentration in the water of any TXS must equal or exceed 100 parts per billion by weight or the total concentration in the water of VOC must equal or exceed 3,500 parts per billion by weight;

15. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility, directly or indirectly into the outdoor atmosphere including, but not limited to, any transfer station, recycling facility, or municipal solid waste composting facility;

16. Any source operation or equipment that has the potential to emit any Group 1 or Group 2 TXS (or a combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

17. A transfer operation involving gasoline or other VOCs regulated under N.J.A.C. 7:27-16.3 or 16.4, or a marine tank vessel loading or ballasting operation regulated under N.J.A.C. 7:27-16.5, if the operation is required to have a control device other than bottom fill or submerged fill;

18. Equipment that is used in a graphic arts operation including, but not limited to, newspaper, lithographic, gravure, flexographic, letterpress and screen printing, in which the quantity of ink, fountain solution, or cleaning material used in any one hour is equal to or greater than one half gallon; or

19. Welding equipment, if the weight of the welding rod or welding wire used in the process is greater than 12 pounds in any calendar day.

"Source emission testing" means the testing of a discharge of any air contaminant from a source operation through any stack or chimney.

"Source operation" means any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or used for emitting any air contaminant into the outdoor atmosphere.

"State Implementation Plan (SIP)" means a plan, or portion thereof, prepared by a State and approved by the EPA pursuant to 42 U.S.C. § 7410, which includes enforceable emission limitations or other control measures, means or techniques, and provides for implementation, maintenance, and enforcement of one or more NAAQS.

"Sulfur dioxide" or " SO_2 " means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

"Temporary facility" means a major facility which, by design, is intended to be operated at more than one location and which is relocated more than once in five years.

"Testing" means a procedure for the determination of the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Total suspended particulate matter" or "TSP" means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

"TXS" means a substance regulated by N.J.A.C. 7:27-17.

"U.S.C." means the United States Code.

"Use" means, in respect to equipment, control apparatus, or a source operation, to engage in any form or manner of operation of equipment, control apparatus or the source operation subsequent to its installation. This term includes any trial operation.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of

determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched, or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)
ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)

1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
chlorofluoromethane (HCFC-31)
1-chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)
methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

Administrative correction

See: 27 N.J.R. 1406(a)

Amended by R.1995 d.492, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 22(b), 27 N.J.R. 3472(a).

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.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 "Federally enforceable", inserted a reference to certificates in 4; in "Modify" or "modification", inserted "of actual emissions" following "amount" in the first sentence; and in "Reconstruct" or "reconstruction", inserted "part(s) of" preceding "control" in the introductory paragraph, and rewrote 1.

Administrative change.

See: 31 N.J.R. 639(b).

Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

In "Exempt activity", added 8; inserted "Fuel cell system"; and in "Insignificant source operation", substituted "rate" for "rather" following "production".

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 "Potential to emit", inserted a new fifth sentence, and rewrote 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 "Air quality simulation model", "Exempt Activity", "Grandfathered", "Insignificant source operation", "NESHAP", "PM-10", "Prevention of significant deterioration", "Significant source operation", and "Testing".

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).

Deleted "Emission statement year"; added "NAICS code"; added "Reporting year".

7:27-22.2 Applicability

(a) This subchapter applies to any facility which is one of the following:

1. A facility which emits or has the potential to emit a Hazardous Air Pollutant (HAP) in an amount which equals or exceeds the amounts listed in (a)1i through iv below. For the purposes of this paragraph, the calculation of potential to emit shall include fugitive emissions, as defined at N.J.A.C. 7:27-22.1.

i. Ten tons per year of any HAP;

ii. Twenty-five tons per year of any combination of HAPs;

iii. Such lesser quantity of any HAP as the EPA may establish by rule, pursuant to 42 USC 7412(a)(1), as the threshold amount for a major HAP facility.

iv. Such quantity of any radionuclides as the EPA may establish by rule.

2. A facility which emits or has the potential to emit any of the air contaminants listed below in Table 1, in an amount which equals or exceeds the threshold amount for that contaminant.

Table 1

Air contaminant	Threshold Level
Carbon Monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur Dioxide	100 tons per year
Oxides of Nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any other Air Contaminant	100 tons per year

For the purposes of this paragraph, the calculation of potential to emit shall include fugitive emissions only if the facility falls into one or more of the following categories:

i. Coal cleaning plants (with thermal dryers);

- ii. Kraft pulp mills;
 - iii. Portland cement plants;
 - iv. Primary zinc smelters;
 - v. Iron and steel mills;
 - vi. Primary aluminum ore reduction plants;
 - vii. Primary copper smelters;
 - viii. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - ix. Hydrofluoric, sulfuric, or nitric acid plants;
 - x. Petroleum refineries;
 - xi. Lime plants;
 - xii. Phosphate rock processing plants;
 - xiii. Coke oven batteries;
 - xiv. Sulfur recovery plants;
 - xv. Carbon black plants (furnace process);
 - xvi. Primary lead smelters;
 - xvii. Fuel conversion plant;
 - xviii. Sintering plants;
 - xix. Secondary metal production plants;
 - xx. Chemical process plants;
 - xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - xxiii. Taconite ore processing plants;
 - xxiv. Glass fiber processing plants;
 - xxv. Charcoal production plants;
 - xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
 - xxvii. All other stationary source categories regulated by a standard promulgated under 42 U.S.C. 7411, Standards of Performance for New Stationary Sources. However, for a facility in this category, fugitive emissions need only be included when calculating the potential to emit those air contaminants which EPA has regulated for that stationary source category.
3. An affected Title IV facility, as defined at N.J.A.C. 7:27-22.1;
4. A facility with any source operation in a source category designated by EPA. EPA is authorized to designate source categories as subject to operating permit requirements pursuant to 40 CFR 70.3(a)(5);

5. A facility with a solid waste incineration unit which combusts municipal waste and which has a combustion capacity greater than 250 tons of municipal waste per day; or

6. A facility for which an owner or operator elects to obtain an operating permit pursuant to (e) below.

(b) A non-major facility not included in (a) above shall become subject to this subchapter if EPA promulgates rules requiring an operating permit for that category of non-major facilities pursuant to 40 CFR 70.3(b)1 or 2.

(c) Notwithstanding (a) above, a facility is not subject to this subchapter if the only applicable requirement which applies to the facility is:

1. A requirement pursuant to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

2. A requirement pursuant to 40 CFR 61, Subpart M—National Emission Standard for HAPs for Asbestos, Section 61.145, Standard for Demolition and Renovation; or

3. A regulation or requirement under 42 U.S.C. 7412(r), Prevention of Accidental Releases.

(d) For the purposes of determining applicability pursuant to (a) above, an owner or operator may elect to treat a research and development operation as a separate facility. For source operations whose primary function changes on an ongoing basis between manufacturing products for commercial use and research and development operations, the source operations may be considered part of a separate research and development facility only during the period of time when those source operations are being used for research and development purposes. Appropriate documentation shall be maintained at the facility to delineate when source operations are used for research and development purposes. If any research and development operation is treated separately for applicability purposes, the emissions or the potential to emit of the operation may be considered separately from the emissions or potential to emit of the remainder of the facility. If any research and development equipment is also used for other operations, the emissions from the equipment shall be calculated separately for each use of the equipment, such that only the emissions generated during research and development are included in the calculation of research and development emissions.

(e) If a facility is not subject to this subchapter, but has equipment or control apparatus subject to the operating certificate requirements at N.J.A.C. 7:27-8, the owner or operator may voluntarily elect to obtain an operating permit for the facility in lieu of obtaining operating certificate(s) for the equipment or control apparatus.

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.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

In (b), substituted "promulgates rules" for "completes rulemaking" following "EPA".

7:27-22.3 General provisions

(a) The owner or operator of a facility subject to this subchapter shall obtain and maintain an operating permit for the facility pursuant to this subchapter.

(b) The owner or operator of a facility subject to this subchapter shall ensure that no person shall use or operate any significant source operation at the facility without a valid operating permit for the facility, which covers the source operation.

(c) The owner or operator of a facility subject to this subchapter shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, incorporated herein by reference, unless emission of the air contaminant is authorized by the operating permit.

(d) A permittee shall ensure that any source operation and any other activity covered by the operating permit, and all components connected to, attached to, or serving the source operation are operated and maintained properly and according to the requirements of the operating permit.

(e) A permittee shall ensure that all requirements of the operating permit are met.

(f) Each owner and each operator of any facility, source operation, or activity to which this subchapter applies is responsible for ensuring compliance with all requirements of this subchapter. If the owner and operator are separate persons, or if there is more than one owner or operator, each owner and each operator is jointly and severally liable for any fees due under this subchapter, and for any penalties for violation of this subchapter.

(g) Any provision of any other rule, statute or other document, incorporated into this subchapter, includes all future supplements and amendments to the incorporated document, unless the context of this subchapter clearly indicates otherwise.

(h) The provisions of (b), (c), (d), and (e) above shall not apply at a facility:

1. Prior to the applicable deadline for applying for an initial operating permit, set forth at N.J.A.C. 7:27-22.5; or

2. If a timely and administratively complete application has been filed and an application shield is in effect for the facility pursuant to N.J.A.C. 7:27-22.7.

(i) The term of an operating permit will be established in the operating permit. The Department will not issue an operating permit with a term of greater than five years.

(j) The expiration of an operating permit terminates the facility's right to operate any significant source operation at the facility, unless an application shield is in effect pursuant to N.J.A.C. 7:27-22.7.

(k) The Department may, pursuant to N.J.A.C. 7:27-22.15, issue a single operating permit to an owner or operator of a temporary facility which will be operated in more than one location during the term of the operating permit. This single operating permit may authorize operation of the temporary facility at each of the locations approved by the Department in the operating permit.

(l) The Department may issue an operating permit which allows a facility to operate under one or more operating scenarios, pursuant to N.J.A.C. 7:27-22.27. No change to an operating permit is required for any change in operation that is specifically authorized by the operating permit through an approved operating scenario or emissions trading program incorporated into the operating permit.

(m) If the SIP allows a determination of an alternative emission limit to be made to a significant source operation subject to this subchapter, the Department may issue an operating permit that includes an alternative emission limit, determined by the Department to be equivalent to, or more 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 require-

ments 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 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, and may be renewed by application to the Department. The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-22.31.

(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) Notwithstanding (qq) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3, (b), (c)6 and (d);

2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-22.22;

3. If the use is a "permit insurance" use, the permittee conforms with the conditions for "permit insurance" uses set forth at N.J.A.C. 7:27-30.14(d); and

4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

(uu) In accordance with N.J.A.C. 7:27-30.14(a)5 and 6, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing in accordance with N.J.A.C. 7:27-22.18(k) of the VOC and/or NO_x emissions of equipment or control apparatus; and

2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.

(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).

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, administrative amendments, seven-day-notice changes, minor modifications, significant modifications, and renewals can be found at N.J.A.C. 7:27-22.5, 22.20, 22.22, 22.23, 22.24, and 22.30, respectively.

(b) Any application or any notice of a seven-day-notice change shall be submitted to the Department 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.

(c) An applicant may submit an application or notice to the Department electronically, using the Remote AIMS Data Input User System (RADIUS). 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.nj.us/dep/aqpp.

(d) A 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.

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.

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.

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) 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.

(d) 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.

(e) 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).

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:

1. Issued prior to the date the applicant submitted the application for the operating permit to the Department, and included by the applicant in the application; or
2. Issued subsequent to the date the application was submitted to the Department and prior to the date the Department issues the draft operating permit.

(f) Each operating permit shall contain a severability clause which ensures the continued validity of all other permit conditions in the event of a challenge to any part of the operating permit.

(g) Each operating permit shall include, but not be limited to, the following statements:

1. The permittee shall comply with all conditions of the operating permit including the approved compliance plan. Any noncompliance with a permit condition constitutes a violation of the New Jersey Air Pollution Control Act N.J.S.A. 26:2C-1 et seq., or the CAA, 42 U.S.C. § 7401 et seq., or both, and is grounds for enforcement action; for termination, revocation and reissuance, or for modification of the operating permit; or for denial of an application for a renewal of the operating permit;
2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of its operating permit;

3. This operating permit may be modified, terminated, or revoked for cause by EPA pursuant to 40 CFR 70.7(g) and revoked or reopened and modified for cause by the Department pursuant to N.J.A.C. 7:27-22.25;

4. The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating this operating permit; or to determine compliance with the operating permit;

5. The filing of an application for a modification of an operating permit, or of a notice of planned changes or anticipated noncompliance, does not stay any operating permit condition;

6. The operating permit does not convey any property rights of any sort, or any exclusive privilege;

7. Upon request, the permittee shall furnish to the Department copies of records required by the operating permit to be kept;

8. No permittee shall allow any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in a quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or which would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the permittee has exclusive use or occupancy. Conditions relative only to nuisance situations, including odors, are not considered Federally enforceable;

9. The Department and its authorized representatives shall have the right to enter and inspect any facility subject to this subchapter, or portion thereof, pursuant to N.J.A.C. 7:27-1.31; and

10. The permittee shall pay fees to the Department pursuant to this chapter.

(h) An operating permit may contain operating scenario(s) pursuant to N.J.A.C. 7:27-22.27, provided that:

1. The applicant has proposed the operating scenarios in the application for the operating permit; and

2. The Department is satisfied, based on the information provided by the applicant, that each source operation included in the operating scenario:

i. Will not exceed the maximum allowable emission limit established in the operating permit for each air contaminant; and

ii. Will comply with all applicable requirements.

(i) For any operating scenario included, the operating permit shall contain permit conditions, including, but not limited to, the following:

1. The permittee shall maintain contemporaneous records at the facility of any changes from one operating scenario to another; and

2. The permittee shall ensure that operation under each such operating scenario complies with all permit conditions, applicable requirements, and the requirements of this chapter.

(j) An operating permit shall authorize compliance through open market emissions trading pursuant to N.J.A.C. 7:27-30. In addition, an operating permit may contain provisions for other emissions trading program(s) pursuant to N.J.A.C. 7:27-22.28A, such as a facility-specific emissions averaging program within one or more groups of source operations, pursuant to N.J.A.C. 7:27-22.28B.

(k) For any authorization of emissions trading included, the operating permit shall contain permit conditions sufficient to ensure that operation, notwithstanding the emissions trading, meets all permit conditions, applicable requirements, and the requirements of this chapter.

(l) The operating permit shall contain provisions for the assertion of an affirmative defense to liability for penalties or other sanctions for violating certain provisions or conditions of the 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.

(m) (Reserved)

(n) Each operating permit shall include a compliance plan which includes all of the elements required for a proposed compliance plan pursuant to N.J.A.C. 7:27-22.9.

(o) Each operating permit shall contain the following provisions with respect to monitoring, recordkeeping and reporting:

1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, provisions for periodic monitoring sufficient to yield reliable data from the relevant time period that are

representative of the facility's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(p) Each operating permit will include a permit shield pursuant to N.J.A.C. 7:27-22.17. If requested by the applicant in the application and approved by the Department, an operating permit shield shall acknowledge that specific provision(s) of potentially applicable requirement(s) do not apply to the facility, cite any such specific provision(s), and state that compliance with the provision(s) is not required.

(q) (Reserved)

(r) If proposed by the applicant, pursuant to N.J.A.C. 7:27-22.6(j), and approved by the Department, the operating permit shall include the methods to be used to determine the actual emissions of any significant source operation at the facility.

(s) Each operating permit shall specify an expiration date which shall be no later than five years from the date of issue.

(t) For facilities subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. § 7651 et seq., the operating permit shall include a permit condition prohibiting emissions from exceeding any allowances that the source lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

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 (j) and (k).

7:27-22.17 Permit shield

(a) The Department will include a permit shield in each operating permit as set forth at N.J.A.C. 7:27-22.16(p). A permit shield provides that compliance with the relevant conditions of the operating permit shall be deemed compliance with the specific applicable requirements that are in effect on the date of issuance of the draft operating permit, and which form the basis for the conditions in the operating permit, provided that the requirements of this section are met.

(b) A permit shield shall provide that:

1. For any applicable provision of an applicable requirement, if the provision is specifically included and identified in the operating permit, compliance with the conditions of the operating permit shall be deemed compliance with that provision of the applicable requirement; and

2. For any provision of a potentially applicable requirement, if the provision is specifically identified in the operating permit as not applicable to the facility, the permittee need not comply with the specifically identified provision.

(c) A permit shield shall apply only to operating permit conditions incorporated into the operating permit through certain procedures.

1. A permit shield shall apply to conditions incorporated into the operating permit through the following:

- i. Issuance of an initial operating permit;
- ii. Issuance of an operating permit, renewal; or
- iii. Any change made pursuant to the procedures for significant modification at N.J.A.C. 7:27-22.24;

iv. Any change made pursuant to the procedures for administrative amendments, provided the administrative amendment incorporates the provisions of a preconstruction permit that was subject to the same review procedures used for significant modification at N.J.A.C. 7:27-22.4, including an opportunity for public comment.

2. A permit shield shall not apply to provisions incorporated into the operating permit through procedures for:

- i. Administrative amendment, except as noted at (c)iv above;
- ii. Changes to insignificant source operations;
- iii. Seven-day-notice changes; or
- iv. Minor modifications.

(d) If an operating permit does not expressly include or exclude an applicable requirement, the applicable requirement is not covered by the permit shield and the permittee shall comply with its provisions to the extent they apply to the permittee.

(e) If it is determined that an operating permit was issued based on inaccurate or incomplete information provided by the permittee, any permit shield provision in that operating permit shall be void as to the portions of the permit which are affected, directly or indirectly, by the inaccurate or incomplete information.

(f) Neither a permit shield, nor any provision in an operating permit, shall alter or affect the following:

- 1. The emergency orders provisions of 42 U.S.C. § 7603, including the authority of EPA under that section;
- 2. The liability of an owner or operator of a facility for any violation of any applicable requirement prior to or at the time of permit issuance;

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).

(m) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)5, pursuant to which the permittee may be required to provide compensation through use of DER credits.

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.

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;

ii. No change to any source operation or to any production process is made at the facility to comply with the applicable requirement; and

iii. The new applicable requirement was not promulgated under Title III of the CAA, unless USEPA specifically indicates that the requirement may be incorporated into the operating permit with an administrative amendment.

(c) A permittee shall, pursuant to (d) and (e) below, submit a timely and administratively complete application for any change being made pursuant to this section as an administrative amendment.

(d) To be deemed timely, an application for an administrative amendment shall be submitted to the Department and EPA prior to the change being made, except for applications submitted pursuant to (b)1 or 3 above. For applications submitted pursuant to (b)1 or 3 above, that application shall be submitted to the Department and EPA within 30 days of the change being made.

(e) To be deemed administratively complete, an administrative amendment shall include the Department assigned operating permit number, a copy of the portion of the operating permit which will be affected by the administrative amendment, a description of the change, and a copy of the revised portions of the operating permit reflecting the administrative amendment. For a transfer of ownership or operational control of the facility, the administrative amendment shall also include the information required in (f) below.

(f) To process a transfer in ownership or operational control pursuant to (b)2 above, a permittee shall attach to the application for an administrative amendment a written agreement between the current and new permittees, specifying the date for the transfer of ownership or operational control, permit responsibility, coverage and liability.

(g) Within 60 days of the Department's receipt of an application for an administrative amendment, the Department shall:

1. Approve the administrative amendment, thereby making the administrative amendment part of the operating permit; or

2. Notify the permittee that the change was not eligible for processing as an administrative amendment. In this event, a permittee must submit the appropriate application to modify the operating permit. The permittee may be subject to penalties for noncompliance with the operating permit during the time the change was in effect, pursuant to N.J.A.C. 7:27A.

(h) A change made through an administrative amendment shall not be covered by any permit shield contained in the operating permit, except for administrative amendments

made pursuant to (b)7 above. The permit shield shall become effective upon approval of the administrative amendment by the Department.

(i) A permittee may elect to make as a minor modification any change authorized to be made as an administrative amendment.

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).

Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

Rewrote (b)7.

7:27-22.21 Changes to insignificant source operations

(a) A permittee may, pursuant to this section, make certain changes to an insignificant source operation, or to the use thereof, without notifying the Department or EPA until the renewal of the operating permit. In the application for the renewal of the operating permit, the permittee shall identify any such changes which affect information in the operating permit. Such changes could include the addition or deletion of insignificant source operations that have occurred during the term of the operating permit.

(b) Any change made to an insignificant source operation during the term of an operating permit, including the construction or installation of a new insignificant source operation, may be made pursuant to the procedures set forth in (a) above, provided that the change:

1. Is not prohibited in the operating permit;
2. Is not subject to any requirements under the acid deposition control provisions at Title IV of the CAA;
3. Is not a modification under any provision of Title I of the CAA;
4. Does not cause the source operation to become subject to an applicable requirement, to which it was not previously subject and which is not already included as a requirement of the operating permit; and
5. Meets all applicable requirements and does not violate any existing permit term or condition.

(c) A change which is made pursuant to this section shall not be covered by any permit shield.

(d) If the Department determines that the change was not eligible for processing as a change to an insignificant source operation, the permittee may be subject to penalties for noncompliance with the permit, pursuant to N.J.A.C. 7:27A-3.

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).

7:27-22.22 Seven-day-notice changes

(a) A permittee may make any of the changes listed at (c) or (d) below through the procedures for a seven-day-notice change set forth in this section. The Department shall attach the notice of the seven-day-notice change to the operating permit, but shall not revise the operating permit until the next application for a renewal. If the requirements of this section are met, a permittee may make a seven-day-notice change seven days after the Department's receipt of the notice of the change.

(b) Any other provision of this section notwithstanding, no change listed in (c) below may be made pursuant to this section if the change would:

1. Require an increase in any allowable emissions limit established in the operating permit, including any maximum allowable emissions rate (whether expressed as pounds per hour, tons per year, total pounds, total tons, or other units expressed as a rate of emissions or total emissions) or concentration limit or any emissions cap;
2. Cause the emission of a new air contaminant or class of air contaminants;
3. Constitute a minor modification or significant modification, as defined at N.J.A.C. 7:27-22.23 or 22.24, respectively;
4. Change a monitoring, recordkeeping, or reporting requirement set forth in the operating permit, if the changed requirement would be less stringent than, the existing requirement;
5. Constitute a modification under any provision of Title I of the CAA; or
6. Subject the facility to the requirements of the acid deposition control provisions in Title IV of the CAA, or would violate such requirements.

(c) Except as provided at (b) above, any of the following changes may be made as seven-day-notice changes, pursuant to the procedures of this section:

1. Any reconfiguration to an operating scenario, including an alternative configuration or a change in the production process, not authorized in the operating permit in effect, provided that the notice to the Department of the change contains the information required at N.J.A.C. 7:27-22.27 (Operating scenarios) and that the operating scenario conforms with the requirements of that section;
2. The attachment of an emissions trading program to an operating permit pursuant to N.J.A.C. 7:27-22.28A(d) (Emissions trading);
3. A change in operation to an emissions trading program attached to an operating permit pursuant to N.J.A.C. 7:27-22.28A(g);

4. Relocation of a temporary facility to a site not specifically authorized in the operating permit, unless air quality simulation modeling or risk assessment is required pursuant to N.J.A.C. 7:27-22.8(a)3; or

5. Any change to a significant source operation which:
 - i. Is not already authorized by the operating permit;
 - ii. Does not cause actual emissions to exceed allowable emissions in the operating permit; and
 - iii. Does not cause the emission of a new air contaminant not specified in the operating permit.

(d) In addition to the items listed at (c) above, a seven-day-notice change may be used for the following, pursuant to the procedures of this section:

1. A change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, provided that:

- i. The production process containing the significant source operation is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;
- ii. The proposed change, construction, or installation is either:

(1) Allowed under the facility-wide permit; or

(2) 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-1.5; and

iii. The proposed change, construction, or installation does not cause any of the following:

(1) An increase in the generation of nonproduct output per unit of production manufactured by the significant source operation or production process;

(2) 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;

(3) An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

(4) The addition of a new production process; or

2. Notice of an increase in the actual emissions of an air contaminant included in the permit, including an increase compensated for through use of DER credits under N.J.A.C. 7:27-30, such as for "permit insurance" pursuant to N.J.A.C. 7:27-30.14(d).

(e) A permittee shall, pursuant to (f), (g), (h), or (i), (as applicable) below, submit a timely and administratively complete notice for any change being made, pursuant to this section as a seven-day-notice change.

(f) To be deemed timely, a notice must be received by the Department and EPA at least seven days prior to the change being made at the facility.

(g) Except pursuant to (i) below, to be deemed administratively complete, the notice shall include all information required by the form for a seven-day-notice obtained from the Department, including, but not limited to, the following information:

1. A description of the planned change, and a statement of the reason the change is being made;
2. The date(s) or schedule for when the change will be made, or a description of the types of circumstances under which the change would be made;
3. The specific source operations that will be changed or will be affected by the change;
4. For each source operation given in (g)3 above, the change in the quantity or rate of actual emissions as a result of the change;
5. Specification of any permit requirement or applicable requirement that will be:
 - i. Complied with through the change; or
 - ii. No longer applicable as a result of the change;
6. A statement affirming that, after implementation of the seven-day-notice the facility will continue to comply with all applicable requirements; and
7. Certification of the notice of the change in accordance with N.J.A.C. 7:27-1.39.

(h) To be administratively complete, any notice submitted pursuant to (d)1 above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4 in addition to the items required in (g) above.

(i) To be administratively complete, a notice submitted pursuant to (d)2 above for compliance with a permit limit through use of DER credits, under the "permit insurance" provisions of the open market emission trading rules at N.J.A.C. 7:27-30, shall be a copy of the Notice of Intent to Use submitted for the use in accordance with N.J.A.C. 7:27-30.15 and 19.

(j) No permittee shall make a change at a facility, including use of a DER for compliance, pursuant to this section unless the written notice of the change is submitted to both

the Department and EPA at least seven days before the change is made, and all other requirements of this chapter are met.

(k) The Department may review a seven-day-notice change at any time prior to the next renewal of the operating permit. If the Department finds that the change was inconsistent with the requirements for a seven-day-notice change, the Department will notify the facility and may take enforcement action.

(l) Upon receipt of a notice of a seven-day-notice change, the Department will file the notice as an attachment to the operating permit. The permittee shall include all such changes in the application for the next renewal of the operating permit, in accordance with N.J.A.C. 7:27-22.30.

(m) The permittee shall attach a copy of each notice submitted pursuant to this section to the copy of the operating permit the permittee maintains at the facility.

(n) The permit shield described at N.J.A.C. 7:27-22.17 shall not apply to any change made pursuant to this section.

(o) A permittee may elect to make any change authorized to be made as a seven-day-notice change as a minor modification or significant modification.

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).

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 references to DERs.

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 (c), deleted a former 4, and recodified former 5 and 6 as 4 and 5; in (h), made an internal reference change; and rewrote (d) and (i).

7:27-22.23 Minor modifications

(a) A permittee may make any change listed at (c) below through the minor modification procedures set forth in this section. Minor modifications are set forth in (c) below, and include changes which may increase actual emissions by insignificant amounts, and other changes which do not increase emissions, but may increase ambient concentrations of air contaminants. The Department shall, upon approval of an application for a minor modification of the operating permit, incorporate the changes into the permit. A separate application for a preconstruction permit is not required. The permittee shall not make any change proposed in a minor modification of the operating permit until the Department has approved the minor modification, except as specified in (a)1, 2, and 3 below.

1. Equipment and control apparatus may be installed at risk pursuant to the requirements of N.J.A.C. 7:27-22.3(o).

2. The proposed minor modification may, at the permittee's risk, be made at the facility after the administratively complete application is received by the Department, and a preconstruction approval has been issued by the Department.

3. Any permittee who elects to implement the change proposed in an application prior to the Department's final decision on the minor modification (after the EPA review period) shall comply with both the applicable requirements governing the change and the conditions of preconstruction approval contained in the proposed minor modification. During this time, the facility need not comply with any outdated existing operating permit provisions it seeks to modify. However, if the permittee fails to comply with the proposed permit provisions during this time, or the minor modification is not approved, the existing permit provisions it seeks to modify shall be enforced.

(b) (Reserved)

(c) Except as provided at N.J.A.C. 7:27-22.22(d) above, construction or installation of any new significant source operation, reconstruction of a process unit or control apparatus made pursuant to N.J.A.C. 7:27-22.24A, or any of the following changes to existing significant source operations, shall be made as a minor modification unless the change violates an applicable requirement or constitutes a significant modification pursuant to N.J.A.C. 7:27-22.24:

1. A change in the location of the point of discharge of any air contaminant from a significant source operation into the outdoor atmosphere, unless the change is authorized in the permit in effect;

2. Any of the following changes to a significant source operation, or to the use thereof, if the change may increase actual emissions over the allowable concentration or allowable rate of any air contaminant emission, or will increase allowable emissions, unless the change is authorized in the operating permit in effect:

i. Change in the relative use, expressed in percent by weight, of any raw material in the operation of a significant source operation, including the introduction of a new raw material not authorized in the operating permit in effect; or

ii. Change in the production process in which the significant source operation is used;

3. An increase in any maximum allowable emission rate or concentration, or any emissions cap;

4. Emission of any air contaminant or class of air contaminants not authorized by the operating permit in effect;

5. Any change to a stack or chimney, or the use thereof, not authorized in the operating permit in effect, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if the change may result in an increase in the ambient concentration of any air contaminant;

6. Any increase in the concentration of any air contaminant in the influent to existing control apparatus, if the influent is limited in the operating permit in effect;

7. Any increase in the total hours of operation per time period or the rate of production above that authorized in the operating permit in effect;

8. Reduction of the frequency of testing, monitoring, recordkeeping or reporting, provided the frequency is not less than that in any applicable requirement.

9. Any of the following decreases, if a method by which the Department can verify and enforce the decrease is not already included in the operating permit in effect, and the permittee requests such decrease to be incorporated into its operating permit:

i. A decrease in the maximum allowable rate of emission of any air contaminant or category of air contaminants;

ii. A decrease in maximum allowable hours of operation per time period; or

iii. A decrease in maximum allowable rate of production;

10. A change in the contents of a storage tank, bin, silo, or other storage container, if such change in contents is not already covered by the operating permit in effect, provided such change:

i. Involves the use or storage of any new HAP; or

ii. Causes a storage tank to become, pursuant to N.J.A.C. 7:27-16.2(b), subject to a control requirement to which the storage tank was not previously subject;

11. The introduction of a raw material, not authorized in the operating permit in effect if the change involves the use of any new HAP;

12. At the option of the applicant, any change which is eligible to be processed as an administrative amendment, a change to an insignificant source operation or a seven-day-notice change pursuant to N.J.A.C. 7:27-22.20, 22.21, or 22.22, respectively.

(d) Any change that is a minor modification and that constitutes construction, reconstruction or modification of a source operation, shall incorporate 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.

(e) A permittee shall, pursuant to (f), (g), (h) and (p) below, submit an administratively complete application for a minor modification of the operating permit for any change being made pursuant to this section as a minor modification.

(f) In order to be considered administratively complete, an application for a minor modification of the operating permit shall meet all application contents requirements for an initial operating permit set forth at N.J.A.C. 7:27-22.6,

except that an application for a minor modification of the operating permit shall include only such information as is relevant to the proposed modification. In addition, the application shall include, at a minimum:

1. A description of the proposed change, the allowable and estimated actual emissions before and after the change, and any new applicable requirements which will apply if the change occurs;

7:27-22.28A Emissions trading

(a) Pursuant to this section a permittee may implement an emissions trading program at a facility subject to this subchapter.

(b) A permittee may implement an open market emissions trading program pursuant to N.J.A.C. 7:27-30 without prior approval. A permittee may also implement any of the following emissions trading programs, if the Department has approved the program and incorporated it into the operating permit:

1. A facility-specific emissions averaging program with a federally enforceable emissions cap, pursuant to N.J.A.C. 7:27-22.28B;
2. An emissions trading program approved by the Department and approved by EPA as a case-by-case revision to New Jersey's SIP; or
3. An emissions trading program approved by the Department and not required to be approved by EPA as a case-by-case revision to New Jersey's SIP. For example, if emissions trading were performed pursuant to a rule which is approved as part of New Jersey's SIP, a case-by-case SIP revision would not be required (unless the rule specifically called for such a revision).

(c) Except as provided in (d) below, the emissions trading program shall be:

1. Incorporated in the initial operating permit approved by the Department; or
2. Incorporated in the operating permit through a renewal or a significant modification of the operating permit.

(d) In lieu of the procedures in (c) above, an emissions trading program may be attached to the operating permit through a seven-day-notice change pursuant to the seven-day-notice change procedures set forth in N.J.A.C. 7:27-22.22, provided that:

1. The emissions trading program is one which:
 - i. Pursuant to (b)2 above is approved by the Department and approved by EPA as a case-by-case revision to New Jersey's SIP; or
 - ii. Pursuant to (b)3 or 4 above is promulgated in provisions of this Chapter and which has been approved by EPA as a revision to New Jersey's SIP; and
2. The attachment is eligible to be made by a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22 and pursuant to the provisions and conditions of the SIP revision or the provisions of this chapter on which the emissions trading program is based.

(e) The emissions trading program shall conform with the applicable provisions of:

1. The Federal emissions trading policy published on December 4, 1986, in the Federal Register, Volume 51, No. 233;

2. The economic incentive program rules published on April 7, 1994, in the Federal Register, Volume 59, No. 67;

3. Any other applicable emissions trading regulations or guidance issued by EPA; and

4. Any applicable requirements in a rule, order, or permit issued by the Department.

(f) An emissions trading program incorporated into the operating permit shall be implemented pursuant to the applicable provisions and conditions of the operating permit. An emissions trading program attached to the operating permit in accordance with (d) above shall be implemented:

1. If the program is one which is pursuant to (b)2 above approved in advance by the Department, in accordance with the provisions and conditions of the SIP revision; or

2. If the program is one which is pursuant to (b)3 above promulgated in provisions of this chapter, in accordance with the applicable provisions of this chapter.

(g) A permittee may seek authorization, through a significant modification or a renewal, to modify an emissions trading program which has been incorporated into an operating permit to accommodate a change to the emissions trading program. Also, if the emissions trading program is one allowed pursuant to (d) to be attached to an operating permit, a permittee may change the program through a seven-day-notice change, provided that the change is eligible to be made by a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22 and pursuant to the provisions and conditions of the Department's approval or the provisions of this chapter on which the emissions trading program is based.

(h) A permit shield pursuant to N.J.A.C. 7:27-17 shall apply to an emissions trading program only if the program is incorporated into the operating permit through an initial operating permit, an operating permit renewal, or a significant modification. A permit shield shall not apply to any emissions trading program, or any modification to a program, which is attached to an operating permit through a seven-day-notice.

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).

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).

Administrative Correction.

See: 28 N.J.R. 3550(a).

7:27-22.28B Facility-specific emissions averaging programs

(a) A permittee may obtain approval for and implement a facility-specific emissions averaging program at a facility subject to this subchapter pursuant to this section, provided that no averaging program set forth in a promulgated rule would apply. Such a program shall be on a case-by-case basis, developed and approved for implementation at a specific facility.

(b) Such a facility-specific emissions averaging program shall be limited to the group of source operations and to the air contaminants authorized for the facility-specific emissions averaging program incorporated in the operating permit. The source operations included shall be a specific group of source operations proposed by the applicant and approved by the Department. The facility-specific emissions averaging program shall subject these source operations collectively to a federally enforceable emissions cap.

(c) An application submitted to obtain authorization to implement a facility-specific emissions averaging program shall provide information to the Department including, but not limited to, the following:

1. A description of the planned emissions averaging program;

2. A statement of the purpose for seeking authorization for the emissions averaging program at the facility. Such a statement shall indicate, for example, if the purpose of the authorization is to establish an emissions cap so as to avoid being classified as a major facility or avoid becoming subject to requirements, such as:

- i. Emission offset requirements pursuant to N.J.A.C. 7:27-18.2; or

- ii. PSD regulations at 40 CFR 52;

3. Specification of any permit condition or applicable requirement that would be:

- i. Complied with through the emissions averaging program; or

- ii. No longer applicable as a result of the emissions averaging program;

4. The specific source operations that would be included in the emissions averaging program;

5. For each source operation subject to the emissions averaging program, each air contaminant for which the quantity or rate of actual emissions may be increased or decreased as a result of the emissions averaging program;

6. For each air contaminant identified pursuant to (c)5 above, the proposed federally enforceable emissions cap for the group of source operations that are to be included in the emissions averaging program;

7. A description of the types of circumstances under which decreases in emissions from one or more source operations will be used to offset increases in emissions from one or more other source operations;

8. Proposed permit conditions which will enable the Department to readily verify whether emissions from the source operations have exceeded the emissions cap; such permit conditions shall set forth replicable procedures sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable. Such replicable procedures shall include monitoring or source emissions testing, or both, and recordkeeping and reporting procedures;

9. A statement affirming that each included source operation shall operate in compliance with the applicable provisions of this chapter and with all other applicable requirements; and

10. Certification in accordance with N.J.A.C. 7:27-1.39.

(d) If the Department approves the incorporation of a facility-specific emissions averaging program in an operating permit, the Department shall establish in the operating permit:

1. A Federally enforceable cap on the aggregate emissions for the group of source operations included in the emissions averaging program authorized by the operating permit; and

2. Permit conditions which will enable the Department to readily verify whether emissions from the source operations have exceeded the emissions cap. Such permit conditions shall set forth replicable procedures, including monitoring, source emissions testing, recordkeeping, and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable.

(e) The Department shall not approve any facility-specific emissions averaging program proposed for an operating permit, or any proposed modification thereto, if:

1. Any State rule or Federal regulation, which is an applicable requirement, requires for any source operation included in the proposed emissions averaging program, or for the modification thereto, case-by-case approval of any increase in emissions from that source operation, unless such case-by-case approval has already been issued by the Department and EPA pursuant to the procedures in the applicable requirement; or

2. The emissions averaging program, or the proposed modification thereto, could result in an increase in the aggregate maximum allowable emissions from the source operations included in the emissions averaging program.

(f) A permittee authorized to implement one or more facility-specific emissions averaging programs shall maintain an emissions log at the facility for all source operations subject to the averaging program(s). The permittee shall maintain this record on a daily basis. Specifically, the log shall reflect for each day:

1. Whether the facility complied with the operating permit by operating within one or more emissions caps established for one or more groups of source operations; and

2. For each group of source operations and for each air contaminant subject to an emissions cap, the following information:

- i. The actual emissions of each source operation per unit of time. The unit of time used for this record shall be the same as that in which the emissions cap is given, if the unit of time on which the cap is based is one day or less. For example, if the emissions cap is given in pounds per hour, the record shall contain for that day the pounds of actual emissions for each hour of the day for each source operation. If the unit of time on which the emissions cap is based is greater than one day (for example, tons per year), the actual emissions per day shall be recorded; and

- ii. The total emissions, collectively, from all source operations in the group subject to the emissions cap. The unit of time used for this record shall be the same unit of time as is used for (f)2i above.

(g) The permittee shall ensure that operation pursuant to the authorized facility-specific emissions averaging program meets all applicable permit conditions and applicable requirements, including the requirements of this chapter.

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).

Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

In (f)2ii, made internal citation change.

7:27-22.29 Facilities subject to acid deposition control

(a) The Department hereby adopts and incorporates by reference the provisions of 40 CFR 72 and 76, and any subsequent amendments thereto, for purposes of implementing an acid rain program that meets the requirements of Title IV of the CAA. The term "permitting authority" shall mean the Department, and the term "Administrator" shall mean the administrator of the United States EPA. If provisions or requirements of 40 CFR 72 and 76 conflict with or are not included in this subchapter, the 40 CFR 72 and 76 provisions and requirements shall apply and take precedence.

(b) An administratively complete application to incorporate Phase II Title IV requirements into the operating permit shall be submitted:

1. By January 1, 1996, for facilities with source operations subject to the requirements for SO₂ pursuant to 42 U.S.C. § 7651d; and

2. By January 1, 1998, for facilities with source operations subject to the requirements for NO_x pursuant to 42 U.S.C. § 7651f;

3. Facilities subject to both SO₂ and NO_x requirements must meet both deadlines. The 1996 application shall address all SO₂ applicable requirements, and any applicable requirements relating to NO_x applicable to each source operating at the time of application. The 1998 application shall include the NO_x applicable requirements at that time.

(c) For any application for an operating permit, or for any portion of an application for an operating permit, being submitted pursuant to the acid deposition control provisions of 40 CFR 72, including those portions of the compliance plan pertaining to acid deposition control requirements, an applicant shall use nationally standardized application forms, which the Department will make available upon EPA's finalization of the forms.

(d) An administratively complete application for an initial operating permit for a facility, or for any portion thereof, subject to the acid deposition control requirements of Title IV of the CAA shall include all information required by the application form, including the name and address of any designated Title IV representative, as defined at N.J.A.C. 7:27-22.1.

(e) The compliance plan for an affected Title IV facility shall meet the requirements of N.J.A.C. 7:27-22.9, except to the extent that these requirements are superseded by the acid deposition control requirements set forth at 42 U.S.C. § 7651a through 7651o or by applicable provisions of 40 CFR 72 or 76.

(f) The Department will take final action on an application for an operating permit, operating permit renewal, permit revision as defined in 40 CFR 72.2, or reopening to implement Phase II Title IV requirements within the deadlines set forth in the acid deposition control requirements at 42 U.S.C. § 7651a through 7651o.

(g) Affected Title IV units subject to the acid deposition control requirements of the CAA are not eligible for authorization to operate under a general operating permit.

(h) The Department is not authorized to 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, if that temporary facility is an affected Title IV facility, as defined at N.J.A.C. 7:27-22.1.

(i) An operating permit for an affected Title IV facility shall contain a condition prohibiting emissions exceeding the

allowances that the facility lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

(j) Neither a permit shield nor any provision in an operating permit shall, consistent with 42 U.S.C. § 7651g(a), alter or affect the applicable requirements of the acid deposition control program.

(k) The Department shall reopen and modify an operating permit for an affected Title IV facility pursuant to the procedures at N.J.A.C. 7:27-22.25, if additional requirements (including excess emissions requirements) become applicable to the facility under the acid deposition control program at Title IV of the CAA. However, the Department shall not reopen an operating permit for the following:

1. Excess emissions offset plans which shall be deemed to be incorporated into the operating permit upon approval by the EPA; and

2. Increases in emissions that are authorized by allowances acquired pursuant to the acid deposition control program, provided that such increases do not require an operating permit revision under any other applicable requirement.

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.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).

In (a) and (e), made CFR reference changes.

7:27-22.30 Renewals

(a) A permittee shall renew the operating permit through the procedures set forth in this section. At the time of submittal of an application for renewal, an applicant who proposes to make change(s) at the facility may include the proposed change(s) with the renewal application, identifying which are administrative amendments, seven-day-notice changes, minor modifications, or significant modifications. The Department may, upon its renewal of the permit, incorporate the change(s) into the operating permit, rather than process each separately.

1. The permittee shall not make any significant modification proposed in the application for renewal until the Department approves the renewal.

2. Construction or operation of source operations pursuant to any administrative amendment, seven-day-notice change, or minor modification proposed in the application for renewal, shall be done consistent with the requirements of N.J.A.C. 7:27-22.20, 22.22, and 22.23, respectively.

(b) The permittee shall submit, pursuant to (c) and (d) below, a timely and administratively complete application for the renewal of the operating permit.

(c) To be considered timely, an application for renewal shall be received by the Department at least 12 months prior to expiration of the operating permit. However, consistent with N.J.A.C. 7:27-22.4(e), the applicant is encouraged to submit the renewal application at least 15 months prior to expiration of the operating permit, so that the Department can notify the applicant of any deficiencies in the application. This will allow the applicant to correct any deficiencies, and to better ensure that the application is administratively complete by the renewal deadline. Only applications which are administratively complete by the renewal deadline will be eligible for coverage by an application shield.

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal and the following:

1. A summary of all the changes that have been incorporated into the operating permit through administrative amendments, minor modifications, or significant modifications during the past five-year term of the initial operating permit or the most recent renewal thereof;

2. Any additional changes to the operating permit which the permittee seeks to have included in the operating permit. For these changes the permittee shall submit all information required pursuant to the procedures for an administrative amendment, seven-day-notice change, minor modification, or significant modification, pursuant to N.J.A.C. 7:27-22.20, 22.22, 22.23 or 22.24, as applicable;

3. Any changes which the permittee has submitted as a seven-day-notice change since the date of issuance of the most recent operating permit, and which the permittee seeks to have incorporated into the operating permit;

4. Changes made to information required in the operating permit for insignificant source operations at the facility;

5. A summary of the results of any source emissions testing or monitoring required by the operating permit that has been performed since the date of issuance of the most recent operating permit for the source operations included in the operating permit;

6. Proposed draft operating permit conditions that:

- i. Reflect any change to the facility or its operations made through a seven-day-notice change since the last operating permit issuance; and

- ii. Reflect any change to the facility or its operations proposed for inclusion in the renewed operating permit; and

7. A summary of all DER generation and use since the date of issuance of the most recent operating permit.

(e) In addition to the information required at (d) above, an applicant may submit proposed methods to be used to determine the actual emissions of each significant source operation, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27-21. This is useful where a different method is more accurate than the general methods provided for in the guidelines for emission statement preparation.

(f) An application for the renewal of an operating permit may, at the applicant's option, include air quality simulation modeling and risk assessment for the facility or a portion thereof, pursuant to N.J.A.C. 7:27-22.8. Where a modification of the operating permit requires air quality simulation modeling, pursuant to N.J.A.C. 7:27-22.8, such modeling shall be submitted with the application.

(g) If an administratively complete application for renewal is received by the Department at least 12 months prior to the date the operating permit expires, the facility will be covered by the application shield set forth at N.J.A.C. 7:27-22.7.

(h) An application for renewal of an operating permit is subject to the requirements for public comment and EPA comment set forth at N.J.A.C. 7:27-22.11 and 22.12.

(i) Unless a facility subject to this subchapter is covered by an application shield pursuant to N.J.A.C. 7:27-22.7, the right to operate the facility terminates upon the expiration of its operating permit.

(j) If an operating permit has expired, the conditions of the operating permit remain enforceable until the operating permit is reissued, except as provided in acid deposition control regulations promulgated by EPA under Title IV of the CAA.

(k) A permit shield provided pursuant to N.J.A.C. 7:27-22.17 shall apply to an operating permit renewal approved by the Department.

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).

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 (d), added reference to DER generation.

7:27-22.31 Fees

(a) The owner or operator of a facility subject to this subchapter shall submit fees to the Department in accordance with this section. The type of fee due, and the amount due, will vary depending on the fiscal year, the amount of regulated air contaminant emissions at the facility, and the number of significant source operations at the facility. Table 2 below summarizes which fees are due for each fiscal year. The types of fees are:

1. Annual emission fees, set forth at (b) below;

2. Supplemental surcharge fees, based on emissions, set forth at (c) below;

3. Initial operating permit application fees, based on the number of significant source operations at a facility, set forth at (d) below; and

4. Modification fees, based on the number of significant source operations being modified, set forth at (e) below;

(b) Emission fees shall be paid by January 31 of each fiscal year, except for the emission fee for fiscal year 1995, which is due October 8, 1995. Emission fees shall be based on the facility's actual emissions during the reporting year which was two years prior to the fiscal year for which the fee is due. (For example, emission fees due on January 31, 2002, which falls in fiscal year 2002, shall be based on the facility's emissions in reporting year 2000.) If actual emission information on a source operation is unavailable, or an Emission Statement has not been filed for a source operation, the emission fee shall be based on permitted emissions, or if no permit has been issued, on the facility's potential to emit. Guidance on calculating actual emissions and potential to emit may be requested from the Department at the address in N.J.A.C. 7:27-22.3(t). Guidance on calculating the CPI for purposes of fee calculations can be found at (i) below. A facility's emission fee shall be calculated as follows:

1. For fiscal year 1995, the emission fee shall be \$25.00 (in 1989 dollars, adjusted by the CPI) per ton of emissions. (For FY95, \$25.00 in 1989 dollars adjusted by the CPI is equal to \$30.07.) The emission fee for FY95 shall be payable only on the following emissions:

- i. NO_x emissions, up to 8,000 tons;
- ii. VOC emissions, up to 8,000 tons;
- iii. One half the total emissions of CO; and
- iv. Emissions of all other regulated air contaminants, up to 4,000 tons;

2. For fiscal years 1996 and 1997, the emission fee shall be \$25.00 (in 1989 dollars, adjusted by the CPI) per ton of emissions, payable on the same emissions as for FY95 in 1 above, except that each facility subject to this subchapter shall pay a minimum emission fee of \$1,000; and

3. For FY98 and thereafter, the emission fee shall be \$25.00 (in 1989 dollars adjusted by the CPI) per ton of emissions, payable on all emissions of any regulated air contaminant except CO, and each facility subject to this subchapter shall pay a minimum emission fee of \$1,000.

(c) Supplemental surcharge fees shall be paid for FY95 and FY96 by all facilities subject to this subchapter. No supplemental surcharge fee shall exceed \$20,000 per facility per fiscal year. The FY95 supplemental surcharge fee shall be paid by October 8, 1995. The FY96 supplemental surcharge fee (excluding the excess, if any, payable under (f) below) shall be paid by January 31, 1996, and shall be based on the facility's actual annual emissions as reported on the

facility's emission statement. If actual emission information on a source operation is unavailable, or an emission statement has not been filed for a source operation, the supplemental surcharge fee shall be based on permitted emissions, or if no permit has been issued, on the facility's potential to emit. The supplemental surcharge fee shall be calculated according to the following formulas:

$$(Q \times Te_s + (\$20,000 \times L) = \$1,500,000$$

where:

Q is the per-ton supplemental surcharge, expressed in dollars per ton;

Te_s is the total emissions, expressed in tons, from facilities with emissions below the size threshold;

L is the number of facilities above the size threshold; and

The size threshold is $\$20,000 \div Q$

For FY95, the supplemental surcharge fee is \$20.00 per ton, payable on all emissions of any regulated air contaminant, except for CO. The Department shall publish a notice in the New Jersey Register, stating the supplemental surcharge fee for FY96 and describing how the fee was calculated.

(d) The initial operating permit application fee shall be paid on or before the deadline for submittal on the facility's initial operating permit application, except for applications due on August 15, 1995, for which application fees are due October 8, 1995. The application fee calculation is the same for all fiscal years. The application fee shall be \$125.00 for each piece of equipment listed on the permit application which, considered singly, constitutes a significant source operation as defined at N.J.A.C. 7:27-22.1. However, no initial operating permit application fee shall exceed \$25,000.

(e) Operating permit modification fees shall be paid upon submittal of an application for a minor or significant modification, in accordance with (k) through (s) below.

(f) The Department will make forms available to use for submittal of fees. The Department may also provide estimated emission fee or supplemental surcharge fee calculations for individual facilities. If a person required to submit any fees pursuant to this section does not receive a fee form, the person shall obtain a fee form from the Department at the address set forth in N.J.A.C. 7:27-22.3(t), and shall submit the required fees by the deadlines set forth in this section. Any person submitting fees shall provide the information specified on the fee form. Backup information and calculations carried out pursuant to this section to determine the fee amount shall be maintained by the facility for at least five years after submittal of the fee, and shall be made available to the Department upon request.

(g) All fee payments required by this section shall be submitted to the Department by check or money order made payable to the "Treasurer, State of New Jersey," shall be accompanied by a completed fee form, and shall be submitted to:

Department of Environmental Protection
Bureau of Revenue
PO Box 417
Trenton, New Jersey 08625-0417

(h) On or before March 1, 1996, and annually thereafter, the Department shall prepare and submit to the Governor and the Legislature the report required by P.L. 1995, c.188, § 7 (N.J.S.A. 26:2C), which will include information on whether there is a need for legislative action to adjust the annual emission fee to adequately fund the operating permit program.

(i) The Consumer Price Index which is used to adjust the emission fee shall be calculated using the CPI-U data published monthly by the U.S. Department of Labor. The CPI-U data is re-published monthly in the Survey of Current Business, Bureau of Economic Analysis, U.S. Department of Commerce. The percentage increase in the CPI for the current year, relative to the CPI for 1989, shall be determined in accordance with the following procedure:

1. The CPI for 1989 is 122.15, representing the average of the monthly CPI-U for the 12 month period ending August 31, 1989;

2. The CPI to be used in calculating the fee for the current fiscal year shall be the average of the monthly CPI-U for the 12 month period ending August 31 of the current fiscal year. For example, the CPI for the fee which is due on January 31, 1999, for fiscal year 1999 shall be the average of the monthly CPI-U for the 12 month period ending August 31, 1998; and

3. The percentage increase in the current CPI relative to the 1989 CPI shall be calculated in accordance with the following formula:

$$i. \text{ Percentage Increase} = 100 \times \frac{\text{Current Year CPI} - 122.15}{122.15}$$

ii. Where:

Current Year CPI is the CPI determined pursuant to (i)2 above; and

122.15 is the CPI for 1989, pursuant to (i)1 above.

(j) To assist in calculations of the annual emission fee required pursuant to this section, the Department will annually publish a notice in the New Jersey Register in November of the fiscal year in which the fee is due, setting forth the percentage increase, for that year, of the current CPI relative to the 1989 CPI and the resultant per-ton emission fee for the year. The Department will calculate the percentage increase in accordance with the procedure set forth in (i) above. For the FY95 emission fee, which is due October 8, 1995, the per-ton emission fee is \$30.07.

(d) Any owner or operator of a MSW incinerator that submits to the Department a report of compliance testing, including all test runs, for a MSW incinerator 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 a MSW incinerator shall maintain at the facility a complete record, including all test reports, of all compliance 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 a MSW incinerator who submits to the Department a report of compliance testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27-8.24.

(g) The owner or operator 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.

7:27-27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator 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. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

SUBCHAPTERS 28 THROUGH 29. (RESERVED)

SUBCHAPTER 30. OPEN MARKET EMISSIONS TRADING

Authority

N.J.S.A. 26:2C, especially 26:2C-8 and 26:2C-9.8.

Source and Effective Date

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).

7:27-30.1 Purpose and scope

(a) This subchapter establishes procedures and standards for the Open Market Emissions Trading Program.

(b) This subchapter includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of volatile organic compounds (VOC) and oxides of

nitrogen (NO_x). It also includes procedures and standards for compliance with certain VOC and NO_x air pollution control requirements through the use of DER credits.

(c) This subchapter also includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of greenhouse gases (GHG).

(d) Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit. For example, if N.J.A.C. 7:27-8 or 22 would require that a permit be revised or modified to reflect a physical or operational change that results in an emission increase, that permit revision or modification would still be required regardless of whether the change arose from the generation or use of DER credits.

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 the section.

7:27-30.2 Definitions

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

“Activity” or “activity level” means, in reference to an emissions source, the duration or degree of its operation during a selected period of time, expressed in units that correspond to the units used in the denominator of an emission rate which applies to the source. For example:

1. If the emission rate is expressed as emissions per hour of operation, the source's activity would be expressed as the number of hours of operation in the selected period of time; or
2. If the emission rate is expressed as emissions per BTU of fuel consumed, the source's activity would be expressed as the number of BTUs of fuel consumed during the selected period of time.

“Air contaminant” means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.

“Allowable emission rate” means the most stringent of any air quality emission limit or standard in any State or Federal law or rule which is applicable to a particular emissions source.

“Alternative emission limit” means an emission limit that the Department has established for a specific emissions source, which is less stringent than the limit in a State or Federal rule that would otherwise apply to the source.

“AP-42” means the manual, published by the EPA, entitled “Compilation of Air Pollutant Emission Factors,” which

is incorporated herein by reference, as amended and supplemented. 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, DC 20402, (202) 783-3228. In addition, this document can be downloaded electronically from the EPA's Technology Transfer Network Bulletin Board Service by dialing (919) 541-5742; or from the EPA website at <http://www.epa.gov/ttn/chief/ap42.html>.

"Area source" means a class of stationary sources or nonroad sources, where each source in the class is too small and/or too numerous to be individually listed in an emissions inventory submitted by the State to the EPA or in a facility's emission statement submitted pursuant to N.J.A.C. 7:27-21. An example of an area source is consumer and commercial products.

"Batch" means, with respect to DER credits, the set of DER credits included in a single Notice of Generation submitted to the registry. Such a set shall include all credits resulting from the implementation of a specific generation strategy during a single generation period.

"Best available control technology (BACT)" is as defined in 40 CFR § 51.166(b)(12).

"BTU" means British thermal unit.

"Calendar quarter" means January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31.

"Carbon equivalent" means the weight of a quantity of a greenhouse gas multiplied by its global warming potential and then also multiplied by the ratio of the molecular weight of carbon to that of carbon dioxide.

"Ceiling rate" means the user source's maximum allowable emission rate during the use period, when DER credits are being used for permit insurance. Such a rate will typically be higher than the corresponding limit in the source's permit. A ceiling rate is selected and specified by the user and is set forth in the Notice of Intent to Use.

"Complete" means, with respect to a notice, containing all information, supporting documentation, statements, and certification required for such a notice under this subchapter.

"Creditable emission reduction" shall have the meaning defined for this term at N.J.A.C. 7:27-18.1.

"Curtailment" means a temporary or partial reduction in an emissions source's economic output. For the purposes of this subchapter, this term does not include either of the following reductions:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or by a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or

2. A reduction in the production of electricity that results from implementing electrical energy efficiency measures.

"Day" means calendar day, unless the phrase business day or working day is used.

"Department" means the New Jersey Department of Environmental Protection (or its authorized agent).

"DER credit" or "credit" means a tradable entity, based on discrete emission reductions which meet the applicable requirements in this subchapter at N.J.A.C. 7:27-30.4(e) or (f) and at N.J.A.C. 7:27-30.6. The value of such a credit shall be given in units of weight, such as pounds or tons. There are three types of DER credits: VOC credits, NO_x credits, and GHG credits.

"Design margin" means the difference between the allowable emission limit for an emissions source, and the actual level of emissions that the source would be designed to achieve, such that expected variations in the source's emissions would not cause it to exceed the allowable emission limit.

"Discrete emission reduction" means a quantity of emission reductions, given in units of weight such as pounds or tons, that were realized over a finite period of time and have been quantified in accordance with this subchapter.

"Economic output" means the goods and/or services which are produced by an emissions source during a specified period of time. Examples include quantity of products and product intermediates manufactured; the flux of useable energy, measured at the point of use, in units such as lumens of light, ton hours of cooling, British thermal units of thermal energy, or kilowatt hours of electricity; the number of square feet interior area illuminated, heated, or cooled to a given standard; or the number of miles a given number of individuals or a given weight or volume of materials are transported.

"Emissions source" means any mobile source, nonroad source, or stationary source.

"EPA" means the United States Environmental Protection Agency, or its authorized agent.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into the outdoor atmosphere, and any stack, chimney, conduit, flue, duct, vent, or similar device connected or attached to, or serving, the equipment. This term includes, but is not limited to, any equipment in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties, which are under common control of the same person or persons.

"Federal Clean Air Act" means 42 U.S.C. § 7401 et seq., as amended or supplemented.

"Fleet" means 10 or more vehicles under common ownership.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

"Generation period" means that period of time during which a batch of DER credits is generated.

"Generator" means a person who generates one or more DER credits pursuant to this subchapter.

"Generator source" means any emissions source that generates emission reductions that are used as a basis for generation of DER credits.

"GHG credit" means a DER credit based on reductions of a greenhouse gas. One GHG credit has an assigned value of one metric ton (2,205 pounds) of carbon equivalent.

"Global warming potential" or "GWP" is the ratio of the global heat-trapping effect, both direct and indirect, of one mass unit of a gas to that of the same mass unit of carbon dioxide over a given period of time. The 100-year period recommended by the Intergovernmental Panel on Climate Change (IPCC) shall be used for the purposes of this subchapter. A list of the GWPs of greenhouse gases is provided in Appendix A of this subchapter, incorporated herein by reference.

"Greenhouse gas" or "GHG" means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons (HFC-23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310mee); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulfur hexafluoride (SF₆).

"Hazardous air pollutant" or "HAP" means any air pollutant listed in or pursuant to 42 U.S.C. § 7412(b).

"Hold" means to have the registry show that a DER credit is credited to one's account.

"Lowest achievable emission rate" or LAER means the control technology defined at 40 CFR § 51.165(a)(1)(xiii).

"Maintenance area" means a former nonattainment area for which the EPA has approved a maintenance plan submitted by a state under 42 U.S.C. § 7505a.

"MEG alert" means a period in which one or more electric generating units are operated at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:

1. An alert begins when one or more electric generating units are operated at emergency capacity after receiving notice from the load dispatcher, directing the electric generating unit to do so; and
2. An alert ends when the electric generating unit ceases operating its electric generating units at emergency capacity.

"Mobile source" means any of the following:

1. A vehicle or engine used for on-highway purposes;
2. A vehicle or engine used for nonroad purposes. Examples of vehicles used for nonroad purposes include marine vessels, locomotives, and airplanes. Examples of engines used for nonroad purposes include engines in the above vehicles, and engines smaller than 175 horsepower used in construction equipment or vehicles or farm equipment or vehicles;
3. A fuel intended for use in such a vehicle or engine; or
4. A fuel delivery system (including, but not limited to, pipelines, tanker trucks, storage tanks, and dispenser pumps) associated with a fuel intended for use by such a vehicle or engine.

"National ambient air quality standard" or NAAQS means an ambient air quality standard promulgated at 40 CFR Part 50.

"Nonattainment area" means any area that the EPA has designated or redesignated at 40 CFR Part 81 or pursuant to 42 U.S.C. § 7407 as nonattainment for the ozone NAAQS.

"Nonroad source" means a nonroad engine or nonroad vehicle, as defined at 42 U.S.C. § 7550. Examples of nonroad sources include gasoline-fueled lawnmowers, dredging and land-moving equipment, and tractors used in farming.

"NO_x credit" means a DER credit based on reductions of NO_x. One NO_x credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of NO_x.

"Operating permit" is as defined in N.J.A.C. 7:27-22.1.

"Operator" means the individual who is in control of or in charge of an emissions source while it is in operation.

"Owner" means a person who claims lawful possession of an emissions source by virtue of legal title or equitable interest therein which entitles that person to such possession.

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide (N₂O), as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR Part 60 Appendix A, methods 7 through 7E.

"Ozone season" means the portion of each year beginning May 1 and ending September 30.

"Permit insurance" means a method for a permittee to comply, through use of DER credits in accordance with N.J.A.C. 7:27-30.14(d), with a permit limit, including a limit on the amount of emissions, activity level, or hours of operation. Under this method, the reduced emissions required pursuant to a permit limit are assured of being obtained. However, instead of the permittee reducing the emissions of the emissions source subject to the permit limit, the permittee relies on voluntary emission reductions from a different emissions source, which are used as the basis for DER credits, to meet the emission reduction requirement. Generally, this method is for complying with a limit currently established in the current permit; however, in some circumstances, if a permittee has submitted an application seeking a revised permit limit, this method may be used to comply with the limit that will be established when the Department acts on the permit application. The two classes of permit insurance authorized under this subchapter are set forth at N.J.A.C. 7:27-30.14(e).

"Person" means an individual, public or private corporation, 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.

"Quantification protocol" means a document setting forth the quantification guidance and methods needed for credit generation and credit use, including, but not limited to, the following:

1. For a Notice of Generation, determining the number of DER credits that have been generated by a generator source;
2. For a Notice of Intent to Use, determining the number of DER credits that a user shall hold when the notice is submitted; and
3. For a Notice of Use, determining the number of DER credits used.

"Real" means actual, genuine and authentic.

"Registry" means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of DER credits.

"Retire" means, with respect to DER credits, to make a DER credit permanently unavailable for use.

"Shutdown" means the permanent cessation of production of an emissions source, such that it no longer has economic output or emissions. For the purposes of this subchapter, scrapping of mobile sources is not considered a shutdown.

"State Implementation Plan" or "SIP" means a plan developed by New Jersey, as required under Titles I and II of the Federal Clean Air Act, and submitted by the State to the EPA. The plan sets forth the means by which the State will attain or maintain the NAAQS established by the EPA.

"Stationary source" means generally any source of air contaminant emissions, except a mobile source or a nonroad engine or nonroad vehicle.

"Surplus" means, with respect to emission reductions used for the generation of DER credits, not required pursuant to any air quality emission limit or standard in any applicable State or Federal law, regulation, permit, or order and not relied upon in a SIP.

"Timely and Appropriate (T & A) Enforcement Response to High Priority Violations (HPVs)' guidance document" means the EPA guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, on December 22, 1998, and as may be amended and supplemented, incorporated by reference herein. For reference, excerpts from this guidance document are set forth herein in Appendix B. However, if a discrepancy is found between Appendix B and the EPA document, the provisions of the EPA document shall prevail.

"Use period" means the period of time during which a user uses DER credits.

"Useful life" means the length of time that equipment or control apparatus can be expected, from the time it initially commences to operate, to continue to operate. For the purposes of this subchapter, in a case where the generation strategy is the replacement of equipment or control apparatus with lower-emitting equipment or control apparatus, this length of time shall be presumed to end five years from the date the new equipment or control apparatus commences to operate.

"User" means the owner or operator of a user source.

"User source" means any emissions source for which the owner or operator seeks to use DER credits for compliance in accordance with this subchapter.

"VOC credit" means a DER credit based on reductions of VOC. One VOC credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of VOC.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)

2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)

1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)

1-chloro-1,1-difluoroethane (HCFC-142b)

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

pentafluoroethane (HFC-125)

1,1,2,2-tetrafluoroethane (HFC-134)

1,1,1-trifluoroethane (HFC-143a)

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)

1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

1,1,1,3,3,3-hexafluoropropane (HFC-236fa)

1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)

1,1,1,2,3-pentafluoropropane (HFC-245eb)

1,1,1,3,3-pentafluoropropane (HFC-245fa)

1,1,1,2,3,3-hexafluoropropane (HFC-236ea)

1,1,1,3,3-pentafluorobutane (HFC-365mfc)

chlorofluoromethane (HCFC-31)

1-chloro-1-fluoroethane (HCFC-151a)

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃)

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

Administrative change.

See: 31 N.J.R. 639(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).

Rewrote the section.

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.3 General provisions

(a) A DER credit represents a tradeable quantity of emission reductions, recognized pursuant to this subchapter. A credit does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit DER credit(s).

(b) A person may generate, transfer or voluntarily retire DER credits in accordance with this subchapter, without prior Federal, State or local government approval. A person may also use VOC or NO_x credits without such prior approval, except when the credits are to be used pursuant to N.J.A.C. 7:27-30.14(g) to comply with emission offset requirements under N.J.A.C. 7:27-18.

(c) Only a whole number of DER credits may be generated, verified, transferred, voluntarily retired, used, found invalid, or cancelled.

Administrative change.

See: 29 N.J.R. 2561(a).

In (d), changed the address for emissions trading registry submittals. Administrative change.

See: 30 N.J.R. 4041(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).

Rewrote the section.

7:27-30.4 DER credit generation: general requirements

(a) A person may generate one or more DER credits pursuant to this section. However, no person may generate one or more credits unless the person:

1. Implements a generation strategy which reduces the actual emissions of a generator source or group of generator sources below its baseline emissions;
2. Conforms to all applicable provisions of this subchapter, including, but not limited to, the requirement that a DER credit be based on emission reductions that are real, surplus, and properly quantified; and
3. Is authorized under (b) below to be the generator of the credits.

(b) The generator of a DER credit shall be the owner or operator of the generator source, except as provided in (c) below, and except in the following circumstances:

1. The generator source is a fuel, and the generation strategy is the reformulation of the fuel so as to decrease emissions from the fuel as it is distributed, stored, and/or sold for use in New Jersey. In such case, the person who implements the reformulation (that is, the owner or operator of the refinery or, if applicable, a person who is defined pursuant to N.J.A.C. 7:27-25.1 as a blender) is authorized to be the generator;

2. The generator source(s) are mobile sources or non-road sources operated in New Jersey, and the generation strategy is:

- i. The reduction in the sources' activity levels through implementation of an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50). In such case, the person who obtains approval of and implements the plan is authorized to be the generator;
- ii. The replacement of conventional vehicles in a fleet with lower-emitting vehicles or the modification of fleet vehicles to make them lower-emitting. In such case, the owner of the fleet is authorized to be the generator; and
- iii. The testing (or more frequent testing) and repair of motor vehicles. In such case, the person who conducts the test and repair program is authorized to be the generator;

3. The generator sources are consumer or commercial products (such as architectural coatings) which release emissions during their distribution, storage, or use, and the generation strategy is the reformulation or redesign of the products so that less emissions are released during the product's distribution, storage or use in New Jersey. In such case, the person who produces the reformulated or redesigned product (that is, the product manufacturer) is authorized to be the generator;

4. The generator sources are electric generating units located in New Jersey, and the generation strategy is the reduction in the electric generating units' activity level by implementing electrical energy efficiency measures in a residential, commercial, industrial, institutional, or governmental facility that is located in New Jersey. In such case, the person who is the electricity consumer (that is, the owner or operator of the facility) is authorized to be the generator; or

5. The generator source is the production of virgin materials (including, but not limited to, their extraction, harvesting, or manufacture, and their handling and transport) that are sold for use as a consumer or commercial product in New Jersey, or that are used as a raw material in a manufacturing process in New Jersey; and the generation strategy is the substitution of recycled materials for the virgin materials. In such case, the person who produces the recycled material in a form in which it is used (either as a product or as a raw material) as a substitute for virgin material is authorized to be the generator. For example, for recycled plastics, the post-consumer or post-industrial processor who produces recycled polymers in the form (pellets or flakes) that they are used by a plastics product manufacturer is authorized to be the generator.

(c) If the person authorized to generate credits under (b) above enters a collective agreement under which the generation strategy would be implemented by another person authorized by the agreement to act on behalf of all signatories to the agreement, then the right to generate credits based on that strategy transfers to the other person, and the individual signatories are preempted from being generators.

(d) If the generation strategy entails a change in equipment or control apparatus and that change is subject to permit requirements under N.J.A.C. 7:27-8 or 22, the following applies:

1. A permittee shall obtain the new permit or the modification or revision of the existing permit prior to commencing implementation of the generation strategy; or

2. If the "at-risk" provisions of N.J.S.A. 26:2C-9.3 and 4 and/or N.J.A.C. 7:27-8.25(a) apply, a permit applicant may commence implementation of the generation strategy while the review of the permit application is pending. However, if the Department does not approve the generation strategy as set forth in the permit application, the emissions reductions realized during the "at-risk" period may not be used as a basis for DER credit generation.

(e) DER credits shall be based only on discrete emission reductions that are real and surplus, and are quantified in accordance with N.J.A.C. 7:27-30.5, 30.24, and 30.25.

(f) If DER credits are to be based on reductions in emissions of a compound which may be classified as either a VOC or a GHG, then a generator may generate either VOC credits or GHG credits, but not both.

(g) The generation period for any batch of DER credits shall not exceed one year. However, if a single generation strategy continues year after year to realize reductions, a generator may each year generate DER credits based on the strategy, provided that the generator meets the notice requirements set forth at N.J.A.C. 7:27-30.7 for each successive generation period.

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 the section.

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.5 DER credit generation: computation of credits

(a) A generator shall calculate the quantity of DER credits generated in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.24 and 30.25.

(b) The number of DER credits generated shall be determined by calculating the quantity of discrete emission reductions on which credits may be based in accordance with (c) below; and then converting this quantity to a number of credits in accordance with (i) below.

(c) The quantity of discrete emission reductions on which credits may be based shall be calculated in accordance with the following formula:

$ER = (\text{Baseline Emissions}) - (\text{Actual Emissions})$

where:

ER = the quantity of discrete emission reductions generated during the generation period, given in units of weight (for example, pounds or tons);

Baseline Emissions = the quantity of emissions which the generator source would have emitted during the generation period if the generator had not implemented the generation strategy to reduce the emissions. If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, this quantity shall be determined in accordance with (d) below, except when the generator is generating credits over multiple consecutive years. In such case, for the second year, and each year thereafter, baseline emissions shall be determined in accordance with (g) below; and

Actual Emissions = the quantity of emissions that the generator source actually emitted during the generation period.

(d) If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, the source's baseline emissions shall equal the amount of the source's adjusted historic emissions, unless the source's allowable emissions and/or the source's measured emissions can be determined and unless either or both of these amounts of emissions are less than the source's adjusted historic emissions. In such case, the source's baseline emissions shall be the lowest of the following: the source's allowable emissions (if determined), the source's adjusted historic emissions, and the source's measured emissions (if determined). Each of these shall be determined as follows:

1. The source's allowable emissions cannot be determined if no emissions limit established by Federal or State law, rule, or regulation or by order applies to the source. However, if such a limit applies, the source's allowable emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. In determining the lowest allowable emission rate, the following shall be taken into consideration if applicable:

i. If the Department has approved a higher emission rate as an alternative emission limit for the source pursuant to N.J.A.C. 7:27-16 or 19, the rate which would have applied in the absence of the alternative emission limit (and not the alternative emission limit) shall be taken into consideration in determining the lowest allowable emission rate which applies to the source; and

ii. If a new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, is required under N.J.A.C. 7:27-8 or 22 for the generation strategy, the permit or operating certificate limit which shall be taken into consideration in determining the lowest allowable emission rate which applies to the source is:

(1) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department prior to June 6, 2000, the new limit; and

(2) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department on or after June 6, 2000, the limit which applied prior to the issuance of the new or revised permit or operating certificate (and not the new limit);

2. The source's adjusted historic emissions shall be its historic emissions adjusted for any difference between the source's economic output during the historic baseline period and during the generation period. A source's adjusted historic emissions shall be determined in accordance with the following formula:

$$\text{Adjusted Historic Emissions} = \left(\frac{EO_G}{EO_H} \right) (\text{Historic Emissions})$$

where:

Adjusted Historic Emissions = The source's historic emissions, adjusted for any difference between the source's economic output during the historic baseline period and during the generation period;

EO_G = The economic output of the generator source during the generation period;

EO_H = The generator source's historic economic output determined in accordance with (e) below, expressed in the same units as is used for economic output during the generation period; and

Historic Emissions = The emissions calculated in accordance with (e) below; or

3. The source's measured emissions cannot be determined if it is not technically feasible to measure the emission stream upstream of the point of application of the generation strategy. However, if such measurements can be taken, the source's measured emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the emission rate which would have resulted had the generation strategy not been applied, determined from measurements made upstream of the point of application of the generation strategy. If the strategy entails the replacement of a control apparatus, subtract the emission reductions that would have been realized by the replaced control from the total emissions calculated.

(e) A generator source's historic emissions shall be calculated using the source's historic emission rate, historic activity level, and historic hours of operation. These terms, as well as the source's historic economic output, shall be derived as follows:

1. Determine the source's historic baseline period, as follows:

i. If the source has operated for less than two years since January 1, 1990, the source's historic baseline period shall be the interval which corresponds to the generation period in the year immediately preceding the first day of the generation period; and

ii. If the source has operated for two or more years since January 1, 1990, the source's historic baseline period shall be one of the following:

(1) The two intervals which correspond to the generation period in each of the two years immediately preceding the first day of the generation period, unless the generator is generating "early" credits pursuant to N.J.A.C. 7:27-30.6(b)3 or (d). In such case, the source's historic baseline period shall be the two intervals which correspond to the generation period in each of the two years immediately preceding the date the generation strategy was first implemented; or

(2) If the generator demonstrates that any two intervals which correspond to the generation period within the five years preceding the first day of the generation period (or, for "early" credit generation, preceding the date the generation strategy was first implemented) are more representative of normal operations, these two other intervals;

2. Using the historic baseline period determined under (e)1 above, determine the value of the terms, as follows:

i. The source's historic emission rate shall be its average emission rate during the historic baseline period;

ii. The source's historic activity level shall be its average activity during the historic baseline period;

iii. The source's historic hours of operation shall be its average hours of operation per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic hours of operation would be its total hours of operation during the historic baseline period divided by two; and

iv. The source's historic economic output shall be its average economic output per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic economic output would be its total economic output during the historic baseline period divided by two.

(f) A time period shall be considered to be an interval that corresponds to a given generation period if the period begins in a different year but on the same calendar date (for example, April 15) as the generation period, and has the same duration as the generation period.

(g) A generator who generates DER credits pursuant to N.J.A.C. 7:27-30.4(g), based on emission reductions realized over multiple years from implementation of a single generation strategy, may in the calculation of baseline emissions for the second year of DER credit generation, and each year thereafter, use the same values for "historic emissions" and "historic economic output" as were used in the first year, provided that:

1. The generator generates credits for each successive consecutive generation period;

2. This continuous generation is reflected in the generator's annual submission of a Notice of Generation;

3. Each year's generation period corresponds to the initial generation period, as determined pursuant to (f) above;

4. No new applicable maximum allowable emission rate that is lower than the historic emission rate is promulgated by EPA or the Department. If such a rate is promulgated, then the value for "historic emissions" shall be recalculated using the newly applicable maximum allowable emission rate, minus a design margin; and

5. If the generator discontinues DER credit generation, and later decides to resume credit generation based on the initial generation strategy, "historic emissions" and "historic economic output" shall be recalculated pursuant to (d) above, using information from the years immediately preceding the new generation period.

(h) The quantity of emission reductions calculated under (c) above shall be discounted in accordance with the following, as applicable:

1. If the generation strategy results in increases of actual emissions of that air contaminant from one or more emissions sources other than the generator source, located at the facility or offsite, the quantity of emission reductions shall be reduced by the amount of those emission increases, as follows:

- i. For each resulting pound of VOC increases (if VOC credits are being generated) or NO_x increases (if NO_x credits are being generated), a pound shall be subtracted; and

- ii. For GHG, for each resulting pound of increased emissions of carbon equivalent, a pound of carbon equivalent shall be subtracted;

2. If the generator source's actual emissions or actual emission rate for any air contaminant during any part of the generation period exceeded any applicable limit established in its permit (unless the exceedance is authorized

pursuant to the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e) or under applicable Federal or State law or rules, the quantity of emission reductions shall be reduced to reflect that no emission reduction, generated during that part of the generation period, may be used as the basis for a credit;

3. For VOC and NO_x, if a portion of the emission reductions calculated under (c) above have been relied on in the SIP and are therefore not surplus, this portion shall be subtracted from the amount of emission reductions that was calculated;

4. If the emission reductions are reductions that were banked pursuant to N.J.A.C. 7:27-18.8 and that are being converted to DER credits, the quantity of the emission reductions shall be reduced pursuant to N.J.A.C. 7:27-18.8(e) if the generator source is subject to a new emission limit established under a State or Federal statute, rule, or regulation; and

5. If any amount of the emission reductions calculated under (c) above occurred at a generator source that is not located in New Jersey, the quantity of the emission reductions shall be reduced by that amount.

(i) The number of DER credits generated shall be determined by converting the quantity of emission reductions calculated under (c) above, expressed in pounds, and as discounted pursuant to (h) above (if applicable), into the number of DER credits generated in accordance with the following:

1. For VOC or NO_x, divide the quantity of emission reductions (given in pounds) by 100 pounds;

2. For a greenhouse gas, divide the quantity of emission reductions (given in pounds of carbon equivalent calculated pursuant to (j) below) by 2,205 pounds;

3. If the registry will receive a complete Notice of Generation late, the number calculated pursuant to (i)1 or 2 above shall be reduced for such lateness in accordance with N.J.A.C. 7:27-30.7(b); and

4. If the result obtained is a whole number, that is the number of DER credits generated; otherwise the result shall be rounded down to the next lowest whole number to determine the number of DER credits generated.

(j) A quantity of any greenhouse gas, given in pounds, may be converted to a pound of carbon equivalent using the following formula:

$$CE = 0.2727 \times (GHG) \times (GWP)$$

where:

CE = A quantity of carbon equivalent, expressed in pounds;

0.2727 = The ratio of the molecular weight of carbon to that of carbon dioxide;

GHG = A given quantity of a specific greenhouse gas, expressed in pounds; and

GWP = The global warming potential of the specific greenhouse gas, as listed in Appendix A.

(k) For VOC and NO_x, if part of the generation period falls within the ozone season and part outside the ozone season, a generator shall perform the calculations in (c), (h) and (i) above separately for those emission reductions generated during the ozone season and for those emission reductions generated outside the ozone season. The total number of credits generated shall be the sum of the credits generated during the ozone season and the credits generated outside the ozone season.

Administrative Change.

See: 28 N.J.R. 3786(b).

Repeal and 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).

Section was "DER generation; computation of DERs".

7:27-30.6 DER credit generation: limitations

(a) None of the following emission reductions is a basis for generation of a DER credit:

1. An emission reduction that results from a shutdown or curtailment;
2. An emission reduction that results from modifying or discontinuing activity that violates any Federal, State or local law, regulation, permit, or order;
3. An emission reduction that is required to comply with a requirement in the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), any regulation, permit, operating certificate, or order pursuant thereto; any air quality emission limit or standard in any applicable law, regulation, permit, or order; or any SIP or Federal Implementation Plan except:
 - i. If emissions are reduced below the level required to comply, they may be used as the basis for generation of a DER credit; and
 - ii. As provided in the procedures for calculating baseline emissions at N.J.A.C. 7:27-30.5(d)1ii.
4. An emission reduction which has been used under any other emissions trading program as the basis for a credit under that other trading program. For example, an emission reduction which has been used as the basis for a claim for early reduction credit in the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.12 may not also be used as a basis for generation of a DER credit. However, this prohibition does not include emission reductions banked under the provisions of the emission offset rule at N.J.A.C. 7:27-18.8 or a NO_x Budget Program allowance which is being converted to a DER credit pursuant to N.J.A.C. 7:27-30.27;

5. An emission reduction which has previously been used as the basis for generating a DER credit under this subchapter;

6. An emission reduction which is accompanied by an increase in a source's emissions of a HAP from a level below the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a level above the threshold;

7. An emission reduction which is accompanied by an increase in emissions of any HAP (from the emissions source or from any other source at the facility or off-site) from a level which exceeds the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a higher level. This SOTA Threshold level is the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. § 7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7;

8. An emission reduction which is accompanied by a violation of a Federal or State law, regulation, order or permit. For example, if the generator source's actual emissions or actual emission rate for any air contaminant during any portion of the generation period exceeds any applicable limit established in the generator source's permit DER credits shall have been generated during that portion of the generation period;

9. An emission reduction that results from the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;

10. An emission reduction that is not a consequence of an action taken by the generator, including, but not limited to, reductions resulting from chance events;

11. An emission reduction from a generator source that is not located in New Jersey;

12. An emission reduction from a new emissions source which has operated for less than one year prior to the first day of the generation period; or

13. An emission reduction from a new product which has been distributed, stored, or sold for use in New Jersey for less than one year prior to the first day of the generation period.

(b) None of the following emission reductions is a basis for generation of a VOC or NO_x credit:

1. An emission reduction below an alternative emission limit approved by the Department for the generator source(s) pursuant to the alternative control plan provisions at N.J.A.C. 7:27-16.17(a)2, the facility-specific NO_x emission limit provisions at N.J.A.C. 7:27-19.13(a)2, or the emission averaging provisions at N.J.A.C. 7:27-19.6, except to the extent that the emissions are reduced below the limit that would otherwise apply;

2. An emission reduction from a stationary source that is subject to N.J.A.C. 7:27-16 or 19, but for which the Department has not yet established an applicable RACT limit either in the rule or in a source-specific emissions limit submitted to the EPA as a SIP revision;

3. An emission reduction generated before May 1, 1992. Furthermore, an emission reduction generated at any time between May 1, 1992 and August 2, 1996 may be a basis for generation of a DER credit only if it satisfies the applicable requirements of this subchapter, and one of the following occurred on or before October 31, 1996:

i. The Department informed the generator in writing that the emission reduction is real, surplus, and properly quantified; or

ii. The generator submitted to the Department and the registry a Notice of Generation in accordance with N.J.A.C. 7:27-30.7 for the emission reduction; or

4. An emission reduction from a generator source whose emissions are not reflected in the emissions inventory submitted by the State to the EPA for inclusion in the SIP, or in the annual emissions inventory conducted pursuant to the emission statement program rules at N.J.A.C. 7:27-21.

(c) None of the following emission reductions is a basis for generation of a GHG credit;

1. Reducing the amount of a hydrofluorocarbon (HFC) or a perfluorocarbon (PFC) that is used in a fire suppression system; and

2. (Reserved)

(d) A GHG emission-reducing strategy that was implemented after 1990 but prior to June 6, 2000 may be used as a generation strategy, subject to the following constraints and limitations:

1. An emission reduction generated prior to June 6, 2000 may not be used as the basis for generation of a GHG credit; however, GHG credits may be based on the emission reductions realized from these strategies on and after June 6, 2000; and

2. The Notice of Generation for the first generation period shall be submitted no later than September 4, 2001 and shall be for a generation period which commences on June 6, 2000.

(e) A DER credit shall not be based on the reduction of a facility's fugitive emissions unless:

1. The facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48; and

2. The fugitive emissions are reduced by the owner or operator taking pollution prevention measures.

(f) If the generation strategy is the replacement of an existing emissions source with a lower-emitting source, notwithstanding the provisions of N.J.A.C. 7:27-30.4(g) which provide for continuing generation of DER credits year after year from a single generation strategy, no DER credit shall be based on the reductions realized by the replacement source after the end of the useful life of the replaced source.

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 the section.

7:27-30.7 DER credit generation: Notice of Generation

(a) On and after June 6, 2000, a generator shall submit a Notice of Generation in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. A Notice of Generation submitted prior to June 6, 2000 shall conform with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).

(b) The deadline for timely submittal of a complete Notice of Generation is 90 days after the last day of the generation period. A Notice of Generation that is received by the registry after this deadline is late, and the following shall apply:

1. Within the notice the generator shall initially reduce the quantity of credits claimed in the notice by 10 percent for the lateness, and shall further reduce the number of credits claimed by an additional 10 percent of the original quantity claimed for each full increment of 30 days beyond the deadline that the notice is submitted. For example, if a generator could have claimed 100 credits, but submits the notice 40 days late, the generator shall claim only 80 credits; and

2. A Notice of Generation shall not be submitted later than 270 days after the deadline.

(c) Emission reductions from more than one generator source may be grouped together and submitted as a batch in single Notice of Generation only if:

1. The generator sources are:

i. All stationary sources subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6; or

ii. A group of more than one stationary source of the same type located at a single facility and the same generation strategy is used for each;

2. The reductions are the fugitive emission reductions at a facility subject to a facility-wide permit issued pursuant to N.J.S.A. 13:1D-48 which result from pollution prevention measures;

3. The reductions are generated through the implementation of any of the generation strategies listed at N.J.A.C. 7:27-30.4(b)2 through 5, and the reductions are

realized from the implementation of a single generation strategy; or

4. The generator is an agent authorized under N.J.A.C. 7:27-30.4(c) to implement one or more emission reduction strategies for emissions sources owned or operated by the signatories to the agreement, and the emission reductions are the reductions realized from the implementation of a single generation strategy at facilities under the control of the signatories.

(d) A Notice of Generation shall include the following:

1. The name and address of the generator, the generator's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;

2. If the generator is an agent authorized to act on behalf of all signatories to a multi-party agreement, and authorized pursuant N.J.A.C. 7:27-30.4(c) (in lieu of the signatories) to be the generator of DER credits, a copy of the collective agreement and a list of all signatories to the agreement, together with the identifying information required under (d)1 above for each signatory;

3. A description of the generation strategy employed;

4. For the generator source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d), except in the cases given in (d)4i and ii below. In these cases only a general class (and not specific generator source(s)) shall be identified, and the additional requirements set forth in (d)4i and ii below shall be satisfied:

i. If the generation strategy is the implementation of energy efficiency measures, in lieu of identifying the specific generator source(s), the address and county of the facilities where the measures were implemented; and

ii. If the generation strategy is the substitution of recycled materials for virgin materials that would otherwise be sold for use as a consumer or commercial product or as a raw material in a manufacturing process, in lieu of identifying the specific production process for the virgin materials, the generator shall provide documentation that the recycled materials were sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process;

5. The month, day, and year of the first and last dates of the generation period;

6. A demonstration that the person submitting the notice is the person authorized under N.J.A.C. 7:27-30.4(b) to be the generator of the credits;

7. One of the following:

i. If a quantification protocol approved by EPA or the Department is used to calculate the number of DER credits generated, citation of that protocol; or

ii. The quantification protocol used, and a statement that the protocol meets the requirements for protocols at N.J.A.C. 7:27-30.25;

8. The type of DER credits being generated (for example, VOC credits or NO_x credits);

9. The number of each type of DER credits determined, pursuant to N.J.A.C. 7:27-30.5 and the quantification protocol, to have been generated; for VOC and NO_x credits, the number based on reductions during the ozone season and for the rest of the year shall be given separately;

10. If the generation of the DER credits resulted in an increase, de minimis or otherwise, in the actual emissions of any HAP, either at the facility or off-site, the name of the HAP specie(s) that had increased emissions and the amount of the increase, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;

11. For GHG credits, a statement specifying whether or not the emission reductions on which the credits are based have also been reported to Energy Information Administration in the United States Department of Energy under its program for Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. § 13385);

12. A demonstration that the emission reductions on which the DER credits are based are surplus. If the generation strategy is a highway project or a transit project, this demonstration shall include a showing that the emission reductions are not a result of the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;

13. For NO_x credits that are based on retired allowances allocated under the NO_x Budget Program, the following:

i. A copy of the Allowance Transfer Form that the Authorized Account Representative has submitted to the NO_x Allowance Tracking System Administrator indicating that the allowances are transferred to a retirement account, as required at N.J.A.C. 7:27-31.6(a)2; and

ii. If the retired allowances had been allocated to the owner or operator of a budget source, a demonstration that the budget source had NO_x emission reductions which were equal to or greater than the emissions value of the retired allowance(s); that the reductions qualify to be used as the basis for a DER credit under N.J.A.C. 7:27-30.4, 30.5, 30.6 and 31.6; and the reductions occurred both within the NO_x Budget control period and within the generation period;

14. If the value used for "historic emissions" in the calculation of baseline emissions is the value used in an initial generation period pursuant to N.J.A.C. 7:27-30.5(g), the date the generation strategy was first implemented;

15. If the generation strategy is the replacement of an existing emissions source with a lower-emitting emissions source, the date that the equipment or control apparatus which was replaced commenced operating and the date of the end of the useful life of the equipment or control apparatus which was replaced;

16. All supporting documentation required to be submitted with the Notice of Generation pursuant to the quantification protocol, which at a minimum must conform with N.J.A.C. 7:27-30.25;

17. The following statements:

i. The emission reductions on which the DER credits are based are real;

ii. The DER credits were not based on a type of emission reduction which may not, pursuant to N.J.A.C. 7:27-30.6, be used as the basis for a DER credit, or on actions prohibited under this subchapter or other provisions of law;

iii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.5 (as applicable) and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and 30.25; and

iv. All supporting documentation required to be submitted with the notice by the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed;

18. If, pursuant to N.J.A.C. 7:27-30.27, the DER credits included in the notice were generated through the conversion of emission reductions banked under the provisions of the emission offset rule at N.J.A.C. 7:27-18.8, or through the conversion of allowances allocated under the provisions of the NO_x Budget Program at N.J.A.C. 7:27-31.7, a statement indicating this;

19. For any batch of DER credits based on emission reductions due to the implementation of an energy efficiency measure, a statement as to whether or not the implementation was subsidized in whole or in part by funding derived from the societal benefits charge levied pursuant to Section 12 of Electric Discount and Energy Competition Act at N.J.S.A. 48:3-60;

20. If any amount of the emission reductions calculated under N.J.A.C. 7:27-30.5(c) occurred at a generator source that is not located in New Jersey, this quantity of the out-of-State emission reductions, given in tons, may (at the option of the generator) be recorded in the notice;

21. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and

22. The certification by the generator as required at N.J.A.C. 7:27-30.18(e).

Repeal and 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).

Section was "DER generation: Notice and Certification of DER Generation".

7:27-30.8 Registry

(a) This section sets forth the procedures and standards for the banking of DER credits in a registry.

(b) Any submittal of a notice or a request to the registry that is required or allowed under this subchapter shall be made to the following address:

Department of Environmental Protection
Office of Air Quality Management
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418
Attention: Open Market Emissions Trading Program

(c) The registry includes information from the following notices (and from amendments thereto):

1. Notices of Generation;
2. Notices of Transfer;
3. Notices of Verification;
4. Notices of Intent to Use;
5. Notices of Use;
6. Notices of Credit Invalidation from the Department or the EPA pursuant to N.J.A.C. 7:27-30.29; and
7. Notices of Retirement pursuant to N.J.A.C. 7:27-30.11.

(d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.

(e) The operator of the registry shall process each notice or amendment it receives as follows:

1. Within one business day after receiving a notice or amendment thereto, the operator of the registry shall determine whether the notice or amendment contains all items required under this subchapter;

2. If the notice or amendment contains all required items, then within one additional business day the operator of the registry shall update the registry to include the notice or amendment and perform the following, as applicable:

i. If the notice is a Notice of Generation, the operator of the registry shall assign a unique serial number to each DER credit claimed in the notice and note all such serial numbers on the registry's copy of the notice;

ii. If the notice is a Notice of Verification, the operator of the registry shall designate each credit in the batch as verified or not verified pursuant to N.J.A.C. 7:27-30.10(e);

iii. If the notice is an amendment of a Notice of Generation which reduces the number of credits originally claimed for the batch, the operator of the registry shall designate the withdrawn credits as canceled in accordance with N.J.A.C. 7:27-30.29;

iv. If the notice is an amendment of a Notice of Generation which renders prior Notice(s) of Verification invalid pursuant to N.J.A.C. 7:27-30.10(f), the operator of the registry shall remove from the registry all designations, based on the Notice(s) of Verification, that credits are verified or not verified. The Notice(s) of Verification shall remain in the registry, but the operator of the registry shall label it invalid; and

v. If the notice is a Notice of Invalidation submitted by the Department or EPA pursuant to N.J.A.C. 7:27-30.29(a), the operator of the registry shall, for each affected credit, place a designation in the registry that the credit is invalid; and

3. If the notice or amendment is missing a required item, the operator of the registry shall return the notice to the person who submitted it, together with an explanation of why the notice is incomplete, and shall not update the registry to include the notice or amendment.

(f) The operator of the registry shall post in the registry a copy of each complete Notice of Generation, Notice of Intent to Use, or Notice of Use, and each amendment thereof, submitted electronically pursuant to N.J.A.C. 7:27-30.19(b), so that the notice or amendment may be examined and/or downloaded by any interested person.

(g) If, pursuant to N.J.A.C. 7:27-30.10(h), the Department or the EPA finds a verification defective, the operator of the registry shall label the corresponding Notice of Verification as invalid. If the invalid Notice of Verification is the only Notice of Verification in the registry that applies to a given batch of DER credits, the operator of the registry shall remove from the registry all designations that the credits in the batch are verified or not verified. If the invalid Notice of Verification is not the only Notice of Verification in the registry that applies to a given batch of DER credits, the operator of the registry shall designate all the credits in the batch as verified or not verified based on the Notices of Verification that are not labeled as invalid.

(h) If a credit has been used, and if the operator of the registry takes either of the following actions which affects the status of the credit, the registry operator shall within seven days of taking the action provide notification, on paper, to the user and to the Department which identifies the credit by its serial number, states the action taken, and gives the basis for the action:

1. Cancellation of the credit pursuant to (e)2iii above;
- or
2. Removal of the designation of a credit's verification pursuant to (e)2iv above.

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 the section.

Administrative correction.

See: 34 N.J.R. 3966(a).

7:27-30.9 DER credit transfer

(a) In order to effect the transfer of one or more DER credits from one holder to another, the transferee shall submit a Notice of Transfer to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.

(b) The transferor shall provide a complete copy of the following to the transferee at the time of the transfer:

1. The Notice of Generation for each batch of DER credits of which the transferred credits are a part including any supporting documentation required pursuant to the quantification protocol or N.J.A.C. 7:27-30.25;
2. The Notice(s) of Verification, if any, for each batch DER credits being transferred in full or in part; and
3. Each amendment to these notices.

(c) A Notice of Transfer shall include the following:

1. Information to identify the transferor and the transferee;
2. The serial numbers assigned to each DER credit being transferred;
3. The average per-credit purchase price of DER credits generated during the ozone season paid by the transferee to the transferor and the average per-credit purchase price of DER credits generated outside the ozone season paid by the transferee to the transferor. These prices shall be based on the full cost of the transaction, including, but not limited to, the amount paid for the credits and any associated service fees;
4. A statement that the (named) transferor has provided the documents listed in (b) above to the (named) transferee; and

5. Certification by both the transferor and transferee as required under N.J.A.C. 7:27-30.18(e).



(d) No DER credit shall be transferred if the credit has been used or retired, or if it has been canceled or designated as invalid pursuant to N.J.A.C. 7:27-30.29.

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 the section.

7:27-30.10 DER credit verification

(a) A DER credit to be used in New Jersey shall be considered to be verified only if:

1. The credit is in the set of NO_x credits verified by the Department on April 25, 1995;
2. The credit is in a batch verified by one of the following persons:
 - i. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8-27 et seq.; or
 - ii. A certified public accountant licensed by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B-1 et seq.; or
3. The credit has been verified by the air pollution control agency of another state or in accordance with the verification procedures of the other state, provided that:
 - i. The credit was generated in the other state; and
 - ii. The Department has entered into an interstate agreement with the air pollution control agency of the other state which expressly allows credit verifications performed under the auspices of the other state to be recognized in New Jersey.

(b) Although a generator may engage a verifier to perform a verification, the verifier shall otherwise be independent of the generator. A verifier shall not be considered independent if:

1. The verifier is employed by the generator, or was employed by the generator within the six months before the verification;
2. The verifier is employed by an entity that prepared the Notice of Generation or any of its supporting documentation for the batch of DER credits being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of DER credits being verified;
3. The generator is owned, in whole or part, or is subject to control, by the verifier or the verifier's employer; or
4. The employer of the verifier is owned, in whole or part, or is subject to control, by the generator.

(c) In performing a verification, a verifier shall consider all the DER credits included in the batch covered by a

Notice of Generation. A verifier can verify a DER credit only if the verifier makes all of the following findings, based on diligent inquiry that is not limited to reliance upon representations made by the generator:

1. The Notice of Generation, together with any amendment thereto, includes all of the information, statements, supporting documentation, and certification required under this subchapter and the applicable quantification protocol;
2. The Notice of Generation, together with any amendment thereto, and including all statements made therein and all the supporting documentation, appears on its face to be true, accurate and complete;
3. The notice, together with any amendment thereto, documents that all calculations relied on in the notice were performed as required under N.J.A.C. 7:27-30.5 and a quantification protocol which meets the requirements of N.J.A.C. 7:27-30.24 and 30.25; and
4. The notice, together with any amendment thereto, establishes that the DER credits are based on emission reductions which are real and surplus, and which satisfy all other applicable requirements of this subchapter for the generation of DER credits.

(d) After making a determination as to whether some or all of the DER credits in the batch can be verified, the verifier shall submit a complete Notice of Verification to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.

(e) A Notice of Verification shall include the following:

1. The name, address, and other pertinent identifying information for:
 - i. The verifier, including the number of the verifier's New Jersey professional engineer or certified public accountant license;
 - ii. The verifier's employer; and
 - iii. The person for whom the verifier is performing the verification;
2. The serial number assigned to each DER credit in the batch;
3. Specification of whether all the credits in the batch are verified, part of the credits in the batch is verified, or none of the batch is verified; if the verifier has determined that he or she is able to verify only part of the credits in the batch, specification of the number of credits verified, together with an explanation of why all the credits cannot be verified;
4. The following statements:

i. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above; and

ii. A statement attesting that the verifier is, in accordance with (b) above, independent of the generator;

5. Disclosure of whether or not the verifier or the verifier's employer is a holder of any credits in the batch; and

6. The certification by the verifier as required under N.J.A.C. 7:27-30.18(e).

(f) A credit shall not be considered to be verified if the Notice of Verification that applies to the credit is no longer valid. No Notice of Verification is valid if, subsequent to the verifier's submission of the Notice of Verification to the registry, an amendment to the Notice of Generation is submitted to the registry which substantively changes any of the information on which the verification was based, including, but not limited to, changes to any of the following:

1. The number of DER credits which have been generated;

2. The method used to calculate the number of DER credits generated; or

3. The data or other information on which the calculation is based.

(g) Any person may have a batch of DER credits verified, even if the batch has already been verified. Therefore, the registry may reflect more than one Notice of Verification for a single batch of DER credits.

(h) If the Department or the EPA determines that a verification is defective, the Department or the EPA will notify the operator of the registry, the verifier, and any person who has used a credit in the batch of its finding.

(i) Notwithstanding the provisions of this section, for any Notice of Generation submitted to the registry prior to June 6, 2000, a verifier shall meet the applicable requirements promulgated at N.J.A.C. 7:27-30.10 on August 5, 1996, at 28 N.J.R. 3786(b); and the verification shall be performed in accordance with the standards set forth in the rules promulgated on August 5, 1996, at 28 N.J.R. 3786(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).

Rewrote the section.

7:27-30.11 Voluntary retirement of DER credits

(a) A holder of a DER credit may voluntarily retire that credit by submitting a Notice of Retirement to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.

(b) A Notice of Retirement shall include the following:

1. Information to identify the holder who is retiring the credit(s);

2. The serial number assigned to each DER credit being voluntarily retired; and

3. The certification by the holder who is retiring the credits as required pursuant to N.J.A.C. 7:27-30.18(e).

(c) DER credits which are being voluntarily retired under this section do not need to be verified prior to being retired.

(d) A person who submits a Notice of Retirement may subsequently amend the notice pursuant to N.J.A.C. 7:27-30.20 to correct an error in the notice.

(e) When DER credits are being used pursuant to N.J.A.C. 7:27-30.12, a Notice of Retirement shall not be submitted for the retirement of 10 percent of the credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the credits being used) for the benefit of the environment. Such retirement is an integral part of the use and is covered in the Notice of Use.

(f) No person may transfer or use a DER credit that has been retired, and no person may withdraw a Notice of Retirement.

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).

Former N.J.A.C. 7:27-30.11, DER use: general requirements, reclassified to N.J.A.C. 7:27-30.12.

7:27-30.12 VOC and NO_x credit use: general requirements

(a) A DER credit, based on reductions of VOC or NO_x emissions, may be used for compliance under this section.

(b) A VOC or NO_x credit shall be considered a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and rules promulgated thereunder. However, nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.

(c) A user may use a credit for compliance only if the registry shows that the user holds the credit, that the DER credit is verified, that the credit has not been used previously or retired, that the credit has not been cancelled pursuant to N.J.A.C. 7:27-30.29(b), and that the credit has not been found to be invalid by either the Department or the EPA.

(d) A user shall not use a NO_x credit to comply with a VOC requirement, and shall not use a VOC credit to comply with a NO_x requirement.

(e) A user shall not use a VOC or NO_x credit based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.

(f) A use period shall not exceed one year. However, a given use may be continued over consecutive use periods, provided that the notice requirements set forth at N.J.A.C. 7:27-30.15 and 30.16 are met for each use period.

(g) Except in a case where the use is exempted from the requirement for a Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(e), a use period shall not begin until a complete Notice of Intent to Use has been submitted to the registry in accordance with N.J.A.C. 7:27-30.15 and 30.19. Additionally:

1. If the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge (see Appendix C for a delineation of this area), the use period shall not begin until 30 days after the user submits a copy of the Notice of Intent to Use to the Federal Land Manager, pursuant to N.J.A.C. 7:27-30.19(h); and

2. If the user source is permitted under N.J.A.C. 7:27-8 or 22, and the use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any "permit insurance" use listed at N.J.A.C. 7:27-30.14(d)), the use period shall not begin until seven days after the Notice of Intent to Use has been submitted to the Department as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.3(k) or 22.22(d).

(h) Whenever credits are used, the user shall retire 10 percent of the total number of the credits used for the benefit of the environment, unless the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), in which case the user shall retire 20 percent of the total number of the credits used for the benefit of the environment. In determining the number of credits needed for a use, the credits required to be retired are additional to the credits otherwise required for the use.

(i) The user shall hold DER credits as follows:

1. For a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), the user shall hold the full quantity of DER credits needed for compliance during the use period by the day the Notice of Intent to Use is submitted to the registry;

2. For a use of DER credits to meet emission offset requirements, the user shall hold DER credits as required pursuant to N.J.A.C. 7:27-30.14(f);

3. For a use for which no Notice of Intent to Use is required, pursuant to N.J.A.C. 7:27-30.15(e), the user shall hold the full quantity of DER credits required for compliance by the day the Notice of Use is submitted to the registry;

4. For any other use, the user shall hold the credits needed for compliance (including any credits required

pursuant to N.J.A.C. 7:27-30.13(d)2, 3 and 4ii, iii and iv) on any given date within the use period by the day before that date, except as provided at (i)5 below;

5. If on any day within the use period the number of credits held by the user for the use is less than the number required to be held under (i)4 above, the number of DER credits needed for compliance for each day the shortfall occurs shall be tripled;

6. Once a user holds a DER credit pursuant to (i)1 through 5 above, the user shall continue to hold the DER credits until the Notice of Use is filed; and

7. In all cases the user is required to hold all DER credits needed for the use at the time the Notice of Use is submitted.

(j) If any DER credit being held for a use pursuant to (i)2 through 7 above subsequently proves not to be needed for the use, the user may, after the Notice of Use is submitted, trade, voluntarily retire, or use these credits for other purposes allowed under this subchapter.

(k) If a user has used a DER credit that is designated as invalid pursuant to N.J.A.C. 7:27-30.29(a) or cancelled pursuant to N.J.A.C. 7:27-30.29(b), the user shall, within 60 days after receiving notice of the invalidation or cancellation, submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a valid credit, identified by its serial number.

(l) If all the verifications of a DER credit that a user has used are rendered invalid pursuant to N.J.A.C. 7:27-30.10(f) or (h), the user shall, within 60 days after receiving notice of the invalidation of the verification:

1. Ensure that a new Notice of Verification is submitted to the registry which verifies the original DER credit; or

2. Submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a verified credit, identified by its serial number.

(m) The Department may request an interim calculation to determine whether the user source's use of credits, as of any date during the use period, has exceeded the maximum number of credits, as set forth by the user in the Notice of Intent to Use. The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.

(n) Any person who submits a Notice of Intent to Use to the registry shall, after the use period, submit a Notice of Use, in accordance with N.J.A.C. 7:27-30.16, even if the person determines that no credits were used during the use period.

(o) If a permittee wants more flexibility, with respect to applicable permit limits, than is allowed under the "permit

insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e), then the permittee may apply to the Department for approval of a 15-year plan for the permittee's facility, pursuant to N.J.S.A. 26:2C-9.2c(3).

Recodified from N.J.A.C. 7:27-30.11 and 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 the section. Former N.J.A.C. 7:27-30.12, DER use: computation of DERs, recodified to N.J.A.C. 7:27-30.13.

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.13 VOC and NO_x credit use: computation of DER credits

(a) A user shall calculate the following in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.24 and 30.25:

1. If the user is required to hold the full number of DER credits needed for compliance when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number of credits that need to be held; and

2. The number of DER credits that were used during a use period.

(b) The number of DER credits that need to be held pursuant to N.J.A.C. 7:27-30.12(i)1 when a Notice of Intent to Use is submitted shall be determined as follows:

1. Determine the maximum quantity of excess VOC or NO_x emissions from the user source, expressed in pounds, that may occur during the use period. The maximum quantity of excess emissions shall be 100 percent of the increase in allowed emissions (above the permit limit in the current permit) of the equipment or control apparatus during the use period. This shall be determined in accordance with the following formula:

$$EE = (CR - PL) (T)$$

where:

EE = the maximum quantity of excess emissions which may be released during the use period, expressed in pounds of VOC or NO_x;

CR = the "ceiling rate," that is the maximum emission rate, specified by the user in the Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.14(d)1ii, which is allowed during the use period, expressed in the same units as used above for the permit limit;

PL = the permit limit which is currently in effect. This limit establishes the rate which is (in the absence of the use of credits) the maximum allowable emission rate for the user source, expressed in emissions per unit time. If the limit in the permit is given in emissions per unit of time, the units used for this rate shall be the same as are used in the permit; otherwise, the limit in the permit shall be converted to and expressed as pounds per hour; and

T = the maximum amount of time within the use period which the equipment or control apparatus is allowed to operate under its currently effective permit, expressed in the same units for time as are used to express the permit limit and the ceiling rate;

2. If the use of VOC or NO_x credits for compliance may result in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those potential VOC or NO_x emission increases to the quantity of emission increases established under (b)1 above; and

3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (b)1 and 2 above to the number of DER credits that need to be held when a Notice of Intent to Use is submitted as follows:

i. Divide the quantity of emission increases calculated under (b)1 and 2 above, expressed in pounds, by 100;

ii. If the user will submit the complete Notice of Intent to Use late, increase the quantity calculated under (b)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b);

iii. If the user fails to hold the full number of DER credits needed for compliance by the day the Notice of Intent to Use is submitted, increase the quantity calculated under (b)3i and ii above for such failure in accordance with N.J.A.C. 7:27-30.12(i)5;

iv. In order to ensure that the requirement to retire 10 percent of the total number of credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the total number of credits used) for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (b)3i through iii above by the following:

(1) If the use is a "permit insurance" use, by 0.8; and

(2) Otherwise, by 0.9; and

v. If the result obtained under (b)3iv above is a whole number, that is the number of DER credits that need to be held when a Notice of Intent to Use is submitted; otherwise round the result up to the next highest whole number to determine the number of DER credits that need to be held.

(c) The number of DER credits that were used during a use period shall be determined as follows:

1. For uses subject to N.J.A.C. 7:27-30.12(i)1, where the full number of credits needed for compliance is to be held when the Notice of Intent to Use is submitted, the number of credits shall be determined in accordance with (b) above;

2. Otherwise, the number shall be determined in accordance with (d) below.

(d) Pursuant to (c)2 above, the number of DER credits that were used during a use period shall be determined as follows:

1. Determine the quantity of emission increases which need to be compensated for with credits as follows:

i. For use of credits to meet emission offset requirements under N.J.A.C. 7:27-30.14(g), the quantity shall be an amount that is equal, in emissions value, to the emission offset requirement established in the permit pursuant to N.J.A.C. 7:27-18.3(d);

ii. For use of credits for a delay of testing under N.J.A.C. 7:27-30.14(a)5ii, where the permittee has not provided a waiver pursuant to N.J.A.C. 7:27-8.28(b) or 22.18(l), the quantity shall be 100 percent of the allowable emissions of the equipment and/or control apparatus during the calendar quarters identified pursuant to N.J.A.C. 7:27-30.14(a)5ii(1). This quantity shall be determined assuming that the emissions equal the maximum allowed under the permit and that the activity level and/or hours of operation are also the maximum allowed;

iii. For use of credits to compensate for excess NO_x emissions during a MEG alert pursuant to N.J.A.C. 7:27-30.14(b)1, the quantity shall be determined pursuant to N.J.A.C. 7:27-19.24(b) and (c); and

iv. Otherwise, the quantity shall be determined by calculating the difference between the user source's actual emissions and its baseline emissions, for each interval within the use period where this difference is positive and then summing these differences. The following formula describes the calculation:

$$EI = \sum_1^I [(Actual\ Emissions) - (Baseline\ Emissions)]$$

where:

EI = the emission increases which need to be compensated for with credits, expressed in pounds of VOC or NO_x;

I = The number of intervals within the use period, where an interval is an extent of time, within a use period, throughout which the user source's actual emissions exceed its baseline emissions. (In a case where actual emissions continuously exceed baseline emissions throughout the use period there shall be only one interval within the use period);

Actual Emissions = for a given interval, the quantity of emissions that the user source actually emitted during the interval, expressed in pounds of VOC or NO_x;

Baseline Emissions = for a given interval, the quantity of emissions determined in accordance with (e) below, expressed in pounds of VOC or NO_x;

2. If the use of VOC or NO_x DER credits resulted in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those actual VOC or NO_x emission increases to the

quantity of emission increases established under (d)1 above; and

3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (d)1 and 2 above to the number of DER credits needed for compliance as follows:

i. Divide the quantity of emission increases calculated under (d)1 and 2 above, expressed in pounds, by 100;

ii. If the user submitted a complete Notice of Intent to Use to the registry late, increase the quantity calculated under (d)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b)3iii;

iii. If the user failed to hold the full number of DER credits needed for compliance by the day such holding is required pursuant to N.J.A.C. 7:27-30.12(i), for each day during the use period that the shortfall continued, triple the quantity calculated under (d)3i and ii above for such lateness in accordance with N.J.A.C. 7:27-30.12(i)3;

iv. In order to ensure that the requirement to retire 10 percent of the total number of credits used for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (d)3i, ii and iii above by 0.9; and

v. If the result obtained under (d)3iv above is a whole number, that is the number of DER credits needed for compliance; otherwise round the result up to the next highest whole number to determine the number of DER credits that were used during a use period.

(e) The quantity of baseline emissions shall be determined as follows:

1. Baseline emissions shall be zero for the additional hours of operation, if the use entails increasing the user source's hours of operation beyond the maximum hours of operation specified in a permit; and

2. Otherwise baseline emissions shall be the emissions that the user source would have emitted if:

i. The user source's emissions rate equals the lowest allowable emission rate applicable during the use period, minus a design margin; and

ii. The user source's activity level and hours of operation are the lower of the following:

(1) The design capacity of the emissions source; or

(2) If applicable, the maximum allowed under its permit.

(f) If part of the use period falls within the ozone season and part outside the ozone season, a user shall perform the calculations in (b) and (c) above separately for these two portions of the use period.

Administrative change.

See: 28 N.J.R. 4959(b).

Recodified from N.J.A.C. 7:27-30.12 and 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 the section. Former N.J.A.C. 7:27-30.13, DER use: required, authorized and prohibited uses, recodified to N.J.A.C. 7:27-30.14.

Administrative correction.

See: 33 N.J.R. 3549(a).

7:27-30.14—VOC and NO_x credit use: required, authorized and prohibited uses

(a) The owner or operator of an emissions source shall use VOC or NO_x credits for compliance if such use is required under another provision of this chapter. Required uses of DER credits include:

1. Pursuant to N.J.A.C. 7:27-16.17(m), compensation for excess VOC emissions authorized under an alternative VOC control plan submitted to the Department for approval after August 2, 1996;

2. Pursuant to N.J.A.C. 7:27-19.13(i), compensation for excess NO_x emissions authorized under an alternative maximum allowable emission rate submitted to the Department for approval after August 2, 1996;

3. Pursuant to N.J.A.C. 7:27-19.23, compensation for any emissions attributable to the difference between the rate of NO_x emissions established as a limit which is to be attained under an innovative control technology plan approved pursuant to N.J.A.C. 7:27-19.23, and the actual rate of NO_x emissions after the date set pursuant to N.J.A.C. 7:27-19.23(c)5v on which the innovative control technology is required to be constructed and/or installed and full compliance attained;

4. Pursuant to N.J.A.C. 7:27-19.24(c), compensation for NO_x emissions from an electric generating unit during a MEG alert that exceed the applicable permit limit; and

5. Pursuant to N.J.A.C. 7:27-8.3(l) or 22.3(uu), compensation for a failure to perform timely testing of the VOC and/or NO_x emissions of equipment or control apparatus. If the testing delay is not approved by the Department, this compensation is in addition to any penalties which may apply. This paragraph shall apply in cases where testing, required by a date established pursuant to N.J.A.C. 7:27-8 or 22 and/or the applicable permit, or pursuant to a written request by the Department pursuant to N.J.A.C. 7:27-8.4(f) or 8.7(f), is not performed within 90 days after the established date. Determination of the amount of compensation shall be based on the following:

i. If the permittee has requested and obtained approval of the Department for a delay in testing pursuant to N.J.A.C. 7:27-8.28(a) or 22.18(k), if the permittee has waived 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) pursuant to N.J.A.C. 7:27-8.28(b) or 22.18(l), and if the testing is performed on the original equipment or control apparatus (not on replacement or reconstructed equipment or control apparatus which is subsequently installed), the following apply:

(1) The permittee shall record the hours of operation of the equipment or control apparatus from the date the testing was originally required to be performed until the date the testing is completed, and shall make such records available to the Department upon request;

(2) The use period shall be determined as follows:

(A) If the emissions source is a new or modified source, the use period shall begin on the date the new or modified source commenced operating; otherwise, the use period shall begin on the date by which the testing was required to be performed;

(B) The use period shall end on the earlier of the following: the date that the testing is completed, or the date which is the last day of the one year period which begins the first day of the use period;

(3) The determination of the source's actual emissions shall be based on the result obtained from the testing, whenever the testing is completed; and

(4) The compensation shall be for emissions in excess of the applicable permit limit, and the quantity of emission increases which need to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)1iv;

ii. Otherwise, the following apply:

(1) The permittee shall determine which calendar quarters fall, in whole or in part, in the period defined as follows:

(A) The first calendar quarter is the calendar quarter which includes the date that is 90 days after the day by which the testing was required to be performed; and

(B) The last calendar quarter is the calendar quarter which includes the earlier of the following: the date that the testing is completed or the date that is one year and 90 days after the day by which the testing was required to be performed;

(2) The initial use period shall begin on the first day of the calendar quarter determined pursuant to (a)5ii(1)(A) above. The final use period shall end on the last day of the calendar quarter determined pursuant to (a)5ii(1)(B) above. If the total number of calendar quarters is four or less, the calendar quarters may be combined into a single use period; and

(3) The compensation shall be for the source's allowable emissions, in full, for all of the quarters determined pursuant to (a)5ii(1) above, and the quantity of emission increases which need to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)1ii; but

iii. Notwithstanding (a)5i and ii above, no compensation is required if the delay is at the request of the Department; and

6. Pursuant to N.J.A.C. 7:27-8.3(l) or 22.3(uu), in addition to any penalties which may apply, compensation for an exceedance of a VOC or NO_x permit limit which results from operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit, or if the control apparatus serving the equipment has broken down or is dysfunctional.

(b) A person may use DER credits, which have been verified in accordance with N.J.A.C. 7:27-30.10, in full or partial settlement of a monetary penalty pursuant to N.J.A.C. 7:27A-3.10(i).

(c) A person may use VOC or NO_x credits to comply with an emission limit established under this chapter, unless the use is prohibited by Federal or State law or is prohibited pursuant to (g) or (h) below. Examples of authorized uses include:

1. Compliance with an applicable VOC control requirement under N.J.A.C. 7:27-16;

2. Compliance with an applicable NO_x control requirement under N.J.A.C. 7:27-19;

3. Compliance with a VOC content requirement for an architectural coating or for a consumer or commercial product pursuant to N.J.A.C. 7:27-23 or 24; however, use of DER credits does not relieve a person from responsibility for complying with the Federal architectural coating requirements at 40 CFR Part 59, Subpart D;

4. Compliance with any VOC or NO_x emissions limit established in a rule which becomes operative on or after August 2, 1996, unless the use of DER credits for such purpose is expressly prohibited;

5. Compliance with emission offset requirements under N.J.A.C. 7:27-18, in accordance with (f) below; and

6. For municipal waste combustors subject to 40 CFR Part 60, Subpart Cb, compliance with the NO_x requirements established pursuant to that subpart. (This does not apply however to a Standard of Performance for New Stationary Sources (commonly referred to as a New Source Performance Standard or NSPS) established under 42 U.S.C. § 7411.)

(d) Notwithstanding any provision of N.J.A.C. 7:27-8 or 22 to the contrary, a permittee may use VOC or NO_x credits for "permit insurance" to comply, respectively, with a VOC or NO_x emissions limit in a permit. However, no permittee may implement a permit insurance use, unless the use belongs to one of the classes of "permit insurance" uses listed in (e) below and the following conditions are met:

1. In the Notice of Intent to Use, in addition to meeting the requirements for such a notice at N.J.A.C. 7:27-30.15, the user shall include the following:

i. Specify the length of the use period to be one, two, three, or four calendar quarters;

ii. Specify the maximum VOC or NO_x emission rate (that is, the "ceiling rate") for the user source during the use period, given in emissions per unit time. This rate shall be an enforceable limit which may not be exceeded during the use period. For a Class 2 permit insurance use as described at (e)2 below, the ceiling rate shall not exceed the corresponding permit limit proposed in the pending permit application; and

iii. Include the statements required pursuant to N.J.A.C. 7:27-30.15(d)13;

2. The Notice of Intent to Use is submitted as seven-day-notice, in accordance with N.J.A.C. 7:27-30.19(g);

3. More than one "permit insurance" use may be implemented concurrently at a facility; however, the resulting increase at the facility in actual emissions shall not exceed five tons of VOC or 10 tons of NO_x for all "permit insurance" uses combined, as determined for any 12 month period;

4. The duration of a permit insurance use shall be limited to a maximum of one year unless:

i. One of the following apply:

(1) The permittee has obtained a permit modification or revision which addresses the original reason permit insurance was needed, and the subsequent use goes beyond the original purpose (that is, entails a higher ceiling rate, a higher activity level, or more hours of operation); or

(2) The subsequent use is for a different purpose; or

ii. The maximum emission rate (that is, the "ceiling rate") specified in the Notice of Intent to Use pursuant to (d)1ii above for the subsequent use is less than the rate at which an exceedance of the lowest allowable rate of emissions of VOC and/or NO_x, as applicable, for the equipment or control apparatus would be defined as a high priority violation, pursuant to EPA's "Timely and Appropriate (T & A) Enforcement Response to High Priority Violations (HPVs)" guidance document;

5. The number of DER credits used for compliance is the number of credits that is required to be held when the Notice of Intent to Use is submitted. This is the number determined pursuant to N.J.A.C. 7:27-30.13(b);

6. The use will not result in:

i. Emissions of an air contaminant not authorized to be emitted under the existing (approved) permit; and

ii. Actual emissions of any air contaminant, other than the air contaminant (VOC or NO_x) emissions which is being compensated for with credits, at a level which exceeds a limit in the permit for that air contaminant; and

7. The use is not one of the uses prohibited pursuant to (h) or (i) below.

(e) The classes of "permit insurance" uses are as follows:

1. A Class 1 "permit insurance" use applies in cases where actual emissions from existing equipment or control apparatus may exceed a permit limit due to a change in operation, including, but not limited to, the use of a new raw material or the increase in the source's activity level. A use shall belong to this class only if:

i. The permittee has not made any physical change to the equipment or control apparatus for which a permit modification or revision is required; and

ii. One of the following apply at the time the Notice of Intent to Use is submitted:

(1) The permittee has not submitted a permit application to the Department for the change in operation; or

(2) The permittee has submitted a permit application for the change in operation, but the Department has not yet acted upon (approved or disapproved) the application; and

2. A Class 2 "permit insurance" use applies in cases where a permittee has submitted a permit application for a physical change to existing equipment or control apparatus and has constructed and/or installed the change, but the Department has not yet approved or disapproved the application; therefore, any new emissions limit sought in the permit application has not yet received Department approval. Class 2 "permit insurance" allows a permittee to operate the equipment or control apparatus in accordance with changes in the permit application prior to the Department issuing the revised permit. A user may use Class 2 "permit insurance" only if the user understands and agrees that if during the use period the user source's actual VOC and/or NO_x emission rate exceeds the limit included in the revised permit, as eventually approved by the Department, the permittee shall be considered to have violated the limit and may be subject to penalties under N.J.A.C. 7:27A-3

(f) A person may use VOC or NO_x credits to comply with the emission offset requirements of N.J.A.C. 7:27-18. However, no person shall use credits to meet emission offset requirements unless all of the following requirements are satisfied:

1. The generation and use of the DER credits meets all applicable requirements of 42 U.S.C. § 7503, 40 CFR 51.165(a), N.J.A.C. 7:27-18, and this subchapter, except as follows:

i. The permittee is not required to include in the emission offset demonstration submitted with the permit application a representation that the emission reductions on which the DER credits are based are permanent, notwithstanding N.J.A.C. 7:27-18.3(e);

ii. The permittee is not required to hold the DER credits prior to using them, notwithstanding N.J.A.C. 7:27-30.12(i);

iii. The permittee is not required to have the DER credits verified prior to using them, notwithstanding N.J.A.C. 7:27-30.12(c); and

iv. The permittee is not required to submit a complete Notice of Use within 30 days after the end of each use period, notwithstanding N.J.A.C. 7:27-30.16(a);

2. The use is proposed in the permit application submitted pursuant to N.J.A.C. 7:27-18 and 22, and in addition to meeting the requirements at N.J.A.C. 7:27-18(e), the permit application shall include the following:

i. A draft initial Notice of Intent to Use is included in the permit application, which includes the quantification protocols both for the generation of the DER credits proposed to be used and for the proposed use; and

ii. A demonstration that the permit applicant will be able, by relying on a series of consecutive temporary reductions, to obtain sufficient DER credits to satisfy the need for credits for the shorter of the following periods:

(1) The period that the user proposes to use DER credits to meet emission offset requirements; or

(2) The period that extends until the applicable primary standard attainment date established under 42 U.S.C. § 7511(a); and

3. In the permit issued pursuant to N.J.A.C. 7:27-22 and 18, the Department has approved the use of DER credits to comply with the emission offset requirements, and the approved permit includes the following as enforceable conditions:

i. The DER credits shall be generated during the use period in which they are used;

ii. Each year, the permittee shall submit a Notice of Intent to Use prior to the beginning of the use period, in accordance with N.J.A.C. 7:27-30.15. The notice shall include a legally binding commitment from one or more DER credit generators to generate the DER credits needed by the permittee for the upcoming use period and to transfer those DER credits to the user prior to the date the user's Notice of Use is due;

iii. The permittee shall continue to submit such a Notice of Intent to Use pursuant to (g)3 above for the shortest of the following periods:

(1) The life of the equipment;

(2) Until credits which meet the standards for creditable emission reductions at N.J.A.C. 7:27-18.5 are secured for use as emission offsets; or

(3) Until emission offset requirements no longer apply to the equipment;

iv. The permittee shall submit each Notice of Intent to Use in accordance with N.J.A.C. 7:27-30.19;

v. For each use period, the permittee shall submit a complete Notice of Use no later than 120 days after the last day of the use period; and

vi. The permittee shall hold the DER credits needed for compliance and ensure that they are verified prior to the submission of the Notice of Use.

(g) The owner or operator of an emissions source shall not use VOC or NO_x credits for any of the following purposes:

1. To avoid the applicability of:

i. The Federal requirements for review of new sources and modifications at 40 CFR 51, Subpart I, and/or the State emission offset requirements at N.J.A.C. 7:27-18;

ii. The Federal prevention of significant deterioration requirements at 40 CFR 52.21; or

iii. The Federal operating permit requirements at 40 CFR 70.

2. To comply with new source performance standards (NSPS) under 42 U.S.C. § 7411, lowest achievable emission rate (LAER) standards under 42 U.S.C. § 7503(a)(2), best available control technology (BACT) standards under 42 U.S.C. § 7475(a)(4), standards for hazardous air pollutants (HAPs) under 42 U.S.C. § 7412, standards for solid waste combustion under 42 U.S.C. § 7429 (except for a municipal waste combustor subject to 40 CFR 60, Subpart Cb, using DER credits for compliance with NO_x requirements pursuant to (b)6 above), acid deposition control requirements under 42 U.S.C. § 7651 through 7651o, or requirements under N.J.A.C. 7:27-8.12 for documentation of state of the art (SOTA) or under N.J.A.C. 7:27-22.35 for incorporation of advances in the art of air pollution control;

3. To comply with requirements for a vehicle inspection and maintenance program mandated under 42 U.S.C. § 7511a(b)(4) or (c)(3), or for clean fueled fleets mandated under 42 U.S.C. § 7511a(c)(4)(B) or 7586;

4. To comply with motor vehicle emissions standards under 42 U.S.C. § 7521, the standards for nonroad vehi-

cles under 42 U.S.C. § 7547, or the motor vehicle emissions standards at N.J.A.C. 7:27-14, 15 and 26;

5. To comply with requirements for reformulated gasoline under 42 U.S.C. § 7545(k), or for Reid vapor pressure under 42 U.S.C. § 7545(h) and (i) and N.J.A.C. 7:27-25;

6. To comply with ozone control standards set under 42 U.S.C. § 7511b, except for NO_x RACT or VOC RACT requirements set forth at N.J.A.C. 7:27-16 or 19;

7. To comply with the State prohibition of air pollution at N.J.A.C. 7:27-5 or with the similar requirements at N.J.A.C. 7:27-8.3(j) and at N.J.A.C. 7:27-22.16(g)8; or

8. To avoid having the facility becoming a "major facility," as defined at N.J.A.C. 7:27-22.1.

(h) A use of DER credits is prohibited if it may result in any of the following:

1. An increase in emissions (from the emissions source or from any other source at the facility or off-site) of any HAP from a level which exceeds the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a higher level. This SOTA Threshold level is the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. § 7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7;

2. An increase in the source's emissions of a HAP from a level below the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a level above the threshold; or

3. An increase in emissions of any air contaminant which would cause an exceedance of an applicable limit, including a permit limit, except under the terms set forth for such increases at N.J.A.C. 7:27-30.14(a)3 and 4, (b), (c)6 and (d).

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 in 2, and deleted a reference to N.J.A.C. 7:27-8.8(f) in 7.

Recodified from N.J.A.C. 7:27-30.13 and 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 the section. Former N.J.A.C. 7:27-30.14, DER use: Notice of Intent to Use DERs, recodified to N.J.A.C. 7:27-30.15.

Administrative correction.

See: 33 N.J.R. 3549(a).

7:27-30.15 VOC and NO_x credit use: Notice of Intent to Use

(a) On and after June 6, 2000, a user shall submit a Notice of Intent to Use in accordance with this section, the

general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. A Notice of Intent to Use submitted prior to June 6, 2000 shall conform with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).

(b) A complete Notice of Intent to Use or amendment is due to the registry 30 days before the first day of the use period. If the registry receives the complete notice late, then the number of DER credits needed for the use shall be increased as follows:

1. Determine the dates which fall within the 30-day period following the date the complete notice is received by the registry;
2. Pursuant to N.J.A.C. 7:27-30.13, determine the number of credits needed to compensate for the emissions which were emitted on the dates within the use period which also fall within the 30-day period; and
3. Multiply this number of credits by 1.5 to determine the total number of credits that, given the lateness of the submission, is required to be used for those dates.

(c) Generally, a Notice of Intent to Use shall apply to a single emissions source. However, a single Notice of Intent to Use may apply to any of the following groups of sources, if the use is for compliance with a common regulatory requirement:

1. All emissions sources owned by a single person and subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6;
2. A specified group of more than one stationary sources of the same type located at a single facility;
3. Units of a product manufactured by a single person (including a motor vehicle fuel) during their storage, distribution, and/or use; or
4. A fleet of motor vehicles.

(d) A Notice of Intent to Use shall include the following:

1. The name and address of the user, the user's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;
2. For the user source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d);
3. The requirements in the law, regulation, permit, or order with which the user intends to comply through the use of DER credits, together with an explanation as to why the user is using credits to comply with these requirements (such as, because it is a cost-effective alternative to installing new control apparatus, or because control apparatus required by a permit has not yet been installed);

4. The month, day, and year of the first and last dates of the use period;

5. The following quantification protocol (or, if a protocol approved by EPA or the Department shall be used, citation of the protocol):

i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the protocol used to *calculate* the number of DER credits that need to be held; or

ii. Otherwise, the protocol that will be used in the Notice of Use to calculate the number of DER credits used;

6. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following:

i. The maximum quantity of excess emissions calculated pursuant to N.J.A.C. 7:27-30.13(b)1, both for the ozone season and for the use period as a whole;

ii. The number of VOC credits or NO_x credits to be needed for the use calculated pursuant to N.J.A.C. 7:27-30.13(b); and the number of VOC credits or NO_x credits held for the use, with the number for the ozone season and for the use period as a whole given separately; and

iii. For each DER credit held for the use, its serial number, the location where the DER credit was generated, and a statement as to whether the credit was generated during the ozone season or outside the ozone season, with the DER credits of each type (VOC or NO_x) generated during the ozone season and outside the ozone season listed separately; and

iv. All supporting documentation required to be submitted with the Notice of Intent to Use pursuant to the quantification protocol specified pursuant to (d)5i above (the documentation shall, at a minimum, conform with N.J.A.C. 7:27-30.25);

7. If the use is one where the full number of DER credits needed for compliance is not required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, an estimate of the maximum number of DER credits that will be used during the use period;

8. If the use of DER credits may reasonably be expected to result in an increase, de minimis or otherwise, in the actual emissions of any HAP, either at the facility or off-site, the name of the HAP specie(s) that may have increased emissions and the maximum amount of the increase, together with specification as to whether the increase is expected from the user source, from other source(s) at the facility, and/or from source(s) off-site;

9. If the use is one of the "permit insurance" uses listed at N.J.A.C. 7:27-30.14(e), the items required pursuant to N.J.A.C. 7:27-30.14(d)1;

10. If the use is compliance with the emission offset requirements of N.J.A.C. 7:27-18, the legally binding commitment required pursuant to N.J.A.C. 7:27-30.14(g)3ii;

11. The following statements:

i. The intended use is not prohibited under this subchapter or other provisions of law; and

ii. The quantification protocol to be used in the Notice of Use to calculate the number of DER credits used with the notice meets the requirements of N.J.A.C. 7:27-30.24 and 30.25;

12. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following statements:

i. All calculations relied on in the notice, including, but not limited to, quantification of the number of DER credits that need to be held when the Notice of Intent to Use is submitted, have been performed in accordance with N.J.A.C. 7:27-30.13 and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and 30.25;

ii. For this use, the user holds the number of NO_x DER credits or VOC DER credits that the user is required to hold, as determined in accordance with N.J.A.C. 7:27-30.13(b), both for the ozone season and for the use period as a whole, and will continue to hold these credits until the Notice of Use is submitted; and

iii. The maximum number of NO_x DER credits or VOC DER credits that will be used during the use period pursuant to this notice will not exceed, during either the ozone season or the use period as a whole, the number of credits the user is required to hold when this notice is submitted, as determined in accordance with N.J.A.C. 7:27-30.13(b);

13. If the use is one of the "permit insurance uses" listed at N.J.A.C. 7:27-30.14(e), the following statements:

i. The use will not cause "air pollution" pursuant to N.J.A.C. 7:27-5, including, but not limited to, unreasonable emission of odors, acid droplets, or materials that cause spotting; and

ii. The user source's actual emission rate will not exceed the ceiling rate, specified pursuant to N.J.A.C. 7:27-30.14(d)1ii, at any time during the use period;

14. If the use is for compliance with emission offset requirements pursuant to N.J.A.C. 7:27-30.14(g), a statement that the use is approved in the permit issued pursuant to N.J.A.C. 7:27-22 and 18, together with the log number of the permit in which the approval is set forth;

15. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and

16. The certification by the user as required at N.J.A.C. 7:27-30.18(g).

(e) Notwithstanding (a) above, if a person is using DER credits for any of the following, such person is not required to submit a Notice of Intent to Use:

1. A person using credits in full or partial settlement of a monetary penalty pursuant to N.J.A.C. 7:27-30.14(b) due to past emission exceedances; however, this exemption from Notice of Intent to Use requirements does not apply if the settlement is for future exceedances; and

2. A person compensating for NO_x emissions in excess of the applicable permit limit from an electric generating unit during a MEG alert, pursuant to N.J.A.C. 7:27-19.24(c).

Recodified from N.J.A.C. 7:27-30.14 and 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 the section. Former N.J.A.C. 7:27-30.15, DER Use: Notice and Certification of DER Use, recodified to N.J.A.C. 7:27-30.16.

7:27-30.16 VOC and NO_x credit use: Notice of Use

(a) Within 30 days after the end of each use period, the user shall submit a complete Notice of Use. If the corresponding Notice of Intent to Use was submitted to the registry on or after June 6, 2000, the Notice of Use shall be submitted in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. If the corresponding Notice of Intent to Use was submitted to the registry prior to June 6, 2000, the Notice of Use shall be submitted in accordance with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).

(b) A Notice of Use shall include the following:

1. For each item of information set forth pursuant to N.J.A.C. 7:27-30.15(d)1 through 6 in the Notice of Intent to Use (or subsequent amendment thereto), either confirmation that the information is still correct; or the corrected information, together with the basis therefor;

2. The number of VOC credits and the number of NO_x credits that have been used, determined as follows:

i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(b) and shall be the credits identified in the Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(d)6iii; and

ii. Otherwise, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(c);

3. For each DER credit being used pursuant to (b)2ii above, its serial number, the location where the DER credit was generated, whether it was generated during the ozone season or outside the ozone season, with the DER

credits used for ozone season compliance listed separately;

4. If the use resulted in an increase in the actual emissions of any HAP, the name of the HAP specie(s) that had increased emissions and the amount of the increase, de minimis or otherwise, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;

5. The following demonstrations:

i. A demonstration that the required number of DER credits were held by the day they were required to be held, pursuant to N.J.A.C. 7:27-30.12(i); and

ii. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, a demonstration that actual emissions of VOC or NO_x during the use period, both for the ozone season and for the use period as a whole, did not exceed the maximum quantity of excess emissions calculated in the Notice of Intent to Use, pursuant to N.J.A.C. 7:27-30.13(b)1;

6. If the use is one of the "permit insurance" uses listed at N.J.A.C. 7:27-30.14(e), the following additional demonstrations:

i. A demonstration that the actual emission rate at no time during the use period exceeded the "ceiling rate" specified in the Notice of Intent to Use; and

ii. A demonstration that the emission increase resulting from the use, together with the emission increases resulting from any other "permit insurance" uses that were simultaneously implemented at the facility did not exceed five tons of VOC or 10 tons of NO_x during any 12 month period. Such demonstration shall be based on calculation of actual emissions, using the methods set forth at N.J.A.C. 7:27-30.13(c)2i and ii;

7. All supporting documentation required to be submitted with the Notice of Use pursuant to the approved quantification protocol which, at a minimum, shall conform with N.J.A.C. 7:27-30.25;

8. The following statements:

i. The use of DER credits has been carried out in accordance with this subchapter and all other applicable provisions of law;

ii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.13 and with the quantification protocol specified pursuant to N.J.A.C. 7:27-30.15(d)5 in the corresponding Notice of Intent to Use;

iii. All supporting documentation required to be submitted with the notice pursuant to the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed; and

iv. The information in the registry and in the user's own records indicate that the DER Credits used have not been previously used, retired, canceled, or found invalid by the Department or EPA;

9. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and

10. The certification by the user as required at N.J.A.C. 7:27-30.18(e).

(c) For a use exempted, pursuant to N.J.A.C. 7:27-30.15(e), from the requirement to submit a Notice of Intent to Use, the Notice of Use shall meet the requirements in (b) above, except as follows:

1. For a person using credits in full or partial settlement of a monetary penalty, the following apply:

i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 3; however, the requirements of N.J.A.C. 7:27-30.15(d)4 through 6 shall not apply;

ii. In lieu of (b)2 above, the Notice of Use shall include the number of VOC credits and the number of NO_x credits agreed to by the Department's Office of Air and Environmental Quality Compliance and Enforcement;

iii. In lieu of (b)3 above, the Notice of Use shall give the serial number of each DER credit being used;

iv. The requirements of (b)4 through 7, and (b)8ii and iii, shall not apply; and

v. The Notice of Use shall include the log number(s) of the enforcement action(s) for which the DER credits are being used; and

2. For a person using credits to compensate for excess NO_x emissions during a MEG alert, the following apply:

i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 5; however, the requirements of N.J.A.C. 7:27-30.15(d)6 shall not apply; and

ii. The requirements of (b)5 and 6 shall not apply.

(d) Submission of a Notice of Use shall constitute a confirmation that the DER credits identified pursuant to (b)2 above have been used. These credits shall not subsequently be traded, retired, or used.

Recodified from N.J.A.C. 7:27-30.15 and 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 the section. Former N.J.A.C. 7:27-30.16, General notice requirements, recodified to N.J.A.C. 7:27-30.18.

7:27-30.17 GHG credit use (Reserved)

Recodified to N.J.A.C. 7:27-30.21 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).

7:27-30.18 General notice requirements

(a) This section establishes general requirements for any of the following notices submitted pursuant to this subchapter:

1. A Notice of Generation pursuant to N.J.A.C. 7:27-30.7;
2. A Notice of Transfer pursuant to N.J.A.C. 7:27-30.9;
3. A Notice of Verification pursuant to N.J.A.C. 7:27-30.10;
4. A Notice of Retirement pursuant to N.J.A.C. 7:27-30.11.
5. A Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15; and
6. A Notice of Use pursuant to N.J.A.C. 7:27-30.16.

(b) A person submitting a notice shall submit the notice on a form obtained from the registry.

(c) In each notice, the person submitting a notice shall include the following information, as applicable:

1. The items specified at N.J.A.C. 7:27-30.7, 30.9, 30.10, 30.11, 30.15 or 30.16, as applicable; and
2. The name and telephone number of the contact person who will provide, to any person who may request it, the opportunity to inspect a copy of the notice and/or any supporting documentation required for the notice or relied on pursuant to the quantification protocol.

(d) In a Notice of Generation, a Notice of Intent to Use, or (if applicable) a Notice of Use, the generator or user shall include for the generator or user source(s) the following identifying information:

1. If the source(s) is a stationary source or a group of stationary sources at a facility, a description of the source, including any applicable identifying numbers (for example, plant ID number, a stack ID number, and/or a permit ID number); and the address and county of the source, including specification of where it is located within the facility; or
2. If the source(s) is a mobile source, a nonroad source, or a group of stationary sources at various locations, a description of the source, including any applicable identifying numbers (for example, vehicle ID number); and the county(s) (and if feasible the specific locations) where the source(s) are operated.

(e) Except pursuant to (f) and (g) below, any person who submits a notice or an amendment thereto pursuant to this subchapter shall include, as an integral part of the notice or amendment, the following two-part certification:

1. A certification, signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the certified document. The certification shall state:

"I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

(f) The certification at (e)2 above shall not be required if the individual required to sign the certification in (e)1 above is the same individual required to sign the certification in (e)2 above.

(g) Instead of using the certification given at (e) above, a prospective user of DER credits shall certify a Notice of Intent to Use, or an amendment thereto as follows: "I certify under penalty of law that I believe the information provided in this Notice of Intent to Use is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgment, using techniques, factors, or calculations approved by the Department or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

(h) If after submitting a notice, the person submitting the notice determines that the notice includes an error, that person shall timely correct the error through the amendment procedures set forth at N.J.A.C. 7:27-30.20. A generator is not relieved of this requirement, even if the credits covered by a Notice of Generation have been verified and the error was not detected by the verifier.

Recodified from N.J.A.C. 7:27-30.16 and 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 the section. Former N.J.A.C. 7:27-30.18, Recordkeeping, recodified to N.J.A.C. 7:27-30.22.

7:27-30.19 Submission of notices

(a) A person submitting a notice pursuant to this subchapter shall submit the notice on paper to the registry at the address given at N.J.A.C. 7:27-30.8(b). The person shall at the same time also make all other submittals required in this section.

(b) A person who submits a Notice of Generation, Notice of Intent to Use, or Notice of Use, and each amendment thereof, shall also submit a complete electronic copy of the notice or amendment to the registry at <http://www.omet.com>. A complete copy shall include all supporting documentation required pursuant to N.J.A.C. 7:27-30.25(b).

(c) A user shall also submit on paper a copy of each Notice of Use to the Department at the applicable address(es) listed below:

1. If the user 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

2. If the user 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

3. If the user 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

4. If the user 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 08102

(d) A permittee who generates DER credits through a mobile source generation strategy shall additionally submit the Notice of Generation to the following:

1. To the New Jersey Department of Transportation at the following address:

Transportation Systems Planning
Department of Transportation
1035 Parkway Avenue
Main Office Building
PO Box 600
Trenton, NJ 08625-0600
Attn: Mobile Source Credit Generation

2. And to the following, as applicable:

i. If the generator source is located in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union County, or Warren, to the executive director of the North Jersey Transportation Planning Authority (NJTPA) at the following address:

North Jersey Transportation Planning Authority
(NJTPA)
One Newark Center, 17th Floor
Newark, NJ 07102

ii. If the user source is located in Burlington, Camden, Gloucester, or Mercer County, to the executive director of the Delaware Valley Regional Planning Commission (DVRPC) at the following address:

Delaware Valley Regional Planning Commission
(DVRPC)
Bourse Building
111 South Independence Mall East
Philadelphia, PA 19106

iii. If the user source is located in Atlantic, Cape May, Cumberland, or Salem County, to the executive director of the South Jersey Transportation Planning Organization (SJTPO) at the following address:

South Jersey Transportation Planning Organization
(SJTPO)
18 N. East Avenue
Vineland, NJ 08360

(e) A permittee who generates DER credits through conversion of emission offsets to DER credits pursuant to N.J.A.C. 7:27-30.27(a) shall additionally submit the Notice of Generation to the emission offset bank at the address given at N.J.A.C. 7:27-18.8(a).

(f) A permittee who intends to use DER credits to meet emission offset requirements shall additionally submit the Notice of Intent to Use to the address listed in N.J.A.C. 7:27-18.8(a).

(g) If a use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any "permit insurance" use listed at N.J.A.C. 7:27-30.14(d)), and if submission of a Notice of Intent to Use is required pursuant to N.J.A.C. 7:27-30.15, the permittee shall additionally:

1. At least seven days before the use period commences, submit a complete Notice of Intent to Use as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.20(b)3 or 22.22(d)2, as applicable, to the following address:

Department of Environmental Protection
Air Quality Regulation Program
PO Box 027
Trenton, New Jersey 08625-0027
Attn: OMET/Seven-day-notice

2. If the user source is subject to the preconstruction permit requirements at N.J.A.C. 7:27-8, submit the service fee required for a seven-day-notice change at N.J.A.C. 7:27-8.6 to the address given at N.J.A.C. 7:27-8.6(g).

(h) At least 30 days before the use period commences, if the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge, the user shall additionally submit the Notice of Intent to Use to the Federal Land Manager. For the convenience of persons submitting notices, a delineation of this area may be found in Appendix C; however, if there is a discrepancy between the size or location of this area given in Appendix C and the size or location given for this area in the Federal Register, the Federal Register shall take precedence. The notice shall be submitted to the Federal Land Manager at the following address:

Chief
Air Quality Branch
United States Fish and Wildlife Service
PO Box 25287
Lakewood, Colorado 80225

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).

Former N.J.A.C. 7:27-30.19, Public availability, recodified to N.J.A.C. 7:27-30.23.

7:27-30.20 Amendment of notices

(a) A person who has submitted a Notice to the registry may subsequently submit to the registry an amendment to the notice for the following purposes:

1. To correct an error in the notice; or
2. To reflect a material change in any of the information, statements or certification in the notice or in any of the supporting documentation included with the notice.

(b) An amendment shall include specification of the notice being amended, the information being amended, the corrected or changed information, an explanation of why it is appropriate to change this information, and the same certification as is required for the notice being amended.

(c) Notwithstanding (a) above, none of the following may be amended:

1. For any notice, the name of the person (that is, generator, transferor, transferee, verifier, user, or retiree as applicable) except in the following case:

- i. The person has legally changed its name; or it has merged into or been consolidated with another entity, such that the successor entity is known by a different name; and

- ii. The renamed person or successor entity documents to the Department its assumption of all liability for the notice and the information set forth therein;

2. For a Notice of Generation, the generator source(s) and the dates of the generation period;

3. For a Notice of Intent to Use, the following:

- i. For any use, the user source(s); the first day of the use period; the maximum number of DER credits that may be used during the use period, both for the ozone season or during the use period as a whole; and the specific DER credits being held for the use (identified by their serial numbers); and

- ii. For a permit insurance use, the last day of the use period, and the maximum emission rate (that is, the ceiling rate); and

4. For a Notice of Retirement, the number of credits retired (this number may neither be increased nor decreased).

Administrative change.

See: 28 N.J.R. 4959(b).

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).

Former N.J.A.C. 7:27-30.20, Emission quantification protocols, repealed.

7:27-30.21 Geographic scope of trading

(a) A VOC or NO_x credit generated in New Jersey may be used anywhere in New Jersey.

(b) A DER credit generated outside New Jersey may be used in New Jersey only if:

1. The air pollution control agency of the state where the generator source is located is duly authorized to enter into a written agreement with the Department pertaining to interstate trading of credits;

2. The Department and the authorized air pollution control agency of the other state have entered into a written agreement that addresses the items listed in (c) below; and

3. The generator source is located as follows:

i. For a NO_x credit, the generator source is located either to the west and/or south of New Jersey or in the same nonattainment area as the user source; or

ii. For a VOC credit, the generator source and the user source are located in the same nonattainment area.

(c) Any written agreement authorizing interstate trading of DER credits shall address the following:

1. Interstate credit tracking procedures that ensure that the Department has reliable access, at a minimum, to information pertaining to the following:

i. Each use in another state of a DER credit generated in New Jersey; and

ii. The generation in another state of a DER credit used in New Jersey;

2. If the other state lies south and/or west of New Jersey, concurrence that no DER credits generated in New Jersey may be used in the other state, unless the generator source and the user source are located in the same interstate nonattainment area;

3. Provision that, upon the Department's request, the other state's air pollution control agency will provide the Department with all information and documentation required to be submitted to that agency for use in that state of a DER credit generated in New Jersey, or pertaining to generation in that state of a DER credit used (or to be used) in New Jersey; and

4. Consistency with applicable Federal laws, rules, and policies. The Department shall not enter into any agreement for interstate trading unless the agreement satisfies all applicable requirements established by the EPA for interstate DER trading agreements.

(d) A written agreement authorizing interstate trading of DER credits may include provisions authorizing credit verifications performed under the auspices of the other state to be recognized in New Jersey. This would relieve any person using a credit in New Jersey that has been verified under the other state's procedures from the requirement to also have

the credit verified, pursuant to N.J.A.C. 7:27-30.10, by a New Jersey verifier. The Department will not, however, enter into an agreement with another state that includes such a provision unless the Department is satisfied that the other state's verification procedures are substantially equivalent to New Jersey's.

Recodified from N.J.A.C. 7:27-30.17 and 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 the section. Former N.J.A.C. 7:27-30.21, Compliance responsibilities, recodified to N.J.A.C. 7:27-30.28.

7:27-30.22 Recordkeeping

(a) For each batch of DER credits generated, the generator shall retain the following records until five years after the last Notice of Use or Notice of Retirement is submitted to the registry, reflecting that all DER credits in the batch (not including any that have been canceled or found to be invalid) have been used or voluntarily retired; the generator shall provide such records to the Department within 15 days after receiving a request from the Department:

1. The Notice of Generation and any amendment thereto; and

2. All data and other records relevant to documenting the generation of the DER credits, as required pursuant to N.J.A.C. 7:27-30.25(c); and

3. Any Notice of Invalidation for a credit in the batch.

(b) For each DER credit used, the user shall retain the following records until five years after the end of the use period, and shall provide such records to the Department within 15 days after receiving a request from the Department:

1. The Notice of Generation, the Notice of Intent to Use, the Notice(s) of Verification, each Notice of Transfer which documents that the credits used were conveyed to the user, the Notice of Use, and any amendments to any of these notices;

2. All data and other records relevant to documenting the generation and use of the DER credit(s), as required pursuant to N.J.A.C. 7:27-30.25(c); and

3. If applicable, any notice that a credit that was used was subsequently canceled, or that the EPA or the Department has found a DER credit used by the user to be invalid; together with the record of replacement of such credits pursuant to N.J.A.C. 7:27-30.12(k).

(c) If the generator source or user source is a stationary source, the generator or user shall retain at the facility where the generator source or user source is located the records required pursuant to (a) or (b) above.

(d) Within 15 days after receiving a request from the Department, a generator, user or verifier shall submit to the Department information which the Department finds reasonably necessary to determine if the generation, verification, proposed use, or use of DER credits complies with this chapter and all applicable State and federal laws and regulations. This information includes, but is not limited to, copies of any notice required to be submitted to the registry under this subchapter, all supporting documentation required by the quantification protocol used or by N.J.A.C. 7:27-30.25.

(e) The operator of the registry shall retain records of any notifications provided to users pursuant to N.J.A.C. 7:27-30.8(h) until five years after all DER credits in any affected batch (that are not canceled or found to be invalid) are used or voluntarily retired.

Recodified from N.J.A.C. 7:27-30.18 and 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 the section. Former N.J.A.C. 7:27-30.22, Penalties, recodified to N.J.A.C. 7:27-30.30.

7:27-30.23 Public availability

(a) All information submitted to the Department or the registry under this subchapter and any supporting documentation required to be retained by a generator or user pursuant to N.J.A.C. 7:27-30.25 is a public record under N.J.S.A. 47:1A-2. To inspect, copy or obtain a copy of any public record held by the registry, a person shall submit a request to the registry at the address listed in N.J.A.C. 7:27-30.8(b). To inspect, copy or obtain a copy of any public record held by the Department, a person shall submit a request to:

Department of Environmental Protection
Office of Legal Affairs
Attention: Public Records Requests
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

(b) A generator or user shall make all notices and amendments thereto, as well as any required supporting documentation, available for inspection to any person who requests it.

Recodified from N.J.A.C. 7:27-30.19 and 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 (a), inserted "and any supporting documentation required to be maintained by a generator or user pursuant to N.J.A.C. 7:27-30.25" following "subchapter" in the first sentence, and changed N.J.A.C. reference in the second sentence; and rewrote (b).

7:27-30.24 Standards for quantification protocols

(a) Each generator or user shall use a quantification protocol that conforms with this section and content requirements for quantification protocols at N.J.A.C. 7:27-30.25. A generator or user shall follow the protocol to

perform the quantifications required for a Notice of Generation, a Notice of Intent to Use, or a Notice of Use. The generator or user shall demonstrate conformance with the protocol to show that the number of DER credits generated or needed for compliance has been properly calculated.

(b) A generator shall use a given protocol only if it applies to the generator source and to the specific generation strategy implemented to reduce emissions. A user shall use a given protocol only if it applies to the user source and to the specific use.

(c) A quantification protocol shall not be found acceptable by the Department or a verifier unless:

1. The methods and guidance it sets forth conform with all applicable guidance issued by the EPA. If applicable EPA-approved measurement, testing and monitoring methods are available, the protocol shall specify that these methods shall be used;

2. The method it prescribes for calculating the number of DER credits generated or the number of DER credits needed for compliance has sufficient detail so as to enable the Department, a verifier, or the EPA to evaluate the validity of the calculation; and

3. The protocol requires that the data on which each calculation is based are the most representative, accurate, current, and reliable data available. Therefore, for emissions data:

- i. If a generator or user would have actual emissions data available, the protocol shall specify that a generator or user shall use this data in the calculation, as applicable, rather than imputed or estimated amounts; and

- ii. For a stationary source, the Department has prepared guidance to assist in selecting the technique(s) to be required by the protocol to measure and quantify actual emissions. This guidance document is entitled "Hierarchies of Quantification Techniques," and a copy of this guidance document may be obtained in accordance with (j) below. This guidance may be used to help select the technique(s) to be used for measuring and quantifying actual emissions. However, following this guidance will not necessarily, in all cases, lead to identifying the technique(s) which are the most accurate and reliable technique(s) available. In such a case, the guidance shall not be followed, and the technique(s) which are the most accurate and reliable technique(s) available shall be selected for inclusion in the protocol.

(d) If the EPA has approved a quantification protocol that is applicable and that meets the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use:

1. The EPA-approved protocol; or

2. An alternate quantification protocol that deviates from the EPA-approved protocol, but meets the requirements of N.J.A.C. 7:27-30.25 and has been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.

(e) If the EPA has approved a quantification protocol that is applicable, but does not address all the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use a quantification protocol that both meets the requirements of N.J.A.C. 7:27-30.25 and also incorporates one of the following:

1. The EPA-approved protocol; or

2. Alternate elements that deviate from the EPA-approved quantification protocol, but that have been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.

(f) If the EPA has not approved a quantification protocol that is applicable, the generator or user shall use:

1. A protocol approved by the Department and made available pursuant to (h) below; or

2. Another protocol that meets the requirements of N.J.A.C. 7:27-30.25. The generator or user need not obtain EPA's or the Department's approval before using such a protocol.

(g) In developing a generation protocol for emission reductions due to implementation of energy efficiency measures, a generator or user is encouraged to refer to and utilize, as applicable, the guidance document "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Public Utilities (BPU) on April 28, 1993. A copy of the document may be obtained from:

New Jersey Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

(h) Before approving an emissions quantification protocol for any source or class of sources, the Department shall provide an opportunity, announced through a public notice in the New Jersey Register, for comment on the proposed protocol. Once the Department approves any emissions quantification protocol, it will make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies. Copies of approved protocols may be requested as set forth in (j) below.

(i) No generator or user may use a quantification protocol, unless they have available and are willing to provide in full the information required pursuant to a quantification protocol that meets the requirements of this section and N.J.A.C. 7:27-30.25.

(j) A copy of an approved emissions quantification protocol or of the guidance document entitled "Hierarchies of Quantification Techniques" may be obtained as follows:

1. A copy may be downloaded from the Department's website at <http://www.state.nj.us/dep/aqm/omet>; or

2. A copy may be requested from:

Department of Environmental Protection
Office of Air Quality Management
PO Box 418
Trenton, New Jersey 08625-0418
Attention: OMET Program
Telephone: (609) 777-1345

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).

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.25 Contents of quantification protocols

(a) A quantification protocol shall set forth the following:

1. The emissions source, or class of emission sources, to which the protocol applies. Each class shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not any given source belongs to the class;

2. The generation strategy(s) or use(s) to which the protocol applies. Each generation strategy and each use shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not the protocol applies to any given generation strategy or use;

3. The formula(s) to be used to calculate the number of DER credits that have been generated during the generation period; the number of DER credits that need to be held when a Notice of Intent to Use is submitted; the number of DER credits used during a use period; or the quantity of actual emission increases during the use period, as applicable;

4. The method(s) to be used to derive each term used in the formula(s) specified pursuant to (a)3 above (for example, the method to be used for determining "baseline emissions"), including, but not limited to:

i. Any test method(s) or other technique(s) to be used for determining actual emission increases or decreases, together with specification of the parameters to be measured, the measurement methods to be used (for example, specific methods for continuous emissions monitoring, stack testing, or predictive emissions monitoring) and the rationale for requiring use of these specific methods;

ii. For a stationary or mobile source, the method for establishing its activity level, including the measurement methods to be used to collect the activity level data (such as monitoring of fuel use or hours of operation), and the rationale for requiring use of these methods; and

iii. For a product, the methods for determining the quantity of product distributed, stored, or used in New Jersey, and the rationale for requiring use of these methods;

5. For a generation protocol, with respect to the "economic output" term in the formula, one of the following:

i. The unit of economic output to be used in the calculation, together with an explanation of why this is an appropriate unit, specification of the measurement methods to be used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for requiring reliance on these methods; or

ii. The methods a generator shall use to develop an appropriate unit of economic output for the generator source;

6. The method(s) the generator or user shall use to document the derivation of each term used in the formula(s) given pursuant to (a)3 above, including, but not limited to, the procedures to be used to compile, summarize, analyze and report emissions data, activity level data, and economic output data;

7. For the air contaminant on which the credits are based (for example, for VOC, if the credits generated or used are VOC credits), the methods to be used for determining:

i. Whether the credit generation or credit use has resulted in an increase in emissions of that air contaminant, from other source(s) at the facility or off-site, including, but not limited to, increases due to a shifting of production to or an increase in activity of the other source; and

ii. If so, the method(s) to be used for determining the quantity of such emissions increase;

8. The methods for determining the design margin. Such methods shall take into account historical compliance margins for the parameter in question, reflecting the individual generator's or user's past performance in meeting the requirement. In the case of a new requirement, the methods may be based either on the individual generator's or user's past performance in meeting past requirements or on an industry average compliance level;

9. The methods to be used for determining if the generation or use of DER credits has resulted in an increase in the actual emissions of any other air contaminant,

including any HAP, either from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and if so, the method(s) to be used for determining the quantity of the increase;

10. For DER credit generation, the methods to be used for determining the following:

i. The quantity of product distributed, stored or used in New Jersey, pursuant to N.J.A.C. 7:27-30.4(a)3; and

ii. The quantity of recycled materials that was sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process, pursuant to N.J.A.C. 7:27-30.4(a)5;

11. Any emission factors or constants to be used, together with either a citation of the source of the factors or constants or an explanation of how they were derived; and

12. Assumptions that a generator or user shall or may make in performing any of the calculations.

(b) A quantification protocol shall specify the supporting documentation that a generator or user (as applicable) shall provide with a notice, as an integral part thereof. This documentation shall include:

1. Explanation of the following:

i. The assumptions made in the calculations, other than those required by the protocol to be used pursuant to (a)12 above;

ii. If the protocol allows the use of more than one method for monitoring, testing, or otherwise determining variables such as the quantity of emissions, activity level, or economic output, an explanation of why the method used was selected;

iii. The steps taken to minimize uncertainty in the methods used and the data on which the calculations are based, including a description of steps taken to assure precision and avoid bias; or if uncertainty cannot be minimized, an explanation of how the calculation method has been modified to account for imprecision and/or bias;

iv. If the generation or use of credits has resulted in an increase, from another source at the facility or elsewhere, in emissions of the same type of air contaminant as that on which the credits are based (for example, VOC emissions, if the credits generated or used are VOC credits), an explanation of the causes of the increase in emissions;

v. For a generation protocol, if the user determined the unit of economic output to be used in the calculations pursuant to (a)5ii, an explanation of why it is an appropriate unit, the measurement methods used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for reliance on these methods;

2. Any calculations performed, including for the determination of:

i. The number of credits generated, the number of DER credits that need to be held when a Notice of Intent to Use is submitted, or the number of DER credits that were used during a use period;

ii. The quantity (if any) of the actual emissions increase of any HAP, including the quantity from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and

iii. The quantity of the increase or decrease in actual emissions of VOC or NO_x;

3. A listing of all State and Federal air quality regulations, orders and permits that apply (for generation protocols) to the generator source or (for use protocols) to the user source, and any emission limits set forth therein for the following:

i. The air contaminant (for example, VOC or NO_x) on which the credits being generated or used are based; and

ii. Any HAP;

4. The data reports and summaries which set forth the data relied on in the calculations, together with adequate labeling and explanation of the data reports and summaries so as to enable proper interpretation; and

5. The following demonstrations:

i. If a generator or user would have actual emissions data available, but the protocol specifies that a generator or user shall use another method which does not utilize the actual emissions data, a demonstration that this other method results in a determination of emissions that is more representative, accurate, current, and reliable; and

ii. If the protocol specifies the use, for a stationary source, of a technique for measuring and quantifying actual emissions different from the techniques that would be selected for the source using the Department's "Hierarchies of Quantification Techniques" guidance document, a demonstration that this other technique is the most accurate and reliable technique available for measuring and quantifying actual emissions.

(c) A quantification protocol shall specify the data and other records relevant to documenting the quantification performed pursuant to N.J.A.C. 7:27-30.22(a) and (b) that, at a minimum, a generator or user shall retain. Such records will include, but not be limited to, the following data sets, where summary data reports are provided in the Notice of Generation, Notice of Intent to Use, or the Notice of Use:

1. Any emissions data relied on in the calculations described in (a) and (b) above;

2. For a stationary or mobile source, the data relied on to establish a generator source's or user source's activity level and hours of operation; and

3. For a product, the data collected to determine the quantity of product distributed, stored, or used in New Jersey; and

4. For a generation protocol, the data collected to establish the generator source's economic output.

(d) A quantification protocol shall provide example calculations, based on the formulas and the requirements for calculation at N.J.A.C. 7:27-30.5 or 30.13.

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).

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.26 (Reserved)

7:27-30.27 Interface with other trading programs

(a) Allowances allocated under the NO_x Budget Program may be converted to NO_x credits, in accordance with N.J.A.C. 7:27-31.6(a).

(b) Emission reduction credits generated under the Emission Offset Program may be converted to NO_x or VOC credits, in accordance with N.J.A.C. 7:27-18.11.

(c) Use of DER credits that are based on the conversion of NO_x Budget allowances or emission reduction credits generated under the Emission Offset Program is subject to the geographic constraints set forth at N.J.A.C. 7:27-30.21 rather than to any corresponding geographic requirements in NO_x Budget Program or the Emission Offset Program.

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).

7:27-30.28 Compliance responsibilities

The generator is responsible for ensuring that it has generated DER credits in accordance with this subchapter. The verifier is responsible for making the Notice of Verification true, accurate and complete. The user is responsible for ensuring that its use of DER credits complies with this subchapter. In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities.

Recodified from N.J.A.C. 7:27-30.21 and 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).

Substituted a reference to DER credits for a reference to DERs and deleted “, and that the DERs are real, surplus, and properly quantified” at the end of the first sentence, and substituted a reference to the Notice of Verification for a reference to the Notice of DER Verification in the second sentence.

Administrative change.

See: 32 N.J.R. 3117(a).

7:27-30.29 Invalidation and cancellation of DER credits

(a) If the Department or the EPA determines at any time that a DER credit does not satisfy all of the applicable requirements of this subchapter, the Department or the EPA may find the credit invalid. The Department or the EPA shall effect such a finding by notifying the registry and the holder of the DER credit that the DER credit is invalid.

(b) If a generator decides, for any reason, to reduce the number of credits claimed for a batch, the generator shall, pursuant to N.J.A.C. 7:27-30.20, submit an amendment to a Notice of Generation requesting that a specified number of credits in the batch be canceled.

(c) Within one business day of receiving a notice that one or more DER credits are invalid, and within one business day of receiving an amendment requesting that one or more DER credits be canceled, the registry operator shall designate in the registry, by serial number, each DER credit that is invalid or canceled. If a part of a batch of DER credits has been found invalid or been canceled, the registry operator shall designate those credits in the batch with the higher serial numbers as being invalid or canceled.

(d) A generator, holder, or user of a DER credit, who is aggrieved with respect to a finding by the Department that a credit is invalid, may request an adjudicatory hearing, pursuant to N.J.A.C. 7:27-1.32.

(e) No credit which has been designated as invalid or as canceled may be transferred, verified, retired, or used.

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).

7:27-30.30 Penalties

A person who fails to comply with any provision of this subchapter shall be subject to civil administrative 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. 2C:28 and N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

Recodified from N.J.A.C. 7:27-30.22 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).

APPENDIX A

Global Warming Potentials¹ (100 year time horizon)

Gas	Global Warming Potential
Carbon dioxide (CO ₂)	1
Methane (CH ₄)	21
Nitrous oxide (N ₂ O)	310
HFC-23	11,700
HFC-125	2,800
HFC-134a	1,300
HFC-143a	3,800
HFC-152a	140
HFC-227ea	2,900
HFC-236fa	6,300
HFC-4310mee	1,300
CF ₄	6,500
C ₂ F ₆	9,200
C ₄ F ₁₀	7,000
C ₆ F ₁₄	7,400
SF ₆	23,900

¹Source: Climate Change 1995: The Science of Climate Change, Report prepared for IPCC by Working Group 1, Intergovernmental Panel on Climate Change, Organization for Economic Co-Operation and Development, Paris, France.

Repeal and 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).

Appendix was “Emissions Included in Emissions Inventory as of August 2, 1996”.

APPENDIX B

Note: The material below has been excerpted from the “Timely and Appropriate (T & A) Enforcement Response to High Priority Violations (HPVs)” guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency, on December 22, 1998. A copy of the complete guidance document may be found on the EPA website at www.epa.gov/oeca/ore/aed or be requested from:

Air & Environmental Quality Compliance and Enforcement
Department of Environmental Protection
PO Box 422
401 East State Street, Floor 4
Trenton, NJ 08625-0422

II. Definition of High Priority Violations

When a violation is detected, the violation's characteristics shall be compared with the Definition of High Priority Violation given in Parts A and B below. To the extent that the violation fits one or more of the elements of the General High Priority Violation Criteria given in Part A or the High Priority Violation Matrix given in Part B, it shall be designated as a high priority violation and is subject to the Timely and Appropriate Section of this policy.

A. General HPV Criteria

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the EPA and the delegated agency.

1. Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
2. Violation of an air toxics requirement (i.e., NESH-AP, MACT) that either results in excess emissions or violates operating parameter restrictions.
3. Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)
4. Violation of any substantive term of any local, State or Federal order, consent decree or administrative order.
5. Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
6. Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
7. Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
8. A violation of an allowable emission limit detected during a reference method stack test.
9. Clean Air Act (CAA) violations by chronic or recalcitrant* violators.
10. Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).

*Chronic or recalcitrant violator refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the Region and the delegated agency that the source should be bumped up into HPV status.

B. High Priority Violation Matrix

The matrix below contains specific criteria for assessing whether violations are high priority. The matrix is set out in six columns that identify: the violation, the means by which the violation was identified (method of detection), the applicable standard, the supplemental significance threshold, percentage in excess of the reference limit or standard and the time in excess of the reference limit or standard. A discussion of each of these elements of the matrix is set out below. Violations not on the High Priority Violation List may nonetheless be serious, but may not be initially subject to the provisions of this policy.

Violations and Method of Detection

The first column lists four types of violations addressed by the matrix. The second column identifies six methodologies for detecting the four types of violations listed in the first column. The following shows the four types of violations and the associated method(s) of detecting violations that are reflected in the first two columns of the matrix. Although the matrix provides specific detection methods for violations, nothing in this policy is intended to limit the agency in using other credible evidence to document a violation.

I. Violation of Allowable Emissions Limitations

- A. Reference Method Stack Testing or
- B. Coatings Analysis, Fuel Samples or Other Process Material Sampling

II. Violation of Parameter Emissions Limitations

- A. Continuous/Periodic Parameter Monitoring

III. Violation of Applicable Standards (non-opacity)

- A. Continuous Emissions Monitoring (where the CEM is certified under Federal performance specifications)

IV. Violation of Applicable Standards (opacity)

- A. Continuous Opacity Monitoring or
- B. Method 9 Visual Emissions Readings

Standards

This column identifies the standard(s) for which a violation is being assessed.

Supplemental Significance Threshold

This column provides a supplemental significance threshold (SST) that is to be considered along with the other matrix factors to determine high priority violations. The SST is intended only as a surrogate threshold against which a violation can be judged and obviates the situation that would occur if an emissions limitation was high enough that a less than 15% excursion of the applicable requirement would result in significant environmental impact. The SST is consistent with the level at which a source would be required to obtain a PSD permit for a major modification for the applicable criteria pollutant(s), expressed as an hourly emission rate. The use of an SST is not intended in and of itself to imply that a facility must obtain a PSD permit.

Percent in Excess of Limit/Parameter

This column is the yardstick by which a violation is judged to be a high priority violation. In some cases (i.e., where the word "FOR" connects this column with the last column), the percent in excess of the limit is paired with a time element. To determine the level of excess emissions for which a violation is considered high priority, multiply the applicable standard by the applicable percentage from this column.

Percent of Time in Excess of the Applicable Standard

The percent of time in excess of the applicable standard is based on the operating time of the facility during the reporting period in which the violation was discovered.

<u>Violation</u>	<u>Method of Detection</u>	<u>Standard</u>	<u>Supplemental Significant Threshold¹</u>		<u>% in Excess of Reference Limit/Parameter</u>		<u>% of Time in Excess of Reference Limit</u>
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement			Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling of raw/process materials usage reports	Any applicable requirement	CO	23 lb/hr	>15% of the applicable emission limitations or the supplemental significant threshold (whichever is more stringent)		N/A
			NO _x	9 lb/hr			
			SO ₂	9 lb/hr			
			VOC	9 lb/hr			
			PM	6 lb/hr			
			PM10	3 lb/hr			
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement			>5% of the applicable parameter limit	FOR	> 3% of the operating time during the reporting period
						OR	any exceedance of the parameter limit for > 50% of the operating time during the reporting period ³
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	≤ 24 hour averaging period (for example, one hour or three hour blocks)	CO	23 lb/hr	15% of the applicable standard or, the supplemental significant threshold (whichever is more stringent)	FOR	> 5% of the operating time during the reporting period ^{4,6}
			NO _x	9 lb/hr			
			SO ₂	9 lb/hr			
			VOC	9 lb/hr			
Violation of applicable opacity standard ²	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period			Any violation of the applicable standard		N/A
	Continuous Opacity Monitoring	0-20% opacity			> 5% opacity over the limit	FOR	> 5 % of the operating time during the reporting period ^{4,6}
		> 20% opacity			> 10% opacity over the limit		
	Method 9 VE Readings	0-20% opacity			> 50% over limit	AND	Any violation of SIP/NSPS limits ⁵
		> 20% opacity			> 25% over limit		

Table Footnotes:

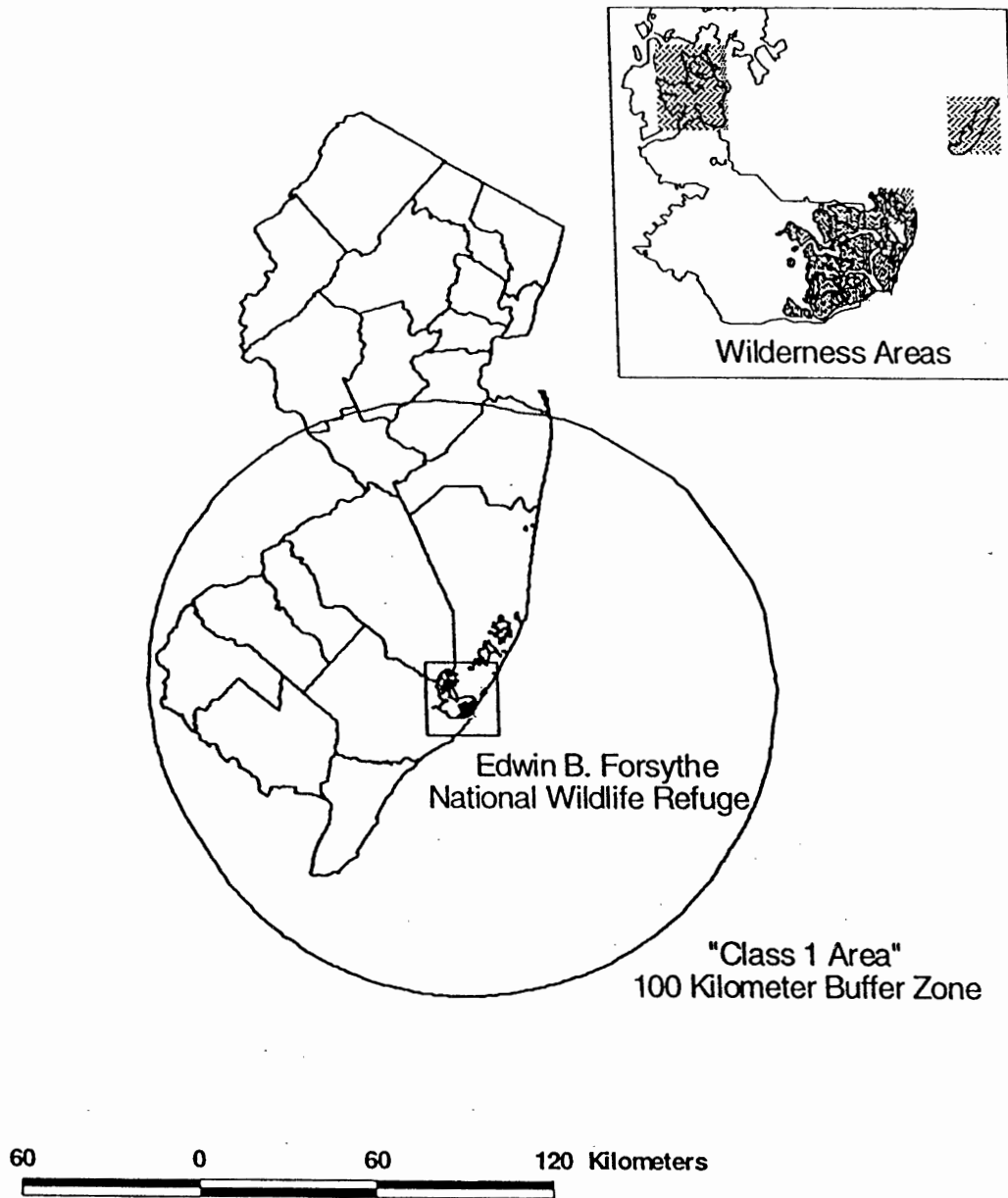
1. Supplemental Significant Threshold is based on PSD significant levels. The significant threshold value is the lb/hr emission rate at 8760 hours which would result in PSD review.
2. Based on the applicable averaging period (e.g. 6-minute block averages).
3. For the first reporting period. If exceedances occur for more than 25% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
4. For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
5. Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
6. This would not include any federally approved exempt period (e.g., startup/shutdown/malfunction 40 CFR 60.11), since these would not be violations.

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).

Administrative change.
See: 32 N.J.R. 3117(a).

APPENDIX C

Map indicating 100 Kilometer Buffer Zone Surrounding Edwin B. Forsythe National Wildlife Refuge



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).

SUBCHAPTER 31. NO_x BUDGET PROGRAM

Authority
N.J.S.A. 13:1B-3 and 26:2C-1 et seq.

Source and Effective Date

R.1998 d.379, effective July 20, 1998 (operative August 16, 1998).
See: 29 N.J.R. 3924(b), 29 N.J.R. 4226(a), 30 N.J.R. 2660(a).

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 intra-state 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 alter-nate) 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 in the New Jersey emission budget made to accommodate the source was based, pursuant to N.J.A.C. 7:27-31.4; or
2. For a baseline source, the emissions or productivity attributed to that source in the 1990 baseline NO_x emission inventory.

"Baseline NO_x emission inventory" means the emissions inventory which developed jointly by all jurisdictions in the OTR and which sets forth, for all baseline sources, the NO_x emissions of these sources for the period May 1 and September 30, 1990. This inventory is the emission baseline from which emission reductions are calculated for purposes of determining the effectiveness of the NO_x Budget Program in limiting NO_x emissions.

"Baseline source" means a source which is one of the following and which operated during the May 1 through September 30 period in 1990:

1. A fossil fuel fired boiler or other indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour; or
2. An electric generating unit with a rated output of at least 15 MW.

"Boiler" means an indirect heat exchanger which combusts fossil fuel to produce steam, or to heat water or any other heat transfer medium.

"British Thermal Unit" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Btu" means British Thermal Unit.

"Budget source" means any of the following sources:

1. A fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;
2. An electric generating unit with a rated output of at least 15 MW; or
3. Any source that has been approved as an opt-in source.

"CEMS" means continuous emission monitoring system.

"Clean Air Act" means the Federal Clean Air Act as amended in 1990 (42 U.S.C. §§ 7401 through 7626).

"Combustion unit" means a source operation or item of equipment which combusts fuel.

"Commence commercial operation" means, with regard to a source that serves an electric generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a source that is a budget source on the date of commencement of commercial operation, the date such production begins shall remain the source's date of commencement of commercial operation even if the source is subsequently modified, reconstructed, or repowered. For a source that is not a budget source on the date the source commences commercial operation, the date the source becomes a budget source shall be the date of commencement of commercial operation, for the purposes of this subchapter.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a source, start-up of a source's combustion chamber. For a source that is a budget source on the date of commencement of operation, such date shall remain the source's date of commencement of operation even if the source is subsequently modified, reconstructed, or repowered. For a source that is not a budget source on the date of commencement of operation, the date the source becomes a budget source shall be the source's date of commencement of operation, for the purposes of this subchapter.

"Common stack" means a single flue through which emissions from two or more sources are exhausted.

"Compliance account" means an account in the NATS where allowances are held in order to be available for use in complying with end-of-season reconciliation requirements pursuant to N.J.A.C. 7:27-31.3(i). The number of allowances in the account will be increased if allowances are allocated to the account or if allowances are transferred into the account from another account. The number of allowances in the account will be decreased if allowances in the account are transferred from the account into another account or if the NATS Administrator makes an allowance deduction for compliance purposes. Each compliance account is associated with a specific budget source.

"Continuous emission monitoring system" or "CEMS" means a system of equipment that samples, analyzes, and determines, on a continuous basis (at least once every 15 minutes), for a given source or group of sources, mass emissions of one or more air contaminants per time period and per heat input, and that records the results in order to provide a permanent record of such data. The following are component parts of a continuous emissions monitoring system required under this subchapter:

1. Nitrogen oxides pollutant concentration monitor;
2. Diluent gas monitor (oxygen or carbon dioxide), when use of such monitor is required by N.J.A.C. 7:27-31.14;
3. Flow monitoring systems (flue gas flow or fuel flow);
4. A continuous moisture monitor, when use of such monitor is required by N.J.A.C. 7:27-31.14; and
5. A data acquisition and handling system.

"Control period" means, for the year 1999 and thereafter, the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

"Current year" means the present calendar year.

"Data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under N.J.A.C.

7:27-31.14 through 31.16, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by N.J.A.C. 7:27-14.

"Department" means the New Jersey Department of Environmental Protection.

"DER credit" means a discrete emission reduction credit pursuant to N.J.A.C. 7:27-30.

"Early reduction allowance" means an allowance based on NO_x emission reductions that meet the criteria specified in N.J.A.C. 7:27-31.12, Early reductions, and that occurred during the period May 1 through September 30, 1997, or the period May 1 through September 30, 1998; or that occurred during both such periods.

"Electric generating unit" means any fossil fuel fired combustion unit that serves an electric generator having a nameplate capacity of 15 MW or greater which provides electricity for sale or use.

"Emissions budget" means a limit or "cap" on the number of tons of NO_x emissions which are allowed to be emitted. This limit is effected by constraining the amount of allowances allocated to a number which does not exceed the number of tons set for the emissions budget.

"Energy efficiency project" means a project which:

1. Is implemented by, or on behalf of, an electric consumer;
2. Reduces the consumer's consumption of electricity;
3. Belongs to a category included in the guidance document "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Regulatory Commissioners on April 28, 1993;
4. The electricity savings of the project is quantified in accordance with this measurement protocol; and
5. Does not entail the direct use of combustion equipment.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties, which are under common control of the same person or persons.

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

"Fossil fuel fired" means fueled by greater than 50 percent fossil fuel on an annual heat input basis.

"General account" means an account in the NATS where allowances are held for a specific person. The number of allowances in the account will be increased if allowances are allocated to the account or if allowances are transferred into the account from another account. The number of allowances in the account will be decreased if allowances in the account are transferred from the account into another account. There are two types of general accounts:

1. Accounts associated with a person who requested the creation of the account pursuant to N.J.A.C. 7:27-31.13; and
2. Accounts utilized by the Department in the allocation process described at N.J.A.C. 7:27-31.7.

"Hazardous air pollutant" or "HAP" means an air contaminant listed in or pursuant to 42 U.S.C. § 7412(b).

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

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

"Industrial boiler" means a boiler that meets the following criteria:

1. No steam produced by the boiler is used to produce electricity that is sold or otherwise supplied to any utility power distribution system; and
2. No steam produced by the boiler is sold or otherwise supplied to a steam distribution system for the purpose of providing steam that would produce electrical energy for sale.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a source lacks certified monitors to report heat input. If the intention is to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the intention is to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

"Maximum potential NO_x emission rate" means the emission rate of NO_x (in pounds per MMBtu) calculated in accordance with section 3 of Appendix F of 40 CFR 75, using the maximum potential NO_x concentration as defined in section 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂) under all operating conditions of the source except for start up, shutdown, and upsets.

"Maximum rated heat input capacity" means the maximum amount of fuel that is able to be combusted per unit of time on a steady state basis in a given combustion device as determined by the physical design and characteristics of the combustion device. This amount (usually expressed in MMBtu per hour) is the product of the gross calorific value of the fuel (usually expressed in Btu per mass of fuel) and the fuel feed rate (usually expressed in mass of fuel per hour).

"MMBtu" means one million British Thermal Units.

"MW" means megawatt.

"MW-hr" means megawatt-hour.

"NATS" means NO_x Allowance Tracking System.

"NATS Administrator" means the agency which is authorized, by New Jersey and the other jurisdictions implementing the NO_x Budget Program, to administer and operate the NATS. At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Clean Air Markets Division, formerly the Acid Rain Division, has agreed to serve as the NATS Administrator for the purposes of the OTC NO_x Budget Program during the years 1999 through 2002. The Administrator of USEPA, or its designee, is the NATS Administrator for the purposes of the NO_x Budget Program pursuant to 40 CFR 51 and 40 CFR 96 during the years 2003 and beyond. As of September 29, 2000, the USEPA Clean Air Markets Division, formerly the Acid Rain Division, has been designated by USEPA to be the NATS Administrator.

"Net electric output" means, for units generating electricity, the net busbar power leaving the plant; that is, the total electrical output generated minus the energy requirements for auxiliaries and emission controls.

"Net useful heat output" means one half of the useful thermal output not associated with neither the energy requirements for auxiliaries and emission controls nor the net electric output performed by the steam generated; that is, one half of the heat output associated with steam delivered to an industrial process.

"NETS" means NO_x Emission Tracking System.

"NETS Administrator" means the agency which is authorized, by New Jersey and the other jurisdictions implementing the NO_x Budget Program, to administer and operate the NETS. At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Clean Air Markets Division, formerly the Acid Rain Division, has agreed to serve as the NETS Administrator for the purposes of the OTC NO_x Budget Program during the years 1999 through 2002. The Administrator of USEPA, or its designee, is the NETS Administrator for the purposes of the NO_x Budget Program pursuant to 40 CFR 51 and 40 CFR 96 during the years 2003 and beyond. As of September 29, 2000, the USEPA Clean Air Markets Division, formerly the Acid Rain Division, has been designated by USEPA to be the NETS Administrator.

"New budget source" means, in respect to provisions of N.J.A.C. 7:27-31.7, Annual allowance allocation, a budget source that, as of May 1 of the then-current year, meets all of the following three criteria:

1. Is not an opt-in source;
2. Has been permitted to operate; and
3. For each of the years 1999 through 2002, has not yet operated for two full May 1 through September 30 periods, and for the each of the years 2003 and thereafter, has not commenced operation in order to be allocated allowances pursuant to N.J.A.C. 7:27-31.7(l) or (d)3 and 4.

"New Jersey emission budget" means the base emission budget, plus the amount added for any sources that have been opted in to the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.4, plus the one time amount added only in the year 1999 for any sources that have earned early reduction allowances pursuant to N.J.A.C. 7:27-31.12.

"New Jersey holder" means, with respect to an account in the NATS, any of the following:

1. An owner or operator of a budget source located in New Jersey, for which there is a compliance account in the NATS; or
2. A person who has established a general account in the NATS, and who is located in New Jersey or conducts activities which are subject to this subchapter.

"NO_x" means oxides of nitrogen.

"NO_x Allowance Tracking System (NATS)" means the system used to track allowances as they are allocated, transferred, used and retired.

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

"Non-Part 75 budget source" means any budget source not subject to the requirements for emissions monitoring

adopted pursuant to § 412 of the Clean Air Act Amendments of 1990 and codified at 40 C.F.R. Part 75.

"Opt-in" means voluntarily to choose to have a given source, which otherwise is not mandated to be a budget source, participate in the NO_x Budget Program and comply with the terms and conditions of this subchapter.

"Opt-in source" means a stationary source which has been opted into the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.4, Opt in provisions.

"OTC" means Ozone Transport Commission.

"OTC MOU" means the Memorandum of Understanding signed by representatives of States that are members of the OTR and the District of Columbia on September 27, 1994, or later. The signing of this document constituted a commitment by the signatories to develop and implement the NO_x Budget Program in each of their jurisdictions.

"OTR" means the Ozone Transport Region, as designated by § 184(a) of the Clean Air Act Amendments of 1990. This region is comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; the District of Columbia; and the following counties of the State of Virginia: Arlington, Fairfax, Loudoun, and Prince William.

"Owner" means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a source;
2. Any holder of a leasehold interest in a source;
3. Any purchaser of power from a source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, this term shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the source; or
4. With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

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

"Oxides of nitrogen" means all oxides of nitrogen, except nitrous oxide, as measured by test methods required under this subchapter.

"Ozone Transport Commission" means the organization established pursuant to § 184(a) of the Clean Air Act Amendments of 1990. The members of this commission include an air pollution control official from each of the following jurisdictions: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

"Person" means an individual, public or private corporation, 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.

"Properly quantified" means, in reference to emission reductions, has been quantified on a reliable and replicable basis that is acceptable to the Department and to the USEPA.

"Real" means, in reference to emission reductions, possessing the following characteristics:

1. Represents a reduction in emissions which is not due to the shutdown or curtailment of the productivity of the source;
2. Has been quantified retrospectively; and
3. Is net of any consequential increase in actual emissions due to any resultant shifting of demand.

"Recorded" means, in reference to an allowance transfer or an allowance deduction, that an account in the NATS has been updated by the NATS Administrator to reflect the details of an allowance transfer or allowance deduction.

"Repowering" means, for the purpose of generating early reduction credit:

1. The installation of equipment which is Qualifying Repowering Technology as defined by 40 C.F.R. Part 72; or
2. The replacement of a budget source either by a new combustion source or by the purchase of heat or power from the owner of a new combustion source provided that:
 - i. The replacement source (regardless of owner) is on the same property or on a contiguous property as the budget source being replaced;
 - ii. The replacement source has a maximum useful heat output rate (including electric power) that is equal to or greater than the maximum heat output rate of the budget source being replaced; and

iii. Relative to the performance of technology in widespread commercial use as of November 15, 1990, the replacement source incorporates technology which better controls the emission of the air contaminants from the combustion process, while simultaneously improving fuel efficiency.

"Retirement account" means a NATS account which holds used or permanently retired allowances. The number of allowances in that account can be increased if additional allowances are transferred into it from another account. The number of allowances in the account shall never decrease, except in the case when an error is being corrected. There are two types of retirements accounts:

1. Accounts into which the NATS administrator deposits its allowances deducted from compliance accounts pursuant to the end-of-season reconciliation procedures described at N.J.A.C. 7:27-31.17; and
2. Accounts into which the NATS administrator deposits its allowances that are permanently retired at the request of the AAR of a general account or a compliance account.

"Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the NATS Administrator.

"State Implementation Plan" or "SIP" means a plan for the attainment of any National Ambient Air Quality Standard, prepared by a state and approved by the USEPA pursuant to Section 110 of the Clean Air Act (42 U.S.C. §§ 1857 et seq.).

"Source operation" or "source" means any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus.

"Submitted" means signed by the authorized account representative and sent to the appropriate agency. For purposes of determining when a document has been submitted, an official U.S. Postal Service postmark or an equivalent official indication by another mail delivery service shall establish the date of submittal. For purposes of determining when an electronic transmission has been submitted, the electronic time stamp of the receiving agency shall establish the date of submittal.

"Surplus" means, in reference to emission reductions:

1. Not required pursuant to any air quality emission limit or standard in any applicable law, regulation, or order;

2. Not relied upon in a SIP submitted by the State at the time the reduction was made, including in an attainment demonstration that applies to the air quality control region in which the emission reductions occur; and

3. Not required pursuant to a permit, unless the permit expressly states that the emission reductions (or a portion of such reductions) are being made voluntarily and are not the consequence of any requirement.

"Ton" means 2,000 pounds.

"Unit operating day" means a calendar day in which a source combusts any fuel.

"Unit operating hour" means any hour or fraction of an hour during which a source combusts any fuel.

"USEPA" means the United States Environmental Protection Agency.

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).

Rewrote the section.

7:27-31.3 Applicability and general provisions

(a) The provisions of this subchapter apply to the owner or operator of any budget source located in New Jersey. This shall include the owner or operator of any baseline source and of any source "opted-in" to the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.4.

(b) Each jurisdiction in the OTR which is implementing the NO_x Budget Program is establishing a base emission budget for the control period in each year, commencing with the year 1999. The base emission budget for New Jersey is as follows:

1. 17,340 tons of NO_x for the years 1999, 2000, 2001, and 2002; and

2. 13,022 tons of NO_x for the year 2003 and each year thereafter, unless the USEPA revises the number of allowances that could be allocated to budget sources in New Jersey pursuant to 40 CFR 51.121 to an amount less than 13,022 tons. In such case, the number of tons shall be equal to the number of allowances that USEPA assigns to New Jersey applicable to budget sources.

(c) Beginning in 1999, the Department shall allocate each year a number of allowances not exceeding the number of tons in the base emission budget for that year, plus an additional number of allowances added to accommodate opt-in sources, pursuant to N.J.A.C. 7:27-31.4. For each year the NATS Administrator shall initially assign allowances equal to New Jersey's base emission budget, plus the allowances for the opt-in sources, to New Jersey's "authority" account in the NATS. This "authority" account contains the Department's authority to create a fixed number of allowances, upon which the allowances will be assigned

serial numbers and upon which they will be transferred into the Department's "primary" account. This "primary" account is a general account held by the Department from which it allocates allowances.

(d) All allowances shall be held in accounts within the NO_x Allowance Tracking System (NATS), as described at N.J.A.C. 7:27-31.13, NO_x Allowance Tracking System. These allowances shall include only the following:

1. Allowances which reflect each year's base emission budget;

2. Allowances created to accommodate opt-in sources pursuant to N.J.A.C. 7:27-31.4; and

3. Allowances based on early reduction credits pursuant to N.J.A.C. 7:27-31.12.

(e) In the years 1999 through 2002, the Department shall allocate all the allowances comprising the base emission budget for New Jersey in accordance with N.J.A.C. 7:27-31.7, Annual allowance allocation. In the year 2003 and each year thereafter, the Department shall allocate no more than 8,200 allowances and shall reserve the remaining allowances in the base emission budget for New Jersey, in accordance with N.J.A.C. 7:27-31.7. In the judgement of the Commissioner, the Department shall only either retire an allowance deposited in the attainment reserve or use it for any other purpose which would contribute toward the attainment or maintenance of the National Ambient Air Quality Standard for ozone in New Jersey. If the Department intends to use any allowance in the attainment reserve account for any purpose other than retirement, the Department shall publish a notice in the New Jersey Register. This notice shall provide the public an opportunity for comment regarding the intended use. This public comment period shall be at least 30 days from publication of the notice. In no case shall the Department use any allowance in the attainment reserve account for any purpose other than retirement if the use would cause the total State NO_x emissions to exceed the level committed to by the Department in its SIP Submission to USEPA under 40 CFR 51.121.

(f) A New Jersey holder of an account in the NATS is subject to the applicable requirements of this subchapter. This includes the requirement, set forth at N.J.A.C. 7:27-31.13, NO_x Allowance Tracking System, to designate an authorized account representative (AAR). Only the AAR of an account may authorize the transfer of an allowance from the account to another account in accordance with the procedures set forth at N.J.A.C. 7:27-31.10, Allowance transfer, use, and retirement.

(g) Pursuant to N.J.A.C. 7:27-31.16(c), the owner or operator of each budget source located in New Jersey shall monitor the emissions of each budget source in accordance to the monitoring plan approved by the Department pursuant to N.J.A.C. 7:27-31.14, Emissions monitoring, and re-

port the source's actual NO_x emissions during that year's control period to the NETS Administrator. Correspondence for NETS Administrator shall be addressed as follows:

ATTN: NO_x BUDGET PROGRAM
United States Environmental Protection Agency
Clean Air Markets Division—Mail Code 6204J
401 M Street SW
Washington, DC 20460

(h) The date of a submission to the NATS or NETS shall be considered to be the date indicated by the official U.S. Postal Service postmark on the envelope in which the document is mailed or, if the submission is made electronically, the electronic time stamp of the receiving agency.

(i) In the year 1999 and in each year thereafter, the owner or operator of a budget source shall ensure that, by the allowance transfer deadline, the allowances which are held for the budget source in a compliance account and which are valid for use in the current year are equal to or greater than the allowances to be deducted from the account pursuant to N.J.A.C. 7:27-31.17, End-of-season reconciliation. An owner or operator who fails to comply with this requirement is subject to the excess emission deduction provisions at N.J.A.C. 7:27-31.19 and to the civil administrative penalties provisions at N.J.A.C. 7:27A-3.10.

(j) Following each year's control period, the NATS administrator shall deduct and permanently retire allowances from each budget source's compliance account to reconcile the emissions of the budget source during the preceding control period pursuant to N.J.A.C. 7:27-31.17, End-of-season reconciliation.

(k) All allowances shall be allocated, transferred, used, or retired as whole allowances. Unless otherwise specified, in any computation to determine the number of whole allowances to be allocated, transferred, used or retired, the amount of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater. Also, unless otherwise specified, in any computation to calculate emissions, including emissions during the May 1 and September 30 period in 1990 under N.J.A.C. 7:27-31.4, Opt-in provisions or N.J.A.C. 7:27-31.12, Early reductions, the NO_x emissions shall be rounded down to the nearest ton for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(l) Allowances are valid only for the purposes of meeting the requirements of this subchapter and cannot be used to authorize the exceedance of the limitations of a permit or of another applicable rule or regulation. The provision does not prohibit the use of allowances that are issued through this subchapter for the purpose of complying with the provisions of another state's rules implementing either the OTC MOU or the USEPA SIP Call at 40 CFR 51.121.

(m) An allowance shall not constitute a security and does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the Department to condition, limit, suspend or terminate any allowances or authorization to emit which said allowance represents.

(n) Nothing in this subchapter waives any Federal or State requirement that otherwise applies to a budget source, including, but not limited to: the Reasonably Available Control Technology standards for NO_x at N.J.A.C. 7:27-19; requirements pertaining to the construction of new or modified sources at N.J.A.C. 7:27-8, 18 and 22; and the requirements pertaining to the Federal acid rain program at 40 C.F.R. Parts 72 through 78.

(o) 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 defined at N.J.A.C. 7:27-1.4, is not confidential. The Department shall process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27-1.6 through 1.30 inclusive.

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).

Rewrote (b)2, (e) and (i); in (g), substituted a reference to the Clean Air Markets Division for a reference to the Acid Rain Division; and in (l), added a second sentence.

7:27-31.4 Opt-in provisions

(a) An owner or operator of a stationary source, that vents all of its NO_x emissions to one or more stacks and is neither a fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour nor an electric generating unit with a rated output of at least 15 MW, may request approval from the Department to opt the source into the NO_x Budget Program in accordance with the provisions of this section.

(b) Any person seeking to opt a stationary source into the NO_x Budget Program shall submit the information required by this section, on application forms obtained from the Department, to the following address:

ATTN: NO_x BUDGET OPT-IN
New Jersey Department of Environmental Protection
Office of Air Quality Management
401 East State Street
PO Box 418
Trenton, NJ 08625-0418

(c) An application submitted pursuant to (b) above shall include the following information:

1. Identification of the owner of the proposed opt-in source, including the name of the company, its mailing address, and telephone number;

7:27-31.6 Interface with the open market emissions trading program

(a) A person may, under the following conditions, convert one or more NO_x Budget allowances into DER credits which may be transferred, retired or used pursuant to the Open Market Emissions Trading Program:

1. The person identifies the allowance(s) to be converted into DER credits. The allowances shall be one of the following:

i. Allowance(s) allocated for a given control period to the owner or operator of a budget source located in New Jersey, provided that:

(1) The person converting the allowance(s) into DER credits is the person to whom the allowance(s) were allocated;

(2) The first and last days of the control period for which the allowance(s) were allocated under the NO_x Budget Program is given as the first and last days of the generation period under the Open Market Emissions Trading Program; and

(3) The budget source achieved, during the control period, NO_x emission reductions that:

(A) Are equal to or greater than the emissions value of the allowance(s) being converted; and

(B) Satisfy the requirements that apply to emission reductions to be used as the basis for a DER credit under N.J.A.C. 7:27-30.4, 30.5 and 30.6; or

ii. An incentive allowance allocated pursuant to N.J.A.C. 7:27-31.7(c)3 or (e)3 to an electric consumer that reduced its electricity consumption through implementation of an energy efficiency measure;

2. The person's AAR submits an Allowance Transfer Form to the NATS Administrator indicating that the identified allowance(s) are to be transferred to the NATS Account Number NJ0000000300, which is a retirement account established by the Department;

3. The person determines the number of DER credits generated in accordance with N.J.A.C. 7:27-30.5. However, instead of calculating the quantity of emission reductions on which the DER credits are based pursuant to N.J.A.C. 7:27-30.5(c), the person shall take as given that this quantity equals the emissions value of the retired allowance(s). This given quantity shall be subject to discounting, as applicable, under N.J.A.C. 7:27-30.5(h). The number of DER credits generated shall then be calculated pursuant to N.J.A.C. 7:27-30.5(i); and

4. The person submits a Notice of DER Generation pursuant to N.J.A.C. 7:27-30.7 and 30.19 for the generation of DER credits based on the retirement of the allowances.

(b) Except as provided in the provisions for early reductions at N.J.A.C. 7:27-31.12, Early reductions, DER credits shall not be converted to allowances and used to satisfy the requirements of this subchapter.

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); and deleted a former (c).

7:27-31.7 Annual allowance allocation

(a) Beginning in 1999, the Department shall allocate allowances each year in accordance with this section. For the years 1999, 2000, 2001 and 2002, the Department shall allocate the New Jersey emission budget in accordance with (b) and (c) below; for the year 2003 and each year thereafter, the Department shall allocate the New Jersey emission budget in accordance with (d) and (e) below. In addition, in each of these years, the Department shall allocate additional allowances to opt-in sources in accordance with (f) below. Also, in the year 1999, the Department shall allocate allowances in accordance with (g) below to sources which have been approved to receive early reduction allowances pursuant to N.J.A.C. 7:27-31.12.

(b) By April 1 in each of the years 1999, 2000, 2001, and 2002, the Department shall allocate 17,340 allowances of the New Jersey emission budget, minus any allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27-31.17(h). This subsection does not apply to opt-in sources; opt-in sources are addressed separately in (f) below. The Department shall allocate allowances in accordance with the following steps:

1. Step 1: This step determines the number of allowances which are to be allocated to the New Source Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to new budget sources which have not operated for two full May 1 through September 30 periods. The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey NO_x emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2,000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NO_x emission rate. If the allowable emission rate for a given fuel is greater than 0.15 lb/MMBtu, then 0.15 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and

2,000 = The factor converting pounds into tons;

2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

i. Calculate the average NO_x emission rate (ER_{NO_x}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$ER_{NO_x} = \frac{E1 + E2}{H1 + H2}$$

Where:

E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

ii. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is greater than 0.15 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to the source.

iii. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with the following procedure:

(1) Calculate 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input in accordance with the following equation:

$$H_{150\%} = 1.5 \times \left(\frac{H1 + H2}{2} \right)$$

Where:

H_{150%} = 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

(2) If H_{150%}, as determined in (b)2iii(1) above, is not greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NO_x} \times 0.5 \times \frac{(H1 + H2)}{2} \times \frac{1}{2,000}$$

Where:

ER_{NO_x} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

(3) If the result of (b)2iii(1) above is greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

i. If there are allowances remaining in the Incentive Reserve after the allowances are allocated in accordance with (e)3 above, and if the number of allowances in the New Source/Growth Reserve were less than the total number of allowances preliminarily determined to be allocated under (e)1 above for the current year's control period, then the Department shall allocate allowances remaining in the Incentive Reserve to the sources being allocated allowances from the New Source/Growth Reserve. The number of allowances to be allocated to each source shall be proportional to the number that each source was underallocated, relative to the number of preliminarily determined allowances under (e)1, until the remaining allowances in the Incentive Reserve have all been allocated or until each source is no longer underallocated, whichever comes first. Any remaining allowances left in the Incentive Reserve after this procedure takes place shall be allocated pursuant to (e)4iii below.

ii. If there are allowances remaining in the New Source/Growth Reserve after the allowances are allocated in accordance with (e)2 above, and if the number of allowances in the Incentive Reserve were less than the total number of allowances preliminarily determined to be allocated to claimants under (e)3 above for the current year's control period, then the Department shall allocate allowances remaining in the New Source/Growth Reserve to the claimants being allocated allowances from the Incentive Reserve. The number of allowances to be allocated to each claimant shall be proportional to the number of allowances that each claimant was underallocated, relative to the number preliminarily determined to be allocated to the claimant under (e)3i above, until the remaining allowances in the New Source/Growth Reserve have all been allocated or until each claimant is no longer underallocated, whichever comes first. Any remaining allowances left in the New Source/Growth Reserve after this procedure takes place shall be allocated pursuant to (e)4iii below.

iii. The Department shall allocate any allowances remaining in the two reserves as follows:

(1) If the sum determined at (d)4i is greater than 8,200 allowances, then the Department shall allocate allowances remaining in the reserves to budget sources. The number of allowances to be allocated to each budget source shall be proportional to the number that each source was underallocated, relative to the number preliminarily determined to be allocated to the source under (d)3, until the remaining allowances in the reserves have all been allocated or until each source is no longer underallocated, whichever comes first. Any remaining allowances left in the reserves after this procedure takes place shall be allocated pursuant to (e)4iii(2) below; and

(2) Any allowances remaining in the reserves that have not been allocated under (d)4iii(1) above shall

be remain in the Incentive Reserve or the New Source/Growth Reserve to be available for allocation in the next year.

(f) The procedures of this subsection, and not those in (c) and (d) above, shall govern the allocation of allowances to opt-in sources. Each year, beginning in the year 1999, the Department shall allocate a number of allowances prior to the control period into the compliance account of each opt-in source equal to the amount of allowances added to the New Jersey emission budget to accommodate the opt-in source pursuant to N.J.A.C. 7:27-31.4, Opt-in provisions. As of September 29, 2000, the Department shall allocate allowances to opt-in sources up to three years in advance of each control period. However, if the productivity of the source is curtailed during the control period, then a number of allowances shall be deducted accordingly from the source's compliance account during the end-of-season reconciliation process and be permanently retired, pursuant to N.J.A.C. 7:27-31.17(g)3.

(g) Before the control period of 1999, the Department shall allocate a quantity of allowances to the compliance account of each source equal to the amount of early reductions for which the Department has approved the creation of early reduction allowances pursuant to N.J.A.C. 7:31.12, Early reductions.

(h) In the computations at (b)5ii(2), (b)5iii, (c)1ii, (c)2ii, (c)2iii, (d)4iii, (e)2iii, (e)4ii and (e)4iii(1) above to determine the number of whole allowances to be allocated or distributed, individual quantities of allowances with the highest decimals shall be rounded up and the remaining quantities of allowances with lower decimals shall be rounded down, such that the total amount of allowances allocated or distributed under the provision equals the total number of allowances available.

(i) The Department reserves the right, in any year, prior to carrying out the allocation process in (b) or (d) above, to allocate to another jurisdiction a limited number of current year allowances, not to exceed two percent of the base emission budget for the year. The Department shall exercise this right only if implementation of the OTC MOU result has the anomalous outcome of the other jurisdiction having insufficient allowances to meet the needs of even its low-emitting budget sources. In the year 2003 and thereafter, the Department shall take these allowances from its attainment reserve account.

(j) Notwithstanding the provisions of (d) and (e) above, as of September 29, 2000, the Department shall not allocate any allowances to a budget source that is no longer in operation at the time that allowances are being allocated.

(k) Notwithstanding the provisions of (b)2i, (b)2iii, (b)4i, (b)4ii(1), (d)3i and (d)3ii, for the purpose of preliminarily determining the number of allowances to be allocated to a budget source, any two control periods in the last three

years may be used (not just the two control periods in which the source used the most fuel) provided that the source's Authorized Account Representative submits a designation of the two periods to be used to the Department at least 60 days prior to the applicable allocation deadline. If two alternate control periods are designated, the Department shall use both the source's actual NO_x emissions and the source's heat input from those two periods in preliminarily determining the number of allowances to be allocated to the budget source.

(l) By September 29, 2000, the Department shall allocate allowances for the control period of the year 2003 by submitting allocation information to the NATS Administrator in accordance with the following table:

NATS Unit Account	* Company	Plant	Description	Allowances
	NJDEP		Incentive Reserve	410
	NJDEP		Growth/New Source Reserve	820
2378000001	CONNECTIV	B.L. ENGLAND	BLE—UNIT #1	268
2378000002	CONNECTIV	B.L. ENGLAND	BLE—UNIT #2	340
2378000003	CONNECTIV	B.L. ENGLAND	BLE—UNIT #3	99
2379002001	CONNECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#1	5
2379003001	CONNECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#2	11
2380002001	CONNECTIV	CEDAR STATION	WEST GENERATOR ON CEDAR #1 TURBINE	1
2380003001	CONNECTIV	CEDAR STATION	EAST GENERATOR ON CEDAR #1 TURBINE	1
2380004001	CONNECTIV	CEDAR STATION	CEDAR #2 TURBINE	3
2382003001	CONNECTIV	MIDDLE ST	MIDDLE CT #1	3
2382004001	CONNECTIV	MIDDLE ST	MIDDLE CT #2	2
2382005001	CONNECTIV	MIDDLE ST	MIDDLE CT #3	4
2383010001	CONNECTIV	MISSOURI	MISSOURI AV. CT #B	2
2383011001	CONNECTIV	MISSOURI	MISSOURI AV. CT #C	2
2383012001	CONNECTIV	MISSOURI	MISSOURI AV. CT #D	2
2384000001	CONNECTIV	DEEPWATER	DW BOILER #1	37
2384000004	CONNECTIV	DEEPWATER	DW—BOILER #4	4
2384000006	CONNECTIV	DEEPWATER	B & W BOILER #6	1
2384000008	CONNECTIV	DEEPWATER	DW BOILER #8	170
2384009001	CONNECTIV	DEEPWATER	DW CT A	5
2385000004	GPU	WERNER GE	Unit 4 (B & W Boiler)	2
2385009001	GPU	WERNER GE	Turbine (501AA) CT#1	7
2385010001	GPU	WERNER GE	Turbine (501AA) CT#2	7
2385011001	GPU	WERNER GE	Turbine (501AA) CT#3	7
2385012001	GPU	WERNER GE	Turbine (501AA) CT#4	6
2390000007	GPU	SAYREVILLE	Unit 7, Cyclone (#6 FUEL)	20
2390000008	GPU	SAYREVILLE	Unit 8, Cyclone (#6 FUEL)	26
2390012001	GPU	SAYREVILLE	Turbine (501AA) OIL FIRED C-4	12
2390014001	GPU	SAYREVILLE	Turbine (501AA) OIL FIRED C-3	8
2390015001	GPU	SAYREVILLE	Turbine (501AA) OIL FIRED C-2	8
2390016001	GPU	SAYREVILLE	Turbine (501AA) OIL FIRED C-1	14
2393000003	GPU	GILBERT	Boiler 3	13
2393000004	GPU	GILBERT	C/C STAG 4 GT	52
2393000005	GPU	GILBERT	C/C STAG 5 GT	47
2393000006	GPU	GILBERT	C/C STAG 6 GT	50
2393000007	GPU	GILBERT	C/C STAG 7 GT	51
2393000009	GPU	GILBERT	CT 9	35
2393015001	GPU	GILBERT	C-1 GT (CT 251)	2
2393016001	GPU	GILBERT	C-2 GT (CT 251)	2
2393017001	GPU	GILBERT	C-3 GT (CT 251)	2
2393018001	GPU	GILBERT	C-4 GT (CT 251)	3
002397A01001	PSE & G	BAYONNE	UNIT NO. 1 (GAS TURBINE)	1
002397A02001	PSE & G	BAYONNE	UNIT NO. 2 (GAS TURBINE)	1
2398001101	PSE & G	BERGEN	UNIT NO. 1-1101 (GAS TURBINE)	39
2398001201	PSE & G	BERGEN	UNIT NO. 1-1201 (GAS TURBINE)	49
2398001301	PSE & G	BERGEN	UNIT NO. 1-1301 (GAS TURBINE)	38
2398001401	PSE & G	BERGEN	UNIT NO. 1-1401 (GAS TURBINE)	39
2398003001	PSE & G	BERGEN	UNIT NO. 3 (GAS TURBINE)	1
2399000101	PSE & G	BURLINGTON	UNIT NO. 10-1 (GAS TURBINE)	4
2399000102	PSE & G	BURLINGTON	UNIT NO. 10-2 (GAS TURBINE)	5
2399000103	PSE & G	BURLINGTON	UNIT NO. 10-3 (GAS TURBINE)	5
2399000104	PSE & G	BURLINGTON	UNIT NO. 10-4 (GAS TURBINE)	6
2399004001	PSE & G	BURLINGTON	UNIT NO. 8 (GAS TURBINE)	1
2399012001	PSE & G	BURLINGTON	UNIT NO. 9-1A & B (GAS TURBINE) NJ Stack IDs 12 and 13	3

NATS Unit Account	* Company	Plant	Description	Allowances
2399014001	PSE & G	BURLINGTON	UNIT NO. 9-2A & B (GAS TURBINE) NJ Stack IDs 14 and 15	3
2399016001	PSE & G	BURLINGTON	UNIT NO. 9-3A & B (GAS TURBINE) NJ Stack IDs 16 and 17	3
2399018001	PSE & G	BURLINGTON	UNIT NO. 9-4A & B (GAS TURBINE) NJ Stack IDs 18 and 19	3
2399028001	PSE & G	BURLINGTON	UNIT NO. 11-1A & B (GAS TURBINE) NJ Stack IDs 28 and 29	2
2399030001	PSE & G	BURLINGTON	UNIT NO. 11-2A & B (GAS TURBINE) NJ Stack IDs 30 and 31	2
2399032001	PSE & G	BURLINGTON	UNIT NO. 11-3A & B (GAS TURBINE) NJ Stack IDs 32 and 33	2
2399034001	PSE & G	BURLINGTON	UNIT NO. 11-4A & B (GAS TURBINE) NJ Stack IDs 34 and 35	2
2400001001	PSE & G	EDISON	UNIT NO. 1-1A & B (GAS TURBINE) NJ Stack IDs 1 and 2	3
2400003001	PSE & G	EDISON	UNIT NO. 1-2A & B (GAS TURBINE) NJ Stack IDs 3 and 4	3
2400005001	PSE & G	EDISON	UNIT NO. 1-3A & B (GAS TURBINE) NJ Stack IDs 5 and 6	3
2400007001	PSE & G	EDISON	UNIT NO. 1-4A & B (GAS TURBINE) NJ Stack IDs 7 and 8	3
2400009001	PSE & G	EDISON	UNIT NO. 2-1A & B (GAS TURBINE) NJ Stack IDs 9 and 10	6
2400011001	PSE & G	EDISON	UNIT NO. 2-2A & B (GAS TURBINE) NJ Stack IDs 11 and 12	6
2400013001	PSE & G	EDISON	UNIT NO. 2-3A & B (GAS TURBINE) NJ Stack IDs 13 and 14	6
2400015001	PSE & G	EDISON	UNIT NO. 2-4A & B (GAS TURBINE) NJ Stack IDs 15 and 16	6
2400017001	PSE & G	EDISON	UNIT NO. 3-1A & B (GAS TURBINE) NJ Stack IDs 17 and 18	6
2400019001	PSE & G	EDISON	UNIT NO. 3-2A & B (GAS TURBINE) NJ Stack IDs 19 and 20	6
2400021001	PSE & G	EDISON	UNIT NO. 3-3A & B (GAS TURBINE) NJ Stack IDs 21 and 22	6
2400023001	PSE & G	EDISON	UNIT NO. 3-4A & B (GAS TURBINE) NJ Stack IDs 23 and 24	6
2401002001	PSE & G	ESSEX	UNIT NO. 10-1A & B (GAS TURBINE) NJ Stack IDs 2 and 3	6
2401004001	PSE & G	ESSEX	UNIT NO. 10-2A & B (GAS TURBINE) NJ Stack IDs 4 and 7	6
2401010001	PSE & G	ESSEX	UNIT NO. 10-3A & B (GAS TURBINE) NJ Stack IDs 10 and 11	6
2401012001	PSE & G	ESSEX	UNIT NO. 10-4A & B (GAS TURBINE) NJ Stack IDs 12 and 13	6
2401014001	PSE & G	ESSEX	UNIT NO. 11-1A & B (GAS TURBINE) NJ Stack IDs 14 and 15	5
2401016001	PSE & G	ESSEX	UNIT NO. 11-2A & B (GAS TURBINE) NJ Stack IDs 16 and 17	5
2401018001	PSE & G	ESSEX	UNIT NO. 11-3A & B (GAS TURBINE) NJ Stack IDs 18 and 19	5
2401020001	PSE & G	ESSEX	UNIT NO. 11-4A & B (GAS TURBINE) NJ Stack IDs 20 and 21	5
2401022001	PSE & G	ESSEX	UNIT NO. 12-1A & B (GAS TURBINE) NJ Stack IDs 22 and 23	10
2401024001	PSE & G	ESSEX	UNIT NO. 12-2A & B (GAS TURBINE) NJ Stack IDs 24 and 25	10
2401026001	PSE & G	ESSEX	UNIT NO. 12-3A & B (GAS TURBINE) NJ Stack IDs 26 and 27	10
2401028001	PSE & G	ESSEX	UNIT NO. 12-4A & B (GAS TURBINE) NJ Stack IDs 28 and 29	10
2401035001	PSE & G	ESSEX	UNIT NO. 9 (GAS TURBINE)	29
2403000001	PSE & G	HUDSON	UNIT NO. 1 (BOILER)	130
2403000002	PSE & G	HUDSON	UNIT NO. 2 (BOILER)	738
2403008001	PSE & G	HUDSON	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A+B Engines NJ Source IDs 1 through 8	3
2404000007	PSE & G	KEARNY	UNIT NO. 7 (BOILER)	23
2404000008	PSE & G	KEARNY	UNIT NO. 8 (BOILER)	8
2404005001	PSE & G	KEARNY	UNIT NO. 12-1A & B (GAS TURBINE) NJ Stack IDs 5 and 6	2

NATS Unit Account	* Company	Plant	Description	Allowances
2404007001	PSE & G	KEARNY	UNIT NO. 12-2A & B (GAS TURBINE) NJ Stack IDs 7 and 8	2
2404009001	PSE & G	KEARNY	UNIT NO. 12-3A & B (GAS TURBINE) NJ Stack IDs 8 and 10	2
2404011001	PSE & G	KEARNY	UNIT NO. 12-4A & B (GAS TURBINE) NJ Stack IDs 11 and 12	2
2404015001	PSE & G	KEARNY	UNIT NO. 9 (GAS TURBINE)	2
2404016001	PSE & G	KEARNY	UNIT NO. 10 (GAS TURBINE) Module 1,2,3,4 A & B Engines NJ Source IDs 1 through 8	6
2404017001	PSE & G	KEARNY	UNIT NO. 11-(GAS TURBINE) Module 1,2,3,4 A & B Engines NJ Source IDs 1 through 8	11
2406000002	PSE & G	LINDEN	UNIT NO. 2-1 & 2-2 (BOILER)	27
2406000007	PSE & G	LINDEN	UNIT NO. 7 (GAS TURBINE)	14
2406000008	PSE & G	LINDEN	UNIT NO. 8 (GAS TURBINE)	16
2406000012	PSE & G	LINDEN	UNIT NO. 1-2 (BOILER)	5
2406000013	PSE & G	LINDEN	UNIT NO. 1-3 (BOILER)	8
2406007001	PSE & G	LINDEN	UNIT NO. 3 (GAS TURBINE)	2
2406008001	PSE & G	LINDEN	UNIT NO. 5 (GAS TURBINE)	2
2406009001	PSE & G	LINDEN	UNIT NO. 6 (GAS TURBINE)	2
2408000001	PSE & G	MERCER	UNIT NO. 1 (BOILER)	425
2408000002	PSE & G	MERCER	UNIT NO. 2 (BOILER)	485
2408007001	PSE & G	MERCER	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A & B Engines NJ Source IDs 1 through 8	1
2410002001	PSE & G	SALEM	UNIT NO. 3A & B (GAS TURBINE) NJ Stack IDs 2 and 3	3
2411000001	PSE & G	SEAWAREN	UNIT NO. 1 (BOILER)	27
2411000002	PSE & G	SEAWAREN	UNIT NO. 2 (BOILER)	25
2411000003	PSE & G	SEAWAREN	UNIT NO. 3 (BOILER)	33
2411000004	PSE & G	SEAWAREN	UNIT NO. 4 (BOILER)	56
2411012001	PSE & G	SEAWAREN	UNIT NO. 6 (GAS TURBINE) Module 1-4 A + B Engines NJ Stack IDs 12 through 19	1
2434005001	VINELAND MEU	HOWARD M	BOILER #9 COMBUSTION ENG. 180000 LB/HR 1	9
2434006001	VINELAND MEU	HOWARD M	COMBUSTION OF FOSSILE FUEL UTILBOILER-E	26
2434006001	VINELAND MEU	HOWARD M	COMBUSTION OF FOSSILE FUEL UTILBOILER-E	26
5083004001	CONECTIV	CUMBERLAND	CUMBERLAND—C.T. #1	8
6776002001	VINELAND MEU	WEST STAT	COMBUSTION TURBINE WESTING- HOUSE S/N17A-2	7
7138002001	GPU	FORKED RIVER	CT-1	12
7138003001	GPU	FORKED RIVER	CT-2	13
7288000001	CONECTIV	SHERMAN AV STATION	SHERMAN—C.T. #1	25
8008001001	CONECTIV	MICKELTON	MICKELTON CT	10
8227003001	GPU	GLEN GARDNER	A1 CT (JET TURBINE)	4
8227004001	GPU	GLEN GARDNER	A2 CT (JET TURBINE)	4
8227005001	GPU	GLEN GARDNER	A3 CT (JET TURBINE)	4
8227006001	GPU	GLEN GARDNER	A4 CT (JET TURBINE)	4
8227007001	GPU	GLEN GARDNER	B5 CT (JET TURBINE)	5
8227008001	GPU	GLEN GARDNER	B6 CT (JET TURBINE)	5
8227009001	GPU	GLEN GARDNER	B7 CT (JET TURBINE)	4
8227010001	GPU	GLEN GARDNER	B8 CT (JET TURBINE)	4
10043001001	LOGAN GENERAT- ING COMPANY, L.P.	LOGAN GENERATING PLANT	PULVERIZED COAL FIRED	358
10099001001	CONECTIV	PEDRICKTOWN COGEN	GENERAL ELECTRIC FRAME 7EA GAS TURBINE	26
10308001001	NORTH JERSEY ENERGY ASSOCI- ATES		CT-1 COMBUSTION TURBINE	167
10308001002	NORTH JERSEY ENERGY ASSOCI- ATES		CT-2 COMBUSTION TURBINE	172
10566001001	CHAMBERS CO- GENERATION L.P.	CARNEY'S POINT PLANT	PC BOILER 2	203
10566002001	CHAMBERS CO- GENERATION L.P.	CARNEY'S POINT PLANT	PC BOILER 1	204
10616001001	KAMINE/MILFORD	MILFORD	COMBUSTION TURBINE	91
10616001002	KAMINE/MILFORD	MILFORD	DUCT BURNER	4

NATS Unit Account	* Company	Plant	Description	Allowances
10751002001	COGEN TECHNOLOGIES	CAMDEN	GENERAL ELECTRIC FRAME 7 EA	66
10805002001	KENILWORTH/SITHE	EF KENILWORTH	GAS TURBINE NATURAL GAS	54
50006005001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO. 500 & DB	39
50006006001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO. 400 & DB	38
50006007001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO. 300 & DB	39
50006008001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO. 200 & DB	40
50006009001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO. 100 & DB	39
50385001001	NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50385002001	NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50497001001	COGEN TECHNOLOGIES	BAYONNE	GT/HRSG #1 EXHAUST STACK	26
50497002001	COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO. 2 EXHAUST STACK	27
50497004001	COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO. 3 EXHAUST STACK	26
50561001001	COASTAL EPCP	EAGLE POINT COGEN	CT A	161
50561001002	COASTAL EPCP	EAGLE POINT COGEN	DB A	21
50561002001	COASTAL EPCP	EAGLE POINT COGEN	CT B	161
50561002002	COASTAL EPCP	EAGLE POINT COGEN	DB B	21
50561086001	COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	62
50561087001	COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	67
50561088001	* COASTAL Eagle Point	WESTVILLE REFINERY	PROCESS HEATER	36
50628748001	VALERO (MOBIL)	PAULSBORO	STEAM BOILER #1	36
50628749001	VALERO (MOBIL)	PAULSBORO	GAS TURBINE	67
50628749002	VALERO (MOBIL)	PAULSBORO	DUCT BURNER	44
50628751001	VALERO (MOBIL)	PAULSBORO	STEAM BOILER #2	35
50628752001	VALERO (MOBIL)	PAULSBORO	STEAM BOILER #	37
50797001001	CogenAmerica	NEWARK	COGEN	56
50799001001	CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #2	19
50799003001	CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #1	18
50852002001	PRIME ENERGY	ELMWOOD	E COGENERATION SYSTEM	106
54416189001	ROCHE VITAMINS	BELVIDERE	COGENERATION & DB	91
54640001001	CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #1	16
54640002001	CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #2	16
54807001001	CONECTIV	VINELAND COGEN	GENERAL ELECTRIC LM6000 GAS TURBINE	7
880016010001	* TOSCO (BAYWAY)		F701 - NO. 7 ATMOSPHERIC PIPESTILL FURNACE	129
880016010003	* TOSCO (BAYWAY)		F702 - NO. 7 PIPESTILL OUTBOARD FLASH TOWER FURNACE	137
880016A03001	* TOSCO (BAYWAY)		F251 - CAT PLANT FEED PREHEAT FURNACE	45

Administrative correction.

See: 31 N.J.R. 2203(a).

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).

Rewrote the section.

7:27-31.8 Claims for incentive allowances

(a) In order to provide an incentive for the saving or generation of electricity through the implementation of certain environmentally beneficial techniques, pursuant to N.J.A.C. 7:27-31.7(c)3 or (e)3, the Department shall distribute allowances each year to persons who have demonstrated, in accordance with the procedures of this section, that they

have saved or generated electricity through the implementation of such techniques.

(b) Distribution of allowances pursuant to N.J.A.C. 7:27-31.7(c)3 or (e)3 shall be based on claims submitted by the persons who have saved or generated the electricity. No such incentive allowances shall be allocated for any claim that is not received by the Department by October 30 of the year in which the electricity savings or generation occurred during the control period.

(c) The following persons are eligible to submit a claim for incentive allowances:

1. A New Jersey electric consumer 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 following quantification guidance document applies: "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's board of Regulatory Commissioners on April 28, 1993;
 - (2) Does not result in the construction, installation, or operation of a new emission source or increase the emissions of any existing emission source at the facility;
 - (3) Does not cause an increase in emissions of any HAP; and
 - (4) Does not cause an increase, which is greater than five tons per year, in the emission of any regulated air contaminant other than NO_x;
2. The owner or operator of equipment that is not a budget source, which commenced operation in 1992 or thereafter and which 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 using solar energy or wind power; and
3. The owner or operator of equipment that generates electricity by another environmentally beneficial technique approved by the Department.
 - (d) A person eligible to receive an incentive allocation may, pursuant to the Open Market Emissions Trading (OMET) Program rules at N.J.A.C. 7:27-30, elect to receive DER credits instead. In such case, the person shall also file a Notice of DER Credit Generation as required by the OMET Program rules, and the Department shall request that the NATS Administrator transfer any allowance that would otherwise have been allocated to the claimant into a retirement account.
 - (e) Prior to filing a claim under this section, a person shall establish a general account in the NATS pursuant to the procedures at N.J.A.C. 7:27-31.13.
 - (f) A claim for incentive allowances shall include:
 1. Documentation that the person submitting the claim is eligible to submit a claim for incentive allowances pursuant to (c) above;
 2. Specification of the amount of electric generation or savings during the control period that is being claimed, expressed in MW-hr as calculated pursuant to (g) below;
 3. 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;
 4. Citation of the unique identification **number assigned** to a general account held by the claimant in the NATS;
 5. Specification as to whether the claimant wishes to receive credit for the electric generation or savings as allowances or as DER credits. If the claimant wishes to receive DER credits, the claimant shall include the total number of DER credits claimed to have been generated pursuant to N.J.A.C. 7:27-30 during the control period; and
 6. Certification in accordance with N.J.A.C. 7:27-1.39.
- (g) The amount of electric generation or savings being claimed shall be determined consistent with the following:
 1. For energy efficiency measures, the amount of electricity claimed to be saved shall be calculated pursuant to the guidance document: "Measurement Protocol for Commercial, Industrial and Residential Facilities," incorporated by reference at N.J.A.C. 7:27-31.21; 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.
- (h) A claim shall be submitted to the Department by October 30 of the year in which the control period occurred on which the claim is based to the following address:

ATTN: NO_x BUDGET INCENTIVE ALLOWANCE CLAIM
New Jersey Department of Environmental Protection
Office of Air Quality Management
401 East State Street
PO Box 418
Trenton, NJ 08625-0418
- (i) No incentive allowances shall be allocated unless the Department approves the claim. Bases for disapproval of a claim include the following:
 1. The claim was not received by the Department by October 30 of the year in which the control period occurred on which the claim is based;
 2. The claim does not include all of the items required at (d) and (f) 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; and
5. The person submitting the claim did not establish a general account in the ATS pursuant to (e) above.

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).

In (c)1i, substituted "an electricity supplier licensed" for "a company which owns a NO_x Budget source located".

7:27-31.9 Permits

(a) The owner or operator of a budget source shall ensure that the operating permit issued under N.J.A.C. 7:27-22 which applies to the budget source shall incorporate all applicable requirements and provisions of this subchapter, including but not limited to the following:

1. The requirement at N.J.A.C. 7:27-31.3(i) to have, by the allowance transfer deadline, a number of allowances in a budget source's compliance account which is at least equal, in emissions value, to the NO_x emissions of the source during the current year control period;
2. The requirement at N.J.A.C. 7:27-31.3(f) for the owner or operator of a budget source to designate a responsible person who will be the authorized account representative for the budget source and have the authority to submit transfer requests to the NATS Administrator and certify and submit reports to the NATS and the NETS that pertain to the budget source; and
3. The requirement at N.J.A.C. 7:27-31.14(a) and 31.16 for the owner or operator of a budget source to monitor and report NO_x emissions from the budget source.

(b) Holding allowances in a budget source's compliance account in order to authorize emissions of NO_x pursuant to this subchapter does not relieve or waive a permittee's responsibility to comply with any of the following:

1. Any applicable NO_x emission standard established at N.J.A.C. 7:27-19;
2. Any permit limit or condition; or
3. Any other emission limit that applies to the budget source.

(c) A permittee does not need to change an operating permit, or a preconstruction permit and certificate, to reflect the transfer of allowances into or out of a budget source's compliance account.

(d) With respect to compliance with (a) above, if an application pertaining to the budget source had previously been submitted to the Department prior to August 16, 1998:

1. A seven-day notice, significant modification, or renewal shall be submitted to the Department by 90 days after the Department approves the monitoring plan pur-

suant to N.J.A.C. 7:27-31.14 if the Department had already approved the operating permit application; or

2. An update to the operating permit application shall be submitted to the Department by 90 days after the Department approves the monitoring plan pursuant to N.J.A.C. 7:27-14 if the Department had not yet approved the operating permit application.

(e) If an opt-in source is located at a facility subject to the operating permit requirements at N.J.A.C. 7:27-22, the owner or operator of the source shall incorporate the opt-in approval of the source into the operating permit, in accordance with (a) above. This shall be done through the initial application for the operating permit, through a seven-day notice or an application for a minor modification or a significant modification, or through an application for a renewal, whichever applies pursuant to N.J.A.C. 7:27-22. The application shall specify this subchapter as an applicable requirement, in accordance with N.J.A.C. 7:27-22.6(f)6. Such incorporation shall include incorporation of the requirement established under this subchapter for the owner or operator to prevent emissions from the source from exceeding, in any year, the allowances held for the source.

(f) In accordance with the provisions at N.J.A.C. 7:27-22, any change made to a budget source which is at a facility subject to the operating permit requirements shall be incorporated into the operating permit and shall be adequately addressed in the compliance plan.

(g) The owner or operator of a budget source required to obtain an operating permit pursuant to N.J.A.C. 7:27-22 shall comply with (a) above when applying for renewal of the operating permit.

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).

In (a)1, substituted "the allowance transfer deadline" for "December 31 of each year beginning in 1999"; and added (g).

7:27-31.10 Allowance use, transfer and retirement

(a) An allowance may be used, in a given year, to meet a budget source's NO_x Budget Program compliance obligations pursuant to N.J.A.C. 7:27-31.3(i) only if:

1. The allowance has been allocated or transferred to the source's compliance account by the allowance transfer deadline for that year; and
2. The allowance is valid in the then-current year for use for compliance with the end-of-season reconciliation requirements. The serial number assigned to an allowance by the NATS Administrator indicates the initial year in which the allowance may be used. The allowance may be used in the initial year or in any year thereafter.

(b) An allowance may be used to meet the compliance obligations of a budget source located in New Jersey, even though the allowance was initially allocated in another jurisdiction, provided that the transfer of the allowance to the budget source's compliance account is carried out in a manner consistent with the requirements of this section.

(c) At any time between the end of the reconciliation process and the allowance transfer deadline during any year, an authorized account representative may authorize the transfer of one or more allowances from the represented account to another account. During the period between the day after the allowance transfer deadline and the end of the reconciliation process, only allowances that are incapable of being used during such reconciliation process may be transferred. The only allowances that are effectively frozen during the reconciliation period are those allowances in compliance accounts that have serial numbers indicating that they could be used during the ongoing reconciliation process. Such a transaction is initiated by the submission of an allowance transfer request to the NATS Administrator in accordance with (d) below. Such transfers of allowances are voluntary actions on the part of authorized account representatives and reflect that:

1. The holding of the allowance(s) has passed from one person to another by whatever means, including, but not limited to, a sale, a gift, auction, a barter arrangement, or other terms of exchange; or
2. The person holding the allowance(s) has elected to move the allowance(s) from one account to another account also under the person's control.

(d) The following procedures shall be carried out to effect an allowance transfer:

1. The transfer shall be documented on a transfer request form obtained from the NATS Administrator;
2. The documentation shall include, at a minimum, the following information:

- i. The NATS account numbers for both the originating account and the acquiring account;
- ii. The name, telephone number, fax number, and address of the persons to which the originating account and the acquiring account are assigned; and
- iii. The serial number of each allowance being transferred;

3. The transfer request shall include a statement of certification which must be signed by the AAR for the originating account. This statement of certification shall be:

- i. Until the NATS Administration provides a revised form for use for the years 2003 and thereafter: "I am authorized to make this submission on behalf of the owners and operators of the budget source (or in the case of general accounts, the parties with an ownership interest in the allowances held in the account) and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment"; or

ii. Once the NATS Administrator provides the revised form, the certification statement provided on the revised form.

4. The transfer request form shall be submitted on paper, unless the NATS Administrator establishes procedures which allow the form to be submitted electronically; and

5. The AAR for the originating account shall provide a copy of the transfer request to each owner or operator of the budget source.

(e) Transfer requests shall be processed by the NATS Administrator in order of receipt. Within five business days of receiving a NO_x allowance transfer request, except as provided in (f) below, the NATS Administrator will record the NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted in accordance with the procedures set forth in (d) above;
2. Each NO_x allowance identified by serial number in the transfer request is in the transferor's account; and
3. The transfer meets all other applicable requirements of this subchapter.

(f) If a NO_x allowance transfer request submitted to the NATS Administrator fails to meet the requirements of (d) above, the NATS Administrator shall not record the transfer. Also, the NATS Administrator shall not record a transfer until after the reconciliation process has been completed, if the NO_x allowance transfer request is submitted on or after the NO_x allowance transfer deadline and the request includes any NO_x allowance which was allocated for the prior year's control period or for the control period for the current year (that is, the control period to which the NO_x allowance transfer deadline applies).

(g) After a transfer request is determined to be valid by the NATS Administrator, the transfer shall be recorded in the NATS as follows: the allowance(s) with the serial number(s) specified in the transfer request shall be deducted from the originating account and added to the acquiring account.

(h) The NATS Administrator shall provide notification of the transfer within five business days of its recording of the transfer to the AAR of the originating account, to the AAR of the acquiring account, and to the Department. Within 10 business days of receipt of a NO_x allowance transfer request that fails to meet the requirements of (d) above, the NATS Administrator shall notify the NO_x authorized account representatives of both the originating and acquiring accounts of its decision not to record the transfer and the reasons for this decision.

(i) If the acquiring account or originating account is assigned to a person located in a jurisdiction outside of New Jersey, the NATS Administrator shall also provide notification of the transfer to the environmental agency serving the other jurisdiction.

(j) Notification pursuant to (g) or (h) above shall, at a minimum, include the following:

1. The effective date of the transfer;
2. The NATS account numbers for both the originating account and the acquiring account;
3. The name and address of the persons to which the originating account and the acquiring account are assigned; and
4. The total number of allowances transferred, and the serial number of each allowance.

(k) This section allows the interstate and interjurisdictional transfer of allowances. However, the transfer of an allowance initially allocated by the Department pursuant to N.J.A.C. 7:27-31.7 to the compliance account of a budget source located in another jurisdiction is prohibited, until the other jurisdiction has also adopted rules which allow the interstate trading of allowances and is implementing a NO_x Budget Program, in a manner consistent with the agreements in the OTC MOU or consistent with USEPA's NO_x SIP Call. NO_x allowances allocated by other jurisdictions may be used to comply with this subchapter, provided the other jurisdiction has adopted and implemented a NO_x allowance program consistent with this subchapter as determined by the Department and the USEPA.

(l) At any time between January 31 and December 31 during any year, a person who holds an allowance in an account may elect to permanently retire that allowance. In order to permanently retire one or more allowances, the AAR of the account in which the allowance is held shall submit to the NATS Administrator a retirement request, that is, a request to transfer the allowance to a retirement account. A retirement request shall conform to the same procedures for a transfer request given at (c) above. The NATS Administrator shall process the retirement request following the same procedures as set forth for transfer requests at (d) through (i) above.

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).

Rewrote the section.

7:27-31.11 Allowance banking

(a) If an allowance held in a general account or a compliance account is not used to satisfy the compliance requirement at N.J.A.C. 7:27-31.3(i), is not otherwise deducted from the account pursuant to N.J.A.C. 7:27-31.17 or 31.19, and is not permanently retired pursuant to N.J.A.C. 7:27-31.10, then that allowance may continue to be held in

the account until the next or subsequent control periods. This retention of one or more allowances in an account from one year to a future year is referred to as "banking."

(b) Each year the NATS Administrator shall flag allowances that remain in an account as of the allowance transfer deadline as "banked" allowances.

(c) By March 1 of the years 2000 through 2003 inclusive, and by May 1 of the year 2004 and each year thereafter, the NATS Administrator shall:

1. Determine whether the total number of allowances banked in the NATS as of January 1 of the current year exceeds 10 percent of the total regional base emission budget for the current year control period; and

2. Announce that for the current year control period:

- i. If the banked allowances are determined to be equal to or less than 10 percent of the total regional base emission budget, all banked allowances can be used in the current year on a one-for-one basis; or

- ii. If the banked allowances are determined to be greater than 10 percent, the constraints on use of banked allowances as set forth in (d) below apply.

(d) If the NATS Administrator determines that the total number of banked allowances exceeds 10 percent of the regional base emission budget for the current year control period, a portion of the banked allowances shall be allowed to be used on a one-for-one basis, but the remainder of the banked allowances shall be required to be used on a two-for-one basis. The NATS Administrator shall determine which banked allowances fall in each class in accordance with the following:

1. The NATS Administrator shall determine the ratio to be used to determine which banked allowances may be used on a one-for-one basis, as follows:

$$\text{Ratio} = \frac{0.10 \times B_R}{A_B}$$

Where:

B_R = The annual regional base NO_x emissions budget; and

A_B = The total number of banked allowances in all NATS accounts; and

2. As prescribed at N.J.A.C. 7:27-31.17(g), during the reconciliation process, the NATS Administrator shall apply the ratio calculated in (d)1 above to the number of banked allowances in each account to determine the number of banked allowances in the account which can be used in the current year control period on a one-for-one basis. The remaining number of banked allowances in each account shall be used on a two-for-one basis.

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).

In (b), deleted "(that is, December 31)" following "deadline"; and in (c), substituted "the years 2000 through 2003 inclusive, and by May 1 of

the year 2004 and each year thereafter" for "each year" in the introductory paragraph.

7:27-31.12 Early reductions

(a) Pursuant to this section, the owner or operator of a budget source may claim early reduction credit based on certain reductions in the emissions from a budget source during 1997 and 1998. If the claim is approved, the Department shall subsequently convert such emission reductions into allowances.

(b) The owner or operator of a budget source who wishes to claim early reductions pursuant to this section shall submit the information specified in (c) below to the Department by October 31, 1998 to the following address:

ATTN: NO_x BUDGET EARLY REDUCTION
CLAIM
New Jersey Department of Environmental Protec-
tion
Office of Air Quality Management
PO Box 418
Trenton, NJ 08625-0418

(c) A claim shall include the following information:

1. Identification of the source, including the rated heat input capacity and type of combustion unit;

2. Specification of the period(s) for which early reductions are being claimed. Early reductions may be claimed for the period from May 1 through September 30 in either the year 1997, 1998, or in both years;

3. The following information pertaining to the source's operation during the period(s) specified in (c)2 above:

i. For each type of fuel allowed to be combusted in the source, the lowest allowable NO_x emission rate applicable during the period(s), expressed in pounds per MMBtu;

ii. For each type of fuel allowed to be combusted in the source, the total amount of each type combusted in the source during the period(s), expressed in MMBtu; and

iii. The total heat input to the source during the period(s), expressed in MMBtu;

4. The following information pertaining to the source's operation during the period of the May 1 through September 30, during two previous years. This information shall be submitted for the two years immediately preceding the submission of the claim, unless the owner or operator can demonstrate that the May 1 through September 30 periods in two other consecutive years within the last five years are more representative of normal source operation. In such case, the information shall be submitted for the May 1 through September 30 period in each of the five years immediately preceding the submission:

i. The total NO_x emissions of the source during each May 1 through September 30 period, expressed in pounds;

ii. The total heat input to the source during each May 1 through September 30 period, expressed in MMBtu;

iii. The net electric output of source during each period, expressed in MW-hr;

iv. The net useful heat output of the source, during each period, expressed in MMBtu.

5. If the source operated in 1990:

i. The total NO_x emissions of source during the period of May 1 through September 30, 1990, expressed in pounds; and

ii. The total heat input to the source during the period of May 1 through September 30, 1990, expressed in MMBtu;

6. If the early reductions are being realized as a result of repowering or replacing a budget source which operated in 1990:

i. Proof that the original budget source which operated in 1990 permanently shut down prior to September 30, 1998, and the date on which shutdown occurred;

ii. Proof that a permit for construction for the repowered or replacement source has been issued and the date on which operation of the repowered or replacement source commenced is after October 1, 1990;

iii. The NO_x emissions of source that has been repowered or replaced during the period of May 1 through September 30, 1990, expressed in pounds; and

iv. The total heat input to the original source during the period of May 1 through September 30, 1990, expressed in MMBtu;

7. If the source commenced operation after 1990, but (c)6 above does not apply:

i. The total heat input to the source during each May 1 through September 30 period for the most recent five years of operation; and

ii. The total NO_x emissions of the source during each May 1 through September 30 period for the most recent five years of operation;

8. A detailed description of the method by which each piece of data specified in (c)3 through 7 above was collected and calculated, including all assumptions upon which the methods were based;

9. Estimates of the level of inaccuracy and degree of uncertainty of each piece of data specified in (c)3 through 7 above, and an explanation of any adjustment factor(s) applied to correct for any significant resulting inaccuracy;

10. The calculations made to determine the number of early reduction credits claimed specified in (d), (e), and (f) below as applicable;

11. One of the following:

i. A statement that the 1997 and/or 1998 emission reductions on which the claim for early reductions is being based have not been used and will not be used, in whole or in part, as a basis for generating DER credits pursuant to N.J.A.C. 7:27-30 or emission offsets pursuant to N.J.A.C. 7:27-18; or

ii. Proof of permanent retirement of any DER credits generated pursuant to N.J.A.C. 7:27-30 and of any emission offsets created pursuant to N.J.A.C. 7:27-18 which are based in whole or in part, on the 1997 and/or 1998 emission reductions which are the basis for the early reduction being claimed; and

12. Certification pursuant to N.J.A.C. 7:27-1.39.

(d) The amount of early reductions eligible to be claimed for a given May 1 through September 30 period, by a source calculated in accordance with the following, with adjustments made for inaccuracy and uncertainty in accordance with (j) below:

$$\text{Early Reductions} = \left(\frac{E_B}{P_B} - \frac{E_P}{P_P} \right) \times P_P$$

Where:

- E_B = The total baseline NO_x emissions of the source as determined in accordance with (e) below, expressed in tons;
- P_B = The total baseline productivity of the source as determined in accordance with (f) below;
- E_P = The total emissions of the source during the May 1 through September 30 period for which early reductions are being claimed as determined in accordance with (g) below, expressed in tons; and
- P_P = The total productivity of the source during the May 1 through September 30 period for which early reductions are being claimed as determined in accordance with (h) below.

(e) The total baseline emissions (E_B) for the purpose of calculation in (d) above shall be determined in accordance with the following:

1. Determine the baseline emission rate. This rate shall be expressed in pounds per MMBtu and shall be the lowest of the following rates:

i. If the source is a fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour, the greater of 0.20 pounds NO_x per MMBtu or 35 percent of the 1990 actual NO_x baseline emission rate of the source (expressed in pounds per MMBtu) and determined by dividing the total NO_x emissions of the source during the May 1 through September 30, 1990 period, as reported pursuant to (c)5i above, by the total heat input to the source during the May 1 through September 30, 1990 period, as reported pursuant to (c)5ii above;

ii. The source's actual 1990 NO_x baseline emission rate, determined by dividing the total NO_x emissions of the source during the May 1 through September 30, 1990 period, as reported pursuant to (c)5i above, by the total heat input to the source during the May 1 through September 30, 1990 period, as reported pursuant to (c)5ii above; or if the source had commenced operation after 1990, the average actual emission rate during the May 1 through September periods selected pursuant to (e)2 below; or

iii. The lowest allowable NO_x emission rate of the source for the period May 1 through September 30 of the year for which early reductions are being calculated. If the lowest allowable NO_x emission rate of the source is a RACT Alternative Emission Limit, then the RACT emission limit as specified at N.J.A.C. 7:27-19 shall be the baseline emission rate. If more than one type of fuel was combusted during the period, then the lowest allowable NO_x emission rate of the source shall be a heat input weighted average of lowest allowable NO_x emission rate for each fuel type;

2. Determine the utilization for the source in accordance one of the following three methods:

i. If the May 1 through September 30 period during the two years immediately preceding the submission of the claim are representative of normal source operation, the utilization shall be an average of the actual heat input to the source during the two consecutive May 1 through September 30 periods;

ii. If the owner or operator can demonstrate that two other May 1 through September 30 periods within the last five years are more representative of normal source operation, the utilization shall be an average of the actual heat input to the source during these other two consecutive May 1 through September 30 periods; or

iii. If the owner or operator of the source can document that the source had not operated during one of the two consecutive May 1 through September 30 periods preceding the submission of the claim, the utilization shall be the total heat input to the source during the single previous May 1 through September 30 periods immediately preceding the submission of the claim;

3. Calculate the source's average baseline emissions by multiplying the baseline emission rate determined in 1 above by the utilization determined in (e)2 above; and

4. The total baseline emissions (E_B) to be used in (d) above shall be the average baseline emissions calculated in (e)3 above, unless the source was operating in 1990 and this average is greater than the source's actual 1990 emissions during the period May 1 through September 30, 1990 as reported pursuant to (c)5i above. In such case, the total baseline emissions (E_B) shall be the source's actual 1990 emissions during the period May 1 through September 30, 1990.

(f) The total productivity (P_B) for the purpose of calculation in (d) above shall be determined in accordance with the following:

1. Establish the applicable productivity period. If the baseline emissions (E_B) determined in (e) above is calculated using a value of utilization based on:

i. Emissions in 1990, the applicable productivity period is May 1 through September 30, 1990;

ii. Emissions in two consecutive years, the applicable productivity period is the two May 1 through September 30 periods in those two consecutive years; or

iii. Emissions during the single May 1 through September 30 period immediately preceding the submission of the claim, the applicable productivity period is that single period;

2. For sources that produce electricity, the baseline productivity is:

i. If the applicable period is a two consecutive years period, the average net electric output, expressed in MW-hr, of the source during the two consecutive periods; and

ii. If the applicable productivity period is a single May 1 through September 30 period in 1990 or in a most recent year, the average net electric output, expressed in MW-hr, during the period in that single year;

3. For sources that produce useful energy other than electricity, the baseline productivity is:

i. If the applicable period is a two consecutive years period, the average net useful heat output, expressed in MW-hr, of the source during the two consecutive periods; and

ii. If the applicable productivity period is a single May 1 through September 30 period in 1990 or in a most recent year, the average net useful heat output, expressed in MW-hr, during the period in that single year;

4. For sources that produce both electricity and other useful energy, the sum of the results of (f)2 and 3 above.

(g) The source's total emissions (E_p) during the May 1 through September 30 period for which early reductions are being claimed, for the purposes of the calculation in (d) above, shall be the total NO_x emissions as reported under (c)4i above.

(h) The total productivity of the source (P_p), during the May 1 through September 30 period for which early reductions are being claimed, for the purposes of the calculation in (d) above, shall be determined in accordance with the following:

1. For sources that produce electricity, the total net electric output, expressed in MW-hr, during the May 1 through September 30 period for which early reductions are being claimed;

2. For sources that produce useful energy other than electricity, the total net useful heat output, expressed in MW-hr, during the May 1 through September 30 period for which early reductions are being claimed; and

3. For sources that produce both electricity and other useful energy, the sum of the results of (h)1 and 2 above.

(i) The amount of early reductions eligible to be claimed by a source which has been repowered or by a new source which has replaced a budget source shall be calculated in accordance with (d) above, except that:

1. The total baseline emissions of the source (E_B) and the baseline productivity of the source (P_B) shall be based on the original source; and

2. The determination of the total productivity and the source's total emissions (E_p) during the May 1 through September 30 period (PP) shall be based on the operation of the repowered source or the new replacement source.

(j) (Reserved)

(k) The Department shall approve all claims for early reduction credits upon verification by the Department that the reductions are real, properly quantified, and surplus. If the information submitted pursuant to (c) above is reviewed and found by the Department as true, accurate and complete, and if the early reduction credits are calculated in accordance with the procedures in (d) above, then the early reduction credits shall be considered real, properly quantified, and surplus.

(l) The Department shall deny any claim for early reduction credits if:

1. The claim is not submitted in accordance with (b) above;

2. The claim is missing any information required in (c) above;

3. The claim contains any piece of information that the Department determines is not true, accurate or complete; or

4. The number of credits being claimed have not been calculated properly in accordance with (d) above.

(m) Notwithstanding (l)4 above, if during its review of a claim, the Department finds that the claimant has claimed an inappropriate number of early reduction credits due to a clear computational error, the Department shall so inform the claimant and adjust the number early reduction credits in lieu of denying the claim.

(n) On or before May 1, 1999, in order to provide the interested public an opportunity to comment, the Department shall publish a notice in the New Jersey Register which sets forth the number of early reduction credits the Department intends to convert into allowances, and lists each owner or operator who generated credits. In addition, the Department shall seek comment from the members of the OTC who are also implementing NO_x Budget Programs.

(o) The notice published in accordance with (n) above shall provide a comment period of at least 30 days commencing with the New Jersey Register's date of publication. The Department shall take into consideration all relevant comments received during the comment period when making its final determination as to whether to approve the claim for early reduction credit. If, at the time of approval of a claim for early reduction credits, the amount of early reduction allowances is more than the amount specified in the notice of intent to approve published in the New Jersey Register, pursuant to (n) above, the Department shall publish a second notice in which it specifies this revised amount and sets forth the reasons for this revision.

(p) The Department shall provide the following information to the NATS Administrator and to USEPA, Region II.

1. A list of all sources that have generated approved early reduction credits;
2. The number of early reduction allowances approved for each source; and
3. Specification of whether each owner or operator has elected to receive the allowances or to accept an amount of DER credits, equivalent in value to the early reduction allowances.

Public Notice: NO_x Budget Program early reduction claim approval.
See: 31 N.J.R. 1108(b).
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).

In (e)1ii, added "if the source had commenced operation after 1990, the average actual emission rate during the May 1 through September periods selected pursuant to (e)2 below; or" at the end.

7:27-31.13 NO_x Allowance Tracking System (NATS)

(a) The NO_x Allowance Tracking System (NATS) is the official electronic database serving the NO_x Budget Program which tracks all allowance transfer, use and retirement. The NATS shall keep track of each allowance held in each account and shall provide information for a specific time period such as the following:

1. The allowances transferred to and from each account;
2. The allowances retired; and
3. The allowances deducted for end-of season reconciliation purposes.

(b) Each allowance tracked in the NATS shall have a unique identification number, assigned by the NATS Administrator. The serial number of each allowance shall indicate the initial year the allowance may be used for compliance with the end-of-season reconciliation requirements.

(c) The NATS Administrator shall associate the following information, at minimum, with each account: name of account owner(s) and operator(s), name of the authorized account representative, name of the alternative authorized account representative, mailing address of the authorized account representative, phone number of the authorized account representative, and the State in which the budget source is located (if applicable). This information shall be gathered from the form used to create the account.

(d) The NATS Administrator shall establish and maintain accounts in the NO_x Allowance Tracking System (NATS), including:

1. On behalf of the owner or operator of each budget source, a source-specific compliance account for each budget source;
2. On behalf of the Department, general accounts that will serve as the Department's "primary" account and other "reserve" accounts for allocation purposes pursuant to N.J.A.C. 7:27-31.7;
3. A retirement account to which allowances that have been deducted for end-of-season reconciliation shall be transferred, a retirement account to which allowances used for penalty purposes will be transferred, and a retirement account to which allowances which are voluntarily retired shall be transferred; and
4. A general account for a person who submits a complete General Account Information form in accordance with (o) below.

(e) Requests for the establishment of an account and any other communication directed to the NATS Administrator shall be addressed as follows:

ATTN: NO_x BUDGET PROGRAM
United States Environmental Protection Agency
Clean Air Markets Division—Mail Code 6204J
401 M Street SW
Washington, DC 20460

(f) The NATS Administrator may, at upon its discretion and on its own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the NATS Administrator shall notify the authorized account representative for the account.

(g) The holder of a compliance account shall designate an authorized account representative and one alternate authorized account representative for the account in accor-

dance with (j) below. The NATS Administrator shall assign each authorized account representative a unique identification number.

(h) The authorized account representative and the alternate authorized account representative are the sole persons who may submit:

1. A request for a transfer of one or more allowances from the NATS account they are authorized to represent to another account; or
2. A report to the NATS on behalf of an account, as required pursuant to N.J.A.C. 7:27-31.16, Reporting.

(i) Even though a request or a report may be submitted by the alternate authorized account representative pursuant to (l) above, the "primary" authorized account representative remains responsible for all allowance transfer requests and for all required reports.

(j) A person may replace an individual who has been previously designated as an authorized account representative or an alternate authorized account representative for a compliance account with another individual. This shall be done through the submission of a new "Account Certificate of Representation" form. Within 30 days following any change in the owner(s) and/or operator(s) of a budget source, including the addition of a new owner or operator, the authorized account representative or alternate authorized account representative shall submit a revision to the account certificate of representation up-dating the list of owners and operators. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous AAR or alternate AAR prior to the time and date when the NATS Administrator receives the superseding account certificate of representation shall be binding on the new AAR, alternate AAR and the owners and operators of the facility and the budget units at the facility.

(k) All correspondence from the NATS Administrator to the holder of an account shall be directed to the primary authorized account representative of the account.

(l) The designation of an authorized account representative for compliance account shall be submitted to the Department no later than when any monitoring plan is due to be submitted to the Department pursuant to N.J.A.C. 7:27-31.14 or, if applicable, when an opt-in application is submitted to the Department pursuant to N.J.A.C. 7:27-31.4.

(m) The following procedure shall be used for the designation of an authorized account representative or an alternate authorized account representative of a compliance account:

1. The holder of the account shall obtain from the NATS Administrator the form entitled "Account Certificate of Representation";

2. The holder of the account shall provide the information requested on the form. This shall include, at a minimum, the following:

- i. A brief description of the budget source, the name of the facility at which the source is located, and the state in which the budget source is located;
- ii. The identification numbers *for the budget* source, including any number assigned by the state and any number assigned by the facility;
- iii. The name, mailing address, telephone and facsimile number of the authorized account representative and of any alternate authorized account representative; and
- iv. A list of the owners and operators of the budget source;

3. The "Account Certificate of Representation" form shall contain the following statement of certification, and the authorized account representative shall sign the form and, in doing so, shall attest to this certification:

i. Until the NATS Administration provides a revised form for use for the years 2003 and thereafter: "I certify that I, _____ (name) _____, was selected as the authorized account representative as applicable by an agreement binding on the owners and operators of the budget source legally designated as _____ (name of source) ____."

ii. Once the NATS Administrator provides the revised form: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."

4. The authorized account representative shall submit the completed and signed form to the NATS Administrator at the address listed on the form or the instructions to the form. A completed and signed form constitutes the agreement of representation. Upon receipt of the form by the NATS Administrator, the named individual(s) are officially designated the authorized account representative and the alternate authorized account representative; and