

2. 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

3. 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.

(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 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 evaluate each change separately 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 evaluate each change separately 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.

(i) The procedures in this section shall also be used for submittal of a 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.

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).

### 7:27-8.21 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 HAP that the replacement source may emit, has a potential to emit the HAP in an amount that is less than the applicable SOTA threshold levels in Appendix 1, Tables A and B; and

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.

(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).

#### **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 modification 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).

#### **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) or (i) below.

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

(f) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds

for an appeal of the Department's decision on the application.

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

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

1. Emission of an air contaminant not previously being emitted;
2. Emission of an air contaminant not authorized by an existing permit; or
3. An exceedance of an emission limit in an existing permit.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).  
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

#### 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.

(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 emission-statement year which was two years prior to the fiscal year for which the fee is due. 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<sub>x</sub> 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:

$$(Q \times T_e + (\$20,000 \times L)) = \$1,500,000$$

where:

Q is the per-ton supplemental surcharge, expressed in dollars per ton;

Te<sub>s</sub> 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 ÷ 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.

TABLE 2  
 SUMMARY OF FEES BY FISCAL YEAR

Emission fee	FY95	FY96	FY97	FY98 and on
	\$251/ton on: up to 8,000 tons of NO <sub>x</sub> , VOC; ½ of CO emissions, 4,000 tons of all other RACs <sup>2</sup>	Same as FY95, except that all facilities must pay at least \$1,000	Same as FY96	\$253/ton on all RACs except CO, all facilities must pay at least \$1,000. No emission caps

	FY95	FY96	FY97	FY98 and on
Initial appli- cation fee	\$125 per sig- nificant source opera- tion, up to \$25,000	Same as FY95	Same as FY95	Same as FY95
Supplemental surcharge fee	\$20 per ton of emissions of any RAC except CO, up to \$20,000	Subject to ad- justment pur- suant to N.J.A.C. 7:27-22.31(c)	None	None
Modification fee	As set forth at N.J.A.C. 7:27-22.31(k), up to \$25,000 per applica- tion	Same as FY95, except that, for cer- tain source operations, the fee is lim- ited to \$500 per piece of equipment modified <sup>4</sup>	Same as FY96	Fees for sig- nificant modi- fications only, as set forth at N.J.A.C. 7:27-22.31(k) through (s), up to \$25,000 per applica- tion

<sup>1</sup> In 1989 dollars adjusted by the CPI.

<sup>2</sup> For purposes of this table, RAC means regulated air contaminant.

<sup>3</sup> In 1989 dollars adjusted by the CPI.

<sup>4</sup> The limit for \$500 per piece of equipment applies to all source operations EXCEPT solid or hazardous waste treatment and disposal equipment, reciprocating engines, and fuel combustion processes with heat input greater than 100 million BTU/hour or that burn solid fuel.\*

(k) A permittee shall submit, as part of each application for a minor or significant modification of an operating permit, a modification application fee, not to exceed \$25,000 per modification, consisting of:

1. The base fee for application review, from the Base Fee schedule in (r) below; and
2. Any applicable fees for additional services, assessed in accordance with the Supplementary Fee Schedule in (s) below.

(l) In some cases, the supplementary fees due pursuant to (k)<sup>2</sup> above cannot be determined at the time of the submittal of the modification application. Prior to taking final action on any modification, the Department will invoice the applicant for any unpaid fee due pursuant to (k) above. The applicant shall submit all fees to the Department within 60 days of receipt of the invoice.

(m) A modification application fee shall not exceed \$25,000 per minor or significant modification, and shall be assessed as follows:

1. For FY95, the application fee shall be that required pursuant to (k) above, and shall be charged for both minor and significant modifications;
2. For FY96 and 97, the modification application fee shall be that required pursuant to (k) above, and shall be charged for both minor and significant modifications. However, for all but the following source operations, the modification fee shall be limited to \$500.00 per piece of equipment:
  - i. Solid or hazardous waste treatment and disposal equipment;
  - ii. Reciprocating engines; and

iii. Fuel combustion processes with heat input greater than 100 million BTU/hour or that burn solid fuel; and

3. For FY98 and thereafter, the modification application fee shall be that required pursuant to (k) above, but shall only be charged for significant modifications.

(n) Consistent with N.J.A.C. 7:27-22.10(e) and (f), if an applicant fails to submit additional information on the application, requested by the Department, by the due date provided in the request, the Department may deny the application. In such a case, a new fee shall be due for any subsequent application.

(o) If the operating permit requires the Department to incur any of the following charges, the permittee shall reimburse the Department for the full amount of these charges:

1. The charges billed by a telephone company for the maintenance of a dedicated telephone line for the electronic transmission of data; or
2. The charges billed by a laboratory for analyzing audit samples.

(p) If a request for an approval of an environmental improvement pilot test or a general permit registration is related to an application for a minor or significant modification, it shall be accompanied by the applicable supplementary fee from the Supplementary Fee Schedule at (s) below, as well as the modification application fee set forth in the Base Fee Schedule below at (r).

(q) (Reserved)

(r) The Base Fee Schedule for modification applications is as follows:

Activity	Basis	Amount
1. Category I <sup>1</sup>	Per application	\$100.00
2. Category II	Per first new or modified significant source operation, plus Per each additional new or modified significant source operation, provided that identical equipment to be used in identical processes and using identical materials shall be treated as one piece of equipment (or significant source operation) for fee calculations.	\$500.00 plus \$350.00
3. Application for environmental improvement pilot test	Per application	250.00
4. General Permit Registration	Per registration for each new or modified significant source operation	250.00

<sup>1</sup> Should both Category I and Category II equipment and control apparatus be included in a single application, the new or modified Category I equipment and control apparatus will be subject to the Category I fee; and the new or modified Category II equipment and control apparatus will be subject to the Category II fee.

(s) The Supplementary Fee Schedule for modification applications is as follows:

Activity	Basis	Amount
1. Prevention of significant deterioration		
i. Engineering review	Per air contaminant	\$500.00
ii. Implement public comment procedures	Per comment period	\$500.00
2. Ambient air monitoring		
i. Review protocol	Per protocol	\$500.00
ii. Inspect monitoring locations and equipment installation	Per inspection	\$500.00
iii. Review quality assurance plan	Per plan	\$500.00
iv. Review data	Per report	\$500.00
3. Air quality impact analysis		
i. Evaluate protocol	Per protocol	\$500.00
ii. Review screening modeling	Per review	\$500.00
iii. Review refined modeling	Per review	\$500.00
4. Risk assessment		
i. Evaluate protocol	Per protocol	\$500.00
ii. Review risk assessment	Per review	\$500.00
5. Testing		
i. Evaluate source-specific testing protocol		
(1) Process materials testing	Per protocol	\$450.00
(2) Source emission testing	Per protocol	\$500.00
ii. On-site monitoring of sample collection pursuant to an approved source-specific testing protocol		
(1) Process materials testing	Per collection event	\$200.00
(2) Source emissions testing	Per performance test	\$500.00
iii. Review testing report		
(1) Process materials testing	Per report	\$200.00
(2) Source emissions testing	Per report	\$500.00
6. Audit performance of continuous monitoring system		
i. Evaluate protocol	Per protocol per permit	\$500.00
ii. Observe testing	Per protocol per permit	\$500.00
iii. Review testing report	Per report	\$500.00

New Rule, 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).

Public Notice: Supplemental surcharge fee amount for operating permit facilities.

See: 28 N.J.R. 1562(b).

### 7:27-22.32 Hearings and appeals

(a) An adjudicatory hearing regarding a determination made by the Department pursuant to this subchapter may be requested and granted in accordance with N.J.A.C. 7:27-1.32.

(b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department takes final action on the application.

(c) If a person does have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department denies the request for an adjudicatory hearing, or when the Commissioner issues a final decision on the matter, whichever is later.

(d) A person who wishes to appeal a penalty assessed for a violation of this subchapter may request an adjudicatory hearing pursuant to the procedures at N.J.A.C. 7:27A.

(e) The Department's failure to take final action on an administratively complete application for an initial operating permit, renewal, minor modification or significant modification, within the deadlines provided by this subchapter, shall constitute grounds for the commencement of an action in lieu of the prerogative writ of mandamus, to compel Departmental action on the application.

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) through (c), changed N.J.A.C. references.

### 7:27-22.33 Preconstruction review

(a) This section sets forth the procedures by which the Department will implement the preconstruction review requirements of N.J.S.A. 26:2C-1 et seq., as they apply to facilities subject to this subchapter.

(b) The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall obtain and maintain 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. These approvals will be superseded by the operating permit when it is issued.

(c) The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. These approvals will be superseded by the operating permit when it is issued.

(d) An application for 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 be subject to preconstruction review, which will include a demonstration that any equipment or control apparatus which is constructed, reconstructed, or modified incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted pursuant to N.J.A.C. 7:27-22.35.

“Normal source operation” means a condition in which an emissions source’s activity level falls within a range that is typical for that emissions source.

“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<sub>x</sub>” 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 Part 60 Appendix A methods 7 through 7E.

“Ozone season” means the portion of each year beginning May 1 and ending September 30.

“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.

“Real” means actual, genuine and authentic.

“Registry” means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer and use of DERs.

“Retire” means, with respect to DERs, to make a DER permanently unavailable for use.

“Shutdown” means the permanent cessation of the activity that results in emissions at all or part of an emissions source. 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 an emissions source that is not a mobile source.

“Surplus” means, with respect to emission reductions used for the generation of DERs, not required pursuant to any air quality emission limit or standard in any applicable law, regulation, permit, or order and not relied upon in a SIP. An emission reduction calculated in accordance with N.J.A.C. 7:27-30.5 and 30.20, and not prohibited as a basis for DERs under N.J.A.C. 7:27-30.6, is considered surplus.

“Use period” means the period of the time when a user uses DERs to comply with an applicable emission limit.

“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 DERs for compliance in accordance with this subchapter.

“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 does not include the 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. The list at 40 CFR §51.100(s)(1) currently includes the compounds and classes of perfluorocarbons set forth below:

#### Compounds

methane  
 methylene chloride (dichloromethane)  
 1,1,1-trichloroethane (methyl chloroform)  
 trichlorofluoromethane (CFC-11)  
 dichlorodifluoromethane (CFCC-12)  
 chlorodifluoromethane (HCFC-22)  
 trifluoromethane (FC-23)  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
 chloropentafluoroethane (CFC-115)  
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
 pentafluoroethane (HFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152A)  
 acetone

#### Classes of perfluorocarbons:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) 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.

### 7:27-30.3 General provisions

(a) A DER used for compliance under this subchapter is a limited authorization to emit NO<sub>x</sub> 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. A DER 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 such authorization.

(b) A person may generate, transfer or use DERs in accordance with this subchapter, without prior Federal, State or local government approval except when DERs are to be used pursuant to N.J.A.C. 7:27-30.13(c) to comply with emission offset requirements under N.J.A.C. 7:27-18.

(c) Any submittal to the Department that is required or allowed under this subchapter shall be made to the applicable address listed below:

1. If the submittal concerns a generator source or user source located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection  
Central Regional Office  
Air and Environmental Quality Enforcement  
CN 407  
Trenton, NJ 08625-0407

2. If the submittal concerns a generator source or user source located in Bergen, Essex, Hudson, or Union County:

Department of Environmental Protection  
Metro Regional Office  
Air and Environmental Quality Enforcement  
2 Babcock Place  
West Orange, NJ 07052

3. If the submittal concerns a generator source or user source located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

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

4. If the submittal concerns a generator source or user source located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection  
Southern Regional Office  
Air and Environmental Quality Enforcement  
20 East Clementon Road  
Gibbsboro, NJ 08525

- (d) Any submittal to the registry that is required under this chapter shall be made to the following address:

Mosakin Corporation  
1070-R Highway 24  
Matawan, New Jersey 07747  
Attention: Emissions Trading Registry

- (e) A DER represents one-twentieth of a ton of emission reductions. Any quantity of DERs generated shall be rounded to the next lowest twentieth of a ton. Any quantity of DERs used shall be rounded to the next highest twentieth of a ton. Only whole DERs may be transferred.

Administrative change.  
See: 29 N.J.R. 2561(a).

In (d), changed the address for emissions trading registry submittals.

### 7:27-30.4 DER generation: general requirements

(a) Except as provided under N.J.A.C. 7:27-30.6, a person may generate one or more DERs by taking an action to reduce the actual emission rate of a generator source owned or operated by the person below the source's baseline emission rate. An owner or operator of a facility may also generate one or more DERs, if the facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48, by taking pollution prevention measures which reduce the facility's fugitive emissions (as defined at N.J.A.C. 7:27-18.1); and an owner or operator of a refinery may generate one or more DERs by reformulating motor vehicle fuel sold in New Jersey. In addition, a person may generate one or more DERs through the reduction of emissions from sources not owned or operated by that person by causing emission reductions to result from either of the following:

1. A reduction in mobile source activity levels that results from 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); or