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# CHAPTER 27

# AIR POLLUTION CONTROL

**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 adopted by the Department of Environmental Protection pursuant to authority delegated at N.J.S.A. 26:2C–1 et seq. and N.J.S.A. 26:2D–1 et seq. and 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).

Overturning Environmental Regulations: A Primer on Breaching The Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

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## 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.

"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.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines, in accordance to the procedures at N.J.A.C. 7:27–1.6 et seq., to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:27–1.6 through 1.8, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation (including, without limitation, N.J.A.C. 7:27–1.18 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of N.J.A.C. 7:27–1.6 et seq., that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

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

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

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification
Plant name and related point identifiers
Address
City
County
AQCR (Air Quality Control Region)
MSA, PMSA, CMSA (Metropolitan Statistical Areas)
State
Zip Code
Ownership and point of contact information
Locational Identifiers:
Latitude & Longitude or UTM Coordinates
SIC Code (Standard Industrial Classification)
Emission point, device or operation description, information
SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example, the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents,

expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP–42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

"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 contaminant emitted is caused by a manufacturing process.

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Garbage" means animal and vegetable matter originating in houses, kitchens, restaurants and hotels, produce markets and similar places.

"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.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint companies as well as individuals, unless restricted by the context to an individual as distinguished from a corporate entity or specifically restricted to one or some of the above enumerated synonyms and, when used to designate the owner of property which may be the subject of an offense includes this State, the United States, any other state of the United States and any foreign country or government; lawfully owning or possessing property within this State.

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C–9.2.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Refuse" means garbage, rubbish and trade waste.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Responsible official" means one of the following:

1. For a corporation:

i. A president, secretary, treasurer, or vice-president of the corporation, who is in charge of a principal business function;

ii. Any other person who performs similar policy or decision-making functions for the corporation; or

iii. A duly authorized representative of the person in 1i or ii above, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a preconstruction permit or certificate, or an operating permit, and either:

(1) The facilities for which the representative is responsible employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(2) The delegation of authority to the representative is approved in writing in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this subchapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, a Regional Administrator of EPA); or

4. For affected facilities under Title IV of the Clean Air Act:

i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

ii. The designated Title IV representative for any other purposes under 40 CFR Part 70.

"Rubbish" means solids not considered to be highly flammable or explosive including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

"Salvage operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metals, chemicals, shipping containers or drums.

"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.

"Stack or chimney" means a flue, conduit or opening permitting particulate or gaseous emissions into the open air, or constructed or arranged for such purpose.

"State" means the State of New Jersey.

"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:27–1.11.

"Trade waste" means solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste material.

"USC" means United States Code.

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 definition for "CFR", "Department", "State" and "USC".
Amended by 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).
Added definitions "assertedly confidential information", "claimant", "class confidentiality determination", "confidential copy", "confidential information", "confidentiality claim", "confidentiality determination", "contract", "contractor", "control apparatus", "equipment", "final public copy", "preliminary public copy", "requester", "source operation" and "substantial damage".
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).

### 7:27–1.5 Municipal ordinances or regulations

No ordinance or regulation of any governing body of a municipality or county or board of health not inconsistent with this Chapter shall be superseded by this Chapter and nothing in this Chapter shall preclude the right of any governing body of a municipality or county or board of health to adopt ordinances or regulations not inconsistent with this Chapter.

### 7:27–1.6 Procedure for making a confidentiality claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:27–1.8) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:27–1.7.

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).

**Law Review and Journal Commentaries**

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

### 7:27–1.7 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:27–1.6 through 1.30. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:27–1.8(a), be directed to the designee.

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).

### 7:27–1.8 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:27–1.7, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:27–1.10(a)1ii;

2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:27–1.13(a)1;

3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:27–1.21(a);

4. Notices of disclosure under N.J.A.C. 7:27–1.22; and

5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:27–1.25.

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

1. With respect to permits and certificates:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
401 East State Street, Second Floor
CN 027
Trenton, New Jersey 08625–0027

2. With respect to emission statement submittals:

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

3. With respect to compliance reports or enforcement actions:

Assistant Director, Air & Environmental Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625–0422

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

### 7:27–1.9 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

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

2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:27–1.26 through 1.30.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

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).

### 7:27–1.10 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;

ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:27–1.11;

iii. The address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:27–1.12;

v. The method for requesting a time extension under N.J.A.C. 7:27–1.12(b); and

vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:27–1.12 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:27–1.11, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:27–1.13. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:27–1.13.

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).

### 7:27–1.11 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:27–1.10(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:27–1.12:

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

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).

### 7:27–1.12 Time for submission of substantiation

(a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:27–1.10(a)1.

(b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time; provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A–1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A–1 et seq. is pending.

(c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

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).

### 7:27–1.13 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:27–1.10 and 1.11, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:27–1.11, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:27–1.26 through 1.30. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

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).

### 7:27–1.14 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

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).

### 7:27–1.15 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:27–1.13(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

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).

### 7:27–1.16 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

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).

### 7:27–1.17 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

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).

### 7:27–1.18 Classes of information which are not confidential information

Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, emissions information, as defined at N.J.A.C. 7:27–1.4, is not confidential information.

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).

### 7:27–1.19 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:27–1.27 and 1.28, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

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).

### 7:27–1.20 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the 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).

### 7:27–1.21 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:27–1.12, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:27–1.13(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determi-

nation that information is no longer confidential information.

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).

### 7:27–1.22 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:27–1.19, 1.20 or 1.21, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;

2. The name of the agency or other person to which the Department disclosed the confidential information; and

3. A description of the confidential information disclosed.

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).

### 7:27–1.23 Disclosure by consent

(a) The Department may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

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).

### 7:27–1.24 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the Department has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

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).

### 7:27–1.25 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

(a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.

(b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:

1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1–14.1.

2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:

i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;

ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and

iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

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).

### 7:27–1.26 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
CN 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).

### 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. 7:1–5, 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).

### 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 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.

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).

### 7:27–1.37 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.

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).

### 7:27–1.38 Liberal construction

This chapter, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

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).

### 7:27–1.39 Certification of information

(a) Except pursuant to (c) below, any person who submits an application, report or other document to the Department shall include, as an integral part of the application, report or other document, 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."

(b) The certification at (a)2 above shall not be required if the individual required to sign the certification in (a)1 above is the same individual required to sign the certification in (a)2 above.

(c) For the purposes of emissions statements requirements pursuant to N.J.A.C. 7:27–21, the specific certification required by N.J.A.C. 7:27–21 shall be used.

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 "Certification of information" at 7:27–8.24.

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## SUBCHAPTER 2. CONTROL AND PROHIBITION OF OPEN BURNING

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed and became effective prior to September 1, 1969. Revisions were filed August 13, 1971, as R.1971 d.139 to become effective October 12, 1971. See: 3 N.J.R. 4(c), 3 N.J.R. 177(a). Subsequent revisions were filed October 29, 1975, as R.1975 d.326 to become effective December 29, 1975. See: 7 N.J.R. 252(c), 7 N.J.R. 547(c).

### 7:27–2.1 Definitions

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

"Air contaminant" means solid particles/liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

"Authorized agent" means a person designated by the Commissioner for a specific function.

"Class I area" means an area so designated by the United States Environmental Protection Agency or the State of New Jersey in order to preserve the area's unique environmental characteristics. (As of January 1, 1980, only the Brigantine Wildlife Refuge has been so designated in New Jersey.)

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Cullings" means dead or non-productive trees which have been removed to allow for the planting of new trees to improve crop yield.

"Dangerous material" means trade waste which presents an existing or potential hazard to health or safety if disposed of by any means other than open burning including but not limited to, explosive, nitrocellulose and elemental sodium.

"Department" means the Department of Environmental Protection.

"Garbage" means waste animal or vegetable matter from houses, kitchens, restaurants, hotels, produce markets or any other source, or food of any kind to be thrown away.

"Hedgerow" means a barrier-like formation composed of, but not limited to, rocks, fencing material, earth, and plant life used to separate sections of farm land in use or serve as boundaries for such lands.

"Herbaceous plant life" means plant life relating to or having the characteristics of an herb, that is, a seed producing annual, biennial or perennial that does develop persistent woody tissue but dies down at the end of a single growing season.

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

"Infested plant life" means any plant life contaminated by or harboring an insect, a plant pathogen, a weed, or any

other organism capable of causing damage, economic or otherwise, to environmental or natural resources.

"Non-attainment area" means any area determined by the Department as one in which the ambient air concentration of a criteria pollutant exceeds a national ambient air quality standard (NAAQS).

"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.

"Plant life" means vegetation including, but not limited to trees, tree branches, leaves, yard trimmings, shrubbery, grass, weeds and crops.

"Prescribed burning" means the open burning of plant life under such conditions that the fire is confined to a predetermined area and accomplishes the environmentally beneficial objectives of prevention and control of wildfires.

"Prunings" means dead or excess branches and twigs removed from plants and trees to improve crop yield. This shall mean and include cullings exclusively of their subterranean portions.

"Refuse" means rubbish, garbage, trade waste and plant life.

"Rubbish" means waste solids not considered to be highly flammable or explosive including, but not limited to, rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, furniture, tin cans, glass, crockery, masonry and other similar materials.

"Salvage operation" means an operation or activity from which is salvaged or reclaimed any product or material including, but not limited to, metals, chemicals, or shipping containers.

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

"Trade waste" means all waste solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste material.

Amended by R.1981 d.135, effective May 7, 1981 (to become effective June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Amend definitions of "Class I area", "cullings", "Hazardous material", "hedgerows", "Non-attainment area" and "Prunings".
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–2.2 Open burning for salvage operations

No person shall cause, suffer, allow or permit a salvage operation by open burning.

### 7:27–2.3 Open burning of refuse

(a) No person shall cause, suffer, allow or permit the disposal of rubbish, garbage, trade waste, buildings or structures by open burning.

(b) No person shall cause, suffer, allow or permit the disposal of fallen leaves by open burning.

(c) No person shall cause, suffer, allow or permit the disposal of any type of plant by open burning.

(d) The provisions of this section shall not apply to open burning of refuse for training or research exercises in fire protection or prevention when conducted at a permanent facility or training center designed to be used solely for such purposes on a continuing basis.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
(d) added.
Administrative Correction in (d) to correct spelling of solely.
See: 23 N.J.R. 1166(b).

**Case Notes**

Burning of tree prunings was unrelated to business operated at residence but violated regulation; penalty assessed. Galli v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 10.

### 7:27–2.4 General provisions

(a) All conditions and provisions of any permit granted in accordance with this subchapter must be fulfilled.

(b) Any permit issued under the provisions of this subchapter shall not be transferable either from one location to another or from one person to another.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Delete previous text and substitute new text (subsections (a) and (b)) therefor.

### 7:27–2.5 Infested plant life

(a) The Department may issue a permit for open burning of infested plant life, except in any municipality which prohibits such open burning, to a person responsible for the control of infested plant life upon certification by an authorized agent that no other effective method of controlling the infestation can be used without causing damage, economic or otherwise, to environmental or natural resources.

(b) Applications may be made to the Bureau of Forest Fire Management in the Department for a permit for the open burning of infested plant life.

(c) Such permit may be valid for a single event or for a period not to exceed 30 days, may be conditioned upon meteorological factors and any other requirements which the Department deems to be necessary, and is revocable at the discretion of the Department.

(d) No open burning shall commence until a permit is issued and is current. Any person seeking a permit for the open burning of infested plant life shall file with the Department a permit application on a form provided by the Department, signed by both the applicant and the authorized agent, which sets forth the following and any other information requested by the Department:

1. The name, address and telephone number of the person submitting the permit application; if such person is a legal entity, the name, title and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where infested plant life is to be burned;

2. The type of business or activity involved;

3. Municipal restrictions on open burning of plant life;

4. The proposed operating practice including the type and quantity of infested plant life to be burned;

5. Whether the open burning is to be carried on in a single instance or the frequency if intermittent;

6. The exact location at which the infested plant life will be burned; and

7. Reasons why the infestation cannot be controlled by any method other than by open burning without causing damage, economic or otherwise, to environmental or natural resources.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
(b): "Forest Fire Management" was "Forestry, Forest Fire Service".
(c): 30 days permit life was 14 days.
Administrative Correction in (d) to change "infected" to "infested".
See: 23 N.J.R. 1166(b).

### 7:27–2.6 Prescribed burning

(a) The Department may issue a permit authorizing prescribed burning in accordance with a plan approved by and under the control and supervision of the Bureau of Forest Fire Management.

(b) The permit may be conditioned upon meteorological factors and any other requirements which the Bureau of Forest Fire Management deems to be necessary and is revocable at the discretion of the Department.

(c) The permit may be issued for a single event or for a period of days, and no prescribed burning shall commence until a permit is issued and current.

(d) Any person seeking a permit for prescribed burning shall file with the Bureau of Forest Fire Management a permit application, on a form provided by the Department, which sets forth the following and any other information requested by the Bureau of Forest Fire Management:

1. The name, address and telephone number of the person submitting the permit application; if such person is a legal entity, the name, title and address of the individual authorized to accept the service of process on its behalf and the name of the officer in charge of the premises where the prescribed burning is to take place;

2. The name and address of the owner of the premises where the prescribed burning is to take place;

3. The exact location at which the prescribed burning is to take place; and

4. A detailed plan describing the specific reasons why the prescribed burning is necessary and how it is to be done.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
(a)–(b): "Forest Fire Management" was "Forestry, Forest Fire Service".
(c): Add requirement that permit be "issued".
(d): "Forest Fire Management" was "Forestry, Forest Fire Service"; add "on a form provided by the Department".
Administrative Correction: (c) added "issued and"; (d) added "on a form provided by the Department".
See: 23 N.J.R. 1166(b).

### 7:27–2.7 Emergencies

(a) The Department may issue a permit to a municipality for the open burning of plant life upon a finding of merit in an affidavit filed with the Bureau of Enforcement Services by the municipal clerk that excessive quantities of plant wastes have been produced by an emergency such as a wind storm or ice storm.

(b) The permit may be conditioned upon meteorological factors and any other requirements which the Enforcement Services deems to be necessary and is revocable at the discretion of the Department.

(c) The permit may be issued for a single event or for a period not to exceed seven days, and no open burning of plant life shall commence until a permit is issued and current.

(d) The affidavit shall set forth the following and any other information requested by the Department:

1. The name, address and telephone number of the municipal clerk submitting the affidavit;

2. The name of the authorized municipal representative in charge of the premises where the plant life is to be burned;

3. The proposed operating practice including the type and quantity of plant life to be burned;

4. Whether the open burning is to be carried on in a single instance or the frequency if intermittent;

5. The exact location(s) at which the plant life is to be burned; and

6. Reasons why the plant life cannot be disposed of by any method other than by open burning.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
(a)-(b): "Bureau of Air Pollution Control" was "Department".
(d)5: "life" added.
Administrative Correction: changed Air Pollution Control to Enforcement Services.
See: 23 N.J.R. 1166(b).

### 7:27–2.8 Dangerous material

(a) The Department may issue a permit for the open burning of dangerous material, except in any municipality which prohibits such open burning, where no other known method of disposal can be used without hazard to health or property, upon a finding of merit in an affidavit filed with the Bureau of New Source Review on a form provided by the Department by the person seeking to engage in such activity.

(b) The permit may be conditioned upon meteorological factors and any other requirements which the Department deems to be necessary and is revocable at the discretion of the Department.

(c) The permit may be issued for a period not to exceed seven days, or for a period not to exceed 60 days, or for a period not to exceed six months and no disposal of dangerous materials by open burning shall commence until a permit is issued and current.

(d) The affidavit shall set forth the following and any other information requested by the Department:

1. The name, address and telephone number of the person submitting the affidavit; if such person is a legal entity, the name, title and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where the dangerous material is to be burned;

2. The type of business or activity involved;

3. Municipal restrictions on open burning of dangerous material;

4. The proposed operating practice including the type and quantity of dangerous material to be disposed of by open burning;

5. Whether the open burning is to be carried on in a single instance or the frequency if intermittent;

6. The exact location at which the dangerous material will be disposed of by open burning;

7. Reasons why the dangerous material cannot be disposed of by any method other than by open burning without resulting in a hazard to health or property; and

8. Measures undertaken to eliminate or to reduce the quantity of dangerous material to be disposed of by open burning:

i. Prior to the initial submittal of an affidavit; or

ii. Since the issuance of the previous permit if the affidavit is for a renewal.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
(a) "Bureau of Air Pollution Control on a form provided by the Department" added, "Department" deleted.
(c) "single event" deleted, and "period not to exceed seven days" and "or for a period not to exceed six months" added; "dangerous" materials was "hazardous" materials.
(d)1, 3, 4, 6, 7: "dangerous" material was "hazardous" material; (d)8 added.
Administrative Correction in (a) changed Air Pollution Control to New Source Review; in (d)2 changed of to or.
See: 23 N.J.R. 1166(b).

### 7:27–2.9 Herbaceous plant life and hedgerows

(a) The Department may issue a permit for the open burning, on the premises where grown, of herbaceous plant life and plant life growing in hedgerows, except in any municipality which prohibits such burning, when the premises are actively in use for raising food crops or salt hay for commercial purposes and on a commercial scale and where no other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources.

(b) The permit will be issued only in accordance with a plan approved by and under the control and supervision of the Bureau of Forest Fire Management.

(c) The permit will be conditioned upon the confirmation with the Bureau of Forest Fire Management of favorable meteorological and air quality conditions on the day the open burning will be conducted.

(d) The permit may also be conditioned upon any requirements which the Department deems to be necessary and is revocable at the discretion of the Department.

(e) The permit may be issued for a period not to exceed seven days or for a period not to exceed 90 days or for a period not to exceed one year, and no open burning shall commence until a permit is issued and current.

(f) Any person seeking a permit for the open burning of herbaceous plant life or hedgerows shall file with the Bureau of Forest Fire Management a permit application on a form provided by the Department which sets forth the following and any other information requested by the Department:

1. The name, address and telephone number of the persons submitting the permit application; if such person is a legal entity, the name, title and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where the open burning is to take place;

2. The name and address of the owner of the premises where the open burning is to take place;

3. Municipal restrictions on open burning;

4. The exact location of the premises on which the herbaceous plant life or hedgerows will be burned;

5. The nature of the business or activity involved and the use being made of the premises;

6. A detailed plan describing the nature and quantity of herbaceous plant life or hedgerows and how the open burning is to be done, including whether it is to take place in a single instance or the frequency if intermittent; and

7. Reasons why no other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Catchline: "and hedgerows" added.
(a): "of herbaceous plant life" after "open burning" deleted, and "of herbaceous plant life and plant life growing in hedgerows" added.
(b): "Forest Fire Management" was "Forestry, Forest Fire Service".
(c): "Forestry, Forest Fire Service", and "and air quality" added.
(e): "single event" deleted and "period not to exceed seven days" added; "to exceed 90 days, or for a period not to exceed one year" added and "exceeding 60 days" deleted.
(f): "or hedgerows" added; "Forest Fire Management" was "Forestry, Forest Fire Service".
(f)4 and 6: "or hedgerows" added.
Administrative Correction in (a) changed combined to commercial; in (f) added or hedgerows.
See: 23 N.J.R. 1166(b).

### 7:27–2.10 Orchard prunings and cullings

(a) The Department may issue a permit for the open burning of orchard prunings and cullings on the premises where grown, except in any municipality which prohibits such burning, when such prunings and cullings are derived from trees being cultivated for commercial purposes to produce food crops or as ornamentals and where no other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources.

(b) The permit will be issued only in accordance with a plan approved by and under the control and supervision of the Bureau of Forest Fire Management.

(c) The permit will be conditioned upon the confirmation with the Bureau of Forest Fire Management of favorable meteorological and air quality conditions on the day the open burning will be conducted.

(d) The permit may also be conditioned upon any requirements which the Department deems to be necessary and is revocable at the discretion of the Department.

(e) The permit may be issued for a period not to exceed seven days or for a period not to exceed 90 days or for a period not to exceed one year, and no open burning shall commence until a permit is issued and current.

(f) Any person seeking a permit for the open burning of orchard prunings and cullings shall file with the Bureau of Forest Fire Management a permit application on a form provided by the Department which sets forth the following and any other information requested by the Department:

1. The name, address and telephone number of the person submitting the permit application, if such person is a legal entity, the name, title and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where the open burning is to take place;

2. The name and address of the owner of the premises where the open burning is to take place;

3. Municipal restrictions on open burning;

4. The exact location of the premises on which the orchard prunings and cullings will be burned;

5. The nature of the business or activity involved and the use being made of the premises;

6. A detailed plan describing the nature and quantity of orchard prunings and cullings and how the open burning is to be done, including whether it is to take place in a single instance or the frequency if intermittent; and

7. Reasons why no other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources.

As amended, R.1977 d.485, effective December 29, 1977.
See: 10 N.J.R. 59(b).
As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Catchline: "and cullings" added.
(a): "and cullings" added.
(b): "Forest Fire Management" was "Forestry, Forest Fire Service".
(c): "with the Bureau of Forest Fire Management" added.
(e): "single event" and "exceeding 60 days" deleted, and "period not to exceed seven days" and "to exceed 90 days, or for a period not to exceed one year" added.
(f): "and cullings" added; "Forest Fire Management" was "Forestry, Forest Fire Service".

(f)4 and 6: "and cullings" added.
Administrative Correction in (c) added "and air quality".
See: 23 N.J.R. 1166(b).

### 7:27–2.11 Land clearing

(a) The Department may issue a permit for the open burning of plant life on the premises where grown, except in any municipality which prohibits such burning, upon a finding of merit in an affidavit, filed by the owner of such premises, which provides certification that:

1. No other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources; and

2. The premises to be cleared by open burning will be used exclusively for commercial agricultural purposes for a period of at least five years after such open burning.

(b) Such affidavit shall become a part and condition of any permit approved pursuant to the provisions of this section.

(c) The permit will be issued in accordance with a plan approved by and under the control and supervision of the Bureau of Forest Fire Management.

(d) The permit will be conditioned upon confirmation with the Bureau of Forest Fire Management of favorable meteorological and air quality conditions on the day the open burning will be conducted.

(e) The permit may also be conditioned upon any requirements which the Department deems necessary and is revocable at the discretion of the Department.

(f) The permit may be issued for a period not to exceed 90 days and no open burning shall commence until a permit is issued and current.

(g) The permit will be limited to a land area not to exceed 25 acres.

(h) Any person seeking a permit to clear land by open burning shall provide such information as requested by the Department and shall file with the Bureau of Forest Fire Management a permit application on a form provided by the Department.

(i) No more than one permit pursuant to the provisions of this section will be issued in any one calendar year for a given premise.

(j) No person shall cause, suffer, allow, or permit the use of land cleared by open burning pursuant to the provisions of this section for any purpose other than commercial agriculture for a period of five years after such open burning.

(k) No person shall cause, suffer, allow or permit open burning pursuant to the provisions of this section in an area which is designated non-attainment for total suspended particulates, or in a Class I area, or within six kilometers of such areas.

As amended, R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Rule concerning "Fees" deleted and rule concerning "land clearing" substituted therefor.

### 7:27–2.12 Special permit

(a) The Department may issue a special permit to any person, regardless of the provisions of any other section of this subchapter, for the open burning of any substance or material upon a finding of merit in an affidavit filed with the Bureau of Enforcement Services that such substance or material represents an imminent hazard to the public health, welfare, or safety.

(b) The permit may be conditioned upon any requirements which the Bureau of Enforcement Services deems to be necessary and is revocable at the discretion of the Department.

(c) The permit will be issued for a single event and no open burning shall commence until a permit is issued and current.

(d) The affidavit shall set forth the following and any other information requested by the Department.

1. The name, address, and telephone number of the person submitting the affidavit;

2. The name of the owner and authorized representative in charge of the premises where the substance or material is to be burned;

3. The proposed operating practice including the nature, type, and quantity of substance or material to be burned;

4. The date(s) on which the open burning is to take place and the time(s) of day;

5. The exact location(s) at which the open burning is to take place; and

6. Reasons why the substance or material cannot be disposed of by any method other than by open burning.

As amended, R.1981 d.135 effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Rule concerning "permit transfer" deleted and rule concerning "special permit" substituted therefor.
Administrative Correction to (a) and (b): changed Air Pollution Control to Enforcement Services.
See: 23 N.J.R. 1166(b).

### 7:27–2.13 Fees

(a) Applications for permits for open burning pursuant to the provisions of this subchapter shall be accompanied by a service fee in accordance with the following schedule and no permit will be issued until the service fee is received.

| Section of Subchapter | | Term of Permit | Service Fee |
|---|---|---|---|
| 2.5 | Infested plant life | 30 days or less | $10.00 |
| 2.6 | Prescribed burning | Specified on permit | No Fee |
| 2.7 | Emergencies | 7 days or less | 10.00 |
| 2.8 | Dangerous materials | 7 days or less | 10.00 |
| | | to 60 days | 25.00 |
| | | to 6 months | 50.00 |
| 2.9 | Herbaceous plant life and hedgerows | 7 days or less | 10.00 |
| | | to 90 days | 25.00 |
| | | to 1 year | 50.00 |
| 2.10 | Orchard prunings and cullings | 7 days or less | 10.00 |
| | | to 90 days | 25.00 |
| | | to 1 year | 50.00 |
| 2.11 | Land clearing | 90 days or less | 25.00 |
| | | | Minimum plus $1 per acre to $50.00 maximum |

(b) Service fees shall be submitted in the form of a check or postal money order made payable to the order of the Treasurer, State of New Jersey. Fees paid pursuant to N.J.A.C. 7:27–2.5, 2.9, 2.10, and 2.11 shall be submitted to the Bureau of Forest Fire Management, Division of Parks and Forestry. Fees paid pursuant to N.J.A.C. 7:27–2.7 and 2.8 shall be submitted respectively to the Bureau of Enforcement Services and the Bureau of New Source Review, Division of Environmental Quality.

Amended by R.1981 d.135, effective May 7, 1981 (to become operative June 7, 1981).
See: 12 N.J.R. 690(a), 13 N.J.R. 264(a).
Administrative Correction to (b).
See: 23 N.J.R. 1166(b).

**Historical Note**

Rules concerning the subject or "Fees" were formerly codified at N.J.A.C. 7:27–2.11.

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## SUBCHAPTER 3. CONTROL AND PROHIBITION OF SMOKE FROM COMBUSTION OF FUEL

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed on November 17, 1971, as R.1971 d.210 to become effective on January 16, 1972. See: 3 N.J.R. 4(c), 3 N.J.R. 255(a). Revisions to this subchapter were filed on August 5, 1977, as R.1977 d.284 to become effective on October 12, 1977. See 8 N.J.R. 375(a), 9 N.J.R. 420(a).

### 7:27–3.1 Definitions

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

"Department" means the Department of Environmental Protection.

"Direct heat exchanger" means equipment in which heat from the combustion of fuel is transferred to a substance being heated so that the latter is contacted by the products of combustion and may contribute to the total effluent.

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

"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. "Internal cross-sectional dimension" means any maximum linear perpendicular distance from an inside wall of a stack or chimney to the inside of an opposite wall, such as the diameter of a circular cross-section or the length or width of a rectangular cross-section.

"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.

"Marine installation" means equipment for propulsion, power or heating on all types of marine craft and floating equipment.

"Mobile source" means equipment designed or constructed to be portable or movable from one location to another including but not limited to aircraft, locomotives operating on rails, tractors, earth moving equipment, hoists and mobile power generators.

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

"Opacity" means the property of a substance which renders it partially or wholly obstructive to the transmission of visible light expressed as the percentage to which the light is obstructed.

"Ringelmann smoke chart" means the Ringelmann's scale for grading the density of smoke as published by the United States Bureau of Mines or any chart, recorder, indicator or device which is approved by the Department as the equivalent of said Ringelmann's scale for the measurement of smoke density.

"Smoke" means small gasborne and airborne particles, exclusive of visible condensed water vapor, arising from a process of combustion in sufficient number to be observable.

"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.

"Visible smoke" means smoke which obscures light to a degree readily discernible by visual observation.

### 7:27–3.2 Smoke emissions from stationary indirect heat exchangers

(a) No person shall cause, suffer, allow or permit visible smoke to be emitted into the outdoor air from the combustion of fuel in any stationary indirect heat exchanger except as provided in (b) below.

(b) No person shall cause, suffer, allow or permit smoke the shade or appearance of which is darker than number 1 on the Ringelmann smoke chart or greater than 20 percent opacity, exclusive of visible condensed water vapor, to be emitted into the outdoor air from the combustion of fuel in any stationary indirect heat exchanger having a rated hourly capacity of 200 million BTU or greater gross heat input and discharging through a stack or chimney having all internal cross-sectional dimensions of 60 inches or greater.

(c) The provisions of (a) and (b) above shall not apply to smoke which is visible for a period of not longer than three minutes in any consecutive 30–minute period.

Administrative correction to section heading changing sanitary to stationary.
See: 23 N.J.R. 61(a).

**Case Notes**

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.

### 7:27–3.3 Smoke emissions from marine installations

(a) No person shall cause, suffer, allow or permit smoke the shade or appearance of which is darker than number 1 on the Ringelmann smoke chart or greater than 20 percent opacity, exclusive of visible condensed water vapor, to be emitted into the outdoor air from the combustion of fuel in the indirect heat exchanger of any marine installation.

(b) The provisions of (a) above shall not apply to smoke which is visible for a period of not longer than three minutes in any consecutive 30–minute period.

### 7:27–3.4 Smoke emissions from the combustion of fuel in mobile sources

No person shall cause, suffer, allow or permit smoke the shade or appearance of which is darker than number 2 on the Ringelmann smoke chart or greater than 40 percent opacity, exclusive of visible condensed water vapor, to be emitted into the outdoor air from the combustion of fuel in any mobile source for a period of more than 10 consecutive seconds.

### 7:27–3.5 Smoke emissions from stationary internal combustion engines and stationary turbine engines

No person shall cause, suffer, allow or permit smoke the shade or appearance of which is darker than number 1 on the Ringelmann smoke chart or greater than 20 percent opacity, exclusive of visible condensed water vapor, to be emitted into the outdoor air from the combustion of fuel in any stationary internal combustion engine or any stationary turbine engine for a period of more than 10 consecutive seconds.

### 7:27–3.6 Stack test

(a) Any person responsible for the construction, installation, alteration or use of an indirect heat exchanger shall, when requested by the department, provide the facilities and necessary equipment for determining the density or opacity of smoke being discharged into the open air and shall conduct such smoke tests using methods approved by the department.

(b) All smoke test data shall be recorded in a permanent log at such time intervals as specified by the department.

(c) The data shall be maintained for a period of not less than one year and shall be available for review by the department.

### 7:27–3.7 Exceptions

The provisions of this subchapter shall not apply to direct heat exchangers, manufacturing processes or any motor vehicle while operating upon the public highways.

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## SUBCHAPTER 4. CONTROL AND PROHIBITION OF PARTICLES FROM COMBUSTION OF FUEL

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed on January 27, 1972, as R.1972 d.16 to become effective on March 27, 1972. See: 3 N.J.R. 248(a), 4 N.J.R. 23(b). Revisions to this subchapter were filed on August 5, 1977, as R.1977 d.284 to become effective on October 12, 1977. See: 8 N.J.R. 375(a), 9 N.J.R. 420(a).

### 7:27–4.1 Definitions

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

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

"Department" means the Department of Environmental Protection.

"Direct heat exchanger" means equipment in which heat from the combustion of fuel is transferred to a substance being heated so that the latter is contacted by the products of combustion and may contribute to the total effluent.

"Equipment" means any device capable of causing the emission of an air contaminant into the open air and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This shall include equipment in which the preponderance of the air contaminants emitted is caused by the manufacturing process.

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

"Heat input rate" means the rate at which the aggregate heat content based on the higher heating value of the fuel is introduced into the fuel burning equipment.

"Isokinetic" means a method for sampling air contaminants from the gas stream in a stack or chimney in such a manner that the gas stream enters a sampling probe in the same direction and at the same velocity as the gas stream in a stack or chimney.

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

"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.

"Marine installation" means equipment for propulsion, power or heating on all types of marine craft and floating equipment.

"Maximum allowable emission rate" means the maximum amount of air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

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

"Performance test principle" means a concept of measurement as required for determining compliance with a specific standard for the emission of air contaminants.

"Sampling train" means a combination of entrapment devices, instruments, and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

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

"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.

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

### 7:27–4.2 Standards for the emission of particles

(a) No person shall cause, suffer, allow or permit particles arising from the combustion of fuel to be emitted from any stack or chimney into the outdoor air in excess of the maximum allowable emission rate set forth in the following table. For a heat input rate between any two consecutive rates shown, the maximum allowable emission rate shall be determined by interpolation:

| Heat Input Rate (Millions of British Thermal Units per Hour) | Maximum Allowable Emission Rate (Pounds per Hour) |
|---|---|
| 1 | 00.6 |
| 10 | 06 |
| 20 | 08 |
| 30 | 09 |
| 40 | 10 |
| 50 | 11 |
| 60 | 12 |
| 70 | 13 |
| 80 | 14 |
| 90 | 14.5 |
| 100 | 15 |
| 120 | 16.5 |
| 140 | 17.5 |
| 160 | 18.5 |
| 180 | 19.3 |
| 200 | 20 |
| 400 | 40 |
| 600 | 60 |
| 800 | 80 |
| 1,000 | 100 |
| 2,000 | 200 |
| 3,000 | 300 |
| 4,000 | 400 |
| 5,000 | 500 |
| 6,000 | 600 |
| 7,000 | 700 |
| 8,000 | 800 |
| 10,000 | 1,000 |

Note: Heat input rate shall be the sum of the heat input rates of all fuel burning equipment discharging through a single stack or chimney.

**7:27–4.3 Performance test principle**

(a) For purposes of measuring emissions in accordance with the provisions of this subchapter, particles shall be drawn by isokinetic procedures from the stack or chimney and the weight of the particles determined gravimetrically after removal of uncombined water.

(b) The measured emission weight shall be the combined weight of all particles collected and analyzed in accordance with the sampling and analytical procedures set forth in N.J.A.C. 7:27B–1.1 et seq.

**7:27–4.4 Emission tests**

(a) Any person responsible for the emission of particles, arising from the combustion of fuel shall, when requested by the department, provide such sampling facilities exclusive of instrumentation and sensing devices as may be necessary for the department to determine the rate at which the particles are or may be discharged from the fuel burning operation.

(b) During such testing by the department, the fuel burning operation shall be operated under normal, routine operating conditions or under such other conditions within the capacity of the equipment as may be requested by the department.

(c) The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

**7:27–4.5 Permit to construct, install or alter and certificate to operate**

(a) No person shall construct or install any new fuel burning equipment, or any new control apparatus, or alter any existing fuel burning equipment, or any control apparatus without first having obtained a "permit to construct, install or alter control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(b) No person shall use or cause to be used any new or altered fuel burning equipment, or any new or altered control apparatus without first having obtained a "certificate to operate control apparatus or equipment" from the department, in accordance with subchapter 8 of this chapter.

(c) No person shall use or cause to be used any fuel burning equipment unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use, in accordance with the permit to construct and the certificate to operate.

**7:27–4.6 Exceptions**

(a) The provisions of this subchapter shall not apply:

1. When the heat input rate to the fuel burning equipment is less than 1,000,000 British Thermal Units per hour;

2. To marine installations, vehicles or other movable or portable equipment;

3. To direct heat exchangers.

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## SUBCHAPTER 5. PROHIBITION OF AIR POLLUTION

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed and became effective prior to September 1, 1969. Revisions to this subchapter were filed on August 5, 1977, as R.1977 d.284 to become effective on October 12, 1977. See: 8 N.J.R. 375(a), 9 N.J.R. 420(a). Petition for Rulemaking: Petition to amend provisions regarding public entity odor violations; petition denied. See: 24 N.J.R. 1642(c), 24 N.J.R. 1907(c), 24 N.J.R. 3764(b).

**7:27–5.1 Definitions**

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

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend 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 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.

"Economic poisons" means those chemicals used as insecticides, rodenticides, fungicides, herbicides, nematocides or defoliants.

**Law Review and Journal Commentaries**

Defending Odor Lawsuits Takes a Nose for Nuisance. Albert I. Telsey, 134 N.J.L.J. No. 9, S14 (1993).

**7:27–5.2 General provisions**

(a) Notwithstanding compliance with other subchapters of this chapter, no person shall cause, suffer, allow or permit to be emitted into the outdoor atmosphere substances in quantities which shall result in air pollution as defined herein.

(b) The provisions of subsection (a) of this section shall not apply to the use of economic poisons.

Public Notice: Air Pollution Investigation Guidelines.
See: 28 N.J.R. 198(a).

**Law Review and Journal Commentaries**

Defending Odor Lawsuits Takes a Nose for Nuisance. Albert I. Telsey, 134 N.J.L.J. No. 9, S14 (1993).

**Case Notes**

Release of air pollutants into outdoor atmosphere during course of fire of unknown origin rendered manufacturer strictly liable. Department of Environmental Protection v. Leeds, 95 N.J.A.R.2d (EPE) 137.

Peach orchard owner was not entitled to air pollution exemption under New Jersey Right to Farm Act. Department of Environmental Protection v. Smith Brokers, Inc. 93 N.J.A.R.2d (EPE) 149.

Wind-blown sand was air contaminant; activities of sand company resulted in air pollution. Division of Environmental Quality v. McCormack Aggregates, 93 N.J.A.R.2d (EPE) 37.

Evidence proved air pollution from sewage plant; penalty assessed. Division of Environmental Quality v. Township of Cedar Grove, 92 N.J.A.R.2d (EPE) 252.

Record established that auto body painting business violated both permit and air pollution regulations when paint fumes escaped from certified spray paint booths; $17,500 penalty assessed. Division of Environmental Quality v. Prestige Auto Body, 92 N.J.A.R.2d (EPE) 178.

Odor emitted by chemical manufacturing facility constituted air pollution; penalty assessed. Givaudan Corporation v. New Jersey Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 130.

Odor emanating from municipal leaf compost pile constituted "air pollution". Borough of Ridgefield v. New Jersey Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 127.

Odor constituted "air pollution"; penalty assessed. A.O. Polymer Corporation v. Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 115.

Evidence failed to establish that claimed air pollution blew on complainant's property; no violation and no penalty. New Jersey Department of Environmental Protection v. Coastal Eagle Point Oil Company, Inc. 92 N.J.A.R.2d (EPE) 85.

Farmer who obtained permits to perform burning of tree trimmings violated air pollution regulation even though dispersal of ash caused by wind shift; penalty reduced. DeEugenio & Sons v. Division of Environmental Quality. 92 N.J.A.R.2d (EPE) 47.

Single complaint about truck filled with asphalt was insufficient to establish violation of air pollution regulation. Division of Environmental Quality v. Marconi Roofing Company, 92 N.J.A.R.2d (EPE) 34.

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## SUBCHAPTER 6. CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed on January 27, 1972, as R.1972 d.16 to become effective on March 27, 1972. See: 3 N.J.R. 248(a), 4 N.J.R. 23(b). Revisions were filed on March 21, 1977, as R.1977 d.95 to become effective on May 23, 1977. See: 8 N.J.R. 375(a), 9 N.J.R. 170(c).

### 7:27–6.1 Definitions

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

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

"Cullett" means broken, waste or recycled glass.

"Department" means the Department of Environmental Protection.

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

"Equipment" means any device capable of causing the emission of an air contaminant into the open air, and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This shall include equipment in which the preponderance of the air contaminants emitted is caused by the manufacturing process.

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

"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 using energy in the form of intense heat for the production of glass.

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

"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.

"Isokinetic" means a method for sampling air contaminants from the gas stream in a stack or chimney in such a manner that the gas stream enters a sampling probe in the same direction and at the same velocity as the gas stream in a stack or chimney.

"Lead glass" means a glass produced from the fusion of silica, alkali and lead oxide, and characterized by a high

index of refraction, high light dispersion, high electrical resistance and high density.

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

"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.

"Opacity" means the property of a substance which renders it partially or wholly obstructive to the transmission of visible light, expressed as the percentage to which the light is obstructed.

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

"Performance test principle" means a concept of measurement as required for determining compliance with a specific standard for the emission of air contaminants.

"Potential emission rate" means the mass rate of air contaminants emitted or to be emitted through a stack or chimney into the outdoor air, exclusive of any type of control apparatus.

"Process weight" means the total weight of all materials introduced into a source operation, excluding liquid or gaseous fuel, uncombined water and air.

"Refuse" means rubbish, garbage, trade waste and plant life.

"Sampling train" means a combination of entrapment devices, instruments and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

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

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

"Source operation" means any manufacturing process or any identifiable part thereof emitting an air contaminant into the outdoor atmosphere through one or more stacks or chimneys.

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

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

### 7:27–6.2 Standards for the emission of particles

(a) No person shall cause, suffer, allow or permit particles as measured by the performance test principles set forth in section 3 of this subchapter to be emitted from any source operation, except as provided in subsection (b) of this section, through any stack or chimney into the outdoor air in excess of the maximum allowable emission rate as determined below:

MAXIMUM ALLOWABLE EMISSION RATE FOR PARTICLES

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| **Potential Emission Rate from Source Operation (lbs. per hr.)** | **Allowable Emission Rate (lbs. per hr.) Based on 99% efficiency of Collection.** | **Source Gas Emitted from Source Operation (Standard cu. ft. per min.)** | **Allowable Emission Rate (lbs. per hr.) Based on 0.02 grains per SCF.** |
| 50 or less | 0.5 | 3,000 or less | 0.5 |
| 100 | 1.0 | 6,000 | 1.0 |
| 1000 | 10.0 | 35,000 | 6.0 |
| 2000 | 20.0 | 70,000 | 12.0 |
| 3000 or greater | 30.0 | 140,000 | 24.0 |
| | | 175,000 or greater | 30.0 |

Instructions:

1. From columns 1 and 2 above, determine the allowable emission rate based upon the potential emission rate of particles from the source operation as measured by the performance test principles set forth in subsections 3(a) and 3(b) of this subchapter;
2. From columns 3 and 4 above, determine the allowable emission rate based upon the source gas emitted from the source operation. Whenever dilution gas is, for any purpose, added to the source gas from a source operation, the source gas emitted shall be considered to be the gas discharge rate prior to such dilution;
3. The greater of the two emission rates as determined from 1 and 2 above shall be the maximum allowable emission rate. For rates between any two consecutive values stated in columns 1 and 3, the corresponding allowable emission rates shall be as determined by interpolation.

(b) The provisions of subsection (a) of this section shall not apply to any glass manufacturing furnace. Such furnace(s) shall be subject to the following:

1. No person shall cause, suffer, allow or permit particles as measured by the performance test principles set forth in section 3(a) and (b) of this subchapter to be emitted from any glass manufacturing furnace through any stack or chimney into the outdoor air in excess of the maximum allowable emission rate, as determined from the equation below:

i. $A = 5 + (.48 \times W)$;
ii. $A$ = maximum allowable emission rate (lbs. per hr.);
iii. $W$ = process weight per hour (tons per hr.).

(c) The provisions of subsection (b) of this section and section 5(b) of this subchapter shall not apply to any glass manufacturing furnace used for the production of lead glass.

(d) No person shall cause, suffer, allow or permit particles to be emitted from any stack or chimney into the outdoor air the shade or appearance of which is greater than 20 per cent opacity, exclusive of visible condensed water vapor.

(e) The provisions of subsection (d) of this section shall not apply to particles the shade or appearance of which is greater than 20 per cent opacity, exclusive of visible condensed water vapor, for a period of not longer than three minutes in any consecutive 30–minute period.

Petition for Rulemaking: Exxon Company petitioned for change to the allowable particle emission rate limit.
See: 25 N.J.R. 1577(c).
Petition for Rulemaking: Petitioners Exxon Corp. and Tosco Corp. sought to lift cap of 30 pounds of particulates per hour; petition granted and amendment to rule to be completed.
See: 24 N.J.R. 1577(c), 25 N.J.R. 1893(b).

**Case Notes**

Orders for violations of particle emission standards held invalid as testing procedures required to be published by the Department under former N.J.A.C. 7:27–6.3 were not published as of issuance date of orders. 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).

### 7:27–6.3 Performance test principles

(a) For purposes of measuring emissions in accordance with the provisions of section 2(a) and (b) of this subchapter, particles shall be drawn by isokinetic procedures from the stack or chimney and the weight of the particles determined gravimetrically after removal of uncombined water.

(b) The measured emission weight shall be the combined weight of all particles collected and analyzed in accordance with the sampling and analytical procedures set forth in N.J.A.C. 7:27B–1.

(c) Opacity measurements shall be carried out in accordance with the procedures set forth in N.J.A.C. 7:27B–2.

**Case Notes**

Orders for violations of particle emission standards held invalid as testing procedures required to be published by the Department under former regulation were not published as of issuance date of orders. 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 70 N.J. 152, 358 A.2d 199 (1976).

### 7:27–6.4 Emission tests

(a) Any person responsible for the emission of particles from a source operation shall, when requested by the department, provide the facilities and necessary equipment for determining the opacity of emissions being discharged through a stack or chimney and shall conduct such opacity tests using methods approved by the department. Opacity test data shall be recorded in a permanent log at such time intervals as specified by the department and shall be maintained for a period of not less than one year and shall be available for review by the department.

(b) Any person responsible for the emission of particles from a source operation shall, upon request of the department, provide such sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the department to determine the nature and quantity of particles being emitted from the source operation. During such testing by the department, the source operation shall be operated under normal, routine operating conditions or under such other conditions within the capacity of the source operation as may be requested by the department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

### 7:27–6.5 Variances

(a) Whenever a person responsible for the emission of particles from a source operation believes that advances in the art of control for the kind and amount of particles emitted has not developed to a degree which would enable the requirements of section 2 of this subchapter to be attained, he may apply to the department for a variance, setting forth his reasons and justifications. The department may issue a variance from section 2(a), (b) and/or (d) of this subchapter and such variance shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for its continuation. Variances issued under the provisions of this section shall be conditional on the compliance with any requirements which the department deems to be necessary.

(b) The department may grant a variance from section 2(b) of this subchapter, if the person responsible for the operation of a glass furnace demonstrates, to the satisfaction of the department, that the process weight for the furnace continually consists of greater than 25 per cent by weight cullet. Such variance:

1. Shall not be granted unless the applicant demonstrates compliance with all other requirements of this chapter, including but not limited to compliance with subchapter 13 (Ambient air quality standards) of this chapter, as well as any other requirements the department deems necessary;

2. Shall specify conditions, including but not limited to a maximum allowable emission rate not to exceed the maximum allowable emission rate, as determined from the following table:

| CULLET USAGE (Per cent by weight) | MAXIMUM ALLOWABLE EMISSION RATE (lbs. per hr.) |
|---|---|
| 25–35% | 6 + (.48 × W) |
| 35–45% | 7 + (.48 × W) |
| 45% or more | 8 + (.48 × W) |

W = process weight per hour (tons per hr.)

3. Shall be valid for a period not to exceed two years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for such renewal.

(c) The department may grant a variance from section 2(d) of this subchapter if the person responsible for the operation of a glass furnace demonstrates, to the satisfaction of the department, that the glass furnace is capable of conforming with the provisions of sections 2(b) or 5(b) of this subchapter, but not capable of simultaneously conforming with the provisions of section 2(d) of this subchapter. Such variance:

1. Shall not be granted unless the applicant demonstrates compliance with all other requirements of this chapter, as well as any other requirements the department deems necessary;

2. Shall specify conditions, including but not limited to a requirement that the shade or appearance of the emissions from the glass furnace not exceed a per cent opacity specified by the department;

3. Shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for such renewal.

(d) Any person seeking a variance under the provisions of subsection (b) and (c) of this section shall file with the department an application on a form provided by the department and shall furnish any other information subsequently requested by the department.

(e) Any person aggrieved by the denial or the prescribed conditions by the department of a variance authorized by this section may, upon application made within 15 days after notice thereof, be entitled to a hearing before the department upon at least 15 days written notice. Within 30 days after such hearing, the department shall issue a notice amending, affirming or rescinding its previous action.

### 7:27–6.6 Permit to construct and certificate to operate

(a) No person shall construct or install any new equipment or any new control apparatus, or alter any existing equipment or control apparatus from which particles are emitted through any stack or chimney into the outdoor air without first having obtained a "Permit to construct, install or alter control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which particles are emitted through any stack or chimney into the outdoor air without first having obtained a "Certificate to operate control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(c) No person shall use or cause to be used any equipment from which particles are emitted through any stack or chimney into the outdoor air, unless all components connected or attached to, or serving the equipment and/or control apparatus are functioning properly and are in use in accordance with the permit to construct, install or alter, and the certificate to operate.

### 7:27–6.7 Exceptions

(a) The provisions of this subchapter shall not apply:

1. To indirect heat exchangers;

2. To incinerators.

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## SUBCHAPTER 7. SULFUR

### 7:27–7.1 Definitions

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

"Adjusted stack height" means the stack height modified by either a stack height adjustment factor or a stack height adjustment in feet.

"Allowable emission" means the emission in any 60–minute period expressed in pounds, computed as set forth in N.J.A.C. 7:27–7.2(r).

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

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

"Gases" means formless fluids which, under standard conditions, occupy the space of enclosure and which can be changed to the liquid or solid state only by the combined effect of increased pressure and decreased temperature.

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

"Source operation" means any process or any identifiable part thereof emitting air contaminants into the outdoor atmosphere through one or more stacks or chimneys. For purposes of this definition identical processes shall be considered as separate source operations.

"Stack exit velocity" means the linear velocity in feet per second at which gases enter the outdoor atmosphere from a stack or chimney.

"Stack height" means the vertical distance measured in feet between the point of discharge from the stack or chimney into the outdoor atmosphere and the elevation of the land thereunder.

"Stack or chimney" means a flue, conduit or opening permitting particulate or gaseous emissions into the open air, or constructed or arranged for such purpose.

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

"Sulfur compounds" means all inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

"Sulfur dioxide ($SO_2$)" means a colorless gas at standard conditions which has the molecular formula $SO_2$.

"Sulfuric acid ($H_2SO_4$)" means a heavy, corrosive, oily, colorless, dibasic, strong acid having the molecular formula $H_2SO_4$.

"Sulfur trioxide ($SO_3$)" means a compound which has the molecular formula $SO_3$.

"Vapors" 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.

### 7:27–7.2 Control and prohibition of air pollution from sulfur compounds

(a) No person shall cause, suffer, allow or permit sulfur compounds in the form of gases, vapors or liquid particles to be discharged from any stack or chimney into the outdoor atmosphere except as provided in this Section.

(b) Whenever the discharge from a stack or chimney includes $SO_2$:

1. The concentration of $SO_2$ in the gases being discharged shall not exceed 2,000 ppm by volume at standard conditions except that for a period of two years following the effective date of this Subchapter, the concentration of $SO_2$ in the gases being discharged shall not exceed 3,000 ppm by volume at standard conditions.

2. The quantity of $SO_2$ which is discharged through any stack or chimney into the outdoor atmosphere in any 60–minute period shall not exceed the allowable emission as set forth in subsection (r) of this section and at any instant the maximum rate of emission expressed in pounds per hour shall not exceed twice the allowable emission.

(c) The provisions of subsection (b)1. of this Section shall not apply to the discharge from:

1. Any stack or chimney whenever the total volume of gases discharged does not exceed 3,000 cubic feet per minute at standard conditions, and the quantity of $SO_2$ discharged in any 60–minute period does not exceed 50 pounds, and at any instant the maximum rate of emission of $SO_2$ does not exceed 100 pounds per hour.

2. Sulfur recovery plants which are engaged in recovering elemental sulfur from hydrogen sulfide. For such plants the concentration of $SO_2$ in the gases being discharged from a stack or chimney shall not exceed 15,000 ppm by volume at standard conditions.

(d) Any person responsible for the discharge of $SO_2$ through a stack or chimney into the outdoor atmosphere shall provide the facilities and necessary equipment and shall conduct stack tests using methods approved by the Department. Such tests shall include a determination of the $SO_2$ concentration, the total gas volume being discharged, and the gas temperature and pressure at the sampling point in the stack or chimney and the data shall be recorded in a permanent log at least once each hour. These data shall be maintained for a period of not less than one year and shall be available for review by the Department.

(e) Whenever the person responsible for the discharge of $SO_2$ can present data to the Department showing that his emissions are well under the allowable emissions or that his process produces predictable concentrations and emission rates, he may apply to the Department for a waiver or modification of the stack testing requirement. For the purpose of this subsection, existing data may be offered as substantiating evidence for such waiver or modification. If a waiver or modification is approved by the Department, the Department shall notify the person of such approval in writing.

(f) The provisions of subsection (d) of this Section shall not apply whenever the total volume of gases discharged from a stack or chimney is less than 1,000 cubic feet per minute at standard conditions.

(g) Whenever the discharge from a stack or chimney includes $SO_3$ and $H_2SO_4$:

1. The combined concentration of $SO_3$ and $H_2SO_4$ in the gases being discharged, when converted and expressed as $H_2SO_4$, shall not exceed ten milligrams per cubic foot at standard conditions; and

2. The combined quantity of $SO_3$ and $H_2SO_4$ discharged in any 60–minute period, when converted and expressed as $H_2SO_4$, shall not exceed the allowable emission as set forth in subsection (r) of this Section and at any instant the maximum rate of emission expressed in pounds per hour shall not exceed twice the allowable emission.

(h) Any person responsible for the discharge of $SO_3$ and $H_2SO_4$ through a stack of chimney into the outdoor atmosphere shall, when requested by the Department, provide the facilities and necessary equipment for determining the combined quantity of $SO_3$ and $H_2SO_4$ being discharged from the stack or chimney and shall conduct stack tests using methods approved by the Department. Such tests may include a determination of the $SO_3$ and $H_2SO_4$ concentrations, the total gas volume being discharged, and the gas temperature and pressure at the sampling point in the stack or chimney, and the data shall be recorded in a permanent log at such time intervals as specified by the Department. The data shall be maintained for a period of not less than one year and shall be available for review by the Department.

(i) Whenever the discharge from a stack or chimney includes sulfur compounds in the form of gases, vapors or liquid particles other than $SO_2$, $SO_3$, and $H_2SO_4$, the total quantity of sulfur in these sulfur compounds which is discharged in any 60–minute period shall not exceed the allowable emission as set forth in subsection (r) of this Section and the maximum rate of emission at any instant shall not exceed the allowable emission.

(j) Any person responsible for the discharge of sulfur compounds in the form of gases, vapors or liquid particles, other than $SO_2$, $SO_3$ and $H_2SO_4$, through a stack or chimney into the outdoor atmosphere shall, when requested by the Department, provide the facilities and necessary equipment for determining the combined quantity of such sulfur compounds being discharged from the stack or chimney and shall conduct stack tests using methods approved by the Department. Such tests may include a determination of the sulfur concentrations, the total gas volume being discharged, and the gas temperature and pressure at the sampling point in the stack or chimney and the data shall be reported in a permanent log at such intervals as specified by the Department. The data shall be maintained for a period of not less than one year and shall be available for review by the Department.

(k) The provisions of this Subchapter shall not apply to:

1. The discharge of sulfur compounds in the form of gases, vapors or liquid particles resulting from the combustion of commercial fuel; or

2. The discharge from any stack or chimney having the sole function of relieving pressure of gas, vapor or liquid under abnormal emergency conditions.

(*l*) Where combustible sulfur compounds are burned at or beyond the exit of a stack or chimney, the products of combustion shall be exempt from the concentration limits of subsection (b)1. of this Section.

(m) Whenever the person responsible for the discharge of a sulfur compound in the form of gases, vapors or liquid particles other than $SO_2$, $SO_3$ and $H_2SO_4$ believes that such sulfur compound does not contribute to air pollution to the degree represented by the allowable emission, he may submit data to the Department setting forth reasons and justifications for a less restrictive allowable emission. If the change is approved by the Department, the Department shall, assign a revised allowable emission for such sulfur compound which shall be used for the purpose of this Subchapter.

(n) Any person responsible for the discharge of sulfur compounds in the form of gases, vapors or liquid particles through a stack or chimney shall, upon request of the Department, provide in connection with such stack or chimney such sampling facilities and testing facilities, exclusive of instruments and sensing devices, as may be necessary for the Department to determine the quantity and concentration of such sulfur compounds which are or may be discharged through such stack or chimney. Such facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

(*o*) Whenever sulfur compounds in the form of gases, vapors or liquid particles from one source operation are discharged through two or more stacks or chimneys, the total quantity that may be discharged from any one stack or chimney shall not exceed the allowable emission permitted for that stack or chimney, nor shall the total quantity that may be discharged from all the stacks exceed the allowable emission that would be permitted from the single stack or chimney having the greatest allowable emission.

(p) Any person responsible for a source operation which discharges sulfur compounds in the form of gases, vapors or liquid particles through a stack or chimney and who in the process of starting up or shutting down such operation anticipates discharges in excess of those allowable under this Subchapter shall file an affidavit which the Commissioner stating the following:

1. The name, address and telephone number of the person submitting affidavit; if such person is a legal entity, the name and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where the source operation is located;

2. The type of business or activity involved;

3. The general nature of the source operation and the proposed operating practice;

4. Duration of the period for which emissions or concentrations in excess of the allowable emission or concentrations can be expected and magnitude of such emission or concentrations;

5. Frequency of start-up and shut-down;

6. Reasons why excessive emissions or concentrations cannot be avoided during the start-up and shut-down period.

(q) The Department may, for reasons set forth in the affidavit, authorize a waiver of the discharge requirements of this Subchapter; provided, however, that such waiver shall not apply to any period of operation other than that period set forth as process start-up and shut-down.

(r) The allowable emission for sulfur compounds in the form of gases, vapors of liquid particles shall be computed as follows:

1. Establish the stack height;

2. Establish the stack exit velocity in feet per second;

3. Establish the temperature in degrees Fahrenheit at which the gases leave the stack;

4. The use of Tables I and II shall be as follows:

i. If the stack height is less than 200 feet, determine "Stack Height Adjustment Factor" from Table I and multiply by stack height to determine "Adjusted Stack Height in Feet".

ii. If stack height is 200 feet or greater, determine "Stack Height Adjustment in Feet" from Table II and add this value to or subtract this value from the actual stack height to determine "Adjusted Stack Height in Feet".

iii. Intermediate values shall be determined by interpolation.

5. Locate the "Adjusted Stack Height" obtained from paragraph 4 of this subsection along the left side of chart titled "Allowable Emission for Sulfur Compounds". Draw a horizontal line across the chart to the point where this line intersects the line on the chart corresponding to the sulfur compound for which the allowable emission is to be determined.

6. Draw a vertical line from the point determined by paragraph 5 of this subsection to the "Allowable Emission in Pounds per Hour" scale along the bottom of the chart. The point at which this line intersects the scale yields the "Allowable Emission in Pounds per Hour" for that sulfur compound.

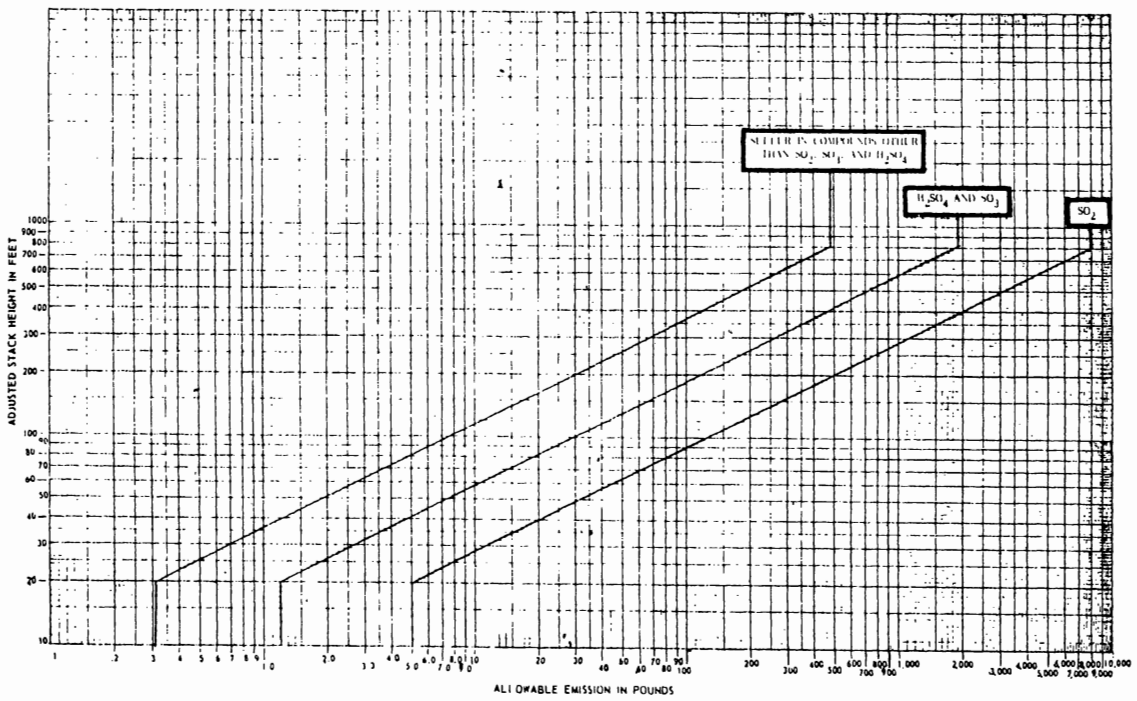
**TABLE I—STACK HEIGHT ADJUSTMENT FACTOR**

| STACK EXIT VELOCITY IN FT./SEC. | TEMPERATURE, DEGREES F., AT WHICH THE GASES LEAVE THE STACK | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 200°F or less | 300° | 400° | 500° | 600° | 700° | 800° | 900° | 1000° or greater |
| 0 | 0.910 | 0.910 | 0.910 | 0.910 | 0.910 | 0.910 | 0.910 | 0.910 | 0.910 |
| 5 | 0.928 | 0.930 | 0.932 | 0.933 | 0.934 | 0.935 | 0.935 | 0.936 | 0.936 |
| 10 | 0.946 | 0.950 | 0.953 | 0.956 | 0.958 | 0.959 | 0.961 | 0.962 | 0.963 |
| 15 | 0.964 | 0.970 | 0.975 | 0.978 | 0.981 | 0.984 | 0.986 | 0.988 | 0.989 |
| 20 | 0.982 | 0.990 | 0.996 | 1.001 | 1.005 | 1.008 | 1.011 | 1.014 | 1.016 |
| 25 | 1.000 | 1.010 | 1.018 | 1.024 | 1.029 | 1.033 | 1.037 | 1.039 | 1.042 |
| 30 | 1.018 | 1.030 | 1.039 | 1.047 | 1.053 | 1.056 | 1.062 | 1.065 | 1.068 |
| 35 | 1.036 | 1.050 | 1.061 | 1.070 | 1.077 | 1.082 | 1.087 | 1.091 | 1.095 |
| 40 | 1.054 | 1.070 | 1.083 | 1.092 | 1.100 | 1.107 | 1.112 | 1.117 | 1.121 |
| 45 | 1.072 | 1.090 | 1.104 | 1.115 | 1.124 | 1.131 | 1.138 | 1.143 | 1.148 |
| 50 OR GREATER | 1.090 | 1.110 | 1.126 | 1.138 | 1.148 | 1.156 | 1.163 | 1.169 | 1.174 |

**TABLE II–STACK HEIGHT ADJUSTMENT IN FEET**

| STACK EXIT VELOCITY IN FT./SEC. | TEMPERATURE, DEGREES F., AT WHICH THE GASES LEAVE THE STACK | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 200°F or less | 300° | 400° | 500° | 600° | 700° | 800° | 900° | 1000° or greater |
| 0 | -18.00 | -18.00 | -18.00 | -18.00 | -18.00 | -18.00 | -18.00 | -18.00 | -18.00 |
| 5 | -14.40 | -13.99 | -13.68 | -13.44 | -13.24 | -13.08 | -12.94 | -12.82 | -12.72 |
| 10 | -10.80 | - 9.99 | - 9.37 | - 8.88 | - 8.48 | - 8.16 | - 7.88 | - 7.65 | - 7.44 |
| 15 | - 7.20 | - 5.98 | - 5.06 | - 4.32 | - 3.72 | - 3.24 | - 2.82 | - 2.47 | - 2.16 |
| 20 | - 3.60 | - 1.97 | - 0.74 | + 0.24 | + 1.04 | + 1.68 | + 2.24 | + 2.70 | + 3.12 |
| 25 | 0.00 | + 2.03 | + 3.58 | + 4.80 | + 5.80 | + 6.60 | + 7.30 | + 7.88 | + 8.40 |
| 30 | + 3.60 | + 6.04 | + 7.89 | + 9.36 | +10.56 | +11.52 | +12.36 | +13.05 | +13.68 |
| 35 | + 7.20 | +10.05 | +12.20 | +13.92 | +15.32 | +16.44 | +17.42 | +18.22 | +18.96 |
| 40 | +10.80 | +14.06 | +16.52 | +18.48 | +20.08 | +21.36 | +22.48 | +23.40 | +24.24 |
| 45 | +14.40 | +18.06 | +20.84 | +23.04 | +24.84 | +26.28 | +27.54 | +28.58 | +29.52 |
| 50 OR GREATER | +18.00 | +22.07 | +25.15 | +27.60 | +29.60 | +31.20 | +32.60 | +33.75 | +34.80 |

**NOTE FOR TABLES I AND II: EXTRAPOLATION BELOW 200°F, OR ABOVE 1000°F., OR ABOVE 50 FT. PER SEC., IS NOT PERMITTED.**




ALLOWABLE EMISSION FOR SULFUR COMPOUNDS

# SUBCHAPTER 8. PERMITS AND CERTIFICATES

**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.

## 7:27–8.1 Definitions

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

"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 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.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" means any change made to equipment or control apparatus or the use thereof, except for change reported to the Department pursuant to N.J.A.C. 7:27–8.3(c) as an amendment of the permit in effect and repair or maintenance. Alteration includes, but is not limited to:

1. Change in the location of the point of discharge of any air contaminant from equipment or control apparatus into the outdoor atmosphere, unless the change is authorized in the permit or certificate in effect;

2. Replacement of equipment or control apparatus or of any substantial component thereof if:

i. The replacement equipment or control apparatus is not the same kind as that which is being replaced;

ii. The replacement equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The data of approval of the permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus; or

iv. No permit is in effect for the equipment or control apparatus;

3. The introduction of any new raw material to equipment or control apparatus for which no certificate is in effect, including the change of contents of a storage tank for which no certificate is in effect;

4. Any reconfiguration to an alternate configuration not authorized in the permit in effect;

5. Any of the following changes to equipment or control apparatus, or to the use thereof, if the change may increase the concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

ii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the permit or certificate in effect; or

iii. Change in the process in which the equipment or control apparatus is used;

6. Increase in the concentration or rate of emission of any air contaminant above that authorized by the permit and certificate in effect;

7. Emission of any air contaminant not authorized by the permit and certificate in effect;

8. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with the stack height regulations promulgated at 40 CFR 51;

ii. The change may result in an increase in the ambient concentration of any air contaminant; or

iii. No permit is in effect for the equipment or control apparatus;

9. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the permit or certificate;

10. Any increase in the total hours of operation per time period or the rate of production above that authorized in the permit or certificate; and

11. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any permit or certificate in effect.

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

"Amendment" means any revision of information in a permit or operating certificate in effect which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term does not include the modification of information in a permit or certificate to reflect alteration of equipment or control apparatus.

"AP–42" means the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA.

"Architectural coating" means a surface coating formulation applied and dried at ambient conditions, and used to coat all or parts of stationary structures and their appurtenances, such as buildings, bridges, the interior or exterior of houses, and other items such as signs, curbs, and pavements.

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

"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 having a molecular composition of one carbon atom and one oxygen atom.

"Category I" means the class of applications for preconstruction permits or certificates for the following types of equipment:

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 metalworking 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 apparatus 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 laboratory hoods, ducts, vents, or similar devices as specified in N.J.A.C. 7:27–8.2(a) used as conduits for exhausting fumes from laboratory operations;

11. Any enclosed sandblasting equipment as specified in N.J.A.C. 7:27–8.2(a) that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;

12. Any plastics grinding equipment as specified in N.J.A.C. 7:27–8.2(a); and

13. Any open top surface cleaner as specified in N.J.A.C. 7:27–8.2(a) 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 application for a preconstruction permit or certificate for any type of new or altered equipment, except those types which are defined above as belonging to Category I.

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

"CFR" means the Code of Federal Regulations.

"Clean Air Act" or "CAA" means the Federal Clean Air Act (42 U.S.C. 7401 et seq.) which consists of Public Law 159 (July 14, 1955; Stat. 322) and all subsequent amendments thereto.

"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 equipment or control apparatus is constructed, installed and used in conformance with all applicable permit and certificate provisions and conditions of approval, and all applicable laws, regulations, and rules.

"Construct" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used. This term does not include dismantling of existing equipment or control apparatus, site preparation, or placement of the footings or foundation upon which the structural elements of the equipment or control apparatus will rest. This term does not include ordering, receiving, or temporary storage of equipment or control apparatus, but does include placing such a device in the location where it is intended to be used. This term also does not include install.

"Consumer Price Index" or "CPI" means, for any calendar year, the annual average Consumer Price Index for all-urban consumers 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.

"Co-product" means one or more incidental result(s) 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 ecovery. A co-product is not considered nonproduct out- ɔut. Increases in quantities of co-products do not count ıowards 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.

"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 ($N_2$), oxygen ($O_2$), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide($CO_2$).

"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.

"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.

"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 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.

"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.

"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.

"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 all limitations and conditions on operation, production, or emissions which can be enforced by the 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; or

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"Freeboard chiller" means a set of condensing coils which are located peripherally along the free board and which condense the solvent vapor before they escape from the surface cleaner.

"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.

"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.

"Hazardous air pollutant" or "HAP" means an air contaminant listed by EPA as a HAP, pursuant to 42 U.S.C. 7412(b). That list is incorporated by reference herein, together with all amendments and supplements. A copy of the list is available from the Department at the address set forth at N.J.A.C. 7:27–8.4(a).

"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.

"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.

"Install" 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, ductwork and conveyor systems. This term does not include the term "construct," as defined above, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the preconstruction or operating permit application and approved by the Department.

"Intermediate product" means one or more desired result(s) 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.

"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.

"Lead" or "Pb" means elemental lead or any compound containing lead.

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

"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 |
| Oxides of nitrogen | 25 tons per year |
| VOC | 25 tons per year |
| Lead | 10 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.

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

"1989 dollars" means current dollars adjusted by the fraction, if any, by which the most recent Consumer Price Index differs from the Consumer Price Index for the calendar year 1989, using the following equation:

1989 dollars = (Current dollars) (1989 CPI)/(Most recent CPI)

Where

"1989 dollars" is the total fixed capital cost calculated in 1989 dollars;

"Current dollars" is the total fixed capital cost expressed in dollars as currently valued;

"1989 CPI" is the Consumer Price Index for the calendar year 1989; the CPI for 1989 is 124.0; and

"Most recent CPI" is the Consumer Price Index for the most recent calendar year for which a Consumer Price Index has been published.

"Nonattainment area" means any area identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard.

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

"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.

"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 a permit issued pursuant to N.J.A.C. 7:27–22 by the Department to authorize the use of one or more source operations from which air contaminants may be emitted.

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

"Ozone" or "$O_3$" means a gas having a molecular composition of three oxygen atoms.

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

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to Section 13 of the Air Pollution Control Act of 1954, as amended, of P.L. 1967, c. 106 (N.J.S.A. 26:2C–9.2).

"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 "Permit to Construct, Install or Alter 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.

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

"Plastics grinding equipment" means any type of machinery which is used to chop, grind or cut any plastic material for reintroduction of the material into the manufacturing process. This includes any conveying and product collection equipment associated with the grinding machinery.

"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.

"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.

"Potable water" means any water used or intended to be used for drinking or culinary purposes.

"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. This term shall include fugitive emissions, but shall not include secondary emissions.

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C–9.2.

"Prevention of significant deterioration" or "PSD" means a permitting process as defined in 40 CFR 52 which is applicable to new or modified major emitting sources locating in areas attaining the national ambient air quality standards for at least one air contaminant.

"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.

"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.

"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 definition 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.

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

"Replacement of equipment or control apparatus or of any substantial component thereof" means the installation of replacement equipment or control apparatus, or any substantial component thereof, at the same location as that occupied by the equipment or control apparatus being replaced.

"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.

"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.

"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.).

"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" 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.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"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).

"Stationary storage tank" means any immobile storage tank. This term also includes any delivery vessel, excluding a railroad tank car, used for storing VOC remaining on site at a facility for more than one month.

"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.

"Substantial component" means, in respect to replacement, the entire piece of equipment or control apparatus, or any component of equipment or control apparatus, if:

1. The total fixed capital cost of the replacement exceeds:

i. For Category I sources, $20,000 as calculated in 1989 dollars; or

ii. For Category II sources, 50 percent of the total fixed capital cost of replacement or $20,000 as calculated in 1989 dollars, whichever is greater; or

2. The equipment or control apparatus, or the component is designated in the conditions of approval of the

preconstruction permit or operating permit in effect as a substantial component.

"Sulfur dioxide" or "$SO_2$" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

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

"Surface cleaning" means removing unwanted foreign matter from the surfaces of materials.

"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.

"Telemetry" means the automatic transmission of measurement data by phone line, radio waves, or other means to a receiver and recorder.

"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 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 not to exceed 90 days.

"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.

"Toxic substance" or "TXS" means a substance listed in N.J.A.C. 7:27–17.

"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 precipitates 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 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 the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1–trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC–11)
dichlorodifluoromethane (CFC–12)
trifluoromethane (HFC–23)
1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)
1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)

chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1–trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluoroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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 $O_3$", "$PM_{-10}$", "potential to emit", "significant net emission increase", "State implementation plan (SIP)", "sulfur dioxide or $SO_2$", 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).

**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) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27–8.3, include:

1. Any equipment used in a commercial or industrial paint spray operation, except for equipment used in architectural coating operations;

2. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

3. All unheated open top surface cleaners having a top opening of greater than six square feet (0.56 square meters);

4. All heated oven top surface cleaners;

5. All conveyorized surface cleaners;

6. Equipment, in addition to that set forth in (a)3, 4, and 5 above, used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of any air contaminant occur from a tank or vessel, the capacity of which is in excess of 100 gallons;

7. Equipment, used in a process, other than as set forth in (a)2, 3, 4, 5 and 6 above, from which direct or indirect emissions of any air contaminant occur and in which the combined weight of all materials, excluding air and water, introduced into any one source operation is in excess of 50 pounds in any one hour;

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 VOC having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1 millimeter 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 direct or indirect emissions of air contaminants occur;

12. Commercial fuel burning equipment having a heat input rate of 1,000,000 BTU per hour or greater to the burning chamber;

13. Any equipment used for the burning of noncommercial fuel, crude oil or process by-products in any form;

14. 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.

15. 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, if the concentration in the water of each TXS equals or exceeds 100 parts per billion by weight or the total concentration in the water of VOC equals or exceeds 3,500 parts per billion by weight;

16. 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;

17. Any source operation which has the potential to emit any TXS at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

18. Any equipment required to have air pollution control apparatus pursuant to any applicable provisions of N.J.A.C. 7:27–16;

19. Any control apparatus serving equipment for which a permit is required pursuant to this section; or

20. Newspaper printing equipment subject to N.J.A.C. 7:27–8.2(a)2. For newspaper printing equipment in operation on or before October 31, 1994, applications must be filed in accordance with this subchapter by September 1, 1995.

(b) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are not required, notwithstanding the provisions of (a) above, include:

1. 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;

2. 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 exemption 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;

3. Potable water treatment equipment, except air stripping equipment with a capacity greater than 100,000 gallons per day;

4. Aeration basins, lagoons and settling basins at publicly owned treatment works or domestic treatment works; and

5. Equipment which is used for the sole purpose of woodworking by sanding, drilling, cutting or planing, unpainted wood or wood products, and which vents into a room.

(c) This subchapter shall not preclude 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).

**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 shall construct, install, or alter any equipment or control apparatus without first having obtained a preconstruction permit, except as provided at N.J.A.C. 7:27–8.2 and 8.17.

(b) No person shall use or cause to be used:

1. Any new or altered equipment or control apparatus without first having obtained an operating certificate, a temporary operating certificate, except as provided at N.J.A.C. 7:27–8.2 and 8.17; or

2. Any equipment or control apparatus if its certificate has expired or been revoked.

(c) Any person holding a permit or certificate shall keep the information in the permit or certificate up to date. Such person shall report any of the following changes to the Department within 120 days after the occurrence of the change, as an amendment of the permit or certificate, provided that the change does not constitute an alteration as defined in N.J.A.C. 7:27–8.1;

1. Change in business name, division name, or plant name; mailing address; company stack designation; telephone number; or name of plant contact;

2. Transfer of ownership of the equipment or control apparatus for which a permit or certificate is in effect;

3. Change in the contents of a storage tank for which a permit is in effect, provided such change does not involve the use or storage of any TXS;

4. The introduction of a raw material not authorized in the permit or certificate in effect;

5. Replacement of equipment or control apparatus or of any substantial component thereof, provided that the date of installation of the replacement equipment or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the replaced equipment or control apparatus; or

6. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with the stack height regulations promulgated at 40 CFR 51:

i. Change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

ii. Decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

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

iv. Increase in the exit temperatures or volume of gas emitted from a stack or chimney.

(d) Any person holding a preconstruction permit or certificate shall make said preconstruction permit or certificate, together with any amendments thereto, readily available for 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 or from any one piece of control apparatus or equipment to another.

(g) (Reserved.)

(h) Preconstruction permits and certificates issued under this subchapter are based on the potential for emission of air contaminants only and 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) The provisions of (a) and (b) above shall not apply to repair or maintenance of control apparatus or equipment.

(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.

(k) Any person holding a permit or certificate may decrease any of the following as an amendment of the permit or certificate, provided that the decrease does not entail any change made to equipment or control apparatus or the use thereof, or otherwise constitute an alteration as defined in N.J.A.C. 7:27–8.1:

1. Any maximum allowable rate of emission of any air contaminant or category of air contaminant limit;

2. Any maximum allowable hours of operation per time period; or

3. Any maximum allowable rate of production.

(*l*) For a person seeking approval for an environmental improvement pilot test, as defined at N.J.A.C. 7:27–8.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for the preconstruction permit or certificate within 30 days of its receipt of an administratively complete application. 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. 7:27–8.11.

(m) Notwithstanding (b) above, no certificate is required for equipment or control apparatus at a facility for which:

1. An operating permit issued by the Department is in effect; or

2. A facility-wide permit issued by the Department pursuant to N.J.S.A. 13:1D–35 et seq. is in effect.

(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.

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).

**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 for permits and certificates

(a) Applications for a preconstruction permit or a certificate, or for a renewal thereof shall be submitted to the Department on forms obtained from the Department. Application forms and information pertinent to applications may be requested from:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
401 East State Street, Second Floor
CN 027
Trenton, New Jersey 08625–0027

(b) The Department may require the applicant to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information 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. 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 in compliance with N.J.A.C. 7:27–1.

(c) 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 at least 60 days prior to the anticipated date of the testing, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

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. Give the Department at least seven days advance notice of the date and time of the start of any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has specified in the conditions of approval of the preconstruction permit or certificate other time requirements for notice;

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.

(d) A single application for a preconstruction permit or certificate may pertain to all equipment and control apparatus from which all of the air contaminants are vented through a single stack or chimney or through a single stack equivalent.

(e) Any person who is applying for a preconstruction permit 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.

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a preconstruction permit shall demonstrate, utilizing an air quality impact analysis conducted in accordance with (k) below and, as deemed necessary by the Department, ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the preconstruction permit application may cause:

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

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

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

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

(g) 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.

(h) Any person submitting any application 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.

(i) Any information an applicant wants the Department to take into consideration in making a decision on an application shall be submitted to the Department in writing for incorporation into the application prior to the Department's making a decision on the application.

(j) An applicant for a preconstruction permit shall conduct an air quality impact analysis in accordance with (k) below if:

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

2. The proposed maximum allowable emissions of 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; 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, as set forth in the definition of the term "major facility" at N.J.A.C. 7:27–8.1.

(k) An air quality impact analysis shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors

into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and how the results of the analysis would be presented to the Department. Technical guidance on the preparation of a protocol and procedures for obtaining approval of a protocol may be requested from:

New Jersey Department of Environmental Protection
Air Quality Regulation Program
401 East State Street
Trenton, NJ 08625–0027
Attention: Air Quality Evaluation

(*l*) (Reserved)

(m) An applicant for a preconstruction permit or a certificate shall list in the application all air contaminants which may be emitted from the source operation which meet the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable de minimis emission threshold set forth in Table C or Table D in Appendix I; or

2. The source operation may emit the given air contaminant in an amount which could reasonably be expected to be detectable by the sense of smell outside of the facility's property boundary.

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).

**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 Public comment

(a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:

1. Are subject to the PSD requirements published at 40 CFR 52; or

2. Must be submitted to the EPA for approval as revisions to any state implementation plan.

(b) The Department may seek comments from the public whenever it finds a significant degree of public interest in a preconstruction permit application or whenever the Department determines such comments might clarify one or more issues involved in the decision on the preconstruction permit application.

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).
Old section recodified to 8.6.
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).

### 7:27–8.6 Denials

(a) The Department shall deny an application for a preconstruction permit or certificate, or a renewal thereof, if construction, alteration, or use of control apparatus or equipment pursuant to the application would result in:

1. A violation of any provision of N.J.A.C. 7:27;

2. An exceedance of any State or Federal ambient air quality standard;

3. An exceedance of any applicable PSD increment as defined in 40 CFR 52;

4. A violation of any applicable NSPS;

5. A violation of any applicable NESHAP;

6. A violation of any Federal stack height or emission dispersion requirement as stated in 40 CFR 51; or

7. A contravention of other criteria established by the Department to protect human health and welfare and the environment.

(b) The Department shall deny an application for a preconstruction permit unless the applicant shows, to the satisfaction of the Department, that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.

(c) The Department may deny an application for a preconstruction permit or certificate 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.

(d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:

1. Pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27–8.11, within 60 days of receipt of a fee invoice; or

2. Reimburse the Department within 60 days of 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 testing or monitoring required by the conditions of approval of a preconstruction permit or certificate.

(e) The Department shall deny an application for a preconstruction permit for a paint spray operation, unless at a minimum the operation is served by particulate control apparatus.

New Rule, R.1985 d.98, effective March 4, 1985 (operative April 5, 1985).
See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).
Old 8.5 recodified to 8.6.
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).
Section 8.6 Service fees was repealed and section 8.5 was recodified here. Annotations under 8.6 Service fees are as follows:
Amended by R.1985 d.98, 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.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).

### 7:27–8.7 Approvals

(a) No person may construct, install, or alter equipment or control apparatus for which a preconstruction permit is required pursuant to this subchapter other than as described and authorized in an approved preconstruction permit. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the preconstruction permit.

(b) No person may operate equipment or control apparatus for which a certificate is required pursuant to this subchapter other than as prescribed and authorized in an approved certificate. Full responsibility for use in accordance with the provisions of the certificate shall be with the person to whom the Department has issued the certificate.

(c) No air contaminant, or category of air contaminant where accepted by the Department, shall be emitted other than those approved in the preconstruction permit. Any information contained in an approved application and any condition of approval thereof are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:

1. Rates of emission of each air contaminant and each category of air contaminant listed;

2. Total hours of operation per time period; and

3. Any rate of production.

(d) The Department may establish conditions of approval of any preconstruction permit or certificate application. In the event that a discrepancy exists between the information in an application for a preconstruction permit or certificate and the conditions of its approval, the conditions of approval shall prevail.

(e) The Department may withdraw its approval of a preconstruction permit if the person to whom the Department has issued the preconstruction permit:

1. Does not begin construction, installation, or alteration within one year after the date of approval of the preconstruction permit; or

2. Discontinues construction, installation, or alteration for a period of more than one year.

(f) The Department may modify the conditions of approval of a certificate:

1. At the time of renewal of a temporary operating certificate;

2. At the time of approval or renewal of a five-year operating certificate; or

3. At any time during the period a certificate is in force, if the Department determines that such modification is necessary to protect human health or welfare or the environment.

(g) Any person to whom the Department has issued a preconstruction permit or certificate shall comply with all terms and conditions of any order related to the preconstruction permit or certificate.

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).

### 7:27–8.8 Conditions of approval

(a) Upon request of the Department, any person to whom the Department has issued a preconstruction permit or certificate shall submit to the Department information relevant to the operation of equipment and control apparatus including, but not limited to:

1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable preconstruction permit and certificate number, any stack designation assigned by the Department, and any stack designation assigned by the person;

2. Records documenting any use of any equipment, control apparatus, or other source operation including, but not limited to, rate of production and hours of operation; and

3. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus.

(b) The Department may include, as a condition of approval, the requirement that a person to whom the Department has issued a certificate provide verification that the equipment or control apparatus is being used in compliance with the provisions and conditions of its preconstruction permit and certificate. Such verification may include:

1. Periodic testing of any process materials or source emissions, or measurement of the ambient concentration of any air contaminant. The testing or measurement shall be conducted in accordance with a standard testing procedure acceptable to the Department or a source-specific testing protocol approved in advance by the Department, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

2. Installation, operation, and maintenance of instrumentation and sensing devices to measure, either at specified intervals or continuously:

i. The kind and amount of any air contaminant emitted;

ii. Operating parameters relevant to determination of potential for air contaminant emissions, such as opacity, pH, flow rate, pressure drop, and temperature at specified process points; and

iii. Ambient concentrations of air contaminants;

3. Recordkeeping including, but not limited to, information pertaining to air contaminant emissions, process operations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department or its representatives; and

4. Reporting to the Department such information as analysis and monitoring results, data derived from measurement of air contaminant emissions and operating parameters, and other information relevant to verifying that the operation of the equipment and control apparatus is in compliance with the provisions of the operating certificate and its conditions. Such information shall, pursuant to the conditions of the preconstruction permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.

(c) The Department may establish, as a condition of approval of any certificate, or any renewal thereof, a schedule of periodic compliance inspections to which the equipment or control apparatus is subject.

(d) No person to whom the Department has issued a preconstruction permit or certificate shall carry out, or allow to be carried out, any alteration of equipment or control apparatus unless the altered equipment or control apparatus incorporates current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

(e) If the conditions of a preconstruction permit or certificate require the Department to incur any of the following charges, the person to whom the Department has issued the preconstruction permit or certificate shall reimburse the Department for the full amount of these charges:

1. 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

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

(f) No person shall use equipment or control apparatus in a manner which will cause 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.

(g) Any person to whom the Department has issued a preconstruction permit or certificate, or a renewal thereof, shall, when requested by the Department, provide such 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 the equipment or control apparatus. During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

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).

**7:27–8.9 Reporting requirements**

(a) Upon the request of the Department, any person holding a preconstruction permit or certificate shall submit to the Department any record relevant to any permit or certificate. Such record shall be submitted to the Department within 30 days of the request by the Department or within a longer time period if approved in writing by the Department.

(b) Any person to whom the Department has issued a preconstruction permit or certificate shall submit any required report in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(c) Any person submitting any report to the Department, including, but not limited to, a report submitted as an amendment of a preconstruction permit or certificate pursuant to N.J.A.C. 7:27–8.3(c) shall include, as an integral part of the report, certifications complying with N.J.A.C. 7:27–1.39.

(d) Upon the request of the Department, any person to whom the Department has issued a certificate shall report on forms obtained from the Department the air contaminant actual emissions, and information relevant thereto, of any air contaminant or category of air contaminants emitted by the equipment, control apparatus, or source operation.

(e) Any person to whom the Department has issued a preconstruction permit or certificate shall provide, in each report of an amendment of permit and certificate information, specification of the date and nature of each change that has occurred. The report shall be submitted on forms obtained from the Department. Changes to be reported to the Department as an amendment of the preconstruction permit or certificate are specified in N.J.A.C. 7:27–8.3(c).

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).

**7:27–8.10 Revocation**

(a) The Department may revoke its approval of a certificate or a renewal thereof, if the person to whom the Department has issued the certificate:

1. Uses, or allows to be used, equipment or control apparatus not in compliance with any provision or condition of approval of the certificate, or any renewal thereof, or with any applicable Federal, State, or local law, regulation, or rule;

2. Constructs or alters, or allows to be constructed or altered, equipment or control apparatus without applying for and obtaining from the Department approval of a preconstruction permit for such alteration of the equipment or control apparatus;

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

4. Fails to inform the Department of a change in the preconstruction permit or certificate information, as required pursuant to N.J.A.C. 7:27–8.3(c) and 8.9(e), as an amendment of the preconstruction permit or certificate, within 120 days of the occurrence of the change;

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

6. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27–8.11, 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;

7. 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

8. 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 revoke any approval of any application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.

(c) Any 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).

**7:27–8.11 Service fees**

(a) Any person subject to the provisions of this subchapter shall submit with each application for a preconstruction permit, an operating certificate or a renewal thereof, or with a request for an amendment, environmental improvement pilot test, or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a preconstruction permit, an operating certificate or a renewal thereof, or on any request for an amendment, seven-day notice change, alteration, environmental improvement pilot test or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule below. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.

(c) The Base Fee Schedule and the Supplementary Fee Schedule are applicable to all applications on which the Department makes its decision on or after the date on which this section is operative.

(d) An additional service fee will not be assessed solely for the failure by the applicant to submit a complete application, pursuant to this subchapter, provided that the applicant, within 30 days of receipt of the written request from the Department, or within a longer time period if so specified in writing by the Department, submits in writing the requested supplementary information to the Department.

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

(f) A complete application fee for a preconstruction permit and certificate shall include both the preconstruction permit application fee set forth below at item 1 and the operating certificate fee set forth below at item 2.

A. BASE FEE SCHEDULE

| Activity | Basis | Amount |
|---|---|---|
| 1. Preconstruction Permit Application [1] | | |
| a. Category I | Per Application | $100.00 |
| b. Category II | Per First New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27–8.2(a) per Application, plus | 500.00 |
| | Per Each Additional New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27–8.2(a) in an Application, provided that identical equipment to be used in identical processes and using identical materials shall be treated as one piece of equipment for fee calculations | 350.00 |
| 2. Certificate Application | | |
| a. Category I | Per Operating Certificate | 150.00 |
| b. Category II | Per Operating Certificate | 500.00 |
| 3. Amendment | | |
| a. Change in business name, division name, plant name; mailing address or telephone number; company stack designation; plant contact, responsible official, authorized representative or agent | Per Preconstruction Permit | 0.00 |
| b. Correction of a typographical error | | 0.00 |
| c. Transfer of Ownership or operating permit | Per Preconstruction Permit | 50.00 |
| d. Any decrease in maximum allowable rate of production or hours of operation per time period | Per Preconstruction Permit | 50.00 |
| e. Any change listed in N.J.A.C. 7:27–8.3(c), 3, 4, 5 or 6 | Per change | 200.00 |
| 4. Certificate Renewal | | |
| a. Category I | Per Operating Certificate | 250.00 |
| b. Category II | Per Operating Certificate | 500.00 |
| 5. Banking | | |

| Activity | Basis | Amount |
|---|---|---|
| a. Base Application Review | Per Source Operation | 200.00 |
| b. Verification | Per Source Operation | 200.00 |
| c. Transfer of Facility Ownership | Per Source Operation | 50.00 |
| d. Withdrawal of Credits | Per Source Operation | 200.00 |
| e. Donation of Credits to the State of New Jersey | Per Donation | 0.00 |
| 6. Application for environmental improvement pilot test | Per Application or Per Extension | 250.00 |

[1] Should both Category I and Category II equipment and control apparatus be included in a single application, the new or altered Category I equipment and control apparatus will be subject to the Category I fee; and the new or altered Category II equipment control apparatus will be subject to the Category II fee.

B. SUPPLEMENTARY FEE SCHEDULE

| Activity | Basis | Amount |
|---|---|---|
| 1. Prevention of Significant Deterioration | | |
| a. Engineering Review | Per Applicable Air Contaminant | $500.00 |
| b. Implement Public Comment Requirement | Per Comment Period | 500.00 |
| 2. Ambient Air Monitoring | | |
| a. Review Protocol | Per Protocol | 500.00 |
| b. Inspect Monitoring Locations and Equipment Installation | Per Inspection | 500.00 |
| c. Review Quality Assurance Plan | Per Plan | 500.00 |
| d. Review Data | Per Required Report | 500.00 |
| 3. Air Quality Impact Analysis | | |
| a. Evaluate Protocol | Per Protocol | 500.00 |
| b. Review Screening Modeling | Per Review | 500.00 |
| c. Review Refined Modeling | Per Review | 500.00 |
| 4. Risk Assessment | | |
| a. Evaluate Protocol | Per Protocol | 500.00 |
| b. Review Risk Assessment | Per Review | 500.00 |
| 5. Testing | | |
| a. Evaluate Source–Specific Testing Protocol | | |
| i. Process Materials Testing | Per Protocol | 450.00 |
| ii. Source Emission Testing | Per Protocol | 500.00 |
| b. On-site Monitoring of Sample Collection Pursuant to an Approved Source–Specific Testing Protocol | | |
| i. Process Materials Testing | Per Collection Event | 200.00 |
| ii. Source Emissions Testing | Per Performance Test | 500.00 |
| c. Review Testing Report | | |
| i. Process Materials Testing | Per Report | 200.00 |
| ii. Source Emissions Testing | Per Report | 500.00 |
| 6. Audit Performance of Continuous Emission Monitors | | |
| a. Evaluate Protocol | Per Protocol Per Permit | 500.00 |
| b. Observe Testing | Per Protocol Per Permit | 500.00 |
| c. Review Testing Report | Per Report | 500.00 |
| 7. Periodic Compliance Inspection | Per Inspection Per Certificate | 200.00 |

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.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Deleted references and fee schedule regarding mathematical combinations.
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).
Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

### 7:27–8.12 Request for an adjudicatory hearing

(a) An applicant who believes himself or herself to be aggrieved with respect to any decision made by the Department regarding any permit and certificate, amendment, certificate renewal, variance, or registration, may contest the decision and 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, if the Department:

1. Denies an application, or any part thereof;

2. Has, in the judgment of the applicant, imposed an unreasonable condition on its approval of an application;

3. Revokes or withdraws a previously issued approval; or

4. Denies the request for a stay under N.J.A.C. 7:27–8.13.

(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
CN 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).

**7:27–8.13 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).

**7:27–8.14 (Reserved)**

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.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Cross reference added regarding recordkeeping requirements.
Repealed by 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).
Section was titled "Confidentiality claims".

**7:27–8.15 (Reserved)**

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).
Repealed by 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).
Section titled "Access to information; nondisclosure".

### 7:27–8.16 (Reserved)

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).
Repealed by 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).
Section titled "Confidentiality determination".

### 7:27–8.17 (Reserved)

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).
Repealed by 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).
Section titled "Substantive criteria for use in confidentiality determination".

### 7:27–8.18 (Reserved)

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).
Repealed by 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).
Section titled "Disclosure of confidential information".

### 7:27–8.19 (Reserved)

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).
Repealed by 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).
Section titled "Disclosure of confidential information to contractors".

### 7:27–8.20 (Reserved)

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).
Repealed by 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).
Section titled "Disclosure by consent".

### 7:27–8.21 (Reserved)

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).
Repealed by 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).
Section titled "Disclosure based on imminent and substantial danger".

### 7:27–8.22 (Reserved)

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).
Repealed by 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).
Section titled "Security procedures".

### 7:27–8.23 (Reserved)

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).
Repealed by 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).
Section titled "Wrongful access or disclosure; penalties".

### 7:27–8.24 (Reserved)

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.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Corrected internal cite at (b)1.
Amended by 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).
Added reference to emission statements.
Repealed by R.1994 d.502, effective October 3, 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).
"Certification of information" recodified at 7:27–1.39.

### 7:27–8.25 (Reserved)

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).
Repealed by R.1994 d.502, effective October 3, 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". See 7:27–1.31, Right to enter.

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

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. 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).

**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 Exemption for pollution prevention alterations at facilities subject to N.J.S.A. 13:1D–35 et seq.**

(a) A person is not required to obtain a permit or a certificate for an alteration of equipment or control apparatus, or installation of new equipment or control apparatus, if:

1. The production process using the equipment or control apparatus, is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq.;

2. The alteration or installation 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 alteration or installation 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) Any person who is exempted pursuant to (a) above from obtaining a permit and certificate shall report the alteration or change and the Pollution Prevention Plan Modification or Pollution Prevention Assessment to the Department within 120 days after the occurrence of the alteration or change, as an amendment of the facility-wide permit pursuant to the procedures for amendment at N.J.A.C. 7:27–8.3(c).

(c) For equipment or control apparatus subject to (a) above, the facility-wide permit shall constitute the operating certificate required by this chapter.

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).

## APPENDIX I

### TABLE A

Hazardous Air Pollutants

| Air Contaminant | CAS Number |
|---|---|
| Acrolein | 107028 |
| Acrylamide | 79061 |
| Asbestos | 1332214 |
| Beryllium compounds | — |
| 1,3–Butadiene | 106990 |
| Cadmium compounds | — |
| Chlordane | 57745 |
| 2–Chloroacetophenone | 532274 |
| 1,2–Dibromo–3–chloropropane | 96128 |
| Dichloroethyl ether (Bis(2–chloroethyl)ether) | 111444 |
| 1,2–Diphenylhydrazine | 122667 |
| Heptachlor | 76448 |
| Hexachlorobenzene | 118741 |
| Hexamethylene–1.6–diisocyanate | 822060 |
| Lead compounds | — |
| Lindane (all isomers) | 58899 |
| Mercury compounds | — |
| Nickel compounds | — |
| Polychlorinated biphenyls (Arochlors) | 1336363 |
| 1,1,2,2–Tetrachloroethane | 79345 |
| Toxaphene (chlorinated camphene) | 8001352 |

### TABLE B

Hazardous Air Pollutants

| Air Contaminant | CAS Number |
|---|---|
| Acrylic acid | 79107 |
| Acrylonitrile | 107131 |
| Benzene | 71432 |
| Benzyl chloride | 100447 |
| Carbon tetrachloride | 56235 |
| Chloroform | 67663 |
| 1.4–Dioxane (1.4–Diethyleneoxide) | 123911 |
| Ethylene dibromide (Dibromoethane) | 106934 |
| Ethylene dichloride (1.2–Dichloroethane) | 107062 |
| Ethylene oxide | 75218 |
| Formaldehyde | 50000 |
| Hexachlorobutadiene | 87683 |
| Hexachlorocyclopentadiene | 77474 |
| Hexachloroethane | 67721 |
| Methylene diphenyl diisocyanate (MDI) | 101688 |
| Tetrachloroethylene (Perchloroethylene) | 127184 |
| 1,1,2–Trichloroethane | 79005 |
| Trichloroethylene | 79016 |
| 2,4,6–Trichlorophenol | 88062 |
| Vinyl bromide | 593602 |
| Vinyl chloride | 75014 |
| Vinylidene chloride (1,1–Dichloroethylene) | 75354 |

### TABLE C

Thresholds for De Minimis Emissions of Hazardous Air Pollutants

| CAS Number | Air Contaminant | Annual emissions pounds per year |
|---|---|---|
| —— | Total dioxin and furans [3] | 0.0001 |
| 92875 | Benzidine | 0.06 |
| 542881 | Bis (chloromethyl) ether | 0.06 |
| 62759 | n-Nitrosodimethylamine | 0.2 |

| CAS Number | Air Contaminant | Annual emissions pounds per year |
|---|---|---|
| —— | Hexavalent chromium compounds | 0.4 |
| 302012 | Hydrazine | 0.8 |
| —— | Arsenic and arsenic compounds | 1.0 |
| 79469 | 2–Nitropropane | 1.0 |
| —— | Any Table A HAP (1) | 2.0 |
| —— | Any Table B HAP (2) | 20.0 |
| —— | Any other HAP | 400.0 |

(1) This air contaminant category shall apply to any HAP listed in Table A at N.J.A.C. 7:27–8, Appendix I.
(2) This air contaminant category shall apply to any HAP listed in Table B at N.J.A.C. 7:27–8, Appendix I.
(3) As defined in EPA/625/3–87/012, Interim Procedures for Estimating Risks associated with exposures to mixtures of chlorinated-p-Dioxins and Dibenzofurans.

TABLE D

Thresholds for De Minimis Emissions of Other Air Contaminants

| Air Contaminant | Hourly emissions (pounds per hour) |
|---|---|
| VOC | 0.05 |
| TSP | 0.05 |
| PM–10 | 0.05 |
| $NO_x$ | 0.05 |
| CO | 0.05 |
| $SO_2$ | 0.05 |
| Any other air contaminant (1) | 0.05 |

(1) This air contaminant category shall apply to any other air contaminant that the facility has the potential to emit in a quantity greater than or equal to 100 tons per year.

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).

## 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 ($CO_2$)" 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 ($SO_2$)" 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, including 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

6. Applications for Permits to Construct and Certificates to Operate, pursuant to the requirements of N.J.A.C. 7:27–8, for any fuel burning unit which must be altered or for any fuel burning unit in which fuel is to be burned having a sulfur content in excess of the applicable limits specified in Table 1 of this section; and

7. A demonstration by air quality simulation modelling acceptable to the Department, including aerodynamic downwash modelling, unless waived in accordance with the provisions of N.J.A.C. 7:27–9.4, that increases in air contaminants resulting from use of the alternative emission control plan will not cause any ambient air quality standard to be exceeded, or cause any allowable prevention of significant deterioration ambient air increment as established by the United States Environmental Protection Agency to be exceeded; and in areas where an ambient air quality standard is already exceeded, will not cause an increase in ambient air concentrations greater than the threshold increases set forth in Table 1 of N.J.A.C. 7:27–18.3; and

8. Sufficient information to evaluate aerodynamic downwash effects including a site plan, heights of all structures within 1,000 feet (305 meters) of the stacks in the mathematical combination, and the topography of the area within 1,000 feet (305 meters) of the stacks in the mathematical combination; and

9. A guarantee that fuel analyses will be submitted at intervals specified by the Department.

(e) The provisions of (a), (b), (c), and (d) above shall not apply whenever a person responsible for the sulfur dioxide emissions from a facility into the outdoor air resulting from the combustion of facility by-products alone, or from the combustion of facility by-products combined with fuels conforming with this section, can demonstrate to the Department that the facility's emissions are predictable and will in no case exceed 310 ppm by volume adjusted to 12 percent carbon dioxide by volume. In such cases, the Department may establish conditions as it deems appropriate including, but not limited to, requiring sampling and analysis of emissions of sulfur dioxide, periodic fuel analysis and the periodic submission of data.

(f) If the identified grade of fuel oil does not agree with the classification by viscosity set forth in Table 1 and Table 2, then the allowable percent sulfur by weight shall be determined by the viscosity classification.

Amended by 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).
"No. 2" fuel oil added under Table 2; new (d) added, old (d) and (e) redesignated as (e) and (f); old (f) deleted.
Administrative correction to (c) and (e).
See: 23 N.J.R. 1166(b).

**Case Notes**

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.

### 7:27–9.3 Exemptions

(a) The provisions of this subchapter shall not apply to fuel used by ocean-going vessels or in motor vehicles.

(b) The Department will set such standards for the sulfur contents of fuel as may be necessary to prevent violation of air quality standards where it is determined that an aerodynamic downwash problem exists as the result of emissions from a source or sources of air pollution.

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).
Old (b) deleted, (c) redesignated as (b).

### 7:27–9.4 Waiver of air quality modelling

(a) The Department may waive the air quality simulation modelling requirements of N.J.A.C. 7:27–9.2(d) if the applicant demonstrates that:

1. The effective heights, as determined in accordance with the provisions of (b) below, of the stacks to be included in the mathematical combination are equal, or that the emissions from the fuel having the greatest sulfur content will be discharged to the atmosphere from the stack having the greatest effective height;

2. The total maximum $SO_2$ emission rate for all source gases to be included in the mathematical combination is no greater than 800 pounds per hour (363 Kg/hr);

3. No stack in the mathematical combination is separated from any other stack by a distance measured from the stack center lines, greater than three times the least effective stack height of any stack included in the mathematical combination; and

4. No stack in the mathematical combination is separated from any other stack by a distance greater than the allowable separation as determined from Figure 1 of this section.

(b) Procedure for using Figure 1.

1. Determine the effective stack heights in accordance with the provisions of (c) below.

2. Locate the least effective stack height on the left side of Figure 1 of this section.

3. Find the intersection of the least effective stack height and maximum total $SO_2$ emission rate. Interpolation is permitted.

4. Draw a vertical line from this point to the bottom of the chart to find the maximum allowable separation of the stacks.

(c) The effective stack height of a given stack for the purposes of this subchapter is the lesser of the following values:

1. 650 feet; or

2. The sum of the physical stack height and the plume rise. Plume rise is calculated from the formula:

$$h = \frac{9.5}{u}\left(\frac{Vd^2\,(T-68)}{T+460}\right)^{0.75}$$

where:
h is the plume rise in feet;

u is 12 if the physical stack height is less than 65 feet; u is 5 for physical stack heights of 65 feet or greater;

V is the actual exit velocity of the stack gas in feet per second;

d is the inside diameter of the stack exit in feet; and

T is the temperature of the stack gas at the stack exit, in degrees Fahrenheit.

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).
Administrative correction to (a)3 and to (c)2.
See: 23 N.J.R. 1166(b).

### 7:27–9.5 Incentive for conversion to coal or other solid fuel

(a) The Department may authorize a person to store, offer for sale, sell, deliver, exchange in trade or use fuel oils having a sulfur content in excess of the maximum allowable amounts set forth in Table 1 of N.J.A.C. 7:27–9.2 provided that:

1. The fuel burning unit in which the high-sulfur oil is used, or a unit of comparable capacity at the same facility, will burn coal or other solid fuel in accordance with a schedule approved by the Department; and

2. The high-sulfur oil will be burned for no longer than a period of two years if an existing fuel burning unit is converted from burning oil or gas, or three years if the conversion is accomplished by the installation of a new fuel burning unit; and

3. The applicant demonstrates by air quality simulation modelling or other methods acceptable to the Department that increases in the emissions of air contaminants resulting from the use of the high-sulfur oil will not cause any ambient air quality standard to be exceeded and in areas where an ambient air quality standard is already exceeded, will not cause an increase in ambient air concentrations greater than the threshold increases set forth in Table 1 of N.J.A.C. 7:27–18.3; and

4. The sulfur dioxide emissions from the burning of coal or other solid fuel will not exceed 0.3 pounds of sulfur dioxide per million BTU gross heat input; and

5. The applicant obtains an approved Permit to Construct and Certificate to Operate, in accordance with the provisions of N.J.A.C. 7:27–8, for the conversion to coal or other solid fuel; and

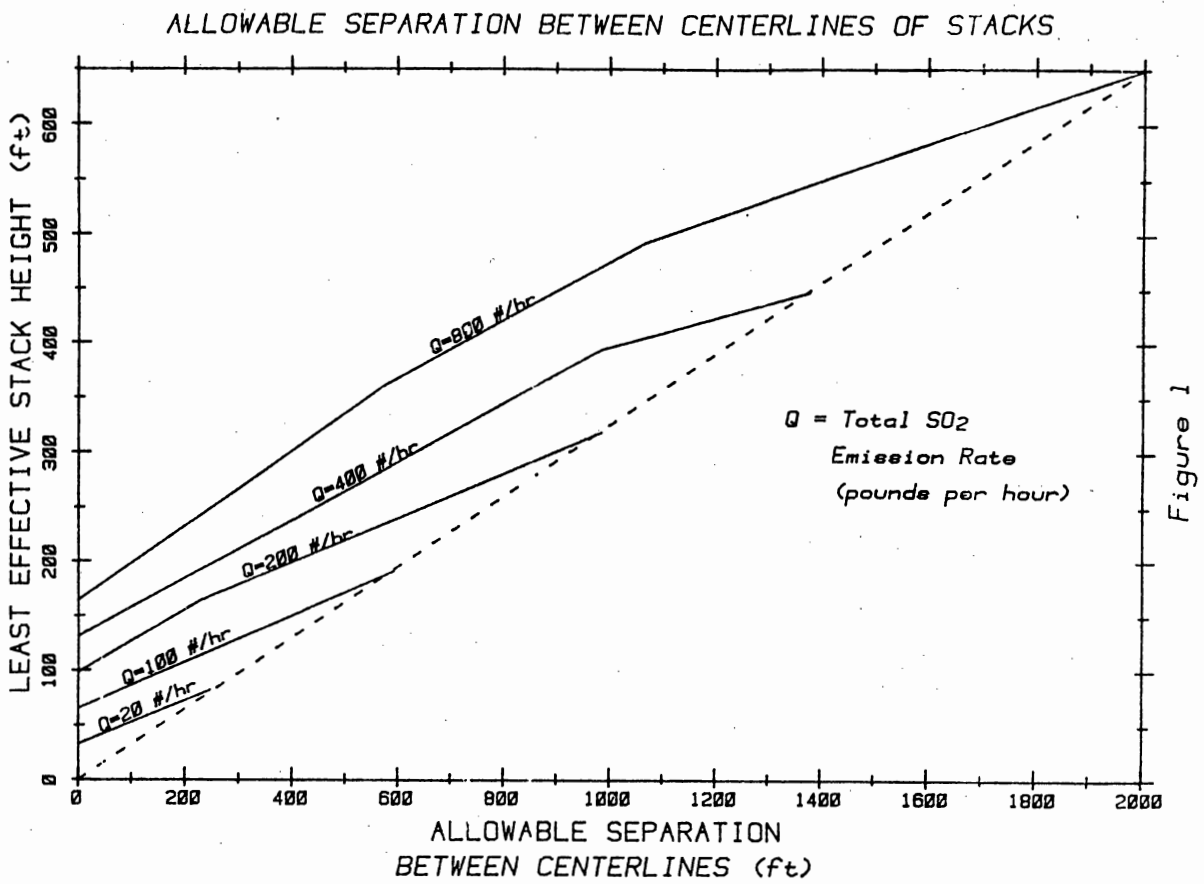
6. The applicant agrees that if the conversion does not take place pursuant to (a)1 above, he will pay to the Department a sum of money no less than the difference between the cost of the high-sulfur oil used pursuant to the provisions of this section and the cost of the same grade oil which would otherwise be required under the provisions of N.J.A.C. 7:27–9.2. Such payment shall be in addition to, and not in lieu of, any penalty which may be required pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq.; and

7. The applicant will furnish to the Department a written monthly report stating the quantity of high-sulfur oil used, the cost of such oil, and the cost of an equivalent quantity of the same grade oil which conforms to the provisions of N.J.A.C. 7:27–9.2; and

8. The applicant attests to his commitment to honor and comply with all of the provisions of this section and any other provisions the Department deems appropriate, by entering into a Consent Order, which shall so state, with the Department; and

9. Such Consent Order shall be subject to modification or revocation by the Department if the Department determines that the emissions from the burning of high-sulfur oil contribute to a contravention of any applicable ambient air quality standard, or significantly degrade ambient air quality, or that the applicant has failed to honor or comply with its provisions in part or in whole.

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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).

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## SUBCHAPTER 10. SULFUR IN SOLID FUELS

**Authority**

N.J.S.A. 13:1D–1 et seq.

**Subchapter Historical Note**

Rules concerning sulfur in coal were originally codified in this subchapter and were filed and became effective prior to September 1, 1969. Amendments to this subchapter were accepted on July 6, 1978 as R.1978 d.220, to become effective on September 15, 1978. See: 10 N.J.R. 98(a), 10 N.J.R. 328(b). Further amendments were adopted as R.1981 d.185, effective June 4, 1981. See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).

### 7:27–10.1 Definitions

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

"Anthracite coal" means coal that is classified as anthracite according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Approved stack-gas cleaning process" means a process which removes sulfur dioxide from the products of combustion of solid fuel and which has been approved by the Department.

"Bituminous coal" means coal that is classified as bituminous according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and subbituminous coal.

"Coke" means a fused, cellular, porous structure that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by the application of heat in the absence of air or in the presence of a limited supply of air.

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

"Lignite" means coal that is classified as lignite A or B according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Nonbanded coal" means coal that is classified as nonbanded according to the American Society for Testing and

Materials Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coal, ASTM D 2796–77.

"Potential combustion emission rate" means the theoretical emission rate that would result from the combustion of a fuel in an uncleaned state without control apparatus.

"Reconstruction" means the replacement of components of an existing 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 construct an entirely new comparable facility.

"Resource recovery facility" means a facility that combusts more than 75 percent non-fossil fuel based on the moving average of heat input during 3–month periods.

"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.

"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.

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

"Subbituminous coal" means coal that is classified as subbituminous according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Sulfur dioxide ($SO_2$)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms.

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

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

"Zone Three" means Burlington, Camden, Gloucester, Mercer, and Salem Counties.

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

As amended, R.1981 d.185, eff. June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.

**7:27–10.2 Sulfur contents standards**

(a) No person shall store, offer for sale, sell, deliver or exchange in trade, for use in New Jersey, solid fuel which contains sulfur in excess of the percentages by weight set forth in Table 1, except as provided otherwise in this Subchapter.

(b) No person shall use in New Jersey, solid fuel which contains sulfur in excess of the percentages by weight set forth in Table 1.

TABLE 1
EXISTING SOLID FUEL BURNING UNITS

| Type Fuel | Maximum Allowable Percent Sulfur by Weight (Dry Basis) | | | |
|---|---|---|---|---|
| | Zone One | Zone Two | Zone Three | Zone Four |
| Anthracite Coal or Coke | 0.8 | 0.8 | 0.8 | 0.8 |
| All other solid fuels | 1.0 | 1.0 | 0.2 | 0.2 |

(c) The provisions of (a) and (b) above shall not apply to solid fuel whose combustion causes sulfur dioxide ($SO_2$) 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.

TABLE 2
EXISTING SOLID FUEL BURNING UNITS

| Type Fuel | Maximum Allowable $SO_2$ Emissions (pounds/million BTU) | | | |
|---|---|---|---|---|
| | Zone One | Zone Two | Zone Three | Zone Four |
| Anthracite Coal and Coke | 1.2 | 1.2 | 1.2 | 1.2 |
| All other solid fuels | 1.5 | 1.5 | 0.3 | 0.3 |

(d) Any solid fuel-fired steam generating unit which is located in Zone Three or Zone Four, having a rated hourly capacity of greater than 200,000,000 British Thermal Units (BTU) gross heat input and any group of units at one facility which is located in Zone Three or Zone Four, having a combined rated hourly capacity of greater than 450,000,000 British Thermal Units (BTU) gross heat input, and which were in operation prior to May 6, 1968, shall be subject to the standards specified in Table 1 for Zone One.

(e) Any person responsible for the use of bituminous coal who believes that bituminous coal containing a maximum allowable percent sulfur by weight as set forth in Table 1 cannot be used in a specific steam generating unit may submit data to the Department setting forth justification for a less restrictive percent of sulfur content by weight in bituminous coal. The Department may authorize the use of a less restrictive percent of sulfur by weight in bituminous coal. Any less restrictive percent of sulfur content by weight in bituminous coal authorized by the Department shall not exceed 1.5 percent, except as provided in (f) below.

(f) The Department may authorize the use of bituminous coal not exceeding a maximum sulfur content of 3.5 percent by weight (dry basis) at existing facilities in Zone One if:

1. The person responsible for the use of bituminous coal demonstrates that bituminous coal, containing one percent sulfur or less by weight and suitable for use in the specific steam generating unit, is not reasonably available in sufficient quantities; and

2. Sulfur dioxide levels in the ambient atmosphere will at no time exceed or jeopardize the ambient air quality standards set forth in N.J.A.C. 7:27–13; and

3. The sulfur content of the bituminous coal burned at the facility represents the minimum sulfur content coal which can be used by the facility and is reasonably available in sufficient quantity; and

4. The person responsible for the use of bituminous coal agrees to such monitoring and reporting requirements as the Department may deem appropriate to ensure compliance with the conditions set forth in this subsection; and

5. The person responsible for the use of bituminous coal submits to the Department for such authorization an application which considers and addresses as a minimum, in addition to the above, the following criteria:

i. Physical surroundings of the coal-fired steam generating unit;

ii. Population density of the surrounding area;

iii. Dispersion characteristics of the source;

iv. Topography of the immediate vicinity; and

v. Aesthetic and nuisance effects.

(g) Authorizations granted pursuant to (f) above shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the Department, setting forth reasons and justifications for such renewal, including a demonstration of continued conformance with the provisions of (f) above.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.
Administrative correction to (c), Table 2.
See: 21 N.J.R. 2991(a).

### 7:27–10.3 Expansion, reconstruction or construction of solid fuel burning units

(a) No person shall expand or reconstruct an existing solid fuel-fired steam generating unit or construct a new solid fuel-fired steam generating unit having a rated hourly capacity that exceeds, or would exceed, as a result of expansion, construction, and/or reconstruction, 250,000,000 British Thermal Units (BTU) gross heat input unless it is demonstrated to the Department that:

1. The sulfur dioxide emissions caused by the combustion of solid fuel from any stack or chimney into the outdoor atmosphere, except as provided under (a)2 or (a)3 below, do not exceed 0.60 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input and 30 percent of the potential combustion emission rate of sulfur dioxide determined as a 30–day rolling average; or

2. The sulfur dioxide emissions from a unit which combusts anthracite coal exclusively do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average; or

3. The sulfur dioxide emissions, if the unit is a resource recovery facility, do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average.

(b) Compliance with the standards of (a) above shall be determined in accordance with the provisions of 40 CFR Part 60 Subpart Da.

(c) No person shall expand or reconstruct an existing solid fuel-fired steam generating unit or construct a new solid fuel-fired steam generating unit, not subject to the provisions of (a) above, having a rated hourly capacity that equals or exceeds, or would equal or exceed as a result of expansion, construction, and/or reconstruction, 1,000,000 British Thermal Units (BTU) gross heat input unless it is demonstrated to the Department that:

1. The sulfur dioxide emissions, caused by the combustion of solid fuel, excluding coke and anthracite coal, from any stack or chimney into the outdoor atmosphere can be controlled to levels that do not exceed at any time 0.30 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input; or

2. The solid fuel, excluding coke and anthracite coal, used to fire such a facility will at no time contain more than 0.20 percent sulfur by weight; or

3. Anthracite coal or coke used to fire such a facility will at no time contain more than 0.8 percent sulfur by weight; or

4. The sulfur dioxide emissions, if the unit is a resource recovery facility, do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.

### 7:27–10.4 Exemptions

(a) The provisions of this subchapter shall not apply to coal used by ocean-going vessels.

(b) In any case in which it is demonstrated to the department that a bona fide pilot installation of an approved stack-gas cleaning process is to be made, the use of nonconforming solid fuel to the extent necessary, in the judgment of the Department, to evaluate the effectiveness of the process will not be prohibited by this subchapter.

(c) Nonbanded coal containing not more than 1.0 percent sulfur by weight may be burned solely for heating purposes in one or two family residences only in combustion equipment in use for such purposes prior to October 1, 1971.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
(b): "solid fuel" was "coal".
(c): Anthracite exemption deleted.

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## SUBCHAPTER 11. INCINERATORS

### 7:27–11.1 Definitions

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

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

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

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

"Department" means the State Department of Environmental Protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Type 0 waste" means trash, a mixture of highly combustible waste such as paper, cardboard, cartons, wood boxes and combustible floor sweepings, containing approximately ten per cent moisture and five per cent incombustible solids, and having a heating value of approximately 8,500 British Thermal Units per pound as fired, and deriving from commercial and industrial activities. The mixtures contain up to ten per cent by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps.

"Type 1 waste" means rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scraps, foliage and combustible floor sweepings, containing approximately 25 per cent moisture and ten per cent incombustible solids and having a heating value of approximately 6500 British Thermal Units per pound as fired, and deriving from domestic, commercial and industrial activities. The mixture contains up to 20 per cent by weight of restaurant or cafeteria waste, but contains little or no treated paper, plastic or rubber wastes.

"Type 2 waste" means refuse, consisting of an approximately even mixture of rubbish and garbage by weight, containing up to 50 per cent moisture and approximately seven per cent incombustible solids, and having a heating value of approximately 4300 British Thermal Units per pound as fired, and commonly deriving from apartment and residential occupancy.

"Type 3 waste" means garbage, consisting of animal and vegetable wastes containing up to 70 per cent moisture and up to five per cent incombustible solids and having a heating value of approximately 2500 British Thermal Units per pound as fired and deriving from restaurants, cafeterias, hotels, hospitals, markets, and like installations.

"Type 4 waste" means human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources, consisting of up to 85 per cent moisture and approximately five per cent incombustible solids and having a heating value of approximately 1,000 British Thermal Units per pound as fired.

"Type 5 waste" means by-product waste, gaseous, liquid or semi-liquid, such as tar, paints, solvents, sludge, fumes, and so forth, from industrial operations.

"Type 6 waste" means solid by-product waste, such as rubber, plastics, wood waste and so forth, from industrial operations.

**7:27–11.2 Construction standards**

(a) No person shall construct, install, use or cause to be used any existing or new incinerator unless such incinerator is of the multiple chamber type or of a type approved by the Department as being equally effective for the purpose of air pollution control.

(b) Two years from the effective date of this Subchapter, no person shall use or cause to be used an existing incinerator unless such incinerator is of multiple chamber type or type approved by the Department as being equally effective for the purpose of air pollution control.

(c) No person shall construct, install, use or cause to be used any new single flue-fed incinerator.

**7:27–11.3 Emission standards**

(a) Particles emission standards shall be as follows:

1. No person shall construct, install, use or cause to be used any new common incinerator or alter or relocate and use or cause to be used any existing common incinerator which will emit more than 0.2 grains of particles including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

2. No person shall construct, install, use, or cause to be used any new special incinerator or alter or relocate and use or cause to be used any existing special incinerator which will emit more than 0.1 grains of particles including ash per cubic foot of dry flue gas at standard conditions corrected to 12 percent carbon dioxide by volume excluding the contribution of auxiliary fuel.

3. Two years from the effective date of this Subchapter no person shall use or cause to be used any existing common incinerator which will emit more than 0.2 grains of particles, including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

4. Two years from the effective date of this Subchapter no person shall use or cause to be used any existing special incinerator which will emit more than 0.1 grains of particles, including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

(b) Smoke emission standards shall be as follows:

1. The provisions of Subchapter 3 (Control and Prohibition of Smoke From Combustion of Fuel) of this Chapter insofar as they relate to smoke from incinerators are superseded by this subsection.

2. No person shall cause, suffer, allow or permit smoke from any incinerator the shade or appearance of which is darker than Number 1 of the Ringelmann smoke chart:

i. To be emitted into the open air; or

ii. To be emitted of such opacity within a stack or chimney, or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree greater than the emission designated as Number 1 of the Ringelmann smoke chart.

3. The provisions of paragraph 2 of this subsection shall not apply to:

i. Smoke emitted during the building of a new fire, the shade or appearance of which is not greater than Number 2 of the Ringelmann smoke chart for a period of three consecutive minutes; or

ii. Emissions of such opacity within a stack or chimney, or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree greater than the emission designated as Number 2 of the Ringelmann smoke chart for a period not greater than three consecutive minutes.

(c) No person shall cause, suffer, allow or permit the emission of particles of unburned waste or ash from any common incinerator or from any special incinerator which are individually large enough to be visible while suspended in the atmosphere.

(d) No person shall construct, install, use or cause to be used any common incinerator or any special incinerator which will result in odors being detectable by sense of smell in any area of human use or occupancy.

(e) Stack test emission standards shall be as follows:

1. Any person responsible for the construction, installation, alteration or use of an incinerator shall, when ordered by the Department, provide the facilities and necessary equipment for determining the density of smoke being discharged from a stack or chimney and shall conduct such smoke tests using methods approved by the Department. All smoke test data shall be recorded in a permanent log at such time intervals as specified by the Department. The data shall be maintained for a period of not less than one year and shall be available for review by the Department.

2. Any person responsible for the use of a new or existing incinerator shall upon request of the Department provide such sampling facilities and testing facilities exclusive of instruments and sensing devices as may be necessary for the Department to determine the nature and quantity of emissions from such incinerators and shall during such testing, operate the incinerator at a charging rate of waste no less than the designed capacity of the incinerator using materials representative of the types of wastes normally burned. Such facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

**7:27-11.4 Permit to construct; certificate to operate**

(a) No person shall construct or install any new incinerator, or any new control apparatus, or alter any existing incinerator, or any existing control apparatus without first having obtained a permit to construct, install or alter control apparatus or equipment from the Department, in accordance with the provisions of Subchapter 8 (Permits and Certificates) of this Chapter.

(b) No person shall use or cause to be used any new or altered incinerator, or any new or altered control apparatus without first having obtained a certificate to operate control apparatus or equipment from the Department, in accordance with the provisions of Subchapter 8 (Permits and Certificates) of this Chapter.

**7:27-11.5 Operation**

(a) Written procedures to be followed for proper operation and maintenance for a new incinerator, or an altered existing incinerator, shall be submitted to the Department for review and approval together with the application for a certificate to operate.

(b) Any person in possession of a certificate to operate an incinerator shall maintain said certificate readily available on the operating premises. Operating procedures and rated burning capacity of the incinerator shall be posted at a convenient place as near as practical to the point of operation.

(c) No person shall use or cause to be used any incinerator unless all components connected, or attached to, or serving the incinerator, including control apparatus are functioning properly and are in use, in accordance with the permit to construct, and the certificate to operate.

**7:27-11.6 Exceptions**

The provisions of this Subchapter shall not apply to incinerators 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.

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## SUBCHAPTER 12. PREVENTION AND CONTROL OF AIR POLLUTION EMERGENCIES

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this Subchapter 12 were filed January 27, 1972, and became effective March 27, 1972 as R.1972 d.15. See: 3 N.J.R. 250(a).

**7:27-12.1 Definitions**

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

"Chemical and allied products industries" means establishments engaged in the manufacture of:

1. Basic chemicals such as acids, alkalies, salts, industrial gases and organic chemicals;

2. Chemical products to be used in further manufacturing such as synthetic fibers, plastics, dry colors and pigments;

3. Finished chemical products to be used for ultimate consumption such as drugs, cosmetics, soap, paints, fertilizers and explosives.

"Glass, clay and concrete products industries" means establishments engaged in the manufacture of glass, glassware, textile fibers, glass insulation wool, structural clay products, concrete products, gypsum and plaster products, lime, abrasives and asbestos.

"Paper and allied products industries" means establishments engaged in manufacturing wood pulp from wood or other materials and the manufacture of paper, paperboard and building papers.

"Petroleum refining and related industries" means establishments engaged in petroleum refining, the manufacture of paving and roofing materials from petroleum products and compounding paving and building materials from petroleum products.

"Primary metals industries" means establishments engaged in the smelting, refining, sintering and alloying of ferrous and nonferrous metals from ore, pig or scrap, and the manufacture of castings, forgings, powdered metals and other basic products of ferrous or nonferrous metals, including the production of coke.

### 7:27–12.2 Emergency criteria

(a) A condition justifying proclamation by the Governor of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Commissioner determines that the accumulation of air contaminants in any place, locality, county or other area in the State is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public.

(b) Such determinations shall be in accordance with criteria published in the New Jersey Register and on file with the Department.

### 7:27–12.3 Criteria for emergency termination

In making a determination that the threat resulting from the accumulation of air contaminants no longer exists, the Commissioner shall be guided by measurements of air quality and advisories provided by the United States Weather Service.

### 7:27–12.4 Standby plans

(a) Any person responsible for the operation of a source of air contamination as set forth in Table 1 of this Section shall prepare standby plans, consistent with good industrial practice and safe operating procedures, for reducing the emission of air contaminants into the outdoor atmosphere during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with the objectives set forth in Tables I–III which are made a part of this Section.

(b) Any person responsible for the operation of a source of air contamination not set forth in Table 1 of this Section, shall, when requested by the Department in writing, prepare standby plans, consistent with good industrial practice and safe operating procedures, for reducing the emission of air contaminants into the outdoor atmosphere during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with the objectives set forth in Tables I–III.

(c) Standby plans as required under subsections (a) and (b) of this Section shall be in writing and show the source of air contamination, the approximate amount of reduction of contaminants and a brief description of the manner in which the reduction will be achieved during an air pollution alert, air pollution warning, and air pollution emergency.

**TABLE I – EMISSION REDUCTION OBJECTIVES**

| Source of Air Contamination | Air Pollution Alert |
|---|---|
| 1. Coal or oil-fired electric power generating facilities. | a. Substantial reduction by utilization of fuels having lowest available ash and sulfur content.<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p m.) atmospheric turbulence for boiler lancing and soot blowing<br>c. Substantial reduction by diverting electric power generation to facilities outside of Alert Area. |
| 2. Coal or oil-fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour | a. Substantial reduction by utilization of fuels having lowest available ash and sulfur content.<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.<br>c. Reduction of steam load demands consistent with continuing plant operations |
| 3. A. Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location:<br>Primary Metals Industries<br>Petroleum Refining and Related Industries<br>Chemical and Allied Products Industries<br>Paper and Allied Products Industries<br>Glass, Clay and Concrete Products Industries<br>AND<br>B. Other persons required by the Department to prepare standby plans. | a. Substantial reduction of air contaminants from manufacturing operations by curtailing, postponing, or deferring production and allied operations.<br>b. Maximum reduction by deferring trade waste disposal operations which emit particles, gases, vapors or malodorous substances.<br>c. Reduction of heat load demands for processing consistent with continuing plant operations.<br>d. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |
| 4. Municipal and commercial refuse disposal operations. | a. Maximum reduction by prevention of open burning on all refuse disposal areas.<br>b. Substantial reduction by limiting burning of refuse in incinerators to the hours between 12:00 Noon and 4:00 p.m. |

**TABLE II**
**EMISSION REDUCTION OBJECTIVES**

| Source of Air Contamination | Air Pollution Warning |
|---|---|
| 1. Coal or oil-fired electric power generating facilities | a. Maximum reduction by utilization of fuels having lowest available ash and sulfur content.<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing and soot blowing.<br>c. Maximum reduction by diverting electric power generation to facilities outside of Warning Area. |
| 2. Coal or oil-fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour. | a. Maximum reduction by utilization of fuels having the lowest available ash and sulfur content.<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing and soot blowing.<br>c. Reduction of steam load demands consistent with continuing plant operations.<br>d. Making ready for use a plan of action to be taken if an emergency develops. |
| 3. A – Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location:<br>Primary Metals Industries<br>Petroleum Refining and Related Industries<br>Chemical and Allied Products Industries<br>Paper and Allied Products Industries<br>Glass, Clay and Concrete Products Industries<br>AND<br>B – Other persons required by the Department to prepare standby plans. | a. Maximum reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic hardship by postponing production and allied operations.<br>b. Maximum reduction by deferring trade waste disposal operations which emit particles, gases, vapors or malodorous substances.<br>c. Reduction of heat load demands for processing consistent with continuing plant operations.<br>d. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing or soot blowing. |
| 4. Municipal and commercial refuse disposal operations | a. Maximum reduction by prevention of open burning on all refuse disposal areas.<br>b. Complete elimination of the use of incinerators. |

TABLE III -- EMISSION REDUCTION OBJECTIVES

| Source of Air Contamination | Air Pollution Emergency |
|---|---|
| 1. Coal or oil-fired electric power generating facilities. | a. Maximum reduction by utilization of fuels having lowest available ash and sulfur content.<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.<br>c. Maximum reduction by diverting electric power generation to facilities outside of Emergency Area. |
| 2. Coal or oil -fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour | a. Maximum reduction by reducing heat and steam demands to absolute necessities consistent with preventing equipment damage<br>b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.<br>c. Taking the action called for in the emergency plan. |
| 3 A. Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location:<br>Primary Metals Industries<br>Petroleum Refining & Related Industries<br>Chemical and Allied Products Industries<br>Paper and Allied Products Industries<br>Glass, Clay and Concrete Products Industries<br>AND<br>B. Other persons required by the Department to prepare standby plans. | a Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.<br>b Elimination of air contaminants from trade waste disposal processes which emit particles, gases, vapors or malodorous substances.<br>c. Maximum reduction of heat load demands for processing.<br>d. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing. |
| 4 Municipal and commercial refuse disposal operations. | a. Maximum reduction by prevention of open burning on all refuse disposal areas.<br>b. Complete elimination of the use of incinerators. |

(d) During a condition of air pollution alert, air pollution warning and air pollution emergency, standby plans as required by this Section shall be made available on the premises to any person authorized to enforce the provisions of the Air Pollution Emergency Control Act.

(e) Standby plans as required by this Section shall be submitted to the Department upon request within 30 days of the receipt of such request; such standby plans shall be subject to review and approval by the Department. If, in the opinion of the Department, such standby plans do not effectively carry out the objectives as set forth in Tables I–III, the Department may disapprove said standby plans, state its reason for disapproval and order the preparation of amended standby plans within the time period specified in the order. Any person aggrieved by the order requiring the preparation of a revised plan is entitled to a hearing in accordance with C.26:2C–14.1 of the Air Pollution Control Act. If the person responsible fails within the time period specified in the order to submit an amended standby plan which in the opinion of the Department meets the said objectives, the Department may revise the standby plan to cause it to meet these objectives. Such revised plan will thereafter be the standby plan which the person responsible will put into effect upon the issuance of an appropriate order by the Governor.

### 7:27–12.5 Standby orders

(a) The following are standby orders which might be appropriate for use by the Governor upon his declaration that an air pollution emergency exists:

1. Air pollution alert:

i. Any person responsible for the operation of a source of air contamination as set forth in Table I of Section 4 (Standby plans) of this Subchapter shall take all air pollution alert actions as required for such source of air contamination; and shall particularly put into effect the standby plans for an air pollution alert;

ii. There shall be no open burning by any persons of tree waste, vegetation, refuse or debris in any form;

iii. The use of incinerators for the disposal of any form of solid or liquid waste shall be limited to hours between 12:00 Noon and 4:00 P.M.;

iv. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 Noon and 4:00 P.M.

2. Air pollution warning:

i. Any person responsible for the operation of a source of air contamination as set forth in Table II of Section 4 (Standby plans) of this Subchapter shall take all air pollution warning actions as required for such source of air contamination; and shall particularly put into effect the standby plans for an air warning;

ii. There shall be no open burning by any persons of tree waste, vegetation, refuse or debris in any form;

iii. The use of incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited;

iv. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 Noon and 4:00 P.M.

3. Air pollution emergency:

i. Any person responsible for the operation of a source of air contamination as described in Table III of Section 4 (Standby plans) of this Subchapter shall take all air pollution emergency actions as listed as required for such source of air contamination; and shall particularly put into effect the standby plans for an air pollution emergency;

ii. All manufacturing establishments except those included in N.J.A.C. 7:27–12.5(a)3i above will institute such action as will result in maximum reduction of air contaminants from their operations by ceasing, curtailing or postponing operations which emit air contaminants to the extent possible without causing injury to persons or damage to equipment;

iii. All places of employment described in this subparagraph shall immediately cease operations:

(1) Mining and quarrying of nonmetallic minerals;

(2) All contract construction work except that which must proceed to avoid physical harm;

(3) Wholesale trade establishments, that is, places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies;

(4) All offices of local, county and State government including authorities, joint meetings and any other public body; except to the extent that such offices must continue to operate in order to enforce the requirements of this order pursuant to statute;

(5) All retail trade establishments except pharmacies and stores primarily engaged in the sale of food;

(6) Banks; credit agencies other than banks; securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers; real estate offices;

(7) Wholesale and retail laundries; laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops; shoe repair shops;

(8) Advertising offices; consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services; commercial testing laboratories;

(9) Automobile repair, automobile services, garages;

(10) Establishments rendering amusement and recreation services including motion picture theaters;

(11) Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools and public and private libraries.

iv. There shall be no open burning by any person of tree waste, vegetation, refuse or debris in any form;

v. The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited;

vi. The use of motor vehicles is prohibited except in emergencies with the approval of local or State police.

**7:27–12.6 (Reserved)**

As amended, R.1974 d.125, effective May 20, 1974.
See: 6 N.J.R. 228(c).

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## SUBCHAPTER 13. AMBIENT AIR QUALITY STANDARDS

**Authority**

N.J.S.A. 26:2C–8.

**Subchapter Historical Note**

Adopted as R.1973 d.11, effective March 5, 1973. See: 4 N.J.R. 184(a), 5 N.J.R. 38(b).

**7:27–13.1 Definitions**

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor 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.

"Arithmetic mean" means the sum of n numbers divided by n.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom and which, for purposes of this subchapter, shall be collected and analyzed using methods approved by the Department.

"Department" means the Department of Environmental Protection.

"Eight-hour average concentration" means an average concentration for eight consecutive hours for which data are available.

"Geometric mean" means the nth root of the product of n numbers.

"Lead" means the element lead, whether in its elemental stage or as part of a chemical compound, and which, for purposes of this subchapter, shall be collected and analyzed using methods approved by the Department.

"Nitrogen dioxide ($NO_2$)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms and which, for purposes of this subchapter, shall be collected and analyzed using methods approved by the Department.

"Ozone ($O_3$)" means a gas at standard conditions, having a molecular composition of three oxygen atoms and which, for purposes of this subchapter, shall be collected and analyzed using methods approved by the Department.

"ppm" means parts per million by volume under standard conditions.

"Primary air quality standard" means an ambient air quality standard intended to protect the public health.

"Secondary air quality standard" means an ambient air quality standard intended to protect the public welfare.

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

"Sulfur dioxide ($SO_2$)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms and which, for purposes of this subchapter, shall be collected and analyzed using methods approved by the Department.

"Suspended particulate matter" means any solid or liquid matter dispersed in the outdoor atmosphere which, for purposes of this subchapter, shall mean the material collected and analyzed using methods approved by the Department.

"Three-hour average concentration" means an average concentration for any three consecutive hours for which data are available.

"24–hour average concentration" means an average concentration or any 24 consecutive hours for which data are available.

Amended by R.1985 d.252, effective May 20, 1985.
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).
Substantially amended.
Administrative Corrections.
See: 23 N.J.R. 1432(d).

### 7:27–13.2 General ambient air quality standards

(a) Whereas air is vital to life and contamination of it to any degree is a condition to be endured reluctantly; and whereas our knowledge of the long-term harmful effects of low levels of contamination is incomplete and uncertain; therefore, it is the air quality objective of the Department to assure, at all times and throughout the territory of the State, ambient air of the highest purity achievable by the installation and diligent operation and maintenance of pollution source control devices and methods consistent with the lawful application of the most advanced state of the art.

(b) Furthermore, it is the objective of the Department, by prevention and correction, so to enhance the quality of the outdoor air that as a minimum, and throughout the State, air quality will be in accord with the numerical air quality standards for specific pollutants set forth in subsequent Sections of this Subchapter.

(c) An implementation plan of action to meet air quality standards will be adopted by the Department and, from time to time, amended as necessary. The plan will incorporate all pertinent air pollution control regulations which limit or prevent the emission into the atmosphere of air contaminants for which air quality standards have been adopted. The plan also will include interim air quality objectives whose achievement through rigorous enforcement can then be predicted.

Amended by R.1985 d.252, effective May 20, 1985 (operative June 6, 1985).
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).
(b): substituted "the" for "our".

### 7:27–13.3 Ambient air quality standards for suspended particulate matter

(a) Primary air quality standards are:

1. During any 12 consecutive months, the geometric mean value of all 24–hour averages of suspended particulate matter concentrations in ambient air shall not exceed 75 micrograms per cubic meter; and

2. During any 12 consecutive months, 24–hour average concentrations may exceed 260 micrograms per cubic meter no more than once.

(b) Secondary air quality standards are:

1. During any 12 consecutive months, the geometric mean value of all 24–hour averages of suspended particulate matter concentrations in ambient air shall not exceed 60 micrograms per cubic meter; and

2. During any 12 consecutive months, 24–hour average concentrations may exceed 150 micrograms per cubic meter no more than once.

**7:27–13.4 Ambient air quality standards for sulfur dioxide**

(a) The primary air quality standards are:

1. During any 12 consecutive months, the arithmetic mean concentration of sulfur dioxide in ambient air shall not exceed 80 micrograms per cubic meter (0.03 ppm); and

2. During any 12 consecutive months, 24–hour average concentrations may exceed 365 micrograms per cubic meter (0.14 ppm) no more than once.

(b) The secondary air quality standards are:

1. During any 12 consecutive months, the arithmetic mean concentration of sulfur dioxide in ambient air shall not exceed 60 micrograms per cubic meter (0.02 ppm);

2. During any 12 consecutive months, 24–hour average concentrations may exceed 260 micrograms per cubic meter (0.1 ppm) no more than once; and

3. During any 12 consecutive months, three-hour average concentrations may exceed 1,300 micrograms per cubic meter (0.5 ppm) no more than once.

**7:27–13.5 Ambient air quality standards for carbon monoxide**

(a) The primary and secondary air quality standards are:

1. During any 12 consecutive months, eight-hour average concentrations of carbon monoxide in ambient air may exceed ten milligrams per cubic meter (9 ppm) no more than once; and

2. During any 12 consecutive months, one-hour average concentrations may exceed 40 milligrams per cubic meter (35 ppm) no more than once.

Amended by R.1985 d.252, effective May 20, 1985 (operative June 6, 1985).
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).

**7:27–13.6 Ambient air quality standards for ozone**

(a) The primary air quality standard is:

1. During any 12 consecutive months, daily maximum one-hour average concentrations of ozone in ambient air may exceed 0.12 ppm (235 micrograms per cubic meter) no more than once.

(b) The secondary air quality standard is:

1. During any 12 consecutive months, one-hour average concentrations of ozone in ambient air may exceed 0.08 ppm (160 micrograms per cubic meter) no more than once.

Amended by R.1985 d.252, effective May 20, 1985 (operative June 6, 1985).
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).
(a) added; original section is now (b)1.

**7:27–13.7 Ambient air quality standards for lead**

(a) The primary and secondary air quality standards are:

1. During any three consecutive months, the arithmetic mean of 24–hour averages of lead concentrations in ambient air shall not exceed 1.5 micrograms per cubic meter.

Amended by R.1985 d.252, effective May 20, 1985 (operative June 6, 1985).
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).
Deleted old text and substituted new.

**7:27–13.8 Ambient air quality standards for nitrogen dioxide**

(a) The primary and secondary air quality standards are:

1. During any 12 consecutive months, the arithmetic mean concentration of nitrogen dioxide in ambient air shall not exceed 100 micrograms per cubic meter (0.05 ppm).

Amended by R.1985 d.252, effective May 20, 1985 (operative June 6, 1985).
See: 16 N.J.R. 1676(a), 17 N.J.R. 1292(a).
Added "(a) The primary . . . standards are:".

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## SUBCHAPTER 14. CONTROL AND PROHIBITION OF AIR POLLUTION FROM DIESEL–POWERED MOTOR VEHICLES

**7:27–14.1 Definitions**

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

"Autobus" includes all motor vehicles used for the transportation of passengers for hire.

"Department" means the Department of Environmental Protection.

"Diesel-powered engine" means a mechanism for converting energy into mechanical force and motion by using a compression ignition type of internal combustion engine.

"Diesel-powered motor vehicle" means a vehicle which is self-propelled by a compression ignition type of internal

combustion engine and which is designed primarily for transporting persons or property on a public street or highway; for purposes of this subchapter, passenger automobiles and motorcycles are excluded.

"Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

"Idle" means the motor vehicle operating mode consisting of a nonloaded, throttled engine speed at the revolutions per minute specified by the manufacturer.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"Opacity" means the property of a substance which renders it partially or wholly obstructive to the transmission of visible light expressed as the percentage to which light is obstructed.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Smoke" means small gasborne or airborne particles, exclusive of water vapor, arising from a process of combustion in sufficient number to be observable.

R.1970 d.148, eff. June 19, 1971.
See: 2 N.J.R. 54(c), 3 N.J.R. 4(a).
Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2888, 17 N.J.R. 189(b).
Section substantially amended.
Administrative Corrections.
See: 23 N.J.R. 1432(d).

### 7:27–14.2 Inspection standard

(a) Any motor vehicle propelled by a diesel-powered engine which is subject to inspection by the owner or lessee at the premises or places of business of the owner or lessee as required by the Division of Motor Vehicles as a condition of compliance with said inspection shall not emit smoke in the exhaust emissions in excess of the 20 percent smoke opacity standard as determined according to the inspection procedure established at N.J.A.C. 7:27B–4.3.

(b) Any diesel-powered autobus which is subject to the inspection rules and regulations of the New Jersey Department of Transportation (reference N.J.S.A. 48:4, and N.J.A.C. 16:53) as a condition of compliance with said inspection shall not emit smoke in the exhaust emissions in excess of the 12 percent smoke opacity standard as determined according to the inspection procedure established at N.J.A.C. 7:27B–4.4.

R.1970 d.148, eff. June 19, 1971.
See: 2 N.J.R. 54(c), 3 N.J.R. 41(a).
Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2888, 17 N.J.R. 189(b).
This section was originally codified at 14.3 and was recodified with substantial changes. The old section 14.2 Public highway standard has been repealed.

**Case Notes**

Inconsistency noted between inspection standard of 20 percent opacity (citing former N.J.A.C. 7:27–14.3) and former regulation setting highway standard of no exhaust smoke emission for diesel vehicles. Schwerman Trucking Co. v. Dept. of Environmental Protection, 125 N.J.Super. 14, 308 A.2d 353 (App.Div.1973).

Former N.J.A.C. 7:27–14.2 prohibiting highway operation of diesel vehicle emitting visible exhaust smoke held void as inconsistent with statutory authority. Schwerman Trucking Co. v. Dept. of Environmental Protection, 125 N.J.Super. 14, 308 A.2d 353 (App.Div.1973).

### 7:27–14.3 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a diesel-powered motor vehicle to idle for more than three consecutive minutes if the vehicle is not in motion, except:

1. A motor vehicle at the vehicle operator's place of business where the motor vehicle is permanently assigned may idle for 30 consecutive minutes; or

2. A motor vehicle may idle for 15 consecutive minutes when the vehicle engine has been stopped for three or more hours.

(b) The provisions of (a) above shall not apply to:

1. Autobuses while discharging or picking up passengers;

2. Motor vehicles stopped in a line of traffic;

3. Motor vehicles whose primary and/or secondary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or air conditioning;

4. Motor vehicles being or waiting to be examined by State or Federal motor vehicle inspectors;

5. Emergency motor vehicles in an emergency situation;

6. Motor vehicles while being repaired;

7. Motor vehicles while engaged in the process of connection, detachment or exchange of trailers; or

8. Motor vehicles manufactured with a sleeper berth while being used, in a non-residentially zoned area, by the vehicle's operator for sleeping or resting.

R.1970 d.148, eff. June 19, 1971.
See: 2 N.J.R. 54(c), 3 N.J.R. 4(a).
Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2888, 17 N.J.R. 189(b).

Section recodified to 14.2 and this section repealed.
New Rule, R.1985 d.610, effective December 2, 1985 (operative May 5, 1986).
See: 16 N.J.R. 2886(a), 17 N.J.R. 2887(a).

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## SUBCHAPTER 15. CONTROL AND PROHIBITION OF AIR POLLUTION FROM GASOLINE–FUELED MOTOR VEHICLES

**Authority**

N.J.S.A. 13:D–1 et seq. and 26:2C–1 et seq.

**Subchapter Historical Note**

Adopted as R.1972 d.1, effective July 5, 1972. See: 3 N.J.R. 103(a), 4 N.J.R. 21(c). Amended by R.1974 d.169, eff. July 1, 1974. See: 76 N.J.R. 173(a), 6 N.J.R. 305(b).

On September 2, 1983 the standards referenced at N.J.A.C. 7:27–15.1 were adopted by the Department of Environmental Protection on an emergency basis as R.1983 d.407. On November 2, 1983 they were readopted without change as R.1983 d.536, and are exempt from the expiration provisions of Executive Order 66(1978) since the application of this order would be in violation of the Clean Air Act, as amended August 1977 (42 USC 7401 et seq.). See: 15 N.J.R. 1607(a), 15 N.J.R. 1943(b).

### 7:27–15.1 Definitions

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

"California Air Resources Board" or "CARB" means the agency of the State of California established and empowered to regulate sources of air contaminant emissions, including motor vehicles, pursuant to California Health & Safety Code, Sections 39500 et seq.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Certified configuration" means a vehicle-engine-chassis design for LDGVs and LDGTs or an engine design for HDGVs certified by either of the following agencies as meeting the applicable emission standards for motor vehicles manufactured in a given model year:

1. EPA for model year 1968 or for a more recent model year; or

2. CARB for model year 1966 or for a more recent model year.

"Clean Air Act" or "CAA" means the Federal Clean Air Act (42 U.S.C. 7401 et seq.) which consists of Public Law 159 (July 14, 1955; Stat. 322) and all subsequent amendments thereto.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Crankcase emissions" means substances emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.

"Department" means the Department of Environmental Protection.

"Division of Motor Vehicles" or "DMV" means the Division of Motor Vehicles within the New Jersey Department of Transportation.

"Element of design" means any automotive part or system on a motor vehicle that is subject to the Federal emission standards at40 CFR Part 86 or California emission standards at California Code of Regulations Title 13 which:

1. Is included in the motor vehicle's certified configuration; and

2. Could affect the emission of any regulated air contaminant from the motor vehicle.

"Emission control apparatus" means any device employed by the vehicle manufacturer which prevents or controls the emission of any air contaminant, including associated components which monitor the function and maintenance of these devices.

"EPA" means the United States Environmental Protection Agency.

"EPA Memorandum 1A" means the memorandum dated June 25, 1974, and issued by the EPA's Office of Enforcement and General Counsel, which sets forth the EPA's interim tampering enforcement policy. This term also includes any revisions to the policy set forth in the June 25, 1974 memorandum that are subsequently issued by the EPA. A copy of this EPA memorandum has been filed with the Office of Administrative Law and may be obtained from the Bureau of Transportation Control in the Department of Environmental Protection.

"Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

"G/mi" means grams per mile.

"Gasoline–fueled" means powered by a hydrocarbon fuel other than diesel fuel, including, but not limited to, gasoline, natural gas, liquified petroleum gas, and propane, and also powered by alcohol fuels, hydrocarbon-alcohol fuel blends and hydrogen.

"Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum loaded weight of a single or combination vehicle.

"Heavy–duty gasoline-fueled vehicle" or "HDGV" means a gasoline-fueled motor vehicle that has a GVWR of more than 8,500 pounds and that is designed primarily for transportation of persons or property.

"Hydrocarbons (HC)" means compounds whose molecules consist of atoms of hydrogen and carbon only.

"Light–duty gasoline-fueled vehicle" or "LDGV" means a gasoline-fueled motor vehicle that has a GVWR of 8,500 pounds or less, is designed primarily for use as a passenger car or is a passenger car derivative and is capable of seating no more than 12 passengers.

"Light–duty gasoline-fueled truck" or "LDGT" means a gasoline-fueled motor vehicle that has a GVWR of 8,500 pounds or less, a vehicle curb weight of 6,000 pounds or less, and a basic frontal area of 45 square feet or less, and that:

1. Is designed primarily for the transportation of property or more than 12 passengers; or

2. Is available with special features enabling off-street or off-highway operation and use.

"Light–duty gasoline-fueled truck 1" or "LDGT1" means a light-duty gasoline-fueled truck with a GVWR of 6,000 pounds or less.

"Light–duty gasoline-fueled truck 2" or "LDGT2" means a light-duty gasoline-fueled truck with a GVWR of more than 6,000 pounds.

"Loaded vehicle weight" or "LVW" means the vehicle curb weight plus 300 pounds.

"Low mileage vehicle" means a motor vehicle that is driven less than 10,000 miles during a biennial inspection period.

"Model year" means the manufacturer's annual production period (as determined under 40 CFR section 85.2304 (60 Fed. Reg. 4738, Jan. 24, 1995), as the same is amended or supplemented) which includes January 1 of such calendar year, provided, that if the manufacturer has no annual production period, this term shall mean the calendar year. A specific model year shall include January 1 of the calendar year for which it is designated and shall not include a January 1 of any other calendar year. Thus, the maximum duration of a model year is one calendar year plus 364 days (or 365 days if a leap year).

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"Motor vehicle emission testing equipment" means equipment in accordance with specifications contained in N.J.A.C. 7:27B, Appendix 7 ("Specifications For Motor Vehicle Emission Testing Equipment For Use in the New Jersey Enhanced Inspection and Maintenance Program"), incorporated herein by reference. This term shall include all devices used for performing a motor vehicle inspection, including, but not limited to, exhaust gas analyzers, evaporative pressure testing apparatus, evaporative purge testing apparatus, dynamometers, computers and related software.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"New motor vehicle" means a newly-manufactured motor vehicle, prior to its delivery to the ultimate purchaser.

"New motor vehicle dealer" means any person licensed pursuant to N.J.S.A. 39:10–19 to sell new motor vehicles.

"Official inspection facility" means a test-only inspection facility operated by, licensed by, or under contract with the DMV whose exclusive function is conducting emissions inspections.

"Oxides of nitrogen" or "$NO_x$" means all the oxides of nitrogen including, but not limited to, nitric oxide (NO) and nitrogen dioxide ($NO_2$), except nitrous oxide ($N_2O$).

"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 States, and any agencies or instrumentalities thereof.

"Predelivery checklist" means a schedule of items and procedures which a new motor vehicle dealer is required or requested by a manufacturer to check or follow prior to delivery of a new motor vehicle to the ultimate purchaser.

"Private inspection facility" or "PIF" means a facility licensed by the DMV to perform emissions inspections that may also offer motor vehicle parts and repair services.

"Quasi-public property" means any property that, although under private ownership or control, is accessible to the public. This term shall include, but shall not be limited to, the New Jersey Turnpike, the Garden State Parkway, shopping mall roadways and parking lots, private business roadways and parking lots, private access roads and residential driveways and parking lots.

"RPM" means revolutions per minute.

"Smoke" means small gasborne and airborne particles, exclusive of water vapor, arising from a process of combustion in sufficient number to be observable.

"Tier 1 Standards" means standards for LDGTs and LDGVs of model years 1994 and later, prescribed at section 202(g) of the Clean Air Act, 42 U.S.C.A. 7521(g).

"Ultimate purchaser" means any person, other than a motor vehicle dealer purchasing in his capacity as a motor vehicle dealer, who in good faith purchases a motor vehicle for purposes other than for resale as a motor vehicle dealer.

"Vehicle curb weight" means the actual weight of a motor vehicle in operational status or the weight given by the manufacturer for such a motor vehicle. Such weight shall include the weight of all standard equipment, of the fuel at nominal tank capacity, and of optional equipment computed in accordance with 40 CFR section 86.082–24. This term, with respect to an incomplete light-duty gasoline truck, shall be the weight given by the manufacturer for such a truck.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Administrative Corrections.
See: 23 N.J.R. 1432(d).
Emergency Amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted concurrent proposal, R.1995 d.527, effective August 28, 1995, (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).
Provisions of R.1995 d.409 readopted, with changes effective October 2, 1995.

### 7:27–15.2 Applicability

(a) Except as provided in (b) and (c) below, this subchapter applies to all light-duty gasoline-fueled vehicles, light-duty gasoline-fueled trucks and heavy-duty gasoline-fueled vehicles.

(b) This subchapter does not apply to:

1. Motor vehicles operated solely on diesel fuel; and
2. Motorcycles.

(c) N.J.A.C. 7:27–15.3, 15.4, 15.5 and 15.6 apply only to those light-duty gasoline-fueled vehicles, light-duty gasoline-fueled trucks and heavy-duty gasoline-fueled vehicles that are subject to inspection in accordance with N.J.S.A. 39:8.

(d) This subchapter shall apply to any person and the United States, all political subdivisions of the United States, and any agencies or instrumentalities thereof.

Emergency New Rule, R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.3 General public highway standards

(a) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit the operation of the motor vehicle upon the public roads, streets or highways of the State or any public or quasi-public property in the State if the vehicle emits visible smoke in the exhaust emissions or in the crankcase emissions for a period in excess of three consecutive seconds.

(b) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit the operation of the motor vehicle upon the public roads, streets, or highways of the State, or any public or quasi-public property in the State, if the vehicle emits hydrocarbons (HC), carbon monoxide (CO), or oxides of nitrogen ($NO_x$) in the exhaust emissions in excess of any applicable standards set forth at N.J.A.C. 7:27–15.6(b).

(c) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit the operation of the motor vehicle upon the public roads, streets or highways of the State or any public or quasi-public property in the State if the motor vehicle does not satisfy and pass all applicable motor vehicle inspection testing requirements at N.J.A.C. 7:27–15.5 unless the motor vehicle has been issued a waiver in accordance with N.J.A.C. 13:20–43.13.

(d) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit the operation of the motor vehicle upon the public roads, streets or highways of the State or any public or quasi-public property in the State if the motor vehicle is a 1968 or later model year vehicle (or, if the vehicle was originally sold in California, a 1966 or later model year vehicle), and the motor vehicle is not certified by either of the following agencies as meeting the applicable emission standards for motor vehicles manufactured in the model years listed below:

1. EPA for model years 1968 and later; or
2. CARB for model year 1966 and later motor vehicles originally sold in California.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Section substantially amended.
Emergency recodification from 7:27–15.2 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.4 New motor vehicle dealer inspections

(a) A new motor vehicle dealer shall ensure that, prior to delivery by the new motor vehicle dealer to the ultimate purchaser, any gasoline-fueled new motor vehicle subject to this subchapter pursuant to N.J.A.C. 7:27–15.2 conforms to the emission specifications prescribed by the manufacturer for the new motor vehicle. These specifications may be prescribed by the manufacturer in the new motor vehicle predelivery check list provided for the dealer's use in assuring proper functioning of the vehicle emission control apparatus.

(b) Whenever applicable emission specifications are not prescribed by the manufacturer, the inspection standards as set forth in N.J.A.C. 7:27– 15.6(b) shall apply to the new motor vehicle.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).

Section substantially amended.
Emergency recodification from 7:27–15.3 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.5 Motor vehicle inspections

(a) The owner of a motor vehicle subject to this section pursuant to N.J.A.C. 7:27–15.2 shall have the motor vehicle periodically inspected in accordance with this section.

(b) The motor vehicle shall be inspected at least once every two years. This biennial inspection shall be deemed an "on-cycle" inspection and shall include an initial inspection, together with any reinspections required pursuant to (h) below. In addition, in accordance with its procedures, the DMV may require the owner of a motor vehicle to have it inspected more frequently than every two years. Such more frequent inspections shall be deemed to be "off-cycle" inspections and shall also include an initial inspection together with any reinspections required pursuant to (h) below.

(c) The inspections shall be performed as follows:

1. Initial inspections for an on-cycle or an off-cycle inspection shall be performed at an official inspection facility, except that motor vehicles four model years old and newer may receive an initial inspection at a PIF; and

2. Reinspections may be performed at either an official inspection facility or at a PIF, except that any reinspections of a motor vehicle that has failed two consecutive initial inspections during the two most recent on-cycle inspections shall be performed at an official inspection facility.

(d) A motor vehicle inspection is not complete until:

1. The motor vehicle passes all of the tests and satisfies all of the requirements, as specified in (f) below, that constitute the emission inspection at an appropriate inspection facility, as specified in (c) above; or

2. The motor vehicle has been issued a waiver in accordance with N.J.A.C. 13:20–43.13.

(e) Initial inspections shall be performed without repair or adjustment, other than proper tightening of the gas cap, at the inspection facility, prior to the inspection.

(f) A motor vehicle inspection shall include the following:

1. A visible smoke test conducted in accordance with N.J.A.C. 7:27B–4.5(a);

2. Unless the motor vehicle is exempt pursuant to N.J.A.C. 7:27–15.6(e) or (f), an exhaust emission test utilizing motor vehicle emission testing equipment approved by the Department. The specific exhaust emission test to be used shall be determined in accordance with (g) below;

3. For all post–1974 model year LDGVs and LDGTs inspected at a PIF, an emission control apparatus compliance examination conducted in accordance with N.J.A.C. 7:27B–4.9;

4. For all post–1974 model year LDGVs and LDGTs originally equipped with an evaporative emission control system, an evaporative pressure test utilizing motor vehicle emission testing equipment approved by the Department and conducted in accordance with N.J.A.C. 7:27B–4.10;

5. For all post–1974 model year LDGVs and LDGTs originally equipped with an evaporative emission control system, an evaporative purge test utilizing motor vehicle emission testing equipment approved by the Department and conducted in accordance with N.J.A.C. 7:27B–4.11, except that those motor vehicles that, in accordance with (g) below, are subject to only the idle test or the 2500 RPM test as their sole exhaust emission test, shall not be subject to an evaporative purge test; and

6. For any motor vehicle that is subject to a recall notice issued to the owner on or after January 1, 1995, pursuant to either a "Voluntary Emissions Recall" as defined at 40 CFR section 85.1902(d) or to a remedial plan determination made pursuant to 42 U.S.C.A. section 7541(c), the provision by the owner of the motor vehicle of documentation that all applicable recall repairs have been completed; provided, however, for any recall notice received fewer than 60 days prior to inspection, provision of this documentation may, instead, be provided at the next scheduled vehicle inspection.

(g) The exhaust emission test to be used pursuant to (f)2 above shall be determined as follows:

1. Except as specified in (g)2 and 3 below, the exhaust emission test procedure to be used shall be as follows:

i. For model year 1967 and older motor vehicles, the exhaust emission test procedure to be used shall be the idle test set forth at N.J.A.C. 7:27B–4.5(b); and

ii. For model year 1968 and newer motor vehicles, the exhaust emission test procedure to be used shall be the ASM5015 test set forth at N.J.A.C. 7:27B–4.7, except that an inspection performed at a PIF, in accordance with (c)1 above, may utilize the IM240 test set forth at N.J.A.C. 7:27B–4.8.

2. Notwithstanding the provision of (g)1 above, if the motor vehicle is any of the following types, the exhaust emission test procedure to be used shall be the idle test set forth at N.J.A.C. 7:27B–4.5(b):

i. Motor vehicles that have a GVWR in excess of 8,500 pounds;

ii. Motor vehicles of model year 1980 and older that employ full-time four-wheel drive; or

iii. Low mileage vehicles of model year 1980 and older.

3. Notwithstanding the provision of (g)1 above, if the motor vehicle is any of the following types, the exhaust emission test procedure to be used shall be the 2500 RPM test set forth at N.J.A.C. 7:27B–4.6:

i. Motor vehicles of model year 1981 and newer that employ full-time four-wheel drive; or

ii. Low mileage vehicles of model year 1981 and newer.

(h) The owner of a motor vehicle that fails to pass all of the tests that constitute a motor vehicle inspection pursuant to (f) above shall have it reinspected in accordance with every applicable element of (f) within 30 days. Operation of the motor vehicle upon the public roads, streets or highways of the State or any public or quasi-public property in the State shall be prohibited pursuant to N.J.A.C. 7:27–15.3(c) unless, by the 30–day deadline:

1. The motor vehicle passes all of the tests and meets all the requirements that constitute the inspection; or

2. A waiver is issued pursuant to N.J.A.C. 13:20–43.13.

(i) An on-road inspection conducted pursuant to N.J.A.C 13:20–43.14 may include the following:

1. A visible smoke test conducted in accordance with N.J.A.C. 7:27B–4.5(a);

2. Unless the motor vehicle is exempt pursuant to N.J.A.C. 7:27–15.6(e) or (f), an idle test utilizing motor vehicle emission testing equipment approved by the Department and conducted in accordance with N.J.A.C. 7:27B–4.5(b);

3. For all post–1974 model year LDGVs and LDGTs, an emission control apparatus compliance examination conducted in accordance with N.J.A.C. 7:27B–4.9;

4. For all post–1974 model year LDGVs and LDGTs originally equipped with an evaporative emission control system, unless the motor vehicle is exempt pursuant to N.J.A.C. 7:27–15.6(e) or (f), an evaporative pressure test utilizing motor vehicle emission testing equipment approved by the Department and conducted in accordance with N.J.A.C. 7:27B–4.10; and

5. Any other tests deemed appropriate by the Director of the DMV that are directed toward detecting acts of tampering with emission control apparatus specifically prohibited at N.J.A.C. 7:27–15.7(a)1 or toward identifying vehicles operated in violation of N.J.A.C. 7:27–15.3(d). Such tests may include visual or functional checks of emission control apparatus and elements of design.

(j) A motor vehicle inspection test using remote sensing techniques shall include the following:

(Reserved)

(k) Any motor vehicle that fails an on-road inspection conducted pursuant to (i) above or a remote sensing test conducted pursuant to (j) above shall be subject to an off-cycle inspection. An off-cycle inspection shall consist of all test procedures and requirements to which a motor vehicle would normally be subject in accordance with (f) above. If the motor vehicle fails the initial off-cycle inspection, the provisions of (h) above apply.

(*l*) Each year DMV shall conduct a program evaluation test which shall entail additional testing for at least 0.1 percent of those motor vehicles subject to inspection during that year. The motor vehicles subject to the program evaluation testing shall be selected by the DMV in accordance with its procedures. The program evaluation test shall consist of two IM240 tests performed in accordance with N.J.A.C. 7:27B–4.8. The program evaluation test shall be performed after, and in addition to, any other inspection procedures required pursuant to this section. The results of the program evaluation test shall not be used in determining whether a motor vehicle has passed or failed its motor vehicle inspection with regard to exhaust emissions.

Emergency New Rule, R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995, (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).
Provisions of R.1995 d.409 readopted, with changes effective October 2, 1995.

### 7:27–15.6 Motor vehicle inspection standards

(a) Any light-duty gasoline-fueled vehicle, light-duty gasoline-fueled truck or heavy-duty gasoline-fueled vehicle shall not emit visible smoke in the exhaust emissions or in the crankcase emissions for a period in excess of three consecutive seconds when measured using the test procedure established at N.J.A.C. 7:27B–4.5.

(b) Any light-duty gasoline-fueled vehicle, light-duty gasoline-fueled truck or heavy-duty gasoline-fueled vehicle shall not emit carbon monoxide (CO), hydrocarbons (HC), or oxides of nitrogen ($NO_x$) in the exhaust emissions in excess of the following standards:

1. If, pursuant to the provisions of N.J.A.C. 7:27–15.5(g), a motor vehicle is tested using the idle test, the motor vehicle shall be subject to the exhaust emission standards set forth in Table 1 below. Compliance with these standards shall be determined in accordance with the inspection test procedure at N.J.A.C. 7:27B–4.5;

TABLE 1
EXHAUST EMISSION STANDARDS
FOR THE IDLE TEST
LDGVs and LDGTs Powered by Gasoline

| Model Year | CO (% by volume) | HC (ppm as hexane) |
|---|---|---|
| Pre-1968 | 8.5 | 1400 |
| 1968-1970 | 7.0 | 700 |
| 1971-1974 | 5.0 | 500 |
| 1975-1980 | 3.0 | 300 |
| 1981 & Later | 1.2 | 220 |

LDGVs and LDGTs Powered by a
Fuel Other Than Gasoline
(Reserved)
HDGVs Powered by Gasoline

| Model Year | CO (% by volume) | HC (ppm as hexane) |
|---|---|---|
| Pre-1968 | 8.5 | 1400 |
| 1968-1970 | 8.5 | 1200 |
| 1971-1974 | 6.0 | 700 |
| 1975-1978 | 4.0 | 500 |
| 1979 & Later | 3.0 | 300 |

HDGVs Powered by a Fuel Other Than Gasoline
(Reserved)

2. If, pursuant to the provisions of N.J.A.C. 7:27–15.5(g), a motor vehicle is tested using the 2500 RPM test, the motor vehicle shall be subject to the applicable exhaust emission standards set forth in Table 2 below. Compliance with these standards shall be determined in accordance with the inspection test procedure at N.J.A.C. 7:27B–4.6;

3. If, pursuant to the provisions of N.J.A.C. 7:27–15.5(g), a motor vehicle is tested using the ASM5015 test, the motor vehicle shall be subject to the applicable exhaust emission standards set forth in Table 3 below. Compliance with these standards shall be determined in accordance with the inspection test procedure at N.J.A.C. 7:27B–4.7; or

4. If, pursuant to the provisions of N.J.A.C. 7:27–15.5(g), a motor vehicle is tested using the IM240 test, the motor vehicle shall be subject to the applicable exhaust emission standards set forth in Table 4 below. Compliance with these standards shall be determined in accordance with the inspection test procedure at N.J.A.C. 7:27B–4.8.

TABLE 2
EXHAUST EMISSION STANDARDS
FOR THE 2500 RPM TEST
LDGVs and LDGTs Powered by Gasoline

| Model Year | CO (% by volume) | HC (ppm as hexane) |
|---|---|---|
| 1981 & Later | 0.5 | 100 |

LDGVs and LDGTs Powered by a
Fuel Other Than Gasoline
(Reserved)

TABLE 3
EXHAUST EMISSION STANDARDS
FOR THE ASM5015 TEST
LDGVs Powered by Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGVs Powered by a Fuel Other Than Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGT1s Powered by Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGT1s Powered by a Fuel Other Than Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGT2s Powered by Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGT2s Powered by a Fuel Other Than Gasoline
(Effective through December 31, 1997)
(Reserved)
LDGVs Powered by Gasoline
(Effective January 1, 1998)
(Reserved)
LDGVs Powered by a Fuel Other Than Gasoline
(Effective January 1, 1998)
(Reserved)
LDGT1s Powered by Gasoline
(Effective January 1, 1998)
(Reserved)
LDGT1s Powered by a Fuel Other Than Gasoline
(Effective January 1, 1998)
(Reserved)
LDGT2s Powered by Gasoline
(Effective January 1, 1998)
(Reserved)
LDGT2s Powered by a Fuel Other Than Gasoline
(Effective January 1, 1998)
(Reserved)

TABLE 4

EXHAUST EMISSION STANDARDS FOR THE IM240 TEST

LDGVs Powered by Gasoline

(effective through December 31, 1997)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 10.0 | 6.00 | 150 | 120 | 10.0 | 10.0 |
| 1973–1974 | 10.0 | 6.00 | 150 | 120 | 9.0 | 9.0 |
| 1975–1976 | 7.50 | 5.00 | 90.0 | 72.0 | 9.0 | 9.0 |
| 1977–1979 | 7.50 | 5.00 | 90.0 | 72.0 | 6.0 | 6.0 |
| 1980 | 2.00 | 1.25 | 60.0 | 48.0 | 6.0 | 6.0 |
| 1981–1982 | 2.00 | 1.25 | 60.0 | 48.0 | 3.0 | 3.0 |
| 1983–1990 | 2.00 | 1.25 | 30.0 | 24.0 | 3.0 | 3.0 |
| 1991–1995 | 1.20 | 0.75 | 20.0 | 16.0 | 2.5 | 2.5 |
| 1994+ Tier 1 | 0.80 | 0.50 | 15.0 | 12.0 | 2.0 | 2.0 |

LDGVs Powered by a Fuel Other Than Gasoline

(effective through December 31, 1997)

(Reserved)

LDGT1s Powered by Gasoline

(effective through December 31, 1997)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 10.0 | 6.00 | 150 | 120 | 10.0 | 10.0 |
| 1973–1974 | 10.0 | 6.00 | 150 | 120 | 9.0 | 9.0 |
| 1975–1978 | 8.00 | 5.00 | 120 | 96.0 | 9.0 | 9.0 |
| 1979–1983 | 7.50 | 5.00 | 100 | 80.0 | 7.0 | 7.0 |
| 1984–1987 | 3.20 | 2.00 | 80.0 | 64.0 | 7.0 | 7.0 |
| 1988–1990 | 3.20 | 2.00 | 80.0 | 64.0 | 3.5 | 3.5 |
| 1991–1995 | 2.40 | 1.50 | 60.0 | 48.0 | 3.0 | 3.0 |
| 1994+ Tier 1 | | | | | | |
| (LVW≤3750) | 0.80 | 0.50 | 15.0 | 12.0 | 2.0 | 2.0 |
| (LVW>3750) | 1.00 | 0.63 | 20.0 | 16.0 | 2.5 | 2.5 |

LDGT1s Powered by a Fuel Other Than Gasoline

(effective through December 31, 1997)

(Reserved)

LDGT2s Powered by Gasoline

(effective through December 31, 1997)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 10.0 | 6.00 | 150 | 120 | 10.0 | 10.0 |
| 1973–1974 | 10.0 | 6.00 | 150 | 120 | 9.0 | 9.0 |
| 1975–1978 | 8.00 | 5.00 | 120 | 96.0 | 9.0 | 9.0 |
| 1979–1983 | 7.50 | 5.00 | 100 | 80.0 | 7.0 | 7.0 |
| 1984–1987 | 3.20 | 2.00 | 80.0 | 64.0 | 7.0 | 7.0 |
| 1988–1990 | 3.20 | 2.00 | 80.0 | 64.0 | 5.0 | 5.0 |
| 1991–1995 | 2.40 | 1.50 | 60.0 | 48.0 | 4.5 | 4.5 |
| 1994+ Tier 1 | | | | | | |
| (LVW≤5750) | 1.00 | 0.63 | 20.0 | 16.0 | 2.5 | 2.5 |
| (LVW>5750) | 2.40 | 1.50 | 60.0 | 48.0 | 4.0 | 4.0 |

LDGT2s Powered by a Fuel Other Than Gasoline

(effective through December 31, 1997)

(Reserved)

LDGVs Powered by Gasoline

(effective January 1, 1998)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 7.00 | 4.50 | 120 | 96.0 | 7.0 | 7.0 |
| 1973-1974 | 7.00 | 4.50 | 120 | 96.0 | 6.0 | 6.0 |
| 1975–1976 | 3.00 | 2.00 | 65.0 | 52.0 | 6.0 | 6.0 |
| 1977–1979 | 3.00 | 2.00 | 65.0 | 52.0 | 4.0 | 4.0 |
| 1980 | 0.80 | 0.50 | 30.0 | 24.0 | 4.0 | 4.0 |
| 1981–1982 | 0.80 | 0.50 | 30.0 | 24.0 | 2.0 | 2.0 |
| 1983–1995 | 0.80 | 0.50 | 15.0 | 12.0 | 2.0 | 2.0 |
| 1994+ Tier 1 | 0.60 | 0.40 | 10.0 | 8.0 | 1.5 | 1.5 |

LDGVs Powered by a Fuel Other Than Gasoline

(effective January 1, 1998)

(Reserved)

LDGT1s Powered by Gasoline

(effective January 1, 1998)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 7.00 | 4.50 | 120 | 96.0 | 7.0 | 7.0 |
| 1973–1974 | 7.00 | 4.50 | 120 | 96.0 | 6.0 | 6.0 |
| 1975–1978 | 4.00 | 2.50 | 80.0 | 64.0 | 6.0 | 6.0 |
| 1979–1983 | 3.40 | 2.00 | 70.0 | 56.0 | 4.5 | 4.5 |
| 1984–1987 | 1.60 | 1.00 | 40.0 | 32.0 | 4.5 | 4.5 |
| 1988–1995 | 1.60 | 1.00 | 40.0 | 32.0 | 2.5 | 2.5 |
| 1994+ Tier 1 | | | | | | |
| (LVW≤3750) | 0.60 | 0.40 | 10.0 | 8.0 | 1.5 | 1.5 |
| (LVW>3750) | 0.80 | 0.50 | 13.0 | 10.0 | 1.8 | 1.8 |

LDGT1s Powered by a Fuel Other Than Gasoline

(effective January 1, 1998)

(Reserved)

LDGT2s Powered by Gasoline

(effective January 1, 1998)

| Model Years | HC (g/mi) | | CO (g/mi) | | $NO_x$ (g/mi) | |
|---|---|---|---|---|---|---|
| | Composite | Phase 2 | Composite | Phase 2 | Composite | Phase 2 |
| 1968–1972 | 7.00 | 4.50 | 120 | 96.0 | 7.0 | 7.0 |
| 1973–1974 | 7.00 | 4.50 | 120 | 96.0 | 6.0 | 6.0 |
| 1975–1978 | 4.00 | 2.50 | 80.0 | 64.0 | 6.0 | 6.0 |
| 1979–1983 | 3.40 | 2.00 | 70.0 | 56.0 | 4.5 | 4.5 |
| 1984–1987 | 1.60 | 1.00 | 40.0 | 32.0 | 4.5 | 4.5 |
| 1988–1995 | 1.60 | 1.00 | 40.0 | 32.0 | 3.5 | 3.5 |
| 1994+ Tier 1 | | | | | | |
| (LVW≤5750) | 0.80 | 0.50 | 13.0 | 10.0 | 1.8 | 1.8 |
| (LVW>5750) | 0.80 | 0.50 | 15.0 | 12.0 | 2.0 | 2.0 |

LDGT2s Powered by a Fuel Other Than Gasoline
(effective January 1, 1998)
(Reserved)

(c) A gasoline-fueled motor vehicle which is subject to inspection pursuant to N.J.A.C. 7:27–15.5(a) shall, as a condition of compliance with said inspection, have properly functioning and properly maintained emission control apparatus as determined according to the inspection test procedures established at N.J.A.C. 7:27B– 4.9, 4.10, 4.11 and 4.12.

(d) Except as provided in (e) and (f) below, the applicability of the standards set forth in this subchapter and of the test procedures set forth at N.J.A.C. 7:27B–4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11 and 4.12 to a motor vehicle with an engine other than the engine originally installed by the manufacturer shall be based on the chassis type and model year of the motor vehicle, not on the engine model year.

(e) A motor vehicle that is modified to operate solely on a fuel other than that for which the motor vehicle was originally equipped shall be subject to the test procedures and standards applicable to a motor vehicle of the current fuel type. If the motor vehicle's fuel type after modification is one to which this subchapter does not apply (for example, a gasoline engine replaced with a diesel engine), the motor vehicle shall be exempt from this subchapter. If the motor vehicle's fuel type after modification is a fuel type to which this subchapter applies, but is other than gasoline (for example, a gasoline engine modified to operate solely on natural gas), the standards applicable to that motor vehicle shall be those prescribed in the Tables 1, 2, 3 and 4 above for motor vehicles powered by a fuel other than gasoline. Until such time that applicable exhaust emission standards are promulgated for motor vehicles powered by fuels other than gasoline, such vehicles shall be exempt from exhaust emission testing when operating on a fuel other than gasoline.

(f) A motor vehicle that is modified or manufactured to operate on more than one fuel type shall be subject to exhaust emission standards that apply to the motor vehicle for each fuel type for which the motor vehicle is equipped. Such motor vehicle shall be subject to an exhaust emission test for each fuel type on which it operates and shall comply with all applicable standards for each fuel type. Such motor vehicle shall also be subject to an evaporative pressure test and an evaporative purge test when operating on gasoline. If the motor vehicle is capable of simultaneous operation on more than one fuel type (for example, flexible fuel, gasoline-methanol vehicle), the motor vehicle shall be subject to an exhaust emission test using the fuel mixture in the vehicle at the time of inspection and subject to the exhaust emission standards applicable to vehicles powered by gasoline. When operating on a fuel other than gasoline, the exhaust emission standards applied to a motor vehicle shall be those prescribed in the Tables 1, 2, 3 and 4 above for motor vehicles powered by a fuel other than gasoline. Until such time that applicable exhaust emission standards are promulgated for motor vehicles powered by fuels other than gasoline, such vehicles shall be exempt from exhaust emission testing when operating on a fuel other than gasoline.

(g) The provisions of (d), (e), and (f) above shall not be construed to allow any of the following acts, if such act is prohibited by N.J.A.C. 7:27–15.7:

1. The installation of an engine into a motor vehicle other than the engine originally installed by the manufacturer;

2. The operation of a motor vehicle on a fuel other than that for which the motor vehicle was originally equipped; and

3. The modification of a motor vehicle to operate on more than one fuel type.

As amended, R.1975 d.22, eff. January 31, 1975.
See: 7 N.J.R. 102(b).
As amended, R.1975 d.91, eff. October 1, 1975.
See: 6 N.J.R. 173(a), 7 N.J.R. 206(c).
As amended, R.1975 d.92, eff. April 1, 1975.
See: 7 N.J.R. 206(c).
As amended, R.1976 d.12, eff. January 14, 1976.
See: 8 N.J.R. 62(c).
As amended, R.1977 d.1, eff. January 3, 1977.
See: 9 N.J.R. 77(c).
Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Section substantially amended.
Amended by R.1985 d.331, effective July 1, 1985 (operative December 2, 1985).
See: 17 N.J.R. 781(a), 17 N.J.R. 1649(a).
"past–1984 model year" substituted for "light duty." Added text "weighing less than 8501 pounds."
Emergency recodification from 7:27–15.4 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995, except changes upon adoption effective October 2, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.7 Prohibition of tampering with emission control apparatus

(a) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit any of the following, unless it is performed in accordance with EPA Memorandum 1A or it is exempt from prohibition by CARB executive order (information on devices or modifications approved by CARB executive order may be obtained from Air Resources Board, Haagen–Smit Laboratory, 9528 Telstar Avenue, El Monte, CA 91731–2990):

1. The disconnection, detachment, deactivation, or any other alteration or modification from the design of the original vehicle manufacturer of an element of design

installed on any motor vehicle with a certified configuration, except temporarily for the purpose of diagnosis, maintenance, repair or replacement;

2. The operation on the public roads, streets or highways of the State or any public or quasi-public property in the State of any motor vehicle with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer;

3. The sale, lease, or offer for sale or lease, of any motor vehicle with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer; or

4. The sale, or offer for sale, of any device or component as an element of design intended for use with, or as part of, any motor vehicle or motor vehicle engine with a certified configuration, which is not designed to duplicate the function and performance of any element of design installed by the original vehicle manufacturer.

New Rule, R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
New rule. Old rule recodified to 15.7.
Emergency recodification from 7:27–15.5 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.8 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a gasoline-fueled motor vehicle to idle for more than three consecutive minutes if the vehicle is not in motion.

(b) The provisions of (a) above shall not apply to:

1. Autobuses while discharging or picking up passengers;

2. Motor vehicles stopped in a line of traffic;

3. Motor vehicles whose primary and/or secondary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or air conditioning;

4. Motor vehicles being or waiting to be examined by State or Federal motor vehicle inspectors;

5. Emergency motor vehicles in an emergency situation;

6. Motor vehicles while being repaired;

7. Motor vehicles while engaged in the process of connection, detachment or exchange of trailers; or

8. Motor vehicles manufactured with a sleeper berth while being used, in a non-residentially zoned area, by the vehicle's operator for sleeping or resting.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Rule recodified and substantially amended, to 15.8.
New Rule, R.1985 d.610, effective December 2, 1985 (operative May 5, 1986).
See: 16 N.J.R. 2886(a), 17 N.J.R. 2887(a).
Emergency recodification from 7:27–15.6 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted concurrent proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

### 7:27–15.9 Non-interference with the motor vehicle codes

Nothing in this subchapter is intended to limit or deny the inspection of motor vehicles in accordance with regulations established pursuant to N.J.S.A. 39:8–2, 39:3–70, 39:3–76, and 39:10–26.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Recodified from 15.5; Old (a) deleted and (b)-(c) now (a)-(b).
Emergency recodification from 7:27–15.7 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

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## 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, when 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.

"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.

"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.

"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.

"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.

"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.

"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 of automobiles and light duty trucks" means the application of surface coating formulations, except during original equipment manufacturing, to 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 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 ($N_2$), oxygen ($O_2$), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide ($CO_2$).

"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.

"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.

"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 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.

"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 chiller" means a heat exchanger mounted on a surface cleaner freeboard to provide a chilled air layer immediately above the VOC vapor space to reduce VOC emissions.

"Freeboard height" means the vertical distance from either the VOC liquid level to the lip of an unheated open top surface cleaner or from the interface of the VOC vapor with the air to the lip of a vapor surface cleaner.

"Freeboard ratio" means a ratio of the freeboard height to the tank width or narrower dimension at the tank lip.

"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.

"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.

"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.

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

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

"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.

"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.

"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.

"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.

"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 a "Permit to Construct, Install or Alter 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.

"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.

"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.

"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.

"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.

"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.

"Refinishing of automobiles and light duty trucks" means 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 adhesion 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 (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measurement Method" or "Method 2—Herzog Semi–Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

"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 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.

"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 for insulation of magnet wire" means the application of electrically insulating varnish or enamel to aluminum or copper wire.

"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 of automobiles and light-duty trucks" means the application, flash-off, and curing of prime, topcoat, and repair coat on 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 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 means an entire coating application system, including all spray booths, flash-off areas, and ovens in which surface coating formulations within the same spray prime, topcoat, or repair operation category are applied, dried and cured.

"Surface coating of cans" means exterior coating 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.

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

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

"Surface 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.

"Surface coating of glass" means the application of any surface coating formulation to glass lamps or bulbs.

"Surface coating of large appliances" means the application of any coating to the component parts 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.

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

"Surface coating of metal furniture" 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 furniture piece.

"Surface coating of miscellaneous metal parts and products" means the application of any coating, excluding an adhesive, to any metal part or product not elsewhere classified 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.

"Surface coating of paper" means the application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of substrate (including paper, fabric, or plastic film); related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film, and magnetic tape; and decorative coating on metal foil including, but not limited to, gift wrap and packaging. This term does not include any graphic arts operation.

"Surface coating of pipe" means the application of any coating to a pipe of any composition, except plastic.

"Surface 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.

"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 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 not to exceed 90 days.

"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.

"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 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.

"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 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 the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1–trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC–11)
dichlorodifluoromethane (CFC–12)
trifluoromethane (HFC–23)
1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)
1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)
chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1–trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluoroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

"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).

**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. The purpose of this subchapter is to require any stationary source operation or group of source operations, located within a contiguous area and under common control to implement reasonably available control technology (RACT) to control VOC 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. 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.

(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) 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).

### 7:27–16.2 Storage of volatile organic compounds

(a) General provisions are:

1. No person shall cause, suffer, allow, or permit the storage of any applicable VOC in any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white or an equivalent method of emission control approved by the Department is used.

2. The provisions of (a)1 above shall not apply to words and logograms applied to the external surface of a 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.

(b) No person shall cause, suffer, allow, or permit 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 | | | |
|---|---|---|---|---|---|
| | | Range I | Range II | | Range III |
| Greater than | But not Greater than | 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 (a) above shall not apply to any storage tank:

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.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
(h) repealed and replaced, establishing separate provisions prior to and after June 15, 1990 and at (i) adding "prior to June 15, 1990".
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (n) (operative October 1, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
EPA identified deficiencies addressed by adding recordkeeping requirements.
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–16.3 Gasoline transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of gasoline into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. Such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which gasoline is transferred.

(b) The provisions of (a) above shall not apply to manufacturing process vessels installed before December 17, 1979.

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such storage tank is equipped with and operating one of the following controls:

1. A vapor balance system with all atmospheric vents positively closed during transfer;

2. A vapor balance system with a conservation vent adjusted to remain closed during transfer;

3. A vapor balance system with a hole of ¼ inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent;

4. A vapor control system which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of gasoline. Upon the request of the Department, any owner or operator utilizing a vapor control system shall demonstrate to the satisfaction of the Department achievement of this control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)) or greater; or

5. A floating roof.

(d) No person shall cause, suffer, allow, or permit the transfer of any substance into any gasoline vapor laden delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such delivery vessel is connected to control apparatus installed and operated in accordance with the provisions of (e) below.

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

1. Facilities loading 15,000 gallons (56,775 liters) of gasoline or less per day shall be equipped with and operating a vapor balance system or other control apparatus of equal or higher efficiency. Such vapor balance system shall have no open vent to the atmosphere during transfer and shall not return the vapors to any tank equipped with a floating roof.

2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:

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

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

TABLE 3A
EMISSION STANDARDS FOR GASOLINE LOADING FACILITIES LOADING MORE THAN 15,000 GALLONS (56,775 LITERS) PER DAY

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

3. The daily loading rate shall be calculated on the basis of the daily average rate during the month with the highest throughput in the last 12 months of operation.

(f) Except as provided in (g) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless such person complies with (h) and (r) below, and unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent the release into the outdoor atmosphere of no less than 95 percent by weight of the VOC generated by dispensing gasoline at the facility; and

2. To prevent overfilling and spillage.

(g) The provisions of (f) above shall not apply to a gasoline dispensing facility with an average monthly throughput of 10,000 gallons (37,850 liters) or less or to any gasoline dispensing devices at a marina used exclusively for refueling of marine vehicles.

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1986, and August 31, 1987, or during the most recent twelve months of operation, whichever is greater; and

2. Documentation of the monthly throughput shall be made available upon request by the Department.

(i) No person shall cause, suffer, allow, or permit any delivery vessel except railroad tank cars or marine tank vessels, having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1. Sustains a pressure change of less than three inches of water (6 millimeters of mercury) in five minutes when pressurized to 18 inches of water (34 millimeters of mercury) and evacuated to six inches of water (11 millimeters of mercury), as tested at least once in every 12–month period for leaks in accordance with test procedures specified by the Department, and

2. Has a certification affixed to the vessel in a prominent location which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests; and

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results.

(j) No person shall cause, suffer, allow, or permit a transfer of gasoline subject to the provisions of (c), (d), and (e) above if the delivery vessel being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the delivery vessel being unloaded is under a vacuum in excess of 6 inches of water (11 millimeters of mercury) gauge.

(k) No person shall cause, suffer, allow, or permit any transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, if:

1. The delivery being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

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

ii. Is a liquid leak;

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

3. The continued transfer results in a liquid gasoline spill.

(*l*) The provisions of (d) above shall not apply to delivery vessels used for less than one month for the purpose of holding gasoline from a storage tank during a period in which the storage tank is undergoing repair or maintenance.

(m) No person shall cause, suffer, allow, or permit the transport or transfer of gasoline in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC except during:

1. Emergency conditions;

2. Gauging; or

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

(n) The provisions of (c) above shall not apply to a storage tank during construction ballast.

(*o*) Any delivery vessel subject to the provisions of (i) above found in violation of (k) or (m) above shall be repaired within 15 days and shall be recertified.

(p) The provisions of this section shall not apply to the loading of gasoline as cargo into any marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey coastal waters are subject to the provisions of N.J.A.C. 7:27–16.5.

(q) Any new gasoline dispensing facility shall install equipment meeting the requirements of (f) above prior to the use of that facility for dispensing gasoline.

(r) Any person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, March 28, 1992 shall comply with the following schedule:

1. Within three months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to the provisions of N.J.A.C. 7:27–8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. Within nine months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. Within 18 months of exceeding the average monthly throughput of 10,000 gallons, compliance with (f) above shall be achieved.

(s) Any person responsible for any gasoline loading facility subject to (e)1, 2, or 3 above shall maintain the following records:

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

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

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

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

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

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1988 d.44, effective January 19, 1988 (operative February 22, 1988).
See: 19 N.J.R. 1938(a), 20 N.J.R. 186(b).
Substantially amended.
Amended by R.1989 d.62, effective February 6, 1989.
See: 20 N.J.R. 1866(a), 21 N.J.R. 321(a).
Added (e)4; repealed (n); renumbered (*o*)-(q) as (n)-(p); added new (q).
Amended by R.1989 d.595, effective December 4, 1989 (operative January 7, 1990).
See: 21 N.J.R. 1960(a), 21 N.J.R. 3748(c).
Compliance date of February 28, 1991 established.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (w)1., (operative October 1, 1992); (w)2–3, (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; added recordkeeping requirement; strengthened verification of conformance with CTG requirements for the transfer of gasoline into storage tanks.
Administrative correction to (i).
See: 24 N.J.R. 1889(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).

**Case Notes**

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

### 7:27–16.4 VOC transfer operations, other than gasoline

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

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

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

(b) No person shall cause, suffer, allow or permit the transfer of any applicable VOC into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. Such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which the VOC is transferred. This subsection shall not apply to a transfer to a manufacturing process vessel installed before December 17, 1979.

(c) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 1,000 pounds of applicable VOC as determined pursuant to (d) below unless the storage tank is equipped with and operating one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of applicable VOC;

2. A floating roof; or

3. A vapor balance system with:

i. All atmospheric vents positively closed during transfer;

ii. A conservation vent adjusted to remain closed during transfer; or

iii. A hole of ¼ inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent.

(d) For the purposes of (c) above, the total calculated annual emission rate for each tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC as follows:

$$EF = 0.000024 \times VP \times MW$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

0.000024 = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (d)1 above, by the annual quantity, in gallons, of each applicable VOC transferred from delivery vessels into the tank. Sum the calculated annual emission rates for each applicable VOC transferred. For a storage tank for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a storage tank for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual emission rate to 1,000 pounds. If the total calculated annual emission rate for the tank is less than 1,000 pounds, this section does not require the use of any control apparatus, except as specified in (b) above. Otherwise, one of the control apparatus described in (c) above must be used.

(e) The provisions of (c) above shall not apply to a storage tank during construction ballast if an applicable VOC is used.

(f) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC into any delivery vessel, except railroad tank cars, from a tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 2,000 pounds of applicable VOC from transfer operations, as determined pursuant to (g) below, unless the transfer is directly from a tank equipped with a floating roof or unless any such delivery vessel is connected to one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent by weight the total VOC emissions to the outdoor atmosphere; or

2. A vapor balance system with all atmospheric vents positively closed during transfer. Such vapor balance system shall not return the vapors to any tank equipped with a floating roof.

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessels from each tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC transferred from the storage tank to regulated delivery vessels as follows:

$$EF = 0.000024 \times VP \times MW$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

0.000024 = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (g)1 above, by the annual quantity (in gallons) of each applicable VOC transferred into delivery vessels at the regulated facility. Sum the calculated annual emission rates for each applicable VOC transferred. For a facility for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a facility for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual uncontrolled emission rate resulting from the total transfers from the storage tank to 2,000 pounds. If the calculated annual emission rate is less than 2,000 pounds, this section does not require the use of any control apparatus, except as specified in (b) above. Otherwise, one of the control apparatus described in (f) above must be used.

(h) The provisions of (f) above shall not apply to:

1. A delivery vessel used for less than 30 days for the purpose of holding VOC from a storage tank during a period in which the storage tank is undergoing repair or maintenance;

2. A delivery vessel used in groundwater remediation operations for temporary storage and handling of VOC contaminated groundwater and recovered VOC; and

3. Vacuum trucks used for equipment clean-out or other clean-up operations.

(i) On and after May 31, 1995, no person shall cause, suffer, allow, or permit any tank truck having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain applicable VOC unless such tank truck is certified to comply with DOT regulations concerning inspection and pressure testing, codified at 40 CFR 180.407. A record of DOT certification shall be kept with the delivery vessel at all times.

(j) On and after May 31, 1995, no person shall cause, suffer, allow, or permit a transfer to or from a tank truck of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if the tank truck being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the tank truck being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge. This provision shall not apply to the loading or unloading of applicable VOC that is typically stored or transferred at elevated pressure, or under vacuum, into or from a delivery vessel that is designed for pressure or vacuum service.

(k) No person shall cause, suffer, allow, or permit any transfer of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if any components of the delivery vessel designed for preventing the release of applicable VOC vapors are not installed and operating as designed. Any loading or unloading transfer operations must cease immediately if:

1. On and after May 31, 1995, the delivery vessel being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance within 1.0 inch (2.54 centimeters) of the source; or

ii. Is a liquid leak; or

2. The transfer results or would result in a liquid leak of applicable VOC.

(*l*) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or storage of any applicable VOC in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel, while containing any applicable VOC, is vapor-tight at all times, except during:

1. Sample collection;

2. Emergency conditions;

3. Gauging; or

4. Venting through a vapor control apparatus approved by the Department.

(m) After a leaking tank truck, subject to the provisions of (i), (k) or (*l*) above is repaired, the owner or operator shall test the delivery vessel before it is loaded with applicable VOC. A record of the repair and test shall be maintained with the delivery vessel for one year.

(n) Any owner or operator of a facility with transfer operations subject to the provisions of (c) or (f) above shall comply with the following schedule:

1. By October 26, 1994, submit to the Chief, Bureau of New Source Review, Environmental Regulation Pro-

gram, Department of Environmental Protection, CN 401, Trenton, New Jersey 08625–0401, a complete application for each permit required, pursuant to N.J.A.C. 7:27–8, to achieve compliance with (c) or (f) above; and

2. By May 31, 1995, achieve compliance with (c) or (f) above and maintain compliance with this section thereafter.

(*o*) The owner or operator of any VOC loading facility subject to (f) above shall maintain the following records:

1. On a daily basis, record the name and total quantity of each applicable VOC, in gallons or liters, loaded into delivery vessels at the facility;

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

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

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere or record the date of carbon bed the replacement and, on a daily basis, check the functioning of the automatic system for switching between carbon beds; and

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

(p) Upon the request of the Department, any owner or operator utilizing a vapor control system pursuant to (c)1 or (f) above shall demonstrate to the satisfaction of the Department achievement of the required control efficiency through testing performed when the ambient air temperature is 70 degrees Fahrenheit (21 degrees Celsius) or greater, unless the Department, in writing, approves the performance tests at a lower ambient temperature.

(q) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (n)1 above, the Department may authorize a 60–day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (n)2 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
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625–0422

New Rule, 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).
Prior text at section, "Open top tanks and surface cleaners", recodified as 7:27–16.6.
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).

### 7:27–16.5 Marine tank vessel loading and ballasting operations

(a) The provisions of this section apply to the following marine tank vessel operations conducted at marine terminals in New Jersey:

1. The transfer of applicable VOC, including gasoline, as cargo into a marine tank vessel; and

2. Ballasting conducted in a marine tank vessel, unless the ballasting is conducted in dedicated ballast tanks that never contain anything other than water.

(b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September 15, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.

(c) The owner or operator of any marine terminal that meets the following criteria shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from applicable VOC transfers at the facility by no less than 95 percent by weight, or shall, by October 26, 1994, submit to the Department a written alternative emission control plan in accordance with N.J.A.C. 7:27–16.17 that shall be implemented in accordance with a schedule in the plan approved in accordance with N.J.A.C. 7:27–16.17:

1. The marine terminal is a major VOC facility;

2. A transfer of some applicable VOC that is not gasoline is conducted at the marine terminal; and

3. Any of the source operations at the terminal which include the transfer of some applicable VOC that is not gasoline has the potential to emit 10 tons per year or more of VOC.

(d) Effective on July 26, 1994, the Department shall not approve an application for a permit for equipment or control apparatus, required pursuant to (b) or (c) above, unless:

1. The system has been designed to collect and control the emissions of applicable VOC resulting from ballasting; or

2. The potential to emit VOC from ballasting is limited to less than two pounds of VOC per 1,000 barrels of ballast transferred.

(e) Effective on July 26, 1994, if a marine tank vessel and marine terminal is equipped with a control apparatus, no person shall cause, suffer, allow, or permit ballasting to be conducted on a marine tank vessel at a marine terminal, unless:

1. The ballasting is conducted in dedicated ballast tanks that only use water;

2. The control apparatus is used during ballasting; or

3. The potential to emit VOC from ballasting is less than two pounds of VOC per 1,000 barrels of ballast transferred.

(f) Effective on July 26, 1994, no person subject to the provision of (b) above, and effective May 31, 1995, no person subject to (c) above, shall cause, suffer, allow, or permit any transfer of any applicable VOC, or ballasting if:

1. The delivery vessel being loaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) or less from the source; or

ii. Is a liquid leak of applicable VOC;

2. Any component of the marine tank vessel or any control apparatus serving the source operation is not installed and operating as designed; or

3. The transfer results or would result in a liquid VOC spill.

(g) Monitoring for gaseous leaks of VOC shall be conducted according to EPA's Reference Method 21 (40 CFR–Part 60–Appendix A), incorporated herein by reference, or any other equivalent test method approved in advance in writing by the Department and acceptable to EPA.

(h) Any testing to determine VOC emissions during the transfer of VOC to a marine tank vessel, conducted in order to determine compliance with this section, shall be performed for at least 60 minutes during the transfer of the last 50 percent of total liquid cargo. For a transfer operation for which the transfer of the last 50 percent of the total liquid cargo is less than a 60 minute duration, the testing shall be performed during the transfer of the entire last 50 percent of the total liquid cargo.

(i) Any tests conducted pursuant to this section to determine emissions of VOC shall be carried out in accordance with:

1. New Jersey Air Test Method 3 (N.J.A.C. 7:27B–3);

2. EPA's Reference Method 25 or 25(a) (40 CFR–Part 60–Appendix A); or

3. Any other equivalent test method approved in advance in writing by the Department and acceptable to EPA.

(j) Effective on July 26, 1994, the owner or operator of a marine terminal subject to (b) or (c) above shall maintain at the marine terminal records sufficient to demonstrate compliance with this section. Any records required by this section shall be made available to the Department upon request and shall be maintained for five years. For each transfer of gasoline or other applicable VOC to the marine tank vessel and for performance of ballasting on a marine tank vessel at the marine terminal, the records shall include the following information:

1. The company name and address of the marine terminal;

2. The date;

3. The name and registry of the marine tank vessel;

4. For any transfer operation, the type of VOC and the quantity, in gallons or liters, loaded into the marine tank vessel;

5. The prior cargo carried by the marine tank vessel and the condition (that is, cleaned, crude oil washed, gas freed, etc.) of the cargo tanks on the marine tank vessel prior to their being loaded or ballasted; and

6. For ballasting, the amount of ballast water or other liquid added to ballast tanks which are unsegregated and which may contain VOC vapor.

(k) It is an affirmative defense to liability for a violation of any of the provisions of this section that compliance would have any of the following effects:

1. Require any act or omission that would be in violation of any statute or regulation over which the United States Coast Guard has jurisdiction; or

2. Prevent an act that was necessary to secure the safety of a vessel or the safety of the passengers or crew.

New Rule, 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).

Prior text at section, "Surface coating and graphic arts operations", recodified as 7:27–16.7.

**7:27–16.6 Open top tanks and surface cleaners**

(a) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated or heated open top tank unless such tank is covered by a lid which protects the VOC vapors from drafts and diffusion when the tank is not in active use.

(b) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than six square feet (0.56 square meters) but not more than 25 square feet (2.3 square meters) unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. Has a freeboard ratio of 0.5 or greater.

(c) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than 25 square feet (2.3 square inches) unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens.

(d) No person shall cause, suffer, allow, or permit the use of any VOC in a heated open top tank which is operated at a temperature lower than the boiling point of such VOC unless such tank:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any agitating system which causes splashing of the VOC;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens; and

5. Has a thermostat or approved equivalent which automatically maintains the VOC temperature below the boiling point.

(e) No person shall cause, suffer, allow, or permit the use of any VOC in an open top vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC;

5. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens;

6. Has a visible high-level vapor mark which shall not be exceeded by the VOC;

7. Is free from the influence of any local exhaust ventilation system unless such ventilation system collects at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

8. Is free from the influence of any positive pressure source located within 20 feet (6.1 meters) of the tank rim unless the cleaner is equipped with and operates a means of collecting at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

9. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid VOC bath;

10. Is equipped with a device which automatically shuts off the heat input to the VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications; and

11. Is equipped with a freeboard chiller through which circulates a cooling fluid having a temperature no higher than 40 degrees F (4.4 degrees C) at any point in the chiller, or with other apparatus approved by the Department as being equally or more effective in reducing emissions. Cleaners with top openings no greater than 25 square feet (2.3 square meters) are not subject to this requirement.

(f) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated conveyorized surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

5. Is protected from drafts when in active use by the installation of silhouette cutouts or hanging flaps to minimize the effective openings around the conveyor inlet and conveyor outlet ports; and

6. Is equipped with a vapor control system which reduces the total emissions of VOC from the cleaner by at least 85 percent by volume. Cleaners installed before December 17, 1979, are not subject to this requirement.

(g) No person shall cause, suffer, allow, or permit the use of any VOC in a conveyorized heated surface cleaner which is operated at a temperature lower than the boiling point of such VOC, unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Has a thermostat or approved equivalent which automatically maintains the VOC temperature below the boiling point;

5. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

6. Is protected from drafts when in active use by the installation of silhouette cutouts or hanging flaps to minimize the effective openings around the conveyor inlet and conveyor outlet parts; and

7. Is equipped with a vapor control system by February 1, 1987, which reduces the total VOC emissions from the cleaner by at least 85 percent by volume.

(h) No person shall cause, suffer, allow, or permit the use of any VOC in a conveyorized vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid VOC bath;

5. Is equipped with a device which automatically shuts off the heat input to the VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications;

6. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

7. Is protected from drafts when in active use by the installation of silhouette cutouts or hanging flaps to minimize the effective openings around the conveyor inlet and conveyor outlet ports; and

8. Is equipped with:

i. A freeboard chiller through which circulates a cooling fluid having a temperature no higher than 40 degrees F (4.4 degrees C) at any point in the chiller; or

ii. A vapor control system which reduces the total VOC emissions from the cleaner by at least 85 percent by volume.

(i) No person shall cause, suffer, allow, or permit the use of any oil-water separator unless such separator is covered with a lid while containing any VOC. Sections of oil-water separators containing essential powered mechanical devices operating above the liquid level are not subject to this requirement.

(j) No person shall cause, suffer, allow, or permit the use of any VOC in an open top tank or surface cleaner unless such use follows written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

(k) Any person subject to the provisions of (j) above shall maintain a training program to ensure that all personnel associated with the use or operation of the open top tank or surface cleaner understand and follow the specified procedure.

(*l*) Copies of operating instructions and maintenance instructions must be located at the open top tank or surface cleaner. Copies shall be supplied to the Department when requested and must be accompanied by similar documents supplied by the equipment manufacturer, with explanations for differences between the two.

(m) The written procedures required by this Section shall be submitted to the Department upon request within 10 days of receipt of such request; such procedure shall be subject to review and approval by the Department. If, in the opinion of the Department, such procedure does not fulfill the requirements of this section, the Department may state its reason for disapproval and order the preparation of an amended procedure within the time period specified in the order. If the person responsible fails within the time period specified in the order to submit an amended procedure which, in the opinion of the Department, fulfills the said requirements, the Department may revise the procedure accordingly. Such revised procedure will thereafter be that which the person responsible must carry out.

(n) Any person subject to the provisions of this section shall notify the Department in writing within 15 days of any revision or alteration of a procedure approved pursuant to the provisions of (j) above. Such written notification shall include a detailed description of the changes in the procedure and the reasons therefor. Such amended procedure shall be subject to review and approval by the Department.

(*o*) The provisions of (a) above shall not apply to:

1. Open top tanks used solely for the application of electrophoretic dip prime coatings to automobiles and light duty trucks;

2. Open top tanks used in a waste water treatment system, provided the VOC emitted from such tanks does not exceed a concentration of 5,000 parts per million by volume measured at any point above the liquid surface at the height of the tank lip.

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.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" changed to "VOC" throughout.
Administrative correction to (f)6. and (g)6.
See: 24 N.J.R. 1889(a).
Recodified from 7:27–16.4 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).
Prior text at section, "Other source operations", recodified as 7:27–16.16.

**Case Notes**

New Jersey held liable under the Federal Clean Air Act for failure to comply with the State's 1983 ozone State Implementation Plan; relief to be determined. American Lun Ass'n of N.J. v. Kean, 670 F.Supp. 1285 (D.N.J.1987).

Standards for volatile organic substances; application by rubber company for permit for mill room scrubber; new application authorized incorporating administratively determined limitations. Nearpara Rubber Company v. Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 258.

### 7:27–16.7 Surface coating and graphic arts operations

(a) The provisions of this section apply to any surface coating operation or graphic arts operation to which any control criteria set forth in Table 7A, 7B, 7C, or 7D applies. Any other surface coating operation or graphic arts operation located at a major VOC facility and having the potential to emit three pounds per hour or more of VOC shall be subject to the provisions of N.J.A.C. 7:27–16.17.

(b) (Reserved)

(c) No person shall cause, suffer, allow, or permit the use of any surface coating operation or graphic arts operation subject to this section, unless:

1. The VOC content of any surface coating formulation as applied does not exceed the applicable maximum allowable VOC content if any, specified in Table 7A, 7B, 7C, or 7D; or

2. Until March 28, 1994, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to March 28, 1992.

3. If more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in Table 7A, 7B, 7C, or 7D is applied by a single surface coating or graphic arts operation and one or more of any such formulation are not in compliance with any limit specified in the applicable table, the daily weighted mean of the VOC content of the surface coating formulations as applied does not exceed the applicable maximum allowable VOC content as set forth in the applicable Table. This daily weighted mean shall be calculated using the following equation:

$$\text{Daily mean VOC content} = \frac{\sum_{i=1}^{n} (C_i)(V_i)}{\sum_{i=1}^{n} (V_i)}$$

where n = number of surface coating formulations subject to the same maximum allowable VOC content standard, applied in one day;

i = subscript denoting an individual surface coating formulation;

$(C_i)$ = maximum actual VOC content per volume of each surface coating formulation (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

$(V_i)$ = volume of each surface coating formulation (minus water) applied in one day, in gallons or liters; or

4. The surface coating or graphic arts operation is served by VOC control apparatus satisfying the requirements listed in (c)4i through iii below:

i. The control apparatus for any surface coating operation prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere; or

ii. The control apparatus for any graphic arts operation meets the collection and control requirements set forth in (h) below; or

iii. The VOC emissions from the surface coating or graphic arts operation are controlled by the control apparatus so that the operation results in an hourly VOC emission rate no greater than the maximum allowable hourly emission rate calculated on a solids as applied basis in accordance with the following equation:

$$\text{Maximum allowable hourly rate} = \frac{\left(1-\frac{y}{d}\right)(z)\ (x)}{\left(1-\frac{x}{d}\right)}$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

y = VOC content of the applied surface coating formulation (minus water) in pounds per gallon (lb/gal) or kilograms per liter (kg/l); and

z = volume of the surface coating formulation(minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

iv. For a surface coating or graphic arts operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:

$$\text{Actual daily emissions} = (1-\eta_c\eta_d)(VOC_a)(V)$$

where $VOC_a$ = daily mean VOC content of the surface coating formulations as calculated by (c)3 above;

V = total daily volume of the surface coating formulations, as applied;

$\eta_c$ = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

$\eta_d$ = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

$$\text{Allowable daily emissions} = \frac{\left(1-\frac{VOC_a}{d}\right)(V)\ (x)}{\left(1-\frac{x}{d}\right)}$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

$VOC_a$ = daily mean VOC content of the applied surface coating formulations as calculated by (c)3 above.

(d) No person shall cause, suffer, allow, or permit the installation of any surface coating or graphic arts operation to apply a surface coating formulation which does not contain water deliberately added in a planned proportion unless a coating application system having a transfer efficiency of 60 percent or greater, or as otherwise approved by the Department, is used.

(e) The provisions of (c) and (d) above and (h), (i), and (j) below shall not apply to any individual surface coating or graphic arts operation in which the total surface coating formulations containing VOC are applied:

1. At rates not in excess of one half gallon per hour and two and one half gallons per day; or

2. For the purpose of developing new surface coating formulations or new equipment for use in surface coating or graphic arts operations, or for the purpose of performing research preceding such development provided such surface coating formulations are applied at rates not in excess of two gallons per hour and three gallons per day.

(f) The owner or operator of any automobile or light duty truck surface coating operation may, as an alternative to complying, pursuant to (c) above, with the content limits set forth in Table 7A, comply with the provisions of Table 7C pertaining to spray prime and spray topcoat surface coating formulations, provided that the transfer efficiency of the spray coating operation is determined in accordance with a method approved by the Department and the EPA.

TABLE 7A
AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS CONTROL CRITERIA AND COMPLIANCE DATES

| | Maximum Allowable VOC Content Per Volume of Coating (minus water) | | |
|---|---|---|---|
| Type of Operation | Pounds Per Gallon | Kilograms Per Liter | Final Compliance Date |
| Prime | | | |
| Electrophoretic dip prime | 1.2 | 0.14 | December 31, 1982 |
| Spray prime | 2.8 | 0.34 | December 31, 1984 |
| Topcoat | | | |
| Spray topcoat | 2.8 | 0.34 | December 31, 1986 |
| Repair | 4.8 | 0.58 | December 31, 1986 |
| Custom Topcoating | 5.0 | 0.60 | June 15, 1990 |
| Refinishing | | | |
| Base coat | 6.0 | 0.75 | June 15, 1990 |
| Clear coat | 4.4 | 0.54 | June 15, 1990 |
| All others | 5.0 | 0.60 | June 15, 1990 |

TABLE 7B
MISCELLANEOUS SURFACE COATING OPERATIONS CONTROL CRITERIA AND COMPLIANCE DATES

| | Maximum Allowable VOC Content per Volume of Coating (minus water) | | |
|---|---|---|---|
| Type of Operation | Pounds Per Gallon | Kilograms Per Liter | Final Compliance Date |
| Group I | | | |
| Can Coating | | | December 31, 1981 |
| Sheet basecoat | 2.8 | 0.34 | |
| Two-piece can exterior | | | |
| Two- and three-piece can interior body spray, two-piece and exterior | 4.2 | 0.51 | |
| Side-seam spray | 5.5 | 0.66 | |
| End sealing compound | 3.7 | 0.44 | |
| Coil Coating | 2.6 | 0.31 | December 31, 1981 |
| Fabric Coating | 2.9 | 0.35 | December 31, 1981 |
| Vinyl Coating | 3.8 | 0.45 | December 31, 1981 |
| Paper Coating | 2.9 | 0.35 | December 31, 1981 |
| Metal Furniture Coating | 3.0 | 0.36 | December 31, 1981 |
| Magnet Wire Coating | 1.7 | 0.20 | December 31, 1981 |
| Large Appliance Coating | 2.8 | 0.34 | December 31, 1981 |
| Miscellaneous Metal Parts and Products | | | December 31, 1983 |
| Clear coating | 4.3 | 0.52 | |
| Air-dried coating | 3.5 | 0.42 | |
| Extreme performance coating | 3.5 | 0.42 | |
| All other coatings | 3.0 | 0.36 | |
| Flat Wood Paneling | | | December 31, 1983 |
| Printed hardwood plywood panels and particleboard panels | 2.7 | 0.32 | |
| Natural finish hardwood plywood | 3.3 | 0.40 | |
| Hardboard panels | 3.6 | 0.43 | |
| Group II | | | |
| Leather Coating | 5.8 | 0.70 | December 31, 1987 |
| Urethane Coating | 3.8 | 0.45 | December 31, 1987 |
| Tablet Coating | 5.5 | 0.66 | December 31, 1987 |
| Glass Coating | 3.0 | 0.36 | December 31, 1987 |
| Wood Furniture | | | December 31, 1987 |
| Semitransparent stain | 6.8 | 0.82 | |
| Wash coat | 6.1 | 0.73 | |
| Opaque stain | 4.7 | 0.56 | |
| Sealer | 5.6 | 0.67 | |
| Pigment coat | 5.0 | 0.60 | |
| Clear Topcoat | 5.6 | 0.67 | |
| Group III | | | |
| Coatings for Metal and Concrete Pipe | | | May 31, 1995, |
| Clear coating | 4.3 | 0.52 | except December |
| Air-dried coating | 3.5 | 0.42 | 31, 1983 for |
| Extreme performance coating | 3.5 | 0.42 | metal pipe |
| All other coatings | 3.0 | 0.36 | coating |

TABLE 7C
ALTERNATIVE MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS WITH MINIMUM TRANSFER EFFICIENCIES REQUIRED FOR SPRAY COATING OPERATIONS

| Maximum Allowable VOC Content per Volume of Coating (minus water) | | Minimum Transfer Efficiency Required |
|---|---|---|
| Pounds per Gallon | Kilograms per Liter | |
| 3.0 | 0.36 | 34 |
| 3.2 | 0.38 | 37 |
| 3.4 | 0.41 | 42 |
| 3.6 | 0.43 | 47 |
| 3.8 | 0.46 | 52 |
| 4.0 | 0.48 | 58 |
| 4.2 | 0.50 | 65 |

NOTE: Each combination of VOC content and transfer efficiency in Table 7C is equivalent to a daily emission of 15.1 pounds of VOC per gallon of solids deposited, minus water. Verification of this equivalent emission rate using the methods prescribed in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (EPA 4593–88–018) shall satisfy compliance with Table 7C.

TABLE 7D
GRAPHIC ARTS OPERATIONS

Part A
COMPLIANCE DATES

| Type of Graphic Arts Operation | Final Compliance Date |
|---|---|
| Rotogravure printing operations (web-fed) and flexographic printing operations which produces published material or packaging for commercial or industrial purposes [1] | December 31, 1981 |
| Rotogravure printing operations (web-fed) and flexographic printing operations on vinyl or urethane coated fabric or sheets [1] | December 31, 1987 |
| Fabric printing operations[1] | December 31, 1987 |
| Gravure printing operations (sheet-fed) | May 31, 1995 |
| Screen printing operations | May 31, 1995 |

Part B
CONTROL CRITERIA FOR GRAPHIC ARTS SOURCE OPERATIONS EXCEPT SCREEN PRINTING OPERATIONS

| Basis | Control Criteria |
|---|---|
| Surface coating formulations [2] that contain water (except fountain solutions): | Maximum Allowable volume percent VOC in volatile fraction of surface coating formulations or fountain solutions (VOC plus water) as applied. 25.0% |
| Surface coating formulations [2] that do not contain water: | Maximum Allowable VOC Content per volume of surface coating formulation (minus water) |
| | Pounds per Gallon: 2.9 — Kilograms Per Liter: 0.35 |
| Fountain solutions: | 5.0%, if the temperature of the fountain solution is 55°F or less; or 3.0%, if the temperature of the fountain solution is higher than 55°F |

Part C
CONTROL CRITERIA FOR SCREEN PRINTING OPERATIONS

| Basis | Control Criteria: Maximum Allowable VOC content per volume of surface coating formulations [2] | |
|---|---|---|
| | Pounds per Gallon | Kilograms per Liter |
| Substrate Category: [3] | | |

| Basis | Control Criteria Maximum Allowable VOC content per volume of surface coating formulations [2] | |
|---|---|---|
| | Pounds per Gallon | Kilograms per Liter |
| Paper | 3.3 | 0.40 |
| Glass and Ceramic | 3.3 | 0.40 |
| Metal | 3.3 | 0.40 |
| Rigid and Flexible Plastic | 3.3 | 0.40 |
| Reflective Sheeting | 3.3 | 0.40 |
| Pressure Sensitive Decals | 3.3 | 0.40 |
| Wood | 3.3 | 0.40 |
| Fabric | 2.9 | 0.35 |
| Surface Coating Formulation: | | |
| Conductive Ink | 8.5 | 1.03 |
| Special Purpose Screen Printing Inks and Coatings | 6.7 | 0.81 |

1 Control apparatus serving certain graphic arts operations of this type which were constructed prior to July 26, 1994 may have compliance dates on or after July 26, 1994, pursuant to the provisions of (p) below.

2 This term includes inks and coatings; see definition of "surface coating formulation."

3 Except where conductive ink and special purpose screen printing inks and coatings are used.

(g) The owner or operator of any metal furniture or large appliance surface coating operation may, as an alternative to complying with the applicable maximum allowable VOC content limits per volume of surface coating formulation (minus water) set forth in Group I of Table 7B, pursuant to (c)1 above, apply to the Department for an alternative maximum allowable VOC content limit per volume of surface coating formulation, provided such person can demonstrate to the satisfaction of the Department and the EPA that the surface coating formulation is applied at a transfer efficiency of greater than 60 percent.

(h) Except as provided in (p) below, the owner or operator of any rotogravure, sheet-fed gravure, flexographic, fabric, or screen printing operation may, as an alternative to complying with the control criteria requirements set forth in Table 7D, pursuant to (c)1 above, install and use control apparatus which:

1. Collects at least 75 percent by volume of the source gas emitted from a rotogravure or gravure printing operation (sheet-fed), including associated dryers, and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (p) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

2. Collects at least 70 percent by volume of the source gas emitted from a flexographic printing operation, including associated dryers, and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (p) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

3. Collects at least 70 percent by volume of the source gas emitted from a fabric printing operation, including associated dryers, and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (r) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions; or

4. Collects at least 70 percent by volume of the source gas emitted from a screen printing operation and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions.

(i) Notwithstanding the provisions of (c)2 and (c)4ii above, the owner or operator of any tablet coating operation that uses a surface coating formulation that does not comply with the maximum allowable VOC content limits per volume of coating (minus water) set forth in Table 7B, Group II, shall install and use control apparatus which prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere.

(j) The owner or operator of any wood furniture surface coating operation shall comply with the following requirements:

1. At a facility emitting less than 50 tons (45.36 megagrams) of VOC per year, each surface coating formulation specified in Table 7B, Group II under "Wood Furniture" shall be applied using airless, air-assisted airless, or heated airless spray techniques, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 40 percent; or

2. At a facility emitting 50 tons (45.36 megagrams) of VOC or greater per year, each surface coating formulation specified in Table 7B, Group II under "Wood Furniture" shall be applied using airless, air-assisted airless, heated airless, electrostatic spray techniques, or flat line processes, or another application method approved by the

Department and the EPA as having a transfer efficiency of at least 65 percent.

(k) The owner or operator of any pipe coating operation, gravure printing operation (sheet-fed), or screen printing operation subject to (c) above shall comply with the following schedule:

1. By October 26, 1994, submit to the Chief, Bureau of New Source Review, Environmental Regulation Program, Department of Environmental Protection, CN 027, Trenton, New Jersey 08625–0027, a complete application for each permit required, pursuant to N.J.A.C. 7:27–8, to achieve compliance with (c) above; and

2. By May 31, 1995, achieve compliance with (c) above and maintain compliance with this section thereafter.

(*l*) The provisions of this section shall not apply to:

1. The surface coating of aircraft and marine vessel exteriors, exclusive of parts coated prior to installation or assembly;

2. The refinishing of automobiles, if coating use is less than 50 gallons (189 liters) per week;

3. The customized topcoating of automobiles and trucks, if coating use is less than 48 gallons (182 liters) per week; and

4. The on-site coating of assembled structures such as, but not limited to, equipment used for manufacturing processes, storage tanks, bridges, and swimming pools.

(m) The owner or operator of any surface coating operation subject to this section applying only surface coating formulations which are subject to and conform with the applicable VOC content limit set forth in Table 7A, 7B, 7C, or 7D shall maintain records of the VOC content of each surface coating formulation (minus water) as applied, in pounds of VOC per gallon of coating or kilograms of VOC per liter of coating; the percent by weight of any exempt organic substance; and the daily volume of each surface coating formulation applied.

(n) The owner or operator of any surface coating operation, or graphic arts operation, which is subject to this section and which uses one or more surface coating formulations which do not conform with the applicable VOC content limit set forth in Table 7A, 7B, 7C, or 7D, shall maintain the following records:

1. For each surface coating formulation including each change of diluent or concentration of diluent as applied, record the following:

i. The number of hours each surface coating formulation was applied and the date;

ii. The volume of each surface coating formulation applied;

iii. The density of each surface coating formulation;

iv. The density of the VOC in each surface coating formulation;

v. The percent by weight of VOC in each surface coating formulation;

vi. The percent by weight of any exempt organic substance in each surface coating formulation;

vii. The percent by weight of any water in each surface coating formulation;

2. For any surface coating operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere;

3. For any surface coating operation that has a control apparatus using carbon or other adsorptive material to control the emission of VOC:

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; and maintain any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are to be readily available on the operating premises, and the person responsible for the surface coating operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operation parameter relevant to the prevention or control of air contaminant emissions from the surface coating operation or control apparatus.

(*o*) The method(s) to be used to determine the composition of a surface coating formulation as required by (m) or (n) above may include utilization of standard formulation sheets, material safety data sheets, the results of analytical tests, or other methods approved in advance and provided that the required information can be readily extracted from the documents.

(p) Notwithstanding the provisions of (h)1, 2, or 3 above, the owner or operator of any rotogravure printing operation, gravure (sheet-fed) printing operation, flexographic printing operation, or fabric printing operation, subject to this section pursuant to (a)1 above, may continue to use a control apparatus which was installed and continues to be operated in compliance with a permit issued by the Department for the printing operation prior to July 26, 1994 so long as the control apparatus has not been altered or replaced since the date of approval of the current permit. If and when the control apparatus is altered or replaced, the new or altered control apparatus shall, at a minimum, meet the requirements set forth in (h)1, 2, or 3 above.

(q) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (k)1 above, the Department may authorize a 60–day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (k)2 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
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625–0422

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
At (c) established differing rates for prior to and after June 15, 1990 and at (i) established deadlines of July 1, 1989 and at (i)3. reduced period from 12 to 6 months.
Petition for rulemaking. See: 22 N.J.R. 862(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (*l*), (m)1. (operative October 1, 1992); (m)2.–4. (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 23 N.J.R. 2119(a), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; added recordkeeping requirements; specified method for averaging surface coating formulations; specify method to be used to determine the required efficiency control apparatus serving surface coating operations; require nationally consistent standards; specify methods for achieving acceptable verification of transfer efficiency.
Administrative correction to (a)2, 3ii, 4 and (k)2.
See: 24 N.J.R. 1889(a).
Recodified from 7:27–16.5 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).
Prior text at section, "Cutback and emulsified asphalts", recodified as 7:27–16.19.
Administrative Correction.
See: 26 N.J.R. 4793(a).

**Case Notes**

Evidence supported finding that refinishers could comply with regulations limiting Volatile Organic Substances (VOS). Matter of Adoption of Amendments to N.J.A.C. 7:27–16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Evidence supported regulation limiting Volatile Organic Substances (VOS) content. Matter of Adoption of Amendments to N.J.A.C. 7:27–16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Department of Environmental Protection was not required to promulgate spot repair regulations to permit higher Volatile Organic Substances (VOS). Matter of Adoption of Amendments to N.J.A.C. 7:27–16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Erroneous estimation of beneficial impact of regulations did not invalidate regulations. Matter of Adoption of Amendments to N.J.A.C. 7:27–16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Volatile Organic Substance (VOS) regulations were not unreasonable for not applying to smaller shops. Matter of Adoption of Amendments to N.J.A.C. 7:27–16, 244 N.J.Super. 334, 582 A.2d 824 (A.D.1990).

Record established that auto body painting business violated both permit and air pollution regulations when paint fumes escaped from certified spray paint booths; $17,500 penalty assessed. Division of Environmental Quality v. Prestige Auto Body, 92 N.J.A.R.2d (EPE) 178.

### 7:27–16.8 Boilers

(a) The provisions of this section apply to any boiler which is subject to the provisions of N.J.A.C. 7:27–19.

(b) The owner or operator of any utility boiler, regardless of size, or any non-utility boiler with a maximum gross heat input rate of 50,000,000 British thermal units or more per hour shall:

1. Cause it to emit VOC in concentrations that do not exceed 50 ppmvd at seven percent oxygen;

2. Cause it to emit CO in concentrations that do not exceed 100 ppmvd at seven percent oxygen; and

3. Adjust its combustion process in accordance with N.J.A.C. 7:27–16.24 as follows:

i. For any utility boiler, regardless of size, or any non-utility boiler with a maximum gross heat input rate of at least 250,000,000 British thermal units per hour, by May 1 of each year beginning in 1995; or

ii. For any non-utility boiler with a maximum gross heat input rate of at least 50,000,000 British thermal units per hour but less than 250,000,000 British thermal units per hour, each calendar year beginning in 1995.

(c) The owner or operator of any non-utility boiler with a maximum gross heat input rate at least 20,000,000 British thermal units per hour and less than 50,000,000 British thermal units per hour shall adjust the combustion process in accordance with N.J.A.C. 7:27–16.24 each calendar year beginning in 1995.

(d) Any owner or operator of a boiler subject to this section shall achieve compliance with (b) above by May 31, 1995, and maintain compliance with this section thereafter.

(e) The owner or operator of any utility boiler or non-utility boiler subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27–16.23 before May 31, 1996.

(f) The owner or operator of any utility boiler subject to this section shall install a continuous emissions monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27–19.18 before May 31, 1995.

(g) The owner or operator of any non-utility boiler with a maximum gross heat input rate of greater than 250,000,000 British thermal units per hour shall install a continuous

monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27–19.18 before May 31, 1995.

(h) Any source conducting emissions tests for VOC in accordance with this subsection shall do so using the New Jersey Air Test Method 3 (N.J.A.C. 7:27B–3) or any equivalent method approved in advance by the Department and acceptable to EPA.

(i) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method approved in advance by the Department and acceptable to EPA.

(j) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method approved in advance by the Department and acceptable to EPA.

(k) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27–19 may submit facility-specific CO and VOC limits as an alternative to those specified in this section as part of the facility's proposed Repowering Plan.

New Rule, 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).
Prior text at section, "Petroleum solvent dry cleaning operations", recodified as 7:27–16.20.
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).

### 7:27–16.9 Stationary gas turbines

(a) The provisions of this section apply to any stationary gas turbine which is subject to the provisions of N.J.A.C. 7:27–19.

(b) The owner or operator of any stationary turbine shall cause it to emit CO in concentrations that do not exceed 250 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.

(c) The owner or operator of any stationary gas turbine shall cause it to emit VOC in concentrations that do not exceed 50 ppmvd at 15 percent oxygen.

(d) Any owner or operator of a stationary gas turbine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(e) The owner or operator of any stationary gas turbine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27–16.23 before May 31, 1996.

(f) Any owner or operator of any stationary gas turbine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27–16.24 before May 1 of each year beginning in 1995.

(g) Any source conducting emissions tests for VOC in accordance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B–3) or any equivalent method approved in advance by the Department and acceptable to EPA.

(h) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

(i) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

(j) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27–19 may submit facility-specific CO and VOC limits as an alternative to those specified in this section as part of the facility's proposed Repowering Plan.

New Rule, 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).
Prior text at section, "Emission information, record keeping and testing", recodified as 7:27–16.22.
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)

### 7:27–16.10 Stationary internal combustion engines

(a) The provisions of this section apply to any stationary internal combustion engine which is subject to the provisions of N.J.A.C. 7:27–19.

(b) The owner or operator of a stationary internal combustion engine subject to this section shall cause it to emit CO in concentrations that do not exceed 500 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.

(c) Any owner or operator of a stationary internal combustion engine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) The owner or operator of any stationary internal combustion engine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27–16.23 before May 31, 1996.

(e) Any owner or operator of any stationary internal combustion engine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27–16.24 before May 1 of each year beginning in 1995.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using Reference Method 10 found in 40 CFR Part 60—Appendix A or any equivalent method approved in advance by the Department and acceptable to EPA.

(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

New Rule, 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).
Prior text at section, "Variances", recodified as 7:27–16.26.
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).

### 7:27–16.11 Asphalt plants

(a) The provisions of this section shall apply to any batch mix asphalt plant which is located at a major VOC facility or any drum mix asphalt plant which is located at a major VOC facility. Any batch mix asphalt plant or any drum mix asphalt plant may opt to be subject to the provisions of N.J.A.C. 7:27–16.17.

(b) The owner or operator of a batch mix asphalt plant or a drum mix asphalt plant shall cause it to emit CO in concentrations that do not exceed 500 ppmvd at seven percent oxygen and VOC in concentrations that do not exceed 250 ppmvd at seven percent oxygen.

(c) Any owner or operator of an asphalt plant subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) Any owner or operator of an asphalt plant subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27–16.23 before May 31, 1996.

(e) Any owner or operator of any asphalt plant subject to this section shall adjust the combustion process in accordance with the procedure set forth in its permit and certificate or at least once per year beginning in 1995, whichever is more stringent.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B–3) or any equivalent method approved in advance by the Department and acceptable to EPA.

(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method approved in advance by the Department and acceptable to EPA.

Recodification: From 16.11.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Repealed and recodified 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).
Recodified from 16.12 and amended by changing "VOS" to "VOC"; former section 16.11 entitled "Permit to construct and certificate to operate" was repealed by this rulemaking and was previously originally recodified from 16.10. See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Repeal and New Rule, 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).
Section was "Applicability".

### 7:27–16.12 (Reserved)

Recodified as 7:27–16.27 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).
Section was "Exceptions".

### 7:27–16.13 Flares

(a) Any flare in use at a major VOC facility after May 31, 1995, shall:

1. Have been designed to reduce the concentration of VOC from the source operation by no less than 95 percent;

2. Have been installed in accordance with the specifications provided by the manufacturer of the flare; and

3. Be operated and maintained in accordance with the specifications provided by the manufacturer of the flare.

(b) The owner or operator of any existing flare subject to this section shall submit in writing, to the Assistant Director of Air and Environmental Quality Enforcement, Division of Enforcement Field Operations, Department of Environmental Protection, CN 422, Trenton, N.J. 08625–0422, the following information prior to May 31, 1995. The following information shall be submitted with any permit application for any flare to be installed after that date. Such submittal shall be certified in accordance with N.J.A.C. 7:27–1.39.

1. The name of the owner and operator of the flare;

2. The make, model and serial number of the flare;

3. A copy of the manufacturer's specification of the performance standards for the flare;

4. A statement that the flare was installed in accordance with the manufacturer's specifications;

5. A statement that the flare is being operated and maintained in accordance with the manufacturer's specifications; and

6. A statement that the flare will continue to be operated in accordance with the manufacturer's specifications.

(c) The owner or operator of a flare subject to this section shall inspect the flare before May 1 of each year beginning in 1995 to verify that the flare continues to be operated in accordance with the manufacturer's specifications for the operation of the flare. The owner or operator of the flare shall record the following in a permanently bound log book at the conclusion of each inspection:

1. The name of the person conducting the inspection;

2. The date on which the inspection was conducted;

3. An entry indicating which flare was inspected;

4. Any changes or adjustments made to the flare as a result of the inspection; and

5. A statement stating that the flare is currently being operated in compliance with the manufacturer's specifications.

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).
Administrative Correction.
See: 27 N.J.R. 2740(a).

**7:27–16.14 through 7:27–16.15 (Reserved)**

**7:27–16.16 Other source operations**

(a) The provisions of this section apply to any source operation, except source operations in the following categories (Note: Source operations in those categories designated by an asterisk (*) which have the potential to emit three pounds per hour or more of VOC and which are located at a major VOC facility are regulated by N.J.A.C. 7:27–16.17.):

1. VOC storage operations;

2. Gasoline transfer operations;

3. VOC transfer operations, other than gasoline;

4. Marine transfer operations;

5. Open top tanks and surface cleaners;

6. Surface coating and graphic arts operations;

7. Boilers;

8. Stationary gas turbines;

9. Stationary internal combustion engines;

10. Asphalt plants;

11. Natural gas pipeline blowdown events;

12. Flares;

13. Petroleum solvent dry cleaning operations;

14. Fiberglass manufacturing furnaces;

15. Glass manufacturing furnaces;

16. Fuel burning for steam generation for space heating;

17. Sulfuric acid plant burners;

18. Any source operation regulated pursuant to N.J.A.C. 7:27–16.17; and

19. Any source operation exempted from this subchapter pursuant to N.J.A.C. 7:27–16.27.

(b) Source operations to which this section apply are not limited to those involved in manufacturing and include, without limit, the following: agitators, autoclaves, bakery ovens, blenders, centrifuges, distillation processes, driers, extruders, fermentation processes, fiberglass boat or vessel manufacturing operations, fiberglass product manufacturing operations, foam blowing operations, fumigation chambers, mills, mixers, ovens, reactors, receivers, roasters, sterilization operations, and synthetic fiber manufacturing operations.

(c) No person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from any source operation subject to the provisions of this section, in excess of the maximum allowable emission rate, as determined in accordance with the procedure in (d) below.

(d) For the purposes of (c) above, the maximum allowable emission rate for a source operation subject to this section shall be determined in accordance with the following procedure:

1. Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC emitted from the source operation.

2. Determine the percent by volume of the VOC in the source gas emitted from the source operation. Whenever dilution gas is added to the source gas from a source operation, the source gas shall be considered to have the gas discharge rate and composition prior to such dilution, in accordance with the following:

i. If the source operation discharges under a ventilation hood, concentration of VOC and the flow rate of the source gas may be measured or otherwise determined in the duct connecting the hood to the inlet of the ventilation fan.

ii. If the emissions and ventilation air are conveyed through ducts from the source operation to the outdoor atmosphere with no interruption, the concentration of VOC and the rate of the source gas are to be determined inside the ducts.

iii. For all other source operations including, but not limited to, evaporation from steps in chemical manufacturing processes, the concentration of VOC and the rate of the source gas shall be measured at a point no farther than six inches (15 centimeters) downstream from the point at which the vapors leave the process equipment.

3. From Table 16B, find the source gas range classification by selecting the appropriate line for the vapor pressure as determined in Step 1 and the appropriate column for the percent VOC as determined in Step 2.

4. From Table 16A, Column 2, determine the maximum allowable percent of process emissions for the source gas range as determined in Step 3.

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or the Exclusion Rate shown in Column 3, whichever is greater.

TABLE 16A
MAXIMUM ALLOWABLE HOURLY VOC EMISSIONS FROM SOURCE OPERATIONS

| Column 1 | Column 2 | Column 3 | |
|---|---|---|---|
| Range Determined From Table 16B | Maximum Allowable emissions, Percent of Process Emissions by Weight | Exclusion Rates As of June 15, 1990 Continuous or Batch Cycle Emission | |
| | | Pounds Per Hour | Kilograms Per Hour |
| Range A | 15 | 3.5 | 1.59 |
| Range B | 15 | 3 | 1.36 |
| Range C | 15 | 2.5 | 1.14 |
| Range D | 12 | 2 | 0.91 |
| Range E | 10 | 1.5 | 0.68 |
| Range F | 8 | 1 | 0.46 |
| Range G | 2 | 0.5 | 0.23 |
| Range H | 0.3 | 0 | 0 |
| Range I | 15 | 3.5 | 1.59 |

TABLE 16B
DETERMINANTS OF CONTROLS REQUIRED FOR PROCESS SOURCE GASES

| Vapor Pressure, PSIA @ 70°F | | Concentration of VOC by Volume, Percent | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Range A | Range B | | Range C | | Range D | | Range E | | Range F | | G | H | I | | | |
| Greater Than | But not Greater Than | Not Greater Than | Greater Than | But not Greater Than | Greater Than | But not Greater Than | Greater Than | But not Greater Than | Greater Than | But not Greater Than | Greater Than | But not Greater Than | | | | | | |
| 0.0 | 0.1 | | | | | | — | — | 1.0 | 18.0 | 18.0 | | | | | | | |
| 0.1 | 0.2 | | | | | — | 1.0 | 7.0 | 7.0 | 29.0 | 29.0 | | | | | | | |
| 0.2 | 0.3 | | | | 6.0 | | 6.0 | 13.0 | 13.0 | 40.0 | 40.0 | | | | | | | |
| 0.3 | 0.4 | | | | 9.0 | | 9.0 | 18.0 | 18.0 | 45.0 | 45.0 | | | | | | | |
| 0.4 | 0.5 | | | | 12.0 | | 12.0 | 22.0 | 22.0 | 50.0 | 50.0 | | | | | | | |
| 0.5 | 0.6 | | | | 14.0 | | 14.0 | 25.0 | 25.0 | 56.0 | 56.0 | | | | | | | |
| 0.6 | 0.7 | | | | 16.0 | | 16.0 | 28.0 | 28.0 | 60.0 | 60.0 | | | | | | | |
| 0.7 | 0.8 | | | | 18.0 | | 18.0 | 31.0 | 31.0 | 64.0 | 64.0 | | | | | | | |
| 0.8 | 0.9 | | | | 20.0 | | 20.0 | 34.0 | 34.0 | 67.0 | 67.0 | | | | | | | |
| 0.9 | 1.0 | | | | 22.0 | | 22.0 | 37.0 | 37.0 | 70.0 | 70.0 | | | | | | | |
| 1.0 | 1.2 | | | | 26.0 | | 26.0 | 41.0 | 41.0 | 74.5 | 74.5 | | | | | | | |
| 1.2 | 1.4 | | | | 29.0 | | 29.0 | 45.0 | 45.0 | 77.5 | 77.5 | | | | | | | |
| 1.4 | 1.6 | | | | 32.0 | | 32.0 | 49.0 | 49.0 | 80.5 | 80.5 | | | | | | | |
| 1.6 | 1.8 | 0.1% (1000 PPM) | 0.1% (1000 PPM) | 1.0% (10,000 PPM) | 34.5 | 1.0% (10,000 PPM) | 34.5 | 52.0 | 52.0 | 83.0 | 83.0 | | | | | | | |
| 1.8 | 2.1 | | | | 38.0 | | 38.0 | 55.0 | 55.0 | 86.0 | 86.0 | 97% Vapor | Greater Than 97% But Not Greater Than 99.5% | Greater Than 99.5% | Greater Than 1% But Not Greater Than 97% | | | |
| 2.1 | 2.4 | | | | 41.5 | | 41.5 | 58.0 | 58.0 | 88.0 | 88.0 | | | | | | | |
| 2.4 | 2.7 | | | | 45.0 | | 45.0 | 61.0 | 61.0 | 90.0 | 90.0 | | | | | | | |
| 2.7 | 3.0 | | | | 48.0 | | 48.0 | 64.0 | 64.0 | 91.5 | 91.5 | | | | | | | |
| 3.0 | 3.5 | | | | 52.0 | | 52.0 | 68.0 | 68.0 | 93.5 | 93.5 | | | | | | | |
| 3.5 | 4.0 | | | | 55.0 | | 55.0 | 71.0 | 71.0 | 95.5 | 95.5 | | | | | | | |
| 4.0 | 4.5 | | | | 58.0 | | 58.0 | 74.0 | 74.0 | 97.0 | | | | | | | | |
| 4.5 | 5.0 | | | | 61.0 | | 61.0 | 76.0 | 76.0 | 97.0 | | | | | | | | |
| 5.0 | 5.5 | | | | 64.0 | | 64.0 | 78.0 | 78.0 | 97.0 | | | | | | | | |
| 5.5 | 6.0 | | | | 66.5 | | 66.5 | 79.5 | 79.5 | 97.0 | | | | | | | | |
| 6.0 | 6.5 | | | | 68.5 | | 68.5 | 81.0 | 81.0 | 97.0 | | | | | | | | |
| 6.5 | 7.0 | | | | 70.5 | | 70.5 | 82.5 | 82.5 | 97.0 | | | | | | | | |
| 7.0 | 7.5 | | | | 72.0 | | 72.0 | 84.0 | 84.0 | 97.0 | | | | | | | | |
| 7.5 | 8.0 | | | | 73.5 | | 73.5 | 85.0 | 85.0 | 97.0 | | | | | | | | |
| 8.0 | 8.5 | | | | 75.0 | | 75.0 | 86.0 | 86.0 | 97.0 | | | | | | | | |
| 8.5 | 9.5 | | | | 77.5 | | 77.5 | 87.5 | 87.5 | 97.0 | | | | | | | | |
| 9.5 | 10.5 | | | | 80.0 | | 80.0 | 89.0 | 89.0 | 97.0 | | | | | | | | |
| 10.5 | 11.5 | | | | 82.0 | | 82.0 | 90.5 | 90.5 | 97.0 | | | | | | | | |
| 11.5 | 13.0 | | | | 84.5 | | 84.5 | 92.0 | 92.0 | 97.0 | | | | | | | | |
| 13.0 | 14.7 | | | | 87.0 | | 87.0 | 93.0 | 93.0 | 97.0 | | | | | | | | |

(e) The provisions of (c) above shall not apply to a source gas in Range A or B discharged into the outdoor atmosphere through a local exhaust ventilation system whose intake is located within six inches (15 centimeters) of the point at which the source gas is discharged to an internal work space, provided such exhaust ventilation system:

1. Collects at least 60 percent by volume of a Range A source gas or 85 percent by volume of a Range B source gas emitted from the source operation; and

2. Is equipped with a vapor control system which prevents from being discharged into the outdoor atmosphere at least 85 percent by volume of the VOC collected, on an hourly basis.

(f) For the purpose of this section:

1. Source gases from a single source operation which are emitted from different vents in different range classifications as determined from Table 16B shall be considered as being discharged from separate source operations for each of which the maximum allowable emission rate must be determined separately.

2. Source operations normally falling within the category subject to the provisions of this section but used for research or development purposes are exempt from compliance with (c) above provided they do not exceed the hourly exclusion rates for their ranges, as set forth in Table 16A, Column 3, as applicable; or provided:

i. No more than two times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any one hour or over a batch cycle average; and

ii. No more than three times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any 24–hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27–16.6(c), (h), (i), and (j) and 16.16(c) and (e). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 16A, Column 3;

4. Until March 28, 1994, the provisions of 3 above may apply to source gases which are mathematically combined, providing approval for such a mathematical combination of sources has been obtained from the Department prior to March 28, 1992;

5. As of March 28, 1992, the Department shall not approve any mathematical combining of source gases; and

6. Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources shall expire as of March 28, 1994. Any person who, as a result of this expiration, must alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall do so in accordance with the following schedule:

i. By September 24, 1992, apply to the Department for a permit to carry out the alteration; and

ii. By March 28, 1994, comply with the requirements of this chapter and with any provisions or conditions set forth in any alteration permit issued which authorizes the alteration of the equipment or control apparatus.

(g) Any person responsible for a source operation subject to (c) above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table 16A in (c) above: the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. Conduct an analysis of the source operation, which demonstrates that, under operating conditions that maximize the VOC emissions after any control, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the VOC emission rate under operating conditions;

2. For any source operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the thermal oxidizer;

3. For any source operation that has a control apparatus using carbon or other adsorptive material used to control the emission of VOC:

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the control apparatus and any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are also to be readily available on the operating premises, and the person responsible for the source operation shall provide these to the Department upon request; and

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

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
Established separate provisions for prior to and as of June 15, 1990 and added Column 4 to table 4.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (m)1. (operative October 1, 1992); (m)2–4 (operative April 1, 1993).
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).

**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 all permits required under N.J.A.C. 7:27–8;

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 permit required under N.J.A.C. 7:27–8 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 all permits and certificates required for the control apparatus under N.J.A.C. 7:27–8, and has agreed to install and use all such control apparatus in accordance with the permits and certificates;

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

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

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

(n) Before altering any source operation which is included in an approved alternative 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 such permits and certificates for the alteration, as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation. Any permit 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. 7:27–8.12, 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
CN 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
CN 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).

**Law Review and Journal Commentaries**

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

### 7:27–16.18 Leak detection and repair

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

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

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

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

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

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

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

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

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

(c) After the applicable date set forth in Table 18A, no person subject to this section shall cause, suffer, allow or permit a regulated leak of any applicable VOC from any pressure relief device or any other component without moving parts (including, without limitation, flanges, manholes, hatches, instrument connections, sealed connections, joints and fittings), unless one of the following conditions is satisfied:

1. The person first attempts to repair the regulated leak, and completes the repair, as soon as is practicable but not beyond the time allotted for each of those actions in Table 18A;

2. The leak is an overpressure release discharge from a pressure relief device, for which the pressure relief device is designed, and the release is properly reported pursuant to any applicable law or rule; or

3. The leak is a discharge to an emergency device (such as a flare) that is designed to combust gases generated during process upsets for emergency events.

(d) After the applicable date set forth in Table 18B, no person subject to this section shall cause, suffer, allow or permit a regulated leak of any applicable VOC from any agitator or any other component with moving parts (including, without limitation, valves, pumps, compressors, agitators and diaphragms), unless the person first attempts to repair the leak, and completes the repair, as soon as is practicable but not beyond the time allotted for each of those actions in Table 18B.

(e) In determining the concentration of VOC in a gaseous leak from a component, the applicable VOC shall be measured at a distance within 0.4 inches (one centimeter) of the source in accordance with:

1. The EPA test reference method 21 set forth at 40 CFR part 60 Appendix A, using methane as the reference compound, unless the owner or operator chooses to use a more appropriate calibration gas with an established response factor for the instrument and to record and report the concentration in terms of methane; or

2. Any other equivalent test method approved in advance in writing by the Department and acceptable to EPA.

TABLE 18A
TIME LIMITS FOR LEAK REPAIR OF COMPONENTS WITHOUT MOVING PARTS

| Type of Leak | Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair | Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete | Date Provision Becomes Effective |
|---|---|---|---|
| Liquid Leak | 2 | 15 | July 26, 1994 |
| Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than: | | | |
| 10,000 ppm | 5 | 15 | July 26, 1994 |
| 1,000 ppm but less than 10,000 ppm | N/A | 15 | July 26, 1994 |

TABLE 18B
TIME LIMITS FOR LEAK REPAIR OF AGITATORS AND OTHER COMPONENTS WITH MOVING PARTS

| Type of Leak | Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair | Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete | Date Provision Becomes Effective |
|---|---|---|---|
| From an Agitator: | | | |
| Liquid Leak | 2 | 15 | July 26, 1994 |
| Gaseous Leak having a concentration of applicable VOC greater than 10,000 ppm above background concentration | 5 | 15 | July 26, 1994 |
| From Other Components with Moving Parts: | | | |
| Liquid Leak | 2 | 15 | July 26, 1994 |
| Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than: | | | |
| 10,000 ppm | 5 | 15 | July 26, 1994 |
| 5,000 ppm but less than 10,000 ppm | N/A | 15 | 4/1/95 |
| 1,000 ppm but less than 5,000 ppm | N/A | 15 | 4/1/96 |

(f) The owner or operator of a petroleum refinery shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Annually, test all agitators, pumps and valves in light liquid service;

ii. Quarterly, test all compressors, valves, and pressure relief devices in gaseous service, unless on both of the last two occasions when such testing was conducted at the petroleum refinery the owner or operator determined that:

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or

operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

iii. Monthly, visually inspect all pumps;

iv. Semi-annually, visually inspect any other type of component in light liquid service; and

v. Test any other type of component in gaseous service within 15 days after the component has been returned to service following having been taken apart or disconnected and reassembled;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. By no later than five days after repair, any component from which a regulated leak was detected shall be tested;

4. By July 1, 1982, the initial leak tests required in (f)1i, (f)1ii, and (f)1iii above shall be completed, and by May 31, 1995 the initial leak tests required in (f)1iv above shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired;

6. Any component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless a refinery process unit shutdown is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired during the next process unit shutdown and prior to the next start-up;

7. Notwithstanding paragraphs (f)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (f)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted.

(g) The owner or operator of any natural gas/gasoline processing plant shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Quarterly, test all pumps, valves, compressors, and pressure relief devices, unless on both of the past two occasions such testing was conducted at any natural gas/gasoline processing plant the owner or operator determined that:

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

ii. Weekly, visually inspect all pumps; and

iii. Once every two years, test any other type of component;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. By no later than five days after repair, any component from which a regulated leak was detected shall be tested;

4. By March 31, 1987, the initial leak tests shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired;

6. Any component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless a process unit shutdown is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired during the next process unit shutdown and prior to the next start-up;

7. Notwithstanding paragraphs (g)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (g)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted.

(h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility subject to this section shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Quarterly test all agitators, pumps and valves in light liquid service, and compressors and pressure relief devices on equipment in gas service, unless on both of the past two occasions such testing was conducted at a synthetic organic chemical or polymer manufacturing facility the owner or operator determined that:

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

ii. Weekly, visually inspect all pumps in light liquid service;

iii. Semi-annually, visually inspect any other type of component in light liquid service; and

iv. Test any type of component in gaseous service within 15 days after the component has been returned to service following having been taken apart or disconnected and reassembled;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. By no later than five days after repair, any component from which a regulated leak was detected shall be tested;

4. By March 31, 1987, the initial leak tests pursuant to (h)1i and (h)1ii above shall be completed, and by May 31, 1995, the initial leak tests required pursuant to (h)1iii above shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired;

6. Any leaking component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless a process unit shutdown is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired during the next process unit shutdown and prior to the next start-up;

7. Notwithstanding paragraphs (h)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (h)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted.

(i) The owner or operator of a chemical plant that is a major VOC facility shall develop and implement a leak detection and repair program for any equipment subject to the provisions of (c) and (d) above if such equipment is not subject to the provisions of (f), (g), or (h) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Annually, test all agitators, pumps, valves, and pressure relief devices in light liquid service;

ii. Quarterly, test all compressors, valves, and pressure relief devices in gas service, unless on both of the past two occasions such testing was conducted at a chemical plant the owner or operator determined that:

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

iii. Monthly, visually inspect all single mechanical seals and packed seal pumps; and

iv. Every six months, visually inspect any other type of component in light liquid service; and

v. Test any other type of component in gaseous service within 15 days after the component has been

returned to service following having been taken apart or disconnected and reassembled;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. By no later than five days after repair, any component from which a regulated leak was detected shall be retested;

4. By May 31, 1995, the initial leak tests shall be initiated at the frequency required by (i)1i through (i)1v above;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired;

6. Any component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless a process unit shutdown is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired during the next process unit shutdown and prior to the next start-up;

7. Notwithstanding paragraphs (i)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (i)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted.

(j) Any owner or operator of a petroleum refinery subject to (f) above shall comply with (j)1 below beginning July 1, 1982, and shall comply with (j)2 below beginning October 1, 1982. Any owner or operator of a natural gas/gasoline processing plant or synthetic organic chemical/polymer manufacturing facility subject to (g) or (h) above, respectively, shall comply with (j)1 below beginning April 1, 1987, and shall comply with (j)2 below beginning July 1, 1987. Any owner or operator of a chemical plant subject to (i) above shall comply with (j)1 and 2 below beginning May 31, 1995:

1. A log of information about components detected to have regulated leaks shall be maintained. The log shall be retained for a minimum of five years and be made available immediately upon request by the Department. The log shall contain the following data for each instance in which a component is detected to have a regulated leak:

i. The name of the process unit where the component detected to have a regulated leak is located;

ii. The type of component;

iii. The tag identification number of the component;

iv. The date on which the regulated leak was detected;

v. The date on which the component detected to have a regulated leak was repaired;

vi. The date and instrument reading of the retest procedure after a component detected to have a regulated leak is repaired;

vii. A record of the calibration of the monitoring instrument;

viii. An identification of those regulated leaks that cannot be repaired without a process unit shutdown; and

ix. The total number of components monitored and the total number of components detected to have a regulated leak.

2. Within 30 days following the last day of every third month, a report shall be submitted to the Department's regional enforcement office that lists all components detected to have a regulated leak during the previous three calendar months that have not been repaired within the applicable time limits set forth in Tables 18A and 18B, all components detected to have a regulated leak whose repair is awaiting a process unit shutdown, all components not tested because they were not in contact with applicable VOC or not in operation during their specified monitoring period, the total number of components inspected, and the total number of components detected to have a regulated leak.

(k) Components that are insulated, encased, or enclosed may be tested for leaks at a distance within 0.4 inches (one centimeter) of the surface of the insulation, encasement, or enclosure.

(*l*) Notwithstanding the provisions of (f), (g), (h), and (i) above, difficult to monitor components installed prior to May 31, 1995, are exempt from quarterly testing requirements, and instead such testing shall be conducted on an annual basis.

(m) The reduced testing provisions pursuant to (*l*) above shall not apply to components installed on or after May 31, 1995, at a facility subject to this section. Instead, all such components installed on or after May 31, 1995 shall be tested in accordance with the other provisions of this section.

(n) The provisions of (f), (g), (h), and (i) above shall not apply to a pressure relief device which is connected to an operating flare or to a vapor recovery device, a storage tank valve, a valve that is not externally regulated, or a valve or other component in vacuum service.

(*o*) No owner or operator of any facility listed in (*o*)1 through 4 below shall install or operate a valve, except for a safety pressure relief valve, at the end of a pipe or line containing applicable VOC unless the pipe or line is sealed with a second valve, a blind flange, a plug or a cap. The sealing device may be removed only when a sample is being taken, during actual use in the process, or during maintenance. A fill line that is used to regularly fill containers is considered to be in actual use in the process for the purpose of this provision. Owners and operators of the following types of facilities are subject to this prohibition, beginning on the dates set forth below:

1. Any petroleum refinery subject to (f) above, after July 1, 1982:

2. Any natural gas/gasoline processing plant subject to (g) above, after July 1, 1987;

3. Any synthetic organic chemical or polymer manufacturing facility subject to (h) above, after July 1, 1987; or

4. Any chemical plant subject to (i) above, beginning May 31, 1995.

(p) The provisions of (f), (g), (h), and (i) above shall not apply to the following components:

1. A component which is primarily used in a laboratory operation or research facility;

2. A component that cannot be tested without immediate danger to the personnel conducting the test, or a component that cannot be tested because it is not accessible, and cannot practicably be made accessible, for conducting the test. For such components, the owner or operator shall document in writing:

i. The reason that the the component cannot be safely tested, or cannot practicably be made accessible for testing with monitoring equipment; and

ii. Under which circumstances and by what method, if any, the component can be tested. Further, when those circumstances do arise, the owner or operator shall cause testing that complies with this section to be performed and shall respond to the results of that testing as this section otherwise requires;

3. A pump that is inherently sealless by design, for example, a magnetic drive, canned motor, or diaphragm pump;

4. A pump equipped with dual mechanical seals, provided that the barrier fluid is not an applicable VOC and that:

i. Each dual mechanical seal is operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

ii. Each dual mechanical seal is equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a VOC control apparatus;

iii. Each dual mechanical seal is equipped with a closed-loop system that purges the barrier fluid into a process stream; or

iv. Each barrier fluid system is equipped with a device that provides detection for the failure of the seal system, the barrier fluid system, or both;

5. A leakless design Bellows type valve; and

6. Process equipment enclosed in such a manner that all emissions from any component with a leak is vented through a system that routes those emissions to a controlled emission point, provided that:

i. The enclosure is maintained under negative pressure at all times while the process unit is in operation; or

ii. The potential points of leakage from the enclosure are subjected to the same leak detection and repair requirements as the components would be if they were not enclosed.

(q) Notwithstanding the other subsections of this section, the owner or operator of a facility subject to the provisions of this section may use pressure testing with gas or liquid as an alternative method to comply with leak detection requirements.

1. If the pressure testing alternative is used for continuous processing equipment, the frequency of pressure testing shall be no less than the frequency set forth in (f), (g), (h) and (i).

2. If the pressure testing alternative is used for batch product processes:

i. Each time batch processing equipment is reconfigured, the batch product-process equipment shall be pressure tested for leaks before applicable VOC is first fed into the equipment and the equipment is placed in applicable VOC service, provided, however, that when the seal is broken between two items of equipment or when equipment is changed in a section of the batch product-processing equipment train, pressure testing is required only for the new or disturbed equipment; and

ii. Notwithstanding (i) above, each batch product process that operates in applicable VOC service during a calendar year shall be pressure tested at least once during the calendar year.

3. When pressure testing with a gas, the following procedures shall be used:

i. The product-process equipment shall be pressurized with a gas to the operating pressure of the equipment, but the equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting in the portion of the equipment being tested;

ii. Once the test pressure is obtained, the gas source shall be shut off;

iii. The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop is exceeded; and

iv. The pressure shall be measured at the beginning and at the end of the test period using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of plus or minus 2.5 mm Hg. If the rate of pressure change is greater than one pound per square inch per hour, or if there is visible, audible or olfactory evidence of fluid loss, a regulated leak is detected.

4. When pressure testing with a liquid, the following procedures shall be used:

i. The product-process equipment shall be filled with the test liquid. Once the equipment is filled, the liquid source shall be shut off;

ii. The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that there is a regulated leak; and

iii. Each seal in the equipment being tested shall be inspected for indications of fluid loss. If there are any indications of liquid dripping or of fluid loss a regulated leak is detected.

(r) The owner or operator of a facility subject to the provisions of this section is exempt from the requirement to repair any regulated leak within the applicable time limits set forth in this section, so long as no applicable VOC is fed to the source operation of which the component is a part until testing confirms that the leak has successfully been repaired.

(s) An affirmative defense to liability for a violation of this section's requirements regarding time limits for repairs shall be available to any person who can demonstrate that:

1. Failure to comply with those time limits was caused by an inability to obtain the necessary parts through the exercise of due diligence; and

2. Keeping the necessary part in stock or otherwise available would have been technically or economically unreasonable; and

3. The parts were obtained and the repairs were made as quickly as the exercise of due diligence permitted.

(t) A leak shall not constitute a violation of this section so long as the component from which it appears has been monitored or inspected in accordance with this section and so long as the leak has been repaired in accordance with this section.

Recodified from 7:27–16.6(d)–(m) 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).
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).

### 7:27–16.19 Application of cutback and emulsified asphalts

(a) No person shall cause, suffer, allow, or permit the use of cutback asphalt or emulsified asphalt containing any VOC unless:

1. The material is applied during the periods January 1 through April 15 or October 15 through December 31;

2. The use is solely as a penetrating prime coat;

3. The emulsified asphalt contains no greater than eight percent VOC by volume and is used for mixed-in-place construction;

4. The material is a cold-mix, stockpile material used for pavement repair; or

5. The user can demonstrate that there are no emissions of VOC from the asphalt under conditions of normal use.

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).
Addressed EPA-identified deficiencies; "VOS" changed to "VOC" throughout.
Recodified from 7:27–16.7 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).

### 7:27–16.20 Petroleum solvent dry cleaning operations

(a) No person shall cause, suffer, allow, or permit VOC emissions to the outdoor atmosphere from a petroleum solvent dry cleaning dryer unless such dryer is:

1. Equipped with a vapor control system which prevents VOC emissions from exceeding 7.7 pounds (3.5 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned; or

2. A solvent recovery dryer operated in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of 0.013 gallons (50 milliliters) per minute is attained.

(b) No person shall cause, suffer, allow, or permit any VOC emissions to the outdoor atmosphere from a petroleum solvent filtration system unless:

1. The VOC content in all filtration wastes is reduced to no more than 2.2 pounds (1.0 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere; or

2. The system is a cartridge filtration system operated such that the filter cartridges are drained in their sealed housings for eight hours or longer before their removal.

(c) No owner or operator of a petroleum solvent dry cleaning facility shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from:

1. Visibly leaking equipment including, but not limited to, washers, dryers, solvent filters, settling tanks, and vacuum stills; and

2. Containers of VOC or VOC-laden waste standing open to the outdoor atmosphere.

(d) The provisions of (a) above shall not apply to petroleum solvent dry cleaning facilities that consume less than 15,000 gallons (56,775 liters) of petroleum solvent annually.

(e) Any person subject to the provisions of (a) above shall comply with the following schedule:

1. By February 2, 1987, a plan shall be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificate to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27–8.

2. By May 1, 1987, construction or installation of equipment and control apparatus in accordance with the approved plan shall commence; and

3. By October 31, 1987, compliance with this section shall be achieved.

(f) The total amount of any VOC consumed by a petroleum solvent dry cleaning operation in each calendar year shall not exceed 9.9 pounds per 220 pounds of dry weight of articles cleaned.

(g) Any person responsible for the emission of any VOC from a petroleum solvent dry cleaning operation subject to this section shall maintain a monthly record setting forth the chemical name of the VOC used in the operation, the volume of VOC consumed in the operation, and the dry weight of articles cleaned.

New Rule, 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).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (g) (operative October 1, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
New (f) and (g) addresses EPA-identified deficiencies.
Recodified from 7:27–16.8 by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–16.21 Natural gas pipelines

(a) The owner or operator of any natural gas pipeline shall by October 26, 1994 prepare a Control Measure Plan that shall:

1. Identify each control technology or procedure available to the owner or operator for achieving reductions in VOC emissions from a blowdown event. Such control technology or procedures may include, without limitation, pipeline pressure reductions, the use of mobile compressors for recompressing, and the use of control apparatus; and

2. Identify in detail the criteria that the owner or operator will use to select the control technology or procedure, or combination thereof, that will achieve the greatest reductions in VOC reasonably achievable for each blowdown event.

(b) The owner or operator of any natural gas pipeline shall by May 31, 1995 achieve some reduction in VOC emissions from each blowdown event and shall implement the control technologies or procedures that the Control Measure Plan indicates would be appropriate for each blowdown event.

(c) On or before March 1 of each year beginning in 1996, the owner or operator of each natural gas pipeline shall submit a report to the Chief, Bureau Field Operations setting forth the location, date and duration of each blowdown event, a description of the emissions reduction procedures and technology used, and a quantification of the amount of VOC emission reductions achieved for each event.

(d) The owner or operator of any natural gas pipeline subject to (a) above shall retain the Control Measure Plan at the office having operating responsibility for the section of pipeline for which the blowdown event will occur and shall provide a copy of such plan to the Department within three days of receipt of a written request from the Department.

(e) If after reviewing a Control Measure Plan, the Department determines that it fails to satisfy the requirements set forth in (a) above, the Department shall notify the owner or operator that it has 30 days to submit to the Department appropriate amendments to its plan. Failure to do so shall constitute a violation of this section. However, an owner or operator may request an adjudicatory hearing regarding the Department's determination in accordance with the procedure at N.J.A.C. 7:27–8.12.

(f) The Department may require amendments to a Control Measure Plan if:

1. The Plan does not contain all of the information required under (a) above;

2. The Plan does not consider all control technology and procedures used or considered for use by other persons in the owner or operator's industry, taking into account the potential for the creation of a safety hazard or the potential for unreasonable interference with enjoyment of life and property;

3. The Plan would be ineffective in controlling VOC emissions during blowdown events;

4. The emission reductions being achieved are not the greatest reductions which can be practicably achieved at reasonable costs; or

5. Implementation of the plan results or would result in any violation of law or regulation; or

6. EPA denies approval of the proposed Control Measure Plan as a revision to the State Implementation Plan.

(g) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (a) above, the Department may authorize a 60–day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of 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 & Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625–0422

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

**7:27–16.22 Emission information, record keeping and testing**

(a) Any person subject to any record keeping provision of this subchapter shall maintain the required records for a period of no less than five years and shall make those records available upon the request of the Department or the EPA, or any duly authorized representative of the Department or the EPA.

(b) Any person who owns or operates a source operation subject to any recordkeeping requirement set forth in this subchapter may submit a request in writing to the Department for approval to maintain records other than those specified at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.4(*o*), 16.5(j), 16.6(*l*), 16.7(m) and (n), 16.13(c), 16.16(g), 16.18(j), 16.20(g) or 16.21(c). The Department and EPA may approve any such request if the person demonstrates to the satisfaction of the Department and EPA that the alternate records to be maintained are at least as effective in documenting that the source operation is operating in compliance with the applicable requirements.

(c) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

(d) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide facilities and necessary equipment for determining the quantity and identity of any VOC emitted into the outdoor atmosphere and shall conduct such testing using N.J.A.C. 7:27B–3 or another method approved by the Department and the EPA. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department, the EPA, or any duly authorized representative of the Department or the EPA.

(e) Any person responsible for the emission of VOC shall, upon request of the Department, provide sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of the VOC being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(f) All testing and monitoring pursuant to the provisions of this subchapter shall be conducted using N.J.A.C. 7:27B–3 or other method approved in advance by the Department and acceptable to EPA.

(g) Hourly emissions limits apply to any consecutive 60 minute period, and testing performed to verify compliance shall be based on a 60 minute period during which the equipment or control apparatus is used and operated under conditions acceptable to the Department and consistent with the operational parameters and limits set forth in any permit or certificate in effect. If circumstances require that test periods be less than, or more than 60 minutes (such as when an operational duration is less than 60 minutes or when detectability limits are approached for low concentration gas streams), the Department may require different test periods in its review and approval of test protocols.

(h) Any record keeping requirement set forth at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.7(m), 16.7(n), 16.16(g), or 16.20(g), shall become effective on October 1, 1992, except for record keeping based on continuous emission monitoring. Any record keeping requirement based on continuous emission monitoring shall become effective on April 1, 1993.

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.7(m) and (n), 16.16(g), or 16.20(g) may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27–1.6 through 1.30.

Recodification: Recodified from 16.8.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Require EPA approval of variances and access to records.
Amended by 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).
Corrected internal cite.
Recodified from 7:27–16.9 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).
Administrative Correction.
See: 27 N.J.R. 2740(a).

### 7:27–16.23 Procedures for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to N.J.A.C. 7:27–16.8, 16.9, 16.10, 16.11 or 16.13 that is subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the equipment or source operation for the air contaminant in question, or pursuant to (a)2 below if no such system has been installed for the air contaminant.

1. With respect to an emission limit for any air contaminant monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of emissions over one calendar day, not including periods of equipment downtime.

2. With respect to an emission limit for any air contaminant that is not monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60–minute period specified by the Department and performed in compliance with N.J.A.C. 7:27–16.22.

(b) For any equipment or source operation subject to (a) above which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit or certificate for such equipment or source operation.

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

(d) An exceedance of any applicable VOC or CO emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a) or (b) above or otherwise, is a violation of this subchapter.

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–16.24 Adjusting combustion processes

When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall do so in accordance with the terms and conditions of N.J.A.C. 7:27–19.16.

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–16.25 (Reserved)

### 7:27–16.26 Variances

(a) Whenever a person responsible for the emission of any VOC believes that advances in the art of control for the kind and amount of VOC emitted have not developed to a degree which would enable the requirements of this subchapter to be attained, such person may apply to the Department in writing for a variance, setting forth any reason and justification therefor.

(b) Any person submitting an application for a variance to the Department is subject to the certification requirements set forth at N.J.A.C. 7:27–1.39.

(c) The Department may issue a variance which shall be valid for a period not to exceed three consecutive years from the date of issuance and may be renewed upon application to the Department setting forth reasons and justifications for its continuation.

(d) Variances issued under the provisions of this section shall be conditional upon:

1. Compliance with any requirements which the Department sets forth as conditions of approval; and

2. Approval by the EPA as a revision to the State Implementation Plan.

(e) Variances may be revoked at any time at the discretion of the Department.

(f) Any applicant aggrieved by the denial or revocation by the Department of a variance allowed under the provisions of this section may request an adjudicatory hearing pursuant to N.J.A.C. 7:27–8.12.

Recodification: From 16.9.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies.
Recodified from 7:27–16.10 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. 2740(a).

### 7:27–16.27 Exceptions

(a) The provisions of this subchapter shall not apply to any stationary vessel or delivery vessel maintained under a pressure greater than one atmosphere provided that any vent serving such vessel has the sole function of relieving pressure under abnormal emergency conditions.

(b) The provisions of this subchapter shall not apply to the emissions of VOC from the following source operations:

1. Offset lithography printing operations until November 15, 1994;

2. Surface coating of plastic parts until November 15, 1994;

3. Natural gas pipelines that are not major VOC facilities, with the exception of blowdown events as set forth in N.J.A.C. 7:27–16.21;

4. Industrial wastewater treatment systems until November 15, 1994;

5. All other wastewater treatment facilities until November 15, 1994; and

6. Open burning.

Recodification: From 16.12.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Recodified from 16.13 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).
Recodified from 7:27–16.12 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).

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## SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

**Subchapter Historical Note**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 13:1D–1 et seq. and 26:2C–1 et seq. and were filed and became effective on June 14, 1977, as R.1977 d.207. See: 9 N.J.R. 69(a), 9 N.J.R. 321(b). Amendments were filed on October 17, 1979, as R.1979 d.414 to become effective on December 17, 1979. See: 10 N.J.R. 477(b), 11 N.J.R. 544(b).

### 7:27–17.1 Definitions

The following words and terms, when used in this subchapter, 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 due to alteration of background air flow characteristics caused by the presence of buildings or other obstacles in the vicinity of the emission point.

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

"Asbestos" means actinolite, amosite, anthophyllite, chrysotile, crocidolite, tremolite.

"CFR" means the Code of Federal Regulations.

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

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

"Distillates of air" means helium (He), nitrogen ($N_2$), oxygen ($O_2$), neon (Ne), argon (Ar), xenon (Xe), and carbon dioxide ($CO_2$).

"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. It shall be calculated by one of the following equations:

1. If the lowest possible temperature of the gas leaving the stack is 68 degrees Fahrenheit (20 degrees Celsius) or less:

$$\text{Effective stack height} = H_s + 2.76(D)(B^{1/3})$$

where:

$H_s$ = the physical stack height above grade in meters
D = the stack outlet in diameter in meters
B = $(V^2)/T$
V = the stack gas exit velocity in meters per second
T = the stack gas temperature at the stack outlet in degrees Kelvin

2. If the lowest possible temperature of the gas leaving the stack is greater than 68 degrees Fahrenheit (20 degrees Celsius):

$$\text{Effective stack height} = H_s + 8.28(F^{0.75})$$

where:

$H_s$ = the physical stack height above grade in meters
F = $(V)(D^2)(T–293)/T$
V = the stack gas exit velocity in meters per second
D = the stack outlet diameter in meters
T = the stack gas temperature at the stack outlet in degrees Kelvin

"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.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate 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.

"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.

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

"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.

"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.

"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.

"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.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measured Method" or "Method 2—Herzog Semi–Automatic 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.

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

"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.

"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).

"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.

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

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, any architectural coating, paint, varnish, ink or adhesive applied to or impregnated into a substrate.

"Surface coating operation" means the application of one or more surface coating formulations, 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.

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

"Toxic substance" or "TXS" means a substance listed in Table 1 of this subchapter.

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

"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 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.

"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 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 the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1–trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC–11)
dichlorodifluoromethane (CFC–12)
trifluoromethane (HFC–23)
1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)
1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)
chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1–trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluoroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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 51.00(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

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).
Definitions amended for consistency with N.J.A.C. 7:27–16.1; definition of "volatile organic compound (VOC)" replaces "volatile organic substance (VOS)".
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).

### 7:27–17.2 Asbestos surface coating

No person shall cause, suffer, allow or permit surface coating by spraying on any building, structure, facility, installation or internal or external portion thereof, asbestos or friable material containing in excess of 0.25 per cent by weight of asbestos.

**Cross References**

Child care center physical plant requirements, see N.J.A.C. 10:122–5.2.

Children's group home physical facility requirements, see N.J.A.C. 10:128–4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124–5.1 et seq.

Residential child care facility maintenance and sanitation requirements, see N.J.A.C. 10:127–4.4.

### 7:27–17.3 Storage, transfer, and use of toxic substances

(a) No person shall cause, suffer, allow or permit any TXS listed in Table 1 to be emitted from any source operation, storage tank, or transfer operation into the outdoor atmosphere unless such equipment and operation is registered with the Department within six months of the effective date of this subchapter. Such registration shall include information relating to vessel sizes, transfer rates, emission rates, operating procedures and other information required by the Department and shall be made on forms provided by the Department.

(b) In cases where the Department determines that the equipment or operating procedures as described in the registration do not represent advances in the art of control for the types and kinds of TXS emitted, the Department will so notify the registrant.

(c) Within three months of such notification, the registrant must advise the Department of measures to be taken for reducing the TXS emissions to a rate or concentration equivalent to advances in the art of control and the schedule for completing such measures.

(d) Upon notification by the Department that the measures and schedule submitted pursuant to subsection (c) of this section are acceptable, the registrant shall implement such measures in accordance with the schedule.

(e) If, in the opinion of the Department, the measures or schedule submitted pursuant to subsection (c) of this section are not acceptable, the Department shall state its reasons and may order the registrant to resubmit, within the time specified in the order, measures to be taken and the schedule for same. If the registrant fails within the time specified to make an acceptable resubmittal, the Department may order the registrant to implement such measures as it deems appropriate within a specified time.

(f) Permit applications submitted to the Department pursuant to N.J.A.C. 7:27–8 satisfy the registration requirements of this section.

TABLE 1

TOXIC SUBSTANCES

GROUP I

| Name | CAS Number |
|---|---|
| Benzene (Benzol) | 71–43–2 |
| Carbon tetrachloride (Tetrachloromethane) | 56–23–5 |
| Chloroform (Trichloromethane) | 67–66–3 |
| Dioxane (1,4–Diethylene dioxide) | 123–91–1 |
| Ethylenimine (Aziridine) | 151–56–4 |
| Ethylene dibromide (1,2–Dibromoethane) | 106–93–4 |
| Ethylene dichloride (1,2–Dichloroethane) | 107–06–2 |
| 1,1,2,2–Tetrachloroethane (sym Tetrachloroethane) | 79–34–5 |
| Tetrachloroethylene (Perchloroethylene) | 127–18–4 |
| 1,1,2–Trichloroethane (Vinyl trichloride) | 79–00–5 |
| Trichloroethylene (Trichloroethene) | 79–01–6 |

GROUP II

| Name | CAS Number |
|---|---|
| Methylene chloride (Dichloromethane) | 75–09–2 |
| 1,1,1–Trichloroethane (Methyl chloroform) | 71–55–6 |

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).
"TVOS" replaced by "TXS".
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

**7:27–17.4 Discharge of toxic substances**

(a) No person shall cause, suffer, allow or permit any GROUP I TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1. At any effective stack height of no less than 40 feet (12.2 meters) above grade;

2. No less than 20 feet (6.1 meters) higher than any area of human use or occupancy including, but not limited to, the roof of a building, which is within 50 feet (15.2 meters), measured horizontally from the point of discharge; and

3. Directed vertically upward.

(b) No person shall cause, suffer, allow or permit the emission of a GROUP I TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

(c) The Department has determined that GROUP II TXS should be subject to at least reasonably available control technology requirements. Accordingly, requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, set forth at N.J.A.C. 7:27–16 and 23, shall apply with full force to GROUP II TXS until the Department amends this rule in response to anticipated EPA rule-making or otherwise. For example, pursuant to this subsection and N.J.A.C. 7:27–16.4(b), certain transfers of methylene chloride may be conducted only with either a vapor control apparatus which reduces by no less than 90 percent the concentration of methylene chloride in the air-vapor mixture displaced during the transfer, a floating roof, or certain types of vapor balance systems. For another example, pursuant to this subsection and N.J.A.C. 7:27–23.3, a lacquer may not contain more than 5.7 pounds per gallon of methylene chloride, nor may it contain more than 4.7 pounds of VOC together with one pound of methylene chloride.

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).
"TVOS" replaced by "TXS".
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

**7:27–17.5 Operating instructions**

(a) No person shall cause, suffer, allow or permit the use of TXS in any open top tank or surface cleaner unless such use is in conformity with written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

(b) Any person subject to the provisions of subsection (a) of this section shall maintain a training program to ensure that all personnel associated with the use or operation of

the open top tank or surface cleaner understand and follow the specified procedure.

(c) Copies of operating instructions and maintenance instructions must be located at the open top tank or surface cleaner. Copies shall be supplied to the Department when requested and must be accompanied by similar documents supplied by the equipment manufacturer, with explanations for differences between the two.

(d) The written procedures required by this section shall be submitted to the Department upon request within 10 days of the receipt of such request; such procedure shall be subject to review and approval by the Department. If, in the opinion of the Department, such procedure does not fulfill the requirements of this section, the Department may state its reason for disapproval and order the preparation of an amended procedure within the time period specified in the order. If the person responsible fails within the time period specified in the order to submit an amended procedure which, in the opinion of the Department, fulfills the said requirements, the Department may revise the procedure accordingly. Such revised procedure will thereafter be that to which the person responsible must conform.

(e) Any person subject to the provisions of this section shall notify the Department in writing within five days of any revision or alteration of a procedure approved pursuant to the provisions of subsection (d) of this section. Such written notification shall include a detailed description of the changes in the procedure and the reasons therefor. Such amended procedure shall be subject to review and approval by the Department.

(f) The provisions of this section shall become effective on January 1, 1981.

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).
"TVOS" replaced by "TXS".

**7:27–17.6 Emission information and tests**

(a) Any person responsible for the manufacture, application or use of any coating, applied on or after August 15, 1977, which the Department, or any agent thereof, has reason to believe contains asbestos shall, when requested by the Department, conduct such tests as are necessary in the opinion of the Department to determine the presence and the amount and/or kinds of asbestos in the coating. Such tests shall be conducted in a manner approved by the Department and shall be made at the expense of the person responsible.

(b) The Department may waive the testing requirements of subsection (a) of this section upon receipt of a materials specification report from the material manufacturer certifying that the asbestos content of the surface coating for which testing is required complies with the provisions of section 2 of this subchapter.

(c) Any person responsible for the emission of TXS shall, upon request of the Department, provide:

1. Information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

2. Facilities and necessary equipment for determining the quantity and identity of TXS emitted into the outdoor atmosphere and shall conduct such tests using methods approved by the Department. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department.

3. Sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of TXS being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"TVOS" replaced by "TXS".

**7:27–17.7 Permit to construct and certificate to operate**

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Certificate to Operate Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(c) No person shall use or cause to be used any equipment or control apparatus from which TXS are emitted into the outdoor atmosphere unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use in accordance with any relevant "Permit to Construct, Install or Alter Control Apparatus or Equipment" and any relevant "Certificate to Operate Control Apparatus or Equipment".

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).
"TVOS" replaced by "TXS".

### 7:27–17.8 Applicability

(a) Operations and equipment covered by this subchapter shall include, but not be limited to, storage tanks, transfer operations, open top tanks, surface cleaning, surface coating, organic chemical manufacture, pharmaceutical manufacture, petroleum refining, and miscellaneous organic solvent uses in which one or more of the toxic substances in Table 1 are stored, used, or manufactured.

(b) Whenever persons, equipment, control apparatus or TXS 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.

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

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).
"TVOS" replaced by "TXS".

### 7:27–17.9 Exceptions

(a) The provisions of sections 3, 4 and 6(c) of this subchapter shall not apply to the benzene constituent of gasoline which is discharged to the atmosphere from storage tanks or transfer operations.

(b) The provisions of this subchapter shall not apply to any TXS which:

1. Was not added to or deliberately formed in a raw material or a finished product; and

2. Does not exceed 0.25 percent by weight of any raw material or finished product; and

3. Is not emitted from any source operation, storage tank, or transfer operation at a rate in excess of 0.1 pounds (45.4 grams) per hour.

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).
"TVOS" replaced by "TXS".

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## SUBCHAPTER 18. CONTROL AND PROHIBITION OF AIR POLLUTION FROM NEW OR ALTERED SOURCES AFFECTING AMBIENT AIR QUALITY (EMISSION OFFSET RULES)

**Authority**

N.J.S.A. 26:2C–1 et seq., unless otherwise stated.

**Subchapter Historical Note**

R.1979 d.237, filed June 14, 1979 to become effective June 30, 1979. See: 11 N.J.R. 327(a). As amended R.1980 d.307, filed July 8, 1980 to become effective September 8, 1980. See: 11 N.J.R. 327(a), 12 N.J.R. 462(c).

**Law Review and Journal Commentaries**

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

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

### 7:27–18.1 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 actual rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. The actual rate of emissions, as of a particular date, shall equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the particular date provided these are representative of normal source operation. The Department may allow the use of a time period different from this two year period only upon a determination that the different time period is more representative of normal operation. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. Generally, the particular date is the permit application date, but may be another date specified by the Department. For any equipment, source operation, or control apparatus which has not begun normal operations as of the particular date, the Department shall assume that its actual emissions equal its allowable emissions. Actual emissions shall, for the purposes of this subchapter, be expressed in tons per year.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

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

"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 an ambient air concentration that exceeds a standard established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a 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.

"Allowable emission" means the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate shall be based on the maximum rated capacity of the equipment, unless the equipment is subject to Federally enforceable limits which restrict the operating rate, hours of operations, or both. In such cases this rate is based on the most stringent of the following:

1. Applicable standards of performance for new stationary sources (NSPS) as set forth in 40 CFR 60;

2. Applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR 61;

3. Applicable emission, equipment, and operating standards as set forth in this chapter, including those with a future compliance date;

4. Applicable emission limitations specified in a Federally enforceable permit, including limitations with a future compliance date; and

5. Any emission limitation in an applicable State Implementation Plan (SIP).

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" has the meaning as defined for this term at N.J.A.C. 7:27–8.1.

"Alternative fuel" means, with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, this term means any fuel not used in the source operation since December 21, 1976.

"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 in 40 CFR 50.

"Attainment area" means any area of the State which is not a nonattainment area.

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27–18.8, 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.

"CAA" means the Clean Air Act as amended November 1990 (42 USC 7401 et seq., as amended by Pub. L. 101–549).

"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.

"Contemporaneous" means, in respect to the construction of new or altered equipment, occurring within a time period which includes:

1. The five years prior to the initiation of the construction; and

2. The period between the initiation of construction and the initiation of operation of that new or altered equipment.

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

"Creditable emission reduction" means a decrease in actual emissions which meets the conditions listed in 1 through 5 below. A decrease is a creditable emission reduction only to the extent that the pre-decrease level of actual emissions or the pre-decrease level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions. Decreases in allowable emissions attributable to equipment or control apparatus that was permitted, but never operated, shall not be considered a creditable emission reduction. In order to be a creditable emission reduction, the decrease must be:

1. Quantifiable;

2. Federally enforceable;

3. Not required pursuant to any Federal or State law, rule, permit, order, or other legal document;

4. Not relied on by the Department in the SIP or any revision thereto, adopted by the Department, to demonstrate attainment or maintenance of a NAAQS or to demonstrate reasonable further progress toward attainment of a NAAQS; and

5. Verifiable, to the satisfaction of the Department, to have in fact occurred.

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a NJAAQS has been promulgated in N.J.A.C. 7:27–13.

"Emission offset" means a creditable emission reduction approved by the Department for use to offset an increase in allowable emissions of an air contaminant from a facility.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into 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, 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 owned or operated by the same person.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the 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; or

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"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.

"Lead" or "Pb" means elemental lead or any compound containing lead.

"Lowest achievable emission rate" or "LAER" means a limitation on the rate of emission from any source operation, equipment, or control apparatus which is consistent with the most stringent of the following:

1. The most stringent emission limitation which is contained in the SIP of any state for such class or category of source operation, equipment, or control apparatus, unless the owner or operator of the proposed new or altered equipment or control apparatus demonstrates to the satisfaction of the Department that such a limitation is not achievable by that equipment or control apparatus;

2. The most stringent emission limitation which is achieved in practice by such class or category of source operation, equipment, or control apparatus; or

3. The most stringent emission limitation established in any NSPS or NESHAP applicable to such class or category of equipment or control apparatus.

"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 dioxide | 100 tons per year |
| Nitrogen oxides | 25 tons per year |
| VOC | 25 tons per year |
| Lead | 10 tons per year |

"Minimum offset ratio" means the minimum acceptable ratio of emission offsets to increases in the allowable emissions for a facility.

"Motor vehicle" means a vehicle propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

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

"NESHAP" means National Emission Standards for Hazardous Air Pollutants as promulgated under 40 CFR 61.

"Net air quality benefit" means, in the area affected by a proposed emission increase of an air contaminant, a net decrease in the ambient concentration of the respective criteria pollutant for the air contaminant.

"Net emission increase" means, in respect to any air contaminant emitted at a facility, an increase calculated in accordance with the procedures set forth at N.J.A.C. 7:27–18.7(a).

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

"Nitrogen dioxide" or "$NO_2$" means a gas that has a molecular composition of one nitrogen atom and two oxygen atoms.

"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 an ambient air quality standard; 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.

"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, and in particular 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.

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

"Ozone" or "$O_3$" means a gas having a molecular composition of three oxygen atoms.

"Permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act (N.J.S.A. 26:2C–1 et seq.), and in particular N.J.S.A. 26:2C–9.2, and N.J.A.C. 7:27–8.

"Person" means any individual or entity and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"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 microns.

"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. This term shall include fugitive emissions, but shall not include secondary emissions.

"Preconstruction permit" means a "Permit to Construct, Install, or Alter 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.

"Reasonable further progress" or "RFP" means such annual incremental reductions in emissions to the outdoor atmosphere of an air contaminant as are required by the CAA for the purpose of ensuring attainment of the NAAQS for the respective criteria pollutant by the applicable statutory deadline.

"Resource recovery source" means any equipment used for processing solid waste (including refuse derived fuel and sewage sludge) for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. For the purpose of this subchapter energy conversion equipment must use solid waste to provide more than 50 percent of the heat input to be considered a resource recovery source.

"Respective criteria pollutant" means the corresponding criteria pollutant for each air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7. The following are the air contaminants listed in Table 3, and their respective criteria pollutants:

| Category of Air Contaminants | Respective Criteria Pollutant |
|---|---|
| TSP | TSP |
| PM–10 | PM–10 |
| $SO_2$ | $SO_2$ |
| CO | CO |
| $NO_x$ | $NO_2$ and $O_3$ |
| VOC | $O_3$ |
| Pb | Pb |

"Secondary emissions" means emissions to the outdoor atmosphere which occur as an indirect result of the construction or operation of new or altered source operations, equipment or control apparatus at a facility and which affect the air quality of the same general area as emissions occurring as a direct result of the new or altered source operation, equipment or control apparatus. This term includes, but is not limited to:

1. Emissions from marine vessels or from vehicles running upon rails or tracks where such vessels or vehicles are associated with the construction or operation of the new or altered source operation, equipment or control apparatus. The term does not, however, include emissions resulting from motor vehicle or aircraft traffic; and

2. Emissions from off-site support facilities which would be constructed or whose rate of emissions would otherwise increase as a result of the construction or operation of the new or altered source operation, equipment, or control apparatus.

"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.

"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.

"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.

"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.

"State Implementation Plan" or "SIP" means a plan for the attainment of NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Sulfur dioxide" or "$SO_2$" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

"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 a test method at N.J.A.C. 7:27B–1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another test method approved by the Department and EPA.

"Transportation control measure" or "TCM" means a measure directed toward reducing air contaminant emissions from motor vehicles. Such measures include those identified in Section 108(f)(1)(A), including the removal from use and the marketplace of pre–1980 model year light duty vehicles and pre–1980 model year light duty trucks.

"Volatile organic compound" or "VOC" shall have the meaning defined for this term at N.J.A.C. 7:27–16.1.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Definitions substantially amended.
Petition for Rulemaking: Petitioner's request granted to change definition of "significant emission increase".
See: 22 N.J.R. 66(c).
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 29 new definitions, amended 19 definitions and deleted 4 definitions.
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).

**Law Review and Journal Commentaries**

Explaining the Facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, 54 (1994).

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

**Case Notes**

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

Evidence supported finding that technology for removal of nitrogen oxide emissions satisfied "advances in art" standard. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

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

### 7:27–18.2 Facilities subject to this subchapter

(a) The requirements set forth in this subchapter pertain to certain applications, submitted to the Department pursuant to N.J.A.C. 7:27–8, for a permit to construct, install, or alter control apparatus or equipment at a facility. No person applying for a permit is subject to this subchapter unless either (b) or (c) below applies and:

1. The facility for which the application is submitted is a major facility; or

2. The emission increase of an air contaminant, proposed in the application for a permit, by itself equals or exceeds the major facility threshold level for that air contaminant set forth in the definition of the term "major facility" at N.J.A.C. 7:27–18.1.

(b) For a major facility or a facility for which an emission increase is proposed that exceeds the major facility threshold level, as provided in (a) above, a person applying for a permit 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 or alteration is proposed is located in 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. 7:27–8.4(j); 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 NJAAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27–8.4(j).

(c) For a major facility, a person applying for a permit 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 or alteration 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".

**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).

### 7:27–18.3 Standards for issuance of permits

(a) The Department shall not issue a permit to any person subject to this subchapter unless such person has demonstrated that the facility will be in compliance with all of the applicable requirements of this subchapter at the time the new or altered equipment commences operation.

(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 or altered will be controlled to the degree which represents the lowest achievable emission rate (LAER); and

2. Certify, in accordance with N.J.A.C. 7:27–8.24, 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 new or altered equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction or alteration, and operation of the new or altered 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 NJAAQS.

(e) Any person required to secure emission offsets pursuant to (c)1 or (d) above shall submit to the Department, as a part of the application for the permit, 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 permanent reduction of the emissions on or before the commencement of the operation of new or altered equipment shall be made Federally enforceable; and

4. How the emission offsets to be secured will comply with N.J.A.C. 7:27–18.5.

(f) No person required to secure emission offsets pursuant to (c)1 or (d) above shall commence operation of any new or altered equipment or control apparatus, until such person secures the required emissions offsets and the emission reductions represented by the offsets have in fact occurred.

(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. 7:27–18.5 prior to April 20, 1993, are excluded from this election. The emission offset postponement provisions in effect on or after April 20, 1993, 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 or alteration 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 or alteration for a period of 18 months or more; and

4. Pursue the new construction or alteration 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 or installation of the new or altered equipment or control apparatus.

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).

**Case Notes**

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

### 7:27–18.4 Air quality impact analysis

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

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

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

TABLE 1

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

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

*μg/m3 = micrograms per cubic meter

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

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

**Case Notes**

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

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

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

i. Contemporaneous; or

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

(b) Creditable emission reductions may result from:

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

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

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

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

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

6. Shutting down an existing source operation; or

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

(c) Any use of emission reductions to offset an emission increase shall result in a net air quality benefit. Except as provided in (e), (f) or (g) below, such net air quality benefit shall be demonstrated by showing that the ratio of emission offsets to the proposed net increase in allowable emissions equals or exceeds the minimum offset ratio, specified in Table 2 below, that is applicable based on the distance between the facility and the location of the emission reductions being proposed as emission offsets.

TABLE 2

MINIMUM OFFSET RATIO

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

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

(e) The Department may accept as showing a net air quality benefit a lower minimum offset ratio or a greater distance than that specified in Table 2 if:

1. The Department determines that reasonable further progress toward attainment of the NAAQS or NJAAQS allows a lower minimum offset ratio or greater distance; or

2. The applicant demonstrates to the Department, using an air quality simulation model, that the lower emission offset ratio or greater distance would result in a net air quality benefit.

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

1. For CO, 1.00:1.00; and

2. For VOC and $NO_x$, 1.30:1.00.

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

(h) Reductions in emissions of VOC or $NO_x$ between November 1 and March 31 inclusive, may not be used to offset increased emissions of VOC or $NO_x$ emitted between April 1 and October 31 inclusive.

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

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

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

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

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

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Section substantially amended.

Recodified from 18.4 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.

### 7:27–18.6 Emission offset postponement

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

(b) Until emission offsets become available, any person who has received a postponement described in (a) above shall demonstrate to the Department annually that emission offsets are unavailable and shall certify that demonstration in accordance with N.J.A.C. 7:27–8.24.

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

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

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

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

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

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

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

Where:

NI = The net emission increase at the facility;
IP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which were authorized by permits issued by the Department;
INP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which came from any equipment or control apparatus for which no permit was in effect at the time of the increase;
IF = Any increase in fugitive emissions of the air contaminant from the facility during the contemporaneous period;
IA = Any proposed increase in allowable emissions of the air contaminant from the new or altered equipment or control apparatus which is the subject of the permit application;
DO = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period, if emission offsets were secured for these increases from the facility or from another facility; and
DC = The sum of all creditable emission reductions at the facility during the contemporaneous period, not including any creditable emission reductions previously used as emission offsets at the facility or any other facility.

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

TABLE 3
SIGNIFICANT NET EMISSION INCREASES

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

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).

### 7:27–18.8 Banking of emission reductions

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

New Jersey Department of Environmental Protection
Air Quality Regulation Program
Bureau of New Source Review
CN 027
Trenton, New Jersey 08625–0027

(b) Any application for the banking of emission reductions shall be certified in accordance with N.J.A.C. 7:27–8.24.

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

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

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

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

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

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

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

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

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

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

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the service fees for banking set forth in the Base Fee Schedule at N.J.A.C. 7:27–8.11.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Substantially amended subsection (a) and deleted subsection (b).
Recodified from 18.7 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.

**Law Review and Journal Commentaries**

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

### 7:27–18.9 Secondary emissions

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

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

(c) The certifications required under (a) and (b) above shall be submitted with the permit application and shall be made in accordance with N.J.A.C. 7:27–8.24.

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

### 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 commencement of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of commencement 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.

### 7:27–18.11 Procedures for interstate and intrastate trading (Reserved)

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).

### 7:27–18.12 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).

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## 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).

**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, 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" shall have the meaning assigned to it at N.J.A.C. 7:27–8.1.

"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, incorpo-

rated 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 ($N_2$), oxygen ($O_2$), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide ($CO_2$).

"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.

"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.

"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.

"Lb/MMBTU" means pounds per million British Thermal Units.

"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 ($NO_2$)" 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 nonbanded 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.

"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 a "Permit to Construct, Install or Alter 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.

"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.

"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 specifications 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 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 the classes of perfluorocarbons set forth below:

Compounds

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

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)

chlorodifluoromethane (HCFC–22)

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)

parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

**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 procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27–19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:

1. The facility's potential to emit $NO_x$ is less than 25 tons per year; and

2. The facility's potential to emit $NO_x$ on any calendar day from May 1 to September 15 is less than 137 pounds per day.

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).

**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 reconstruction 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. 7:27–8.8(d). 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. 7:27–8.8(d) 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. 7:27–8.24, 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. 7:27–8.24, 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
CN 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 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.

(h) 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
CN 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 highest potential to emit $NO_x$ is located, and send the notice to the address applicable to that county under (h)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).

### 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 NOx 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

ii. TPAE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit or the peak allowable emissions of the designated set. The peak allowable emissions for each averaging unit equals the applicable $NO_x$ emission limit set forth in N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The TPAE of the designated set means the applicable $NO_x$ emission limit for each averaging unit multiplied by the heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27–19.20, the applicable $NO_x$ emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27–19.20(d) or 19.20(g)3 as applicable, and the applicable $NO_x$ emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27–19.20(g)4;

7. The method to be used to measure the actual $NO_x$ emission rate of each averaging unit;

8. The name and phone number of the individual responsible for the recordkeeping required under (g) below; and

9. Any other information which the Department requests, which is reasonably necessary to enable it to determine whether the averaging units designated by the owner or operator will comply with the requirements of this section.

(c) The Department shall approve an averaging plan only if the following requirements are satisfied:

1. Each averaging unit can satisfy the maximum allowable $NO_x$ emission rate which the owner or operator proposed under (b)4 above for that averaging unit;

2. The request for authorization satisfies all requirements of (b) above; and

3. The owner and operator of the averaging units to be included in the designated set enter into a Federally enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits or operating certificates, or both), requiring any averaging unit for which the $NO_x$ emission rate specified under (b)4 above is less than the applicable maximum allowable $NO_x$ emission rate specified at N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 to continue to emit $NO_x$ at a rate no greater than that specified under (b)4 above.

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. The actual $NO_x$ emissions from each averaging unit in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the maximum allowable $NO_x$ emission rate specified in (b)4 above for that averaging unit; and

2. The sum of the actual $NO_x$ emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable $NO_x$ emissions for all averaging units in the designated set. The allowable $NO_x$ emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable } NO_x \text{ emissions} = H \times AL$$

where:

i. H means the actual heat input to the averaging unit during the appropriate time interval specified in (f) below. The heat input is expressed in millions of BTUs, based on the higher heating value of the fuel burned; and

ii. AL means the applicable $NO_x$ emission limit set forth in N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, expressed in pounds of $NO_x$ per million BTUs. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27–19.20, the applicable $NO_x$ emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27–19.20(g)3, and the applicable $NO_x$ emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27–19.20(g)4.

(e) The owner or operator of the designated set shall calculate the actual $NO_x$ emissions of each averaging unit using emissions data from a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27–19.18. The owner or operator may comply with this requirement using emissions data derived in accordance with a monitoring plan for limited installation of continuous emissions monitoring systems approved by the Department under N.J.A.C. 7:27–19.18(e).

(f) The owner or operator shall demonstrate compliance with this section as follows:

1. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for each calendar day during the period beginning May 1 and ending September 15 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and $NO_x$ emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation; and

2. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for the 30–day period ending on September 16 of each year, and the 30–day period ending on each subsequent day through April 30 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and $NO_x$ emissions for each averaging unit over the entire 30–day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30–day periods ending in the preceding month.

(g) The owner or operator of a designated set shall maintain the records listed below for five years from the date on which each record was made. The owner or operator shall maintain such records in a permanently bound log book or an electronic method, in a format that enables the Department to readily determine whether the designated set and each averaging unit are in compliance. The owner or operator shall maintain the following records:

1. The unique identifier for each averaging unit included in the designated set as specified in (b)1 above;

2. The time period for which the data is being recorded;

3. The date upon which the data was recorded;

4. The amount, type and higher heating value of the fuel(s) consumed over the subject time period;

5. The amount of $NO_x$ (expressed in pounds or tons) emitted by each averaging unit over the subject time period;

6. Whether the amount exceeds the allowable rate for the averaging unit specified under (b)4 above;

7. The sum of the amounts listed in (g)5 above for all averaging units;

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

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

(h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (1) below. The owner or operator shall include the following information in the quarterly report:

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

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

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

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

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

4. In the report for the quarter ending September 30:

i. The compliance determination required under (f)2 above for each 30 day period ending on a calendar day from September 16 through September 30, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from July 1 through September 15; and

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

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

1. The name of the owner or operator;

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

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

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

5. Certification of the notification, in accordance with N.J.A.C. 7:27–8.24.

(j) An owner or operator of an averaging unit which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the control of the owner or operator, and for which the $NO_x$ emission rate specified under (b)4 above is less than the applicable maximum allowable $NO_x$ emission rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, or 19.10 shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written preliminary notice to the Department. This preliminary notice shall be followed up within 30 calendar days of the occurrence of the incident certifying the information in accordance with N.J.A.C. 7:27–8.24. In the written notice, the owner or operator shall identify the unit which is or was not operating, and state why it is or was not operating;

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

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

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).

### 7:27–19.7 Non-utility boilers and other indirect heat exchangers

(a) Beginning in calendar year 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 20 million but less than 50 million BTUs per hour shall:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27–19.16, each calendar year; or

2. Cause the boiler or other indirect heat exchanger to emit $NO_x$ at a rate no greater than the applicable maximum allowable $NO_x$ emission rate specified in Table 4 below, and establish compliance with this requirement by continuous emissions monitoring pursuant to N.J.A.C. 7:27–19.15(a)1.

(b) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million but less than 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit $NO_x$ at a rate no greater than the applicable maximum allowable $NO_x$ emission rate specified in Table 4 below, and comply with the applicable requirements of (d) below.

TABLE 4

Maximum Allowable $NO_x$ Emission Rates for Non-utility Boilers and other Indirect Heat Exchangers Subject to N.J.A.C. 7:27–19.7(b)
(pounds per million BTU)

| | Firing Method | | |
|---|---|---|---|
| Fuel/Boiler Type | Tangential | Face | Cyclone |
| Coal—Wet Bottom | 1.0 | 1.0 | 0.55 |
| Coal—Dry Bottom | 0.38 | 0.43 | 0.55 |
| # 2 Fuel Oil | 0.12 | 0.12 | 0.12 |
| Other Liquid Fuels | 0.3 | 0.3 | 0.3 |
| Refinery fuel gas | 0.20 | 0.20 | N/A |
| Natural Gas | 0.1 | 0.1 | 0.1 |

(c) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit $NO_x$ at a rate no greater than the applicable maximum allowable $NO_x$ emission rate specified in Table 5 below, and comply with the applicable requirements of (d) below.

TABLE 5

Maximum Allowable $NO_x$ Emission Rates for Non-utility Boilers and other Indirect Heat Exchangers Subject to N.J.A.C. 7:26–19.7(c)
(pounds per million BTU)

| | Firing Method | | |
|---|---|---|---|
| Fuel/Boiler Type | Tangential | Face | Cyclone |
| Coal—Wet Bottom | 1.0 | 1.0 | 0.60 |
| Coal—Dry Bottom | 0.38 | 0.45 | 0.55 |
| Oil and/or Gas | 0.20 | 0.28 | 0.43 |
| Refinery fuel gas | 0.20 | 0.20 | N/A |
| Gas Only | 0.20 | 0.20 | 0.43 |

(d) In addition to complying with (c) above, the owner or operator of any non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27–19.18. In addition to complying with (b) or (c) above, as applicable, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million BTUs per hour but less than 250 million BTUs per hour shall either:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27–19.16, each calendar year; or

2. Establish compliance with the applicable maximum allowable emission rate by continuous emissions monitoring pursuant to N.J.A.C. 7:27–19.15(a)1.

(e) In lieu of complying with a $NO_x$ emission limit under (b) or (c) above, the owner or operator of a non-utility boiler or other indirect heat exchanger may comply with one of the following, or with a combination of (e)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.

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).

### 7:27–19.8 Stationary internal combustion engines

(a) The owner or operator of a rich-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 1.5 grams of $NO_x$ per horsepower hour.

(b) The owner or operator of a lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 2.5 grams of $NO_x$ per horsepower hour.

(c) The owner or operator of any lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by liquid fuel, shall cause it to emit no more than 8.0 grams of $NO_x$ per horsepower hour.

(d) In lieu of complying with a $NO_x$ emission limit under (a), (b) or (c) above, the owner or operator of a stationary internal combustion engine may comply with one of the following, or with a combination of (d)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 engine, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the engine, 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 engine, 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).

### 7:27–19.9 Asphalt plants

(a) The owner or operator of a batch type or drum mix asphalt plant which has the potential to emit at least 25 tons per year of $NO_x$ shall cause it to emit $NO_x$ at a rate no greater than 200 ppmvd at seven percent $O_2$.

(b) At least annually, the owner or operator of an asphalt plant subject to (a) above shall adjust the combustion process of the aggregate dryer in accordance with N.J.A.C. 7:27–19.16.

(c) In lieu of complying with a $NO_x$ emission limit under (a) above, the owner or operator of an asphalt plant may comply with one of the following, or with a combination of (c)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.

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).

### 7:27–19.10 Glass manufacturing furnaces

(a) The owner or operator of any commercial container glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)6 shall cause the furnace to emit no more than 5.5 pounds of $NO_x$ per ton of glass removed from the furnace.

(b) The owner or operator of any specialty container glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)7 shall cause the furnace to emit no more than 11 pounds of $NO_x$ per ton of glass removed from the furnace.

(c) The owner or operator of a borosilicate recipe glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)8 shall:

1. By January 1, 1994 determine the baseline $NO_x$ emission rate from the furnace by either:

i. Conducting source emissions testing in accordance with N.J.A.C. 7:27–19.17; or

ii. Using the results of source emissions testing conducted at any time after November 15, 1990, provid-

ed that the procedures used for the source emission testing meet the requirements of N.J.A.C. 7:27–19.17;

2. By July 1, 1994, submit one of the following to the Department:

i. A written plan detailing how the $NO_x$ emission rate from the furnace will be reduced by 30 percent from the baseline emission rate measured in (c)1 above; or

ii. A demonstration that the $NO_x$ emissions from the furnace, as measured by the source emissions testing performed under (c)1 above, are at least 30 percent less than the uncontrolled $NO_x$ emissions from the furnace as of a date no earlier than November 15, 1990;

3. Before the date specified in (d) below, implement the plan detailed in (c)2i above (unless the owner or operator has submitted the demonstration described in (c)2ii above); and

4. Beginning on the date specified in (d) below, cause the furnace to emit $NO_x$ at a rate no greater than the reduced rate described in (c)2i above, or to continue to emit $NO_x$ at a rate no greater than the rate demonstrated under (c)2ii above.

(d) A glass manufacturing furnace subject to this subchapter shall comply with the requirements of (a), (b), (c)3 and (c)4 above beginning on the earlier of the following:

1. The first date after January 23, 1994 on which rebricking of the furnace is completed; or

2. May 1, 1997.

(e) Beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to this subchapter shall adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27–19.16 before May 1 of each calendar year.

(f) In lieu of complying with a $NO_x$ emission limit under (a), (b) or (c) above, the owner or operator of a 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 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 limits**

(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 equipment, 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. 7:27–8.24.

(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.

(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 amendments thereto, as are required under N.J.A.C. 7:27–8 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 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. 7:27–8.12, 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
CN 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).

### 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
CN 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. 7:27–8.24; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Any material condition of the approval is violated;

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

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

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

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, if:

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

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

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

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

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

### 7:27–19.15 Procedures and deadlines for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit as follows:

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

i. Between May 1 and September 15, over each calendar day; and

ii. From September 16 through April 30 of the following year, over the 30–day period ending on each such day; or

2. If no continuous emissions monitoring system has been or is required to be installed on the equipment or source operation, compliance with the limit shall be based upon the average of three one-hour tests, each performed over a consecutive 60–minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27–19.17.

(b) For any equipment or source operation subject to this subchapter which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation.

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

(d) An exceedance of any applicable $NO_x$ emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a), (b), or (c) above or otherwise, is a violation of this subchapter.

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).

**7:27–19.16 Adjusting combustion processes**

(a) When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall:

1. Inspect the burner, and clean or replace any components of the burner as necessary to minimize total emissions $NO_x$ and CO;

2. Inspect the flame pattern and make any adjustments to the burner necessary to optimize the flame pattern; and

3. Inspect the system controlling the air-to-fuel ratio, and ensure that it is correctly calibrated and functioning properly. For turbines with fixed air-to-fuel nozzles that cannot be adjusted, the owner or operator shall instead inspect and clean the fuel nozzles annually, recalibrating and repairing as necessary.

(b) An exceedance of an emission limit which occurs during an adjustment of the combustion process under (a)2 or 3 above, as a result of the adjustment, is not a violation of this chapter. Before the combustion adjustment begins, and after it has been completed, the maximum emission rate of any contaminant shall not exceed the maximum allowable emission rate applicable under this chapter or under an applicable certificate issued pursuant to N.J.A.C. 7:27–8.

(c) The owner or operator of the adjusted equipment or ource operation shall record each adjustment conducted under (a) above in a permanently bound log book or other format approved in writing by the Department, containing the following information for each adjustment:

1. The date of the adjustment and the times at which it began and ended;

2. The name, title and affiliation of the person who made the adjustment;

3. The $NO_x$ concentration in the effluent stream, in either ppmv or ppmvd, after each adjustment was made;

4. The CO concentration in the effluent stream, in either ppmv or ppmvd, after each adjustment was made;

5. The concentration of $O_2$ at which the CO and $NO_x$ concentrations pursuant to (c)3 and 4 were measured; and

6. Any other information which the Department or the EPA has required as a condition of approval of any permit or certificate issued for the equipment or source operation.

**7:27–19.17 Source emissions testing**

(a) Upon request by the Department or EPA, the owner or operator of any equipment or source operation subject to this subchapter shall:

1. Conduct tests to determine the emissions from such equipment or source operation to determine the nature and quantity of VOC, $NO_x$, or CO being emitted into the outdoor atmosphere;

2. Provide information concerning the location, rate, duration, concentration, and properties of the emissions of $NO_x$, CO or VOC from such equipment or source operations, and such other information as may be reasonably necessary to assess air emissions;

3. Provide information concerning the rate at which the equipment or source operation is combusting fuel during tests conducted under (a)1 above, and the maximum gross heat input value of the equipment or source operation; and

4. Provide the log prepared under (e) below, or any part thereof requested by EPA or the Department.

(b) Upon the Department's request, the owner or operator of any equipment or source operation subject to this subchapter shall provide the Department with temporary or permanent sampling facilities satisfying the requirements of N.J.A.C. 7:27B–1.4. The owner or operator shall construct such facilities in accordance with all applicable laws, ordinances and regulations, including those which regulate construction practices.

(c) During any testing conducted pursuant to this section, the equipment or source operation, and all components connected, attached to, or serving the equipment, shall be used and operated under normal routine operating conditions, under maximum capacity operating conditions, or under such other conditions within the capacity of the equipment as the Department or EPA requests.

(d) A person conducting testing pursuant to this section shall use the test method which the Department specifies, based upon the circumstances specific to the facility or to the equipment or source operation being tested. The Department shall specify one of the following methods:

1. The methods set forth at 40 CFR 60, Appendix A, method 7E; or

2. Any other method which EPA and the Department have approved in advance in writing. If EPA approves a method, and the Department determines that the method yields results at least as consistent as the appropriate method listed under (d)1 above, and which has no greater tendency to understate emissions, the Department shall approve the method.

(e) The owner or operator of the tested equipment or source operation shall record any test data collected under this section, and maintain it for at least five years after the date on which the testing was conducted.

**7:27–19.18 Continuous emissions monitoring**

(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Obtain a system approved in advance by the Department. The Department shall approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, Performance Specification Tests No. 2, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in compliance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the EPA regulations listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in compliance with the manufacturer's specifications; and

5. Continuously monitor and record $NO_x$ emissions from the equipment or source operation subject to the monitoring requirement.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment or source operations of a given type at a facility may satisfy this requirement without installing a continuous emissions monitor on every unit of such equipment or source operations at the facility, by using an alternative monitoring methodology set forth in an alternative monitoring plan, approved in advance in writing by the Department, which is as reliable for demonstrating compliance for that unit as a continuous emissions monitoring system which satisfies the criteria in (a) above would be.

(c) A person seeking approval of an alternative monitoring plan pursuant to (b) above shall submit a written application to the Department. The applicant shall include in the application all of the information required under N.J.A.C. 7:27–19.14(c)2, 3, 4 and 6. The applicant shall include in the application for the alternative monitoring plan the following information for each item of equipment or source operation for which a continuous emissions monitor is required under this subchapter and to which the alternative monitoring plan would apply:

1. The make and model of each unit of equipment or source operation;

2. The facility at which the equipment or source operation is used;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application for each unit of equipment or source operation listed in (c)1 above;

5. A statement that the applicant proposes to install or not install a continuous emissions monitor which satisfies the criteria set forth in (a) above;

6. A demonstration that the monitoring methodology set forth in the alternative monitoring plan is as reliable for demonstrating compliance as a continuous emissions monitor which satisfies the criteria listed in (a)1 above; 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 proposed plan or request 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) The Department shall approve an alternative monitoring plan only if:

1. The proposed alternative monitoring methodology is equivalent for purposes of reliably determining compliance to a continuous emissions monitor which satisfies the criteria listed in (a)1 above by the following:

i. For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, the owner or operator identifies another item of equipment or source operation at the facility which is:

(1) Of the same make and model;

(2) Is used under substantially the same conditions;

(3) Will have a continuous emissions monitoring system installed on it; and

(4) Has an emissions rate which will not differ significantly from the emission rate from the corresponding equipment or source operation on which the continuous emissions monitoring system is to be installed; or

ii. For each item of equipment or source operation which a continuous emissions monitor is not to be installed, the owner or operator proposes a monitoring protocol for that equipment or source operation that provides quality-assured, representative monitoring data that can be used to determine continuous compliance consistent with EPA's proposed Enhanced Monitoring guidance, 40 CFR 64 (Federal Register Vol. 58, No. 203, p. 54648–54699). The proposed monitoring protocol should take into consideration site specific factors such as:

i. Control system design;

ii. Operating processes at the facility;

iii. Demonstrated margin of compliance;

iv. The potential variability of emissions; and

v. Established monitoring procedures utilized at the facility to meet other regulatory requirements; and

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

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

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

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

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

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

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

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

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

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

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

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, *if*:

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

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

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

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

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

Chief, Bureau of Technical Services
Air Quality Regulation Program
Department of Environmental Protection
CN–411
Trenton, New Jersey 08625–0411

**7:27–19.19 Recordkeeping and reporting**

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

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

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

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

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

(d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September 15, for the 30–day period ending on September 16, and for each 30–day period ending on each subsequent day through April 30 of the following year:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired 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. The day or 30–day period, as applicable, for which the record is being made;

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September 15, during the 30–day period ending on September 16, and during each 30–day period ending on each subsequent day through April 30 of the following year;

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

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

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

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

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

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

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

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

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

**7:27–19.20 Fuel switching**

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

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

(c) An owner or operator seeking approval of a plan for fuel switching shall submit an application to the Department by June 22, 1995, in accordance with N.J.A.C. 7:27–19.14(a), (b) and (c). In addition to the information required under N.J.A.C. 7:27–19.14(c), the owner or operator shall include in the application the following information regarding each combustion source that is to combust a cleaner fuel seasonally:

1. Information sufficient to identify the combustion source, including a brief description, (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its location, its permit number, its company stack designation, 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 the combustion source, expressed in million BTUs per hour;

3. The type of fuel or fuels combusted in the combustion source;

4. The maximum allowable $NO_x$ emission rate for the combustion source, determined under (d) below, together with the calculations made to determine that rate;

5. The method to be used to measure the actual $NO_x$ emission rate of each combustion source;

6. A statement that the owner or operator will operate each combustion source included in the plan in accordance with the requirements of (g) below;

7. The name and business telephone number of the individual responsible for recordkeeping and reporting required under N.J.A.C. 7:27–19.19; and

8. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the source operations and items of equipment subject to fuel switching will comply with the requirements of this section.

(d) The maximum daily and annual $NO_x$ emission rate for a combustion source included in the fuel switching plan is determined as follows (except that for a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, only (d)1 through 3 below apply):

1. Establish the base year. The base year is calendar year 1990, unless the Department approves the use of calendar year 1991, 1992 or 1993 as the base year. The Department shall approve the use of 1991, 1992 or 1993 as the base year only if the owner or operator demonstrates that the alternative year is more representative of the normal operation of the combustion source;

2. For each fuel that the combustion source combusted during the base year (established under (d)1 above), determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the base year;

3. Determine the maximum allowable $NO_x$ emissions rate (in lb/MMBTU) for the combustion of each fuel, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

4. For each fuel, multiply the heat input in the base year (determined under (d)2 above) by the maximum allowable emissions rate (determined under (d)3 above);

5. Add all of the amounts determined under (d)4 above;

6. Divide the total determined under (d)5 above by the sum of all of the heat inputs that the combustion source derived from the combustion of each fuel (determined under (d)2 above). The result is the maximum allowable $NO_x$ emission rate, expressed in lb/MMBTU, provided, however, that the maximum allowable $NO_x$ emission rate shall not be greater than the rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year;

7. The calculations under (d)4, 5 and 6 above can be expressed in the following equation:

$$M = \frac{(HI_1 L_1) + (HI_2 \times L_2) + \ldots + (HI_N \times L_N)}{(HI_1 + HI_2 + \ldots + HI_N)}$$

where:

i. M is the maximum allowable $NO_x$ emission rate, in lb/MMBTU;

ii. $HI_1$ is the heat input that the combustion source derived from the combustion of Fuel 1 during the base year, expressed in MMBTU;

iii. $L_1$ is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 1, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

iv. $HI_2$ is the heat input that the combustion source derived from the combustion of Fuel 2 during the base year, expressed in MMBTU;

v. $L_2$ is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 2, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

vi. N is number of fuels combusted during the base year;

vii. $HI_N$ is the heat input that the combustion source derived from the combustion of Fuel N during the base year, expressed in MMBTU; and

viii. $L_N$ is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel N, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable.

(e) The Department shall approve a plan for fuel switching only if the application satisfies all requirements of (c) above and N.J.A.C. 7:27–19.14. A plan for fuel switching shall be deemed to meet these requirements if it provides for a combustion source to attain compliance with the emission limits under (g)3, 4 and 5 below partly through combustion of cleaner fuel and partly through the use of other $NO_x$ control measures, and satisfies all other requirements of (c) above and N.J.A.C. 7:27–19.14.

(f) Any owner or operator seeking to comply with this subchapter by fuel switching in accordance with this section shall obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27–19.14 before May 1, 1995, and maintain that approval in effect.

(g) Beginning in calendar year 1995, the owner or operator shall operate each combustion source included in the plan in compliance with the following:

1. All conditions of the Department's written approval of the fuel switching plan shall be met;

2. From May 1 through September 15 of each year, the combustion source shall combust the cleaner fuel exclusively, or derive a higher percentage of its total heat input from cleaner fuel than the percentage it derived from May 1 through September 15 of the base year;

3. During each calendar day from May 1 through September 15 of each year, the combustion source shall emit $NO_x$ at an average rate no higher than the maximum allowable $NO_x$ emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, the maximum allowable $NO_x$ emission rate shall be 1.0 lb/MMBTU;

4. During the 30–day period ending on September 16 of each year, and each 30–day period ending on each subsequent day thereafter until April 30 of the following year, the combustion source shall emit $NO_x$ at an average rate no higher than the rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit $NO_x$ at a rate no higher than 1.5 lb/MMBTU; and

5. During each calendar year, the combustion source shall emit $NO_x$ at an average rate no higher than the maximum $NO_x$ emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit $NO_x$ at a rate no higher than 1.5 lb/MMBTU. Compliance with this requirement shall be determined based on averaging over each calendar year.

(h) The owner or operator shall determine the $NO_x$ emissions from each combustion source included in an approved fuel switching plan in accordance with N.J.A.C. 7:27–19.15(a).

(i) The owner or operator shall demonstrate compliance with this section as follows:

1. Each calendar day from May 1 through September 15 of each year, the owner or operator shall determine whether each combustion source included in the plan is in compliance with the applicable daily $NO_x$ emission limit under (g)3 above. The owner or operator shall perform the calculations necessary to verify compliance and make a record of them within three working days after the date that is the subject of the calculation;

2. For the 30–day period ending on September 16, and for each 30–day period ending on each subsequent day until April 30 of the following year, the owner and operator shall determine whether each combustion source included in the plan is in compliance with the applicable 30–day $NO_x$ emission limit under (g)4 above; and

3. By January 15 of each year, the owner or operator shall determine whether the total actual $NO_x$ emissions from each combustion source included in the plan (determined under (k) below) complied with the limit on annual $NO_x$ emissions (determined under (j) below) during the preceding calendar year.

(j) The limit on annual $NO_x$ emissions is calculated as follows:

1. For each fuel that the combustion source combusted during the year, determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the year;

2. Add all of the amounts determined under (j)1 above;

3. Multiply the sum determined under (j)2 above by the maximum $NO_x$ emissions rate determined under (d) above. The result is the limit on annual $NO_x$ emissions, expressed in pounds;

4. The calculations under (j)2 and 3 above can be expressed in the following equation:

$$L = M \times (AHI_1 + AHI_2 + \ldots + AHI_N)$$

where:

i. L is the limit on annual $NO_x$ emissions, in pounds;

ii. M is the maximum allowable emissions rate determined under (d) above;

iii. $AHI_1$ is the heat input that the combustion source derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iv. $AHI_2$ is the heat input that the combustion source derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. N is number of fuels combusted during the year; and

vi. $AHI_N$ is the heat input that the combustion source derived from the combustion of Fuel N during the year, expressed in MMBTU.

(k) The actual annual $NO_x$ emissions from the combustion source are calculated as follows:

1. Determine the heat input (expressed in MMBTU) that the combustion source actually derived from each fuel it combusted during the year;

2. Determine the average rate (in lb/MMBTU) at which the combustion source actually emitted $NO_x$ when combusting each fuel listed in 1 above, in accordance with N.J.A.C. 7:27–19.15(a);

3. For each fuel combusted during the year, multiply the heat input (determined under (k)1 above) by the average rate of $NO_x$ emissions (determined under (k)2 above);

4. Add all of the amounts determined under (k)3 above;

5. The calculations under (k)3 and 4 above can be expressed in the following equation:

$$AE = (AHI_1 \times AR_1) + (AHI_2 \times AR_2) + \ldots + (AHI_N \times AR_N)$$

where:

i. AE is the actual $NO_x$ emissions during the year from the combustion source, expressed in pounds;

ii. $AHI_1$ is the heat input that the combustion source actually derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iii. $AR_1$ is the average rate at which the combustion source actually emitted $NO_x$ when combusting Fuel 1 during the year, expressed in lb/MMBTU;

iv. $AHI_2$ is the heat input that the combustion source actually derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. $AR_2$ is the average rate at which the combustion source actually emitted $NO_x$ when combusting Fuel 2 during the year, expressed in lb/MMBTU;

vi. N is number of fuels that the combustion source actually combusted;

vii. $AHI_N$ is the heat input that the combustion source actually derived from the combustion of Fuel N during the year, expressed in MMBTU; and

viii. $AR_N$ is the average rate at which the combustion source actually emitted $NO_x$ when combusting Fuel N during the year, expressed in lb/MMBTU.

(*l*) For each combustion source included in the approved plan, the owner or operator shall comply with the record-keeping and reporting requirements of N.J.A.C. 7:27–19.19.

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).

**7:27–19.21 Phased compliance—repowering**

(a) The owner or operator of a combustion source included in a repowering 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 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 a repowering plan shall submit to the Department an application for approval of the repowering plan pursuant to N.J.A.C. 7:27–19.14, including a repowering plan 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 is subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the repowering 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 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 if installing a new combustion source;

ii. Obtaining all necessary permits and certificates if installing a new combustion source;

iii. Awarding contracts to repower the source including contracts for the purchase of heat or power from a new combustion source or placing orders for the purchase of component parts and/or equipment necessary to repower the source;

iv. Initiating construction and/or installation of the replacement unit if installing a new combustion source; and

v. Completing the repowering.

3. Specific procedures and schedules for implementing interim measures for control of $NO_x$ emissions for the combustion source during the interim period;

4. A list of all $NO_x$ control technologies available for use with the combustion source;

5. An analysis of the technological feasibility of installing and operating each $NO_x$ emission control technology identified in 4 above for the interim period;

6. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

7. 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 combustion source is repowered cannot be used after repowering, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

8. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)6 above and the estimated emission reductions under (c)7 above;

9. The $NO_x$ control measures that the owner or operator proposes to employ during the interim period;

10. The proposed interim $NO_x$ emission limit with which the source will comply during the interim period;

11. The method to be used to measure the actual $NO_x$ emission rate of the combustion source;

12. 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;

13. The location of the proposed replacement unit; and

14. 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 repowering plan will comply with the requirements of this section.

(d) The Department shall approve a repowering 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 without limitation the requirement that the proposed repowering plan consider all control technologies available for the control of $NO_x$ emissions from each type of combustion source included in the plan during the interim period;

2. For each combustion source included in the plan, the replacement unit will incorporate advances in the art of air pollution control for the kind and amount of air contaminant emitted;

3. The repowering will improve the efficiency with which each combustion source included in the plan combusts fuel and/or generates power;

4. The completion date listed in (c)2v above is no later than May 1, 1999;

5. For any control technologies described in (c)4 above that the owner or operator does not propose to use on the combustion source, 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 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 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).

6. For each combustion source included in the plan, the interim emission limit proposed under (c)10 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)5iii and iv above;

7. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)10 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

8. 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 a repowering plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved repowering 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. Repower 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 repowering 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 repowering is completed;

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 repowering plan for completion of a milestone listed in (c)2 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 repowered source, as required in the preconstruction permit for the replacement equipment;

9. If the plan includes a utility boiler, cause the repowered utility boiler to emit $NO_x$ at a rate no higher than the applicable maximum allowable $NO_x$ listed in Table 6 below (provided however, that the $NO_x$ emission limits in Table 6 shall not be construed to limit the owner or operator's obligations under (e)8 above); and

10. If repowering of any combustion source included in the plan is not completed by May 1, 1999, cease operating the combustion source to be repowered by May 1, 1999.

TABLE 6

Maximum Allowable $NO_x$ Emission Rates for Utility Boilers Which Have Been Repowered
(pounds per million BTU)

| | Firing Method | | |
|---|---|---|---|
| Fuel/Boiler Type | Tangential | Face | Cyclone |
| Coal—Wet Bottom | 0.2 | 0.2 | 0.2 |
| Coal—Dry Bottom | 0.2 | 0.2 | N/A |
| Oil and/or Gas | 0.1 | 0.1 | 0.1 |
| Gas Only | 0.1 | 0.1 | 0.1 |

(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 repowering 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 repowering plan (and agreement to repower) 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, it shall be Federally enforceable. Plans listed under (g) below shall be Federally enforceable upon the issuance of the Department's approval.

(g) A repowering plan (and agreement to repower) 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, using natural gas as the "cleaner fuel"; or

2. The use of selective non-catalytic reduction from May 1 through September 15 of each year.

(h) Before the Department approves a repowering 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)2 above by specified dates;

ii. Ceasing to operate a combustion source if repowering is not completed by a date specified for that source;

iii. Implementing interim measures to control $NO_x$ emissions from each combustion source during the interim period;

iv. 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;

v. Using a specified method to measure the actual $NO_x$ emission rate of the combustion source; and

vi. 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 repowering plan if the owner or operator materially fails to complete the repowering or any other milestone by the date specified in the 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).
Administrative correction added (f)3.
See: 27 N.J.R. 3157(a).

**7:27–19.22 Phased compliance—impracticability of full compliance by May 31, 1995**

(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 a phased compliance plan shall submit to the Department an application for approval of the phased compliance plan pursuant to N.J.A.C. 7:27–19.14. 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, and whether the owner or operator advised the Department before the application due date that a late application would be submitted. 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 is subject in the absence of an approved plan. In the application, the owner or operator shall include the following information in addition to the information required under N.J.A.C. 7:27–19.14:

1. The phased compliance plan described in (c) below;

2. A description of the steps that the owner or operator has taken to cause each combustion source included in the plan to attain compliance with the applicable $NO_x$ emission limit under this subchapter; and

3. For each combustion source included in the plan, a detailed explanation of the reasons why the owner or operator believes that compliance with the applicable $NO_x$ emission limit by May 31, 1995 is impracticable.

(c) The owner or operator shall include the following information in the phased compliance 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 proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submit applications for all necessary permits and certificates;

ii. Obtain all necessary permits and certificates;

iii. Award contracts for the implementation of control measures or place orders for the purchase of component parts, equipment and/or control apparatus necessary to attain compliance with the applicable $NO_x$ emission limit under this subchapter;

iv. Initiate construction and/or installation of the component parts, equipment and/or control apparatus necessary to attain compliance with the applicable $NO_x$ emission limit under this subchapter; and

v. Attain full compliance with the applicable $NO_x$ emission limit under this subchapter;

3. The $NO_x$ control measures or technology that the owner or operator proposes to employ during the interim period; and

4. 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 phased compliance plan will comply with the requirements of this section.

(d) The Department shall approve a phased compliance plan only if the following requirements are satisfied with respect to each combustion source included in the plan:

1. The application satisfies all the requirements of N.J.A.C. 7:27–19.14 and (b) above;

2. The information submitted under (b)1ii above establishes that the owner or operator has made a good faith effort to cause the combustion source to attain compliance with the applicable $NO_x$ emission limit under this subchapter;

3. The information submitted under (b)1iii above, evaluated in light of the criteria set forth in (e) below, establishes that it is impracticable for the combustion source to attain compliance with the applicable $NO_x$ emission limit under this subchapter by May 31, 1995; and

4. The interim period is less than 12 months.

(e) In determining whether compliance with the applicable $NO_x$ emission limit under this subchapter by May 31, 1995 is impracticable, the Department shall apply the following criteria:

1. The amount of time needed to obtain all permits and certificates necessary to attain compliance, following the submission of an administratively complete application;

2. The amount of time needed to obtain all component parts and/or equipment necessary to obtain compliance, following the placement of orders for such parts and/or equipment. The estimate of time may reflect shortages in the supply of such parts and/or equipment;

3. The amount of time needed to complete construction and/or installation of the component parts and/or equipment necessary to attain compliance, following the initiation of construction and/or installation; and

4. The nature, extent and probability of any harm to public safety or welfare that could result from accelerating construction and/or installation in order to attain compliance by May 31, 1995. For example, if it were probable that an electric generating utility could not cause all of its electric generating units to attain compliance by that date without subjecting a substantial number of customers to voltage reductions and/or interruptions in electric service, that fact would be relevant in establishing impracticability.

(f) On the date that the approved compliance plan provides for a combustion source to attain full compliance with the applicable $NO_x$ emission limit under this subchapter, the Department's approval of the plan shall expire. Upon expiration of the Department's approval, the combustion source shall be subject to all applicable requirements of this subchapter, including the $NO_x$ emission limits that would have applied to the source in the absence of an approved plan.

(g) An owner or operator who has obtained the Department's approval of a phased compliance plan shall:

1. Operate all combustion sources included in the plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet all milestones in the approved phased compliance plan;

3. Within 15 days after the date of each milestone in the approved phased compliance plan, advise the Department in writing whether the owner or operator has met the milestone; and

4. During the interim period, control $NO_x$ emissions from the combustion source as follows:

i. By adjusting the combustion process in accordance with N.J.A.C. 7:27–19.16, if the source's air-to-fuel ratio can be adjusted in a manner that reduces $NO_x$ emissions; or

ii. By seasonally combusting natural gas in accordance with N.J.A.C. 7:27–19.20, implementing selective non-catalytic reduction, or implementing other measures that the Department determines are appropriate in light of the costs involved and the total quantity of $NO_x$ reductions that will be achieved until the full compliance date listed in (c)2v above.

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).

**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; and

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.

(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).

**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 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 electric generating utility shall notify the Department by way of a report confirming the occurrence of the MEG alert. The electric generating utility shall certify the report in accordance with N.J.A.C. 7:27–8.24. In the report, the electric generating utility 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 owned or operated by the utility;

2. The date and time at which the electric generating utility received notice from the load dispatcher, directing the utility 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 utility began to operate the electric generating unit at emergency capacity;

4. The date and time at which the electric generating utility received notice from the load dispatcher, advising the utility 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 electric generating utility 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 electric generating utility has provided or will provide compensatory reductions in $NO_x$ emissions as required under (c) below.

(c) The electric generating utility shall submit to the Department documentation of actual $NO_x$ emission reductions in compensation for the excess $NO_x$ emissions during the MEG alert, in accordance with the following requirements:

1. Within the period beginning three years before the MEG alert begins and ending one year after the MEG alert ends, the electric generating utility shall obtain (or shall have obtained) reductions in $NO_x$ emissions from a combustion source through measures (which may include pollution prevention measures) above and beyond those required under any Federal or State law, rule, regulation, permit or order.

2. The ratio of the amount of the $NO_x$ emission reductions under (c)1 above to the amount of the excess $NO_x$ emissions calculated under (b)6 above shall be 1.3:1; and

3. Emissions reductions from any shutdown or curtailment of operations of a combustion source shall not be credited toward meeting this requirement.

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).

**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 15. 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 source 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 owned or operated by the utility;

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).

### 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).

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## SUBCHAPTER 20. (RESERVED)

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## SUBCHAPTER 21. EMISSION STATEMENTS

**Source and Effective Date**

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

**Law Review and Journal Commentaries**

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

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda, 132 N.J.L.J. No. 8, S10 (1992).

### 7:27–21.1 Definitions

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

"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified in this subchapter.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

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

"AP–42" means the most recently published edition and any subsequent edition of the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3228.

"Capture efficiency" means the amount of an air contaminant collected by a control apparatus serving the source operation, expressed as a percentage of the total amount of the air contaminant emitted by the source operation.

"Carbon monoxide" or "CO" means an air contaminant which is a colorless, odorless 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.

"CFR" means the United States Code of Federal Regulations. This document may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3228.

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

"Control efficiency" means the amount of an air contaminant prevented from being discharged into the outdoor atmosphere by a control apparatus, expressed as a percentage of the total amount of the air contaminant collected by the control apparatus.

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

"Delivery vessel" means any mobile storage tank including, but not limited to, a marine vessel, tank truck or railroad tank car.

"Distillates of air" means the following chemical species: helium (He), nitrogen ($N_2$), oxygen ($O_2$), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide ($CO_2$).

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification

Plant name and related point identifiers

Address

City

County

AQCR (Air Quality Control Region)

MSA, PMSA, CMSA (Metropolitan Statistical Areas)

State

Zip Code

Ownership and point of contact information

Locational Identifiers:

Latitude & Longitude or UTM Coordinates

SIC Code (Standard Industrial Classification)

Emission point, device or operation description, information

SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP–42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

"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.

"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.

"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 NSPS promulgated at 40 CFR 60, or promulgated under 42 U.S.C. 7411;

2. Any NESHAP promulgated at 40 CFR 61, 40 CFR 63, or promulgated under 42 U.S.C. 7412;

3. Any standard or other requirement provided for in a State Implementation Plan that has been approved by EPA or promulgated through rulemaking by EPA;

4. Any permit issued pursuant to the requirements established at 40 CFR 52.21; 40 CFR 51, Subpart I; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq., or this chapter, except to the extent that the permit or order includes any prohibition established solely pursuant to N.J.A.C. 7:27–8.8(f) or N.J.A.C. 7:27–5.

"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.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, sold for use or used in a motor vehicle or motor vehicle engine, 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.

"Lead" or "Pb" means elemental lead or any compound containing lead measured as elemental lead.

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

"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.

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

"NSPS" means Standard 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, and in particular 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 a permit issued by the Department pursuant to N.J.A.C. 7:27–22 to authorize the use of one or more source operations from which air contaminants may be emitted.

"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.

"Pb" see "lead."

"Peak carbon monoxide season" means December 1 through the last day of February, inclusive.

"Peak ozone season" means June 1 through August 31, inclusive.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C–9.2.

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

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

"Potential to emit" means 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 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. Fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

"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.

"Process intermediate" means any material used in a process which is neither a raw material nor a product.

"Process level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Product" means the output from a source operation, equipment, or control apparatus. Such outputs may include mixtures, composites, compounds and elemental substances.

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

"Reid vapor pressure" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measurement" or "Method 2—Herzog Semi–Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

"Responsible official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

   i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

   ii. The delegation of authority to such representative is approved in advance by the Assistant Director for Air and Environmental Quality Enforcement, Division of Facility Wide Enforcement, Department of Environmental Protection;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unity of the agency (for example, a Regional Administrator of EPA); or

4. For affected sources under Title IV of the Clean Air Act:

   i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

   ii. The designated representative for any other purposes under 40 CFR part 70.

"SCC code" means the eight-position Source Classification Code that provides a detailed analysis of a process. See EPA document "AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants" EPA 450/4–90–003, which may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487–4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, (202) 783–3228.

"Seasonal throughput" means the percent of the total yearly operating activity which occurs during each of the following periods:

1. December 1 through February 28/29 (for example, December 1, 1992, through February 28/29, 1993);

2. March 1 through May 31;

3. June 1 through August 31; and

4. September 1 through November 30.

"SIC code" means the Standard Industrial Classification code 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.

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

"Source operation" means any process or any identifiable part thereof emitting or having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"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.

"Sulfur dioxide," or "$SO_2$," means an air contaminant which is a colorless gas at standard conditions having a molecular composition of one sulfur atom and two oxygen atoms.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C–9.2, which is valid for a period not to exceed 90 days.

"Ton" means a unit of weight equal to 2,000 pounds (0.907 metric tons or 907.20 kilograms).

"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.

"USC" means the United States Code.

"UTM coordinates" means Universal Transverse Mercator geographic coordinates, specified by the UTM zone, horizontal coordinate and vertical coordinate.

"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 which have been approved in writing by the Department. 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

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–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)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched or linear completely methylated siloxanes

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.

Amended by R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).
Administrative Correction.
See: 27 N.J.R. 1406(a).

### 7:27–21.2 Applicability

(a) Any owner or operator of a facility is subject to the requirements of this subchapter for any calendar year in which the facility emits or has the potential to emit, directly or indirectly to the outdoor atmosphere, any air contaminant listed at Table 1 at a rate greater than or equal to the applicable threshold. Emission statements are required, starting for the 1992 calendar year, for any air pollutant exceeding the thresholds in Table 1.

TABLE 1
AIR CONTAMINANT REPORTING THRESHOLDS

| Air Contaminant | Threshold in Tons per Year |
|---|---|
| VOC | 10 |
| $NO_x$ | 25 |
| CO | 100 |
| $SO_2$ | 100 |
| TSP | 100 |
| $PM_{10}$ | 100 |
| Pb | 5 |

(b) With respect to the provisions of (a) above, emissions associated with any delivery vessel loading operation shall be included in determining a facility's potential to emit. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27–16.2 pursuant to N.J.A.C. 7:27–16.2(m), also shall be included in a facility's potential to emit. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from a facility's potential to emit.

(c) Notwithstanding (a) above, no facility is required, pursuant to this subchapter, to submit an emission statement for $SO_2$, TSP, $PM_{10}$, or Pb with respect to emissions occurring in or before 1992.

(d) Any facility which is solely a retail gasoline dispensing facility is exempt from the requirements of this subchapter.

### 7:27–21.3 General provisions

(a) Except as provided in N.J.A.C. 7:27–21.2(b), each owner or operator of a facility shall submit to the Department an emission statement pertaining to the emissions released directly or indirectly into the outdoor atmosphere during any calendar year in which the facility is subject to this subchapter pursuant to N.J.A.C. 7:27–21.2. Such emission statement shall include information only for the air contaminant(s) for which the facility's potential to emit equals or exceeds the applicable threshold set forth at N.J.A.C. 7:27–21.2, Table 1; however, if the facility's potential to emit equals or exceeds the reporting threshold for VOC, $NO_x$, or CO, the facility must report information for VOC, $NO_x$ and CO.

(b) The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter shall subject the owner and 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. All owners and operators are jointly and severally liable for such civil and criminal penalties.

(c) Compliance with the emission statement requirements of this subchapter does not relieve any owner or operator of a facility from the responsibility to comply with any other applicable reporting requirements set forth in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

(d) Submittal of an emission statement to the Department, or the Department's acceptance thereof, does not constitute approval by the Department of unauthorized releases of air contaminants into the outdoor atmosphere or of any exceedance of any applicable emission limit established in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

(e) Acceptance or receipt of an emission statement by the Department does not constitute the Department's acceptance of the truth, accuracy or completeness of the emission statement. The Department's failure to act on the information contained in the emission statement at the time of its receipt does not bar the Department from any future action based on that information.

(f) With respect to the provisions of N.J.A.C. 7:27–21.5 below, emissions associated with any delivery vessel loading operation shall be included in a facility's emission statement submittal. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27–16.2 pursuant to N.J.A.C. 7:27–16.2(m) also

shall be included in a facility's emission statement submittal. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from the requirements of N.J.A.C. 7:27–21.5(c) through (i).

Case Notes

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

**7:27–21.4 Procedure for submitting an emission statement**

(a) Emission statements shall be submitted to the Department on or before:

1. May 31, 1993 for a facility applicable to this subchapter due to the emissions of 1992; and

2. For each following year, April 15 of each calendar year following any calendar year in which the facility is subject to this subchapter.

(b) Emission statements shall be submitted to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
CN 418
Trenton, NJ 08625–0418
ATTN: Emission Statements

(c) Emission statements shall be submitted on a form obtainable from the Department at the address listed in (b) above.

(d) Any person submitting an emission statement shall transmit the report to the Department on paper. With the written prior approval of the Department, an emission statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an emission statement on paper. Notwithstanding this subsection, certification in accordance with the provisions of N.J.A.C. 7:27–8.24 as required in this subchapter shall accompany any transmission of an emission statement to the Department.

(e) Any person who submits information to the Department may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27–1.6. Emissions information, as defined at N.J.A.C. 7:27–21.1, is not confidential. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27–1.6 through 1.30 inclusive.

Case Notes

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

**7:27–21.5 Required contents of an emission statement**

(a) Any person who submits an emission statement to the Department shall include, as an integral part of the report:

1. Certification, in accordance with the requirements of N.J.A.C. 7:27–21.7; and

2. The date of the signature of certification, and the telephone number of the certifying individual.

(b) Emission statements shall include the following facility identification information:

1. The full name of the facility;

2. The parent company name, if applicable;

3. The physical location of the facility (that is, the street address);

4. The mailing address of the facility;

5. The SIC code(s) of the facility;

6. The UTM coordinates or latitude and longitude of the facility;

7. The calendar year of the emissions;

8. Number of employees;

9. Plant contact; and

10. Plant contact phone number.

(c) Emission statements shall include the following operating data for each source operation which has the potential to emit VOC or $NO_x$ or both:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(d) Emission statements shall include the following information at the process level for $NO_x$ (expressed as molecular weight of $NO_2$) and VOC:

1. Emissions information:

i. The actual emissions of VOC and $NO_x$ in tons per year;

ii. The average actual emissions of VOC and $NO_x$ in pounds per day of operation during the peak ozone season;

iii. The code for the method used to quantify the actual emissions (see (*l*) and Table 2 below); and

iv. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary, secondary and tertiary control apparatus identification codes (see Table 3 below);

ii. Actual capture efficiencies achieved by the capture device. If the actual capture efficiency is unavailable, the capture device design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate; and

ii. The average process rate per day of operation during the peak ozone season.

(e) Emission statements shall include the following operating data for each source operation which has the potential to emit CO:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(f) Emission statements shall include the following information at the process level for CO:

1. Emissions information:

i. The actual emissions of CO in tons per year;

ii. The average actual emissions of CO in pounds per day of operation during the peak ozone season;

iii. The average actual emissions of CO in pounds per day of operation during the peak carbon monoxide season;

iv. The code for the method used to quantify the actual emissions (see (*l*) and Table 2 below); and

v. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary, secondary and tertiary control apparatus identification codes (see Table 3);

ii. Actual capture efficiencies achieved by the capture device. If the actual capture efficiency is unavailable, the capture device design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate;

ii. The average process rate per day of operation during the peak ozone season; and

iii. The average process rate per day of operation during the peak carbon monoxide season.

(g) Emission statements shall include the following operating data for each source operation which has the potential to emit $SO_2$, TSP, $PM_{10}$ and/or Pb:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(h) Emission statements shall include the following information at the process level for $SO_2$, TSP, $PM_{10}$ and/or Pb:

1. Emissions information:

i. The actual emissions in tons per year;

ii. The code for the method used to quantify the actual emissions (see (*l*) and Table 2 below); and

iii. Any emission factor used to determine actual emissions;

2. Control apparatus information:

i. Current primary, secondary and tertiary control apparatus identification codes (see Table 3);

ii. Actual capture efficiencies achieved by the capture device. If the actual capture efficiency is unavailable, the capture device design efficiency shall be used; and

iii. Actual control efficiencies achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used; and

3. Process rate data:

i. The annual process rate; and

ii. The average process rate per day of operation during the peak ozone season.

(i) The following information may replace the more detailed information required at (c) through (h) above only for any source operation which has the potential to emit less than 0.1 ton per year of Pb or less than one ton per year of any other air contaminant required to be reported pursuant to this subchapter:

1. The following information shall be supplied:

i. A description of each source operation; and

ii. Actual emissions of each air contaminant emitted from each source operation shall be estimated at 0.1

ton per year for Pb and one ton per year for any other air contaminant; and

iii. Code 10 from Table 2 below; or

2. The following information shall be supplied:

i. A description of each source operation;

ii. Estimated actual emission in tons per year;

iii. The code for the method used to quantify the actual emissions (see (1) and Table 2 below); and

2. For CO, VOC and NO

3. For CO emissions, in average pounds per day of operation during the peak carbon monoxide season.

(k) Emission statements shall also include any other information required by any Federal regulation or emission statement guidance published by EPA. Any additional information required by this provision will be published in a New Jersey Register notice and will be clearly indicated on the emission statement forms for the applicable year.

(*l*) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in (d)1, (f)1, (h)1 or (i)2 above shall be the method from Table 2 which is reasonably available and which the departing entity believes best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the Federal Clean Air Act has been issued by the Department for the facility. In such case, the method used shall be the method specified in the operating permit.

TABLE 2

CODES FOR METHODS OF QUANTIFYING ACTUAL EMISSIONS

| Method | Code |
|---|---|
| Emissions based on Continuous Emission Monitoring | 1 |
| Emissions based on source test or other measurements | 2 |
| Emissions based on material balance using engineering knowledge of the process | 3 |
| Emissions based on AP–42 | 4 |
| Emissions based on best engineering judgment | 5 |
| Emissions based on a state or local agency's emission factor | 6 |
| New construction not yet operational; emissions are zero | 7 |
| Source closed, operation ceased | 8 |
| Emissions to be computer calculated by the Department or EPA based on standard emission factor (SCC emission factor file) | 9† |
| Emissions to be computer calculated by the Department or EPA based on other approved emission factor | 10† |
| Emissions estimated at one ton per year (0.1 ton per year for Pb) | 11‡ |

† Codes 8 and 9 may only be used for selected source operations with prior notice or approval from the Department

‡ Code 10 may only be used for source operations which meet the criteria to report pursuant to (i)1 above

TABLE 3

CONTROL APPARATUS IDENTIFICATION CODES

| Control Apparatus | Code |
|---|---|
| No control apparatus | 000 |
| Wet scrubber high efficiency | 001 |
| Wet scrubber medium efficiency | 002 |
| Wet scrubber low efficiency | 003 |
| Gravity collector high efficiency | 004 |
| Gravity collector medium efficiency | 005 |
| Gravity collector low efficiency | 006 |
| Centrifugal collector high efficiency | 007 |
| Centrifugal collector medium efficiency | 008 |
| Centrifugal collector low efficiency | 009 |
| Electrostatic precipitator high efficiency | 010 |
| Electrostatic precipitator medium efficiency | 011 |
| Electrostatic precipitator low efficiency | 012 |
| Gas scrubber—general | 013 |
| Mist eliminator high velocity | 014 |
| Mist eliminator low velocity | 015 |
| Fabric filter high temperature | 016 |
| Fabric filter medium temperature | 017 |
| Fabric filter low temperature | 018 |
| Catalytic afterburner | 019 |
| Catalytic afterburner-heat exchange | 020 |
| Direct flame afterburner | 021 |
| Direct flame afterburner-heat exchange | 022 |
| Flaring | 023 |
| Modified furnace or burner | 024 |
| Staged combustion | 025 |
| Flue gas recirculation | 026 |
| Reduced combustion-air preheat | 027 |
| Steam or water injection | 028 |
| Low excess-air firing | 029 |
| Fuel-low nitrogen content | 030 |
| Air injection | 031 |
| Ammonia injection | 032 |
| Control of % $O_2$ in combustion air | 033 |
| Wellman–Lord/sodium sulfate scrubber | 034 |
| Magnesium oxide scrubbing | 035 |
| Dual alkali scrubbing | 036 |
| Citrate process scrubbing | 037 |
| Ammonia scrubbing | 038 |
| Catalytic oxidation—flue gas desulfuring | 039 |
| Alkalized alumina | 040 |
| Dry limestone injection | 041 |
| Wet limestone injection | 042 |
| Sulfuric acid plant—contact process | 043 |
| Sulfuric acid plant—double contact process | 044 |
| Sulfur plant | 045 |
| Process change | 046 |
| Vapor recovery system | 047 |
| Activated carbon adsorption | 048 |
| Liquid filtration system | 049 |
| Packed-gas absorption | 050 |
| Tray-type gas absorption column | 051 |
| Spray Tower | 052 |
| Venturi scrubber | 053 |
| Process enclosed | 054 |
| Impingement plate scrubber | 055 |
| Dynamic separator (dry) | 056 |
| Dynamic separator (wet) | 057 |
| Mat or panel filter | 058 |
| Metal fabric filter screen | 059 |
| Process gas recovery | 060 |
| Dust suppressor—water spray | 061 |
| Dust suppressor—chemical stabilization/wet agents | 062 |

| Control Apparatus | Code |
|---|---|
| Gravel bed filter | 063 |
| Annular ring filter | 064 |
| Catalytic reduction | 065 |
| Molecular sieve | 066 |
| Wet lime slurry scrubbing | 067 |
| Alkaline fly ash scrubbing | 068 |
| Sodium carbonate scrubbing | 069 |
| Sodium-alkaline scrubbing | 070 |
| Fluid bed dry scrubber | 071 |
| Tube and shell condenser | 072 |
| Refrigerated condenser | 073 |
| Barometric condenser | 074 |
| Single cyclone | 075 |
| Multiple cyclone without fly ash reinjection | 076 |
| Baffle | 078 |
| Multiple cyclone with fly ash injection | 079 |
| Chemical oxidation | 080 |
| Chemical reduction | 081 |
| Ozonation | 082 |
| Chemical neutralization | 083 |
| Activated clay adsorption | 084 |
| Wet cyclonic separator | 085 |
| Water curtain | 086 |
| Nitrogen blanket | 087 |
| Conservation vent | 088 |
| Bottom filling | 089 |
| Conversion to variable vapor space tank | 090 |
| Conversion to floating roof tank | 091 |
| Conversion to pressurized tank | 092 |
| Submerged filling | 093 |
| Underground tank | 094 |
| White paint | 095 |
| Vapor lock balance recovery system | 096 |
| Installation of secondary seal for external floating roof tank | 097 |
| Moving bed dry scrubber | 098 |
| Miscellaneous control devices | 099 |
| High efficiency particulate air filter | 101 |

### 7:27–21.6 Recordkeeping requirements

(a) Each owner or operator of a facility subject to this subchapter shall maintain the following records on the operating premises for a period of five years from the due date of each emission statement:

1. A copy of the emission statement submitted to the Department; and

2. Records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) Upon the request of the Department, the owner or operator of the facility shall make these records available at the facility for inspection by any representative of the Department during normal business hours.

### 7:27–21.7 Certification of information

(a) Any person who submits an emission statement to the Department shall include, as an integral part of the emission statement, 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 emission statement. The certificate shall state:

"I certify under penalty of law that I believe the information provided in this emission statement is true, accurate and complete. For those portions of the above information 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."

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27–21.1, which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this emission statement and all attached documents and, based on my inquiry of those officials immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I certify that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe any estimates are the result of good faith application of sound professional judgment, using techniques, factors, or standards 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."

### 7:27–21.8 Request for extensions

(a) A responsible official who is unable to submit an emission statement pursuant to this subchapter by the due date may request an extension to submit an emission statement.

(b) A request for an extension shall include the following information:

1. The Air Pollution Control Plant Identification Number of the facility (if one exists);

2. The plant contact and telephone number;

3. The name and telephone number of the responsible official;

4. The reasons and justifications for the inability to submit the emission statement by the due date and the extreme hardship that would be prevented by submitting the emission statement after the due date; and

5. The date by which the responsible official commits to submit the emission statement which can be no later than one month from the due date.

(c) A request for an extension shall be submitted, in writing, to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
CN 418
Trenton, NJ 08625–0418
ATTN: Emission Statements—Extension Request

(d) The Department recommends that an initial request for an extension be submitted by April 1. The Department will not consider an initial request for an extension if the Department receives it after April 15.

(e) A responsible official may request one additional request for an extension as long as the Department receives it before the initial extension has expired.

(f) Within 10 working days after receipt of a request for extension, the Department will respond with its determination as to whether the request for extension is denied or granted and the date by which the emission statement is due. The Department will grant an extension if the extension is necessary to prevent extreme hardship.

(g) A request for an extension shall be automatically granted if all of the following conditions are met:

1. The Department receives a request for an extension from the responsible official by the date set forth in (d) above for an initial request or in (e) above for an additional request;

2. The date that the responsible official commits to submit the emission statement is no later than one month after the due date as set forth in (b)5 above; and

3. The Department does not respond within 10 working days of receipt of the request.

New Rule, R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).

**7:27–21.9 Notification of non-applicability**

(a) If conditions at a facility have changed in a manner such that a facility which was required to submit an emission statement in the previous year is not required to submit an emission statement in the current year, the responsible official shall notify the Department in accordance with this section. The responsible official shall submit such notification of non-applicability to the Department by February 1 of the first year in which the facility is not required to submit an emission statement. For example, if in calendar year 1994 the facility does not meet the applicability requirements for submitting an emission statement in 1995, the responsible official must submit the notification of non-applicability by February 1, 1995.

(b) A notification of non-applicability must include the following information:

1. The plant ID of the facility;

2. The plant contact and telephone number;

3. The name and telephone number of the responsible official;

4. The reasons and justifications as to why the responsible official believes that the facility is not required to submit an emission statement pursuant to N.J.A.C. 7:27–21.2 including, but not limited to, the following:

i. The maximum annual quantity of air contaminants allowed to be emitted from all sources pursuant to each preconstruction permit held by the facility at any time during the year;

ii. The maximum annual quantity of air contaminants that can be emitted from all source operations at their maximum design capacity that are not subject to a preconstruction permit;

iii. The maximum annual quantity of all air contaminants that can be emitted as fugitive emissions; and

iv. Whether the facility is required to obtain or has voluntarily applied for an operating permit pursuant to N.J.A.C. 7:27–22; and

5. A statement as to whether the owner or operator anticipates that conditions at the facility may change in a manner that the facility may in future years be required to submit an emission statement pursuant to N.J.A.C. 7:27–21.2.

(c) A notification of non-applicability shall be submitted to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
CN 418
Trenton, NJ 08625–0418
ATTN: Emission Statements—Notification of Non-applicability

(d) By April 1, the Department shall respond with its determination as to whether the Department concurs with the responsible official's statement that the facility is not required to submit an emission statement. Failure of the Department to meet this deadline does not relieve the facility's responsibility to comply with all applicable provisions of this subchapter nor does it constitute the Department's concurrence with the responsible official's statement that the facility is not required to submit an emission statement.

(e) If a notification of non-applicability is received by the Department after February 1, the Department is under no obligation to respond to the notification and may take enforcement action pursuant to N.J.A.C. 7:27A–3.10 if the facility does not submit an emission statement pursuant to this subchapter and the Department determines that the facility was required to do so.

New Rule, R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).

### 7:27–21.10 Severability

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

Recodified from 7:27–21.8 by R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).

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## SUBCHAPTER 22. OPERATING PERMITS

**Authority**

N.J.S.A. 13:1B–3, 13:1D–9, and 26:2C–1 et seq.

**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).

**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 and other relevant factors, to predict the concentration of an air contaminant in the ambient air.

"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 $SO_2$ 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.

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

"BACT" or "best available control technology" has the meaning set forth for this term in the PSD regulations at 40 CFR 52.21.

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

"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.

"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 NJAAQS 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.

"Emission statement year" means the reporting period required by the emission statement rules at N.J.A.C. 7:27–21. The reporting period runs from December 1 through November 30. Each emission statement year is designated according to the calendar year in which 11 of the 12 months of the reporting period fall. For example, the period from December 1, 1998 through November 30, 1999 is emission statement year 1999, for which an emission statement submission is due in April 2000.

"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. Copying and duplication activities for internal use and for support of office activities at the facility;

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;

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; or

7. Equipment which is used for the sole purpose of woodworking by sanding, drilling, cutting or planing, unpainted wood or wood products, and which vents into a room.

"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 60, or promulgated under 42 USC 7411;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61, 40 CFR 63, or promulgated under 42 USC 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 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 70; 40 CFR 71; 40 CFR 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.

"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, or prior to the subsequent applicable revisions to rules and regulations codified at N.J.A.C. 7:27–8 that occurred March 5, 1973, June 1, 1976, April 5, 1985, and October 31, 1994, and no construction, reconstruction or modification of the equipment or control apparatus has occurred since.

"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 a source operation which is one of the types of source operations set forth in paragraphs 1, 2, 5, 6, 7, 8, 9, 11, 14, 16, 17, or 18, in the definition of "significant source operation," and which is smaller than, or has a lower production rather than, specified in the applicability levels for significant source operations.

"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.

"Lowest achievable emission rate" or "LAER" has the meaning assigned to this term at N.J.A.C. 7:27–18.1.

"Lead" or "Pb" means elemental lead or any compound containing lead measured as elemental lead.

"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:

| Air Contaminant | Major Facility 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 HAP | 10 tons per year |
| All HAPs, collectively | 25 tons per year |
| 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 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.

"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 63 and 61.

"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 a Standard 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 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. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

"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 permitting process, set forth at 40 CFR 52.21, which applies to new or modified major emitting facilities located in attainment areas. The EPA has delegated the administration of the PSD program in New Jersey to the Department.

"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 a process unit, or the replacement 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 control apparatus; and

2. $80,000, in 1995 dollars, adjusted by the 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.

"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:

1. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

2. All unheated open top surface cleaners having a top opening of greater than six square feet (0.56 square meters);

3. All heated open top surface cleaners;

4. All conveyorized surface cleaners;

5. Equipment, in addition to that set forth in paragraph 2, 3, and 4 above, used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of any air contaminant occur from a tank or vessel, the capacity of which is in excess of 100 gallons;

6. Equipment, used in a process, other than as set forth in paragraphs 1, 2, 3, 4, and 5 above, from which direct or indirect emissions of any air contaminant occur and in which the combined weight of all raw materials, excluding air and water introduced into any one source operation is in excess of 50 pounds in any one hour;

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 VOC 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 having a heat input rate of 1,000,000 BTU per hour or greater to the burning chamber;

12. Any equipment used for the burning of noncommercial fuel, crude oil or process by-products in any form;

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 which has the potential to emit any TXS at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

17. Any equipment required to have air pollution control apparatus pursuant to any applicable provision of N.J.A.C. 7:27–16;

18. Newspaper printing equipment from which direct or indirect emissions of air contaminants occur and in which the quantity of coating material used in any source operation is equal to or greater than one half gallon in any one hour.

"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 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 emissions limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. 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 excludes the compounds and the classes of perfluorocarbons set forth below from the definition of VOC:

Compounds:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

trifluoromethane (FC–23)

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

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

chloropentafluoroethane (CFC–115)

chlorodifluoromethane (CFC–22)

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)

parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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 set forth 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).

**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 completes rulemaking 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).

**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, or which authorizes emissions trading, pursuant to N.J.A.C. 7:27–22.28. Each operating scenario or any emissions trading for which an applicant seeks approval shall be proposed in the application for the initial operating permit, seven-day-notice change, a minor modification, a significant modification, or a renewal, as appropriate. No change to an operating permit is required for any change in operation that is authorized by the operating permit pursuant to any approved operating scenario or emissions trading.

(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
CN 027
Trenton, New Jersey 08625–0027
Attention: Operating permits
Telephone: (609) 633–8248

(u) If an additional applicable requirement becomes applicable to the facility, or an applicable requirement which was previously applicable to the facility changes, the permittee shall act to have the new applicable requirement or the change incorporated into the operating permit, in accordance with the procedures set forth in N.J.A.C. 7:27–22.25.

(v) The Department may terminate an operating permit upon request of the permittee if the Department determines that the facility is no longer subject to operating permit requirements pursuant to N.J.A.C. 7:27–22.2.

(w) Except as provided in the permit shield provisions at N.J.A.C. 7:27–22.17, an operating permit does not relieve any person from the obligation to comply with all applicable provisions of this chapter, including preconstruction requirements under this subchapter, to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(x) Notwithstanding the other provisions of this section, if any of the acid deposition control provisions of N.J.A.C. 7:27–22.29 conflicts with any other provision of the subchapter, the requirements of N.J.A.C. 7:27–22.29 shall prevail for an affected Title IV facility.

(y) The owner or operator of any facility which contains equipment or control apparatus that is subject to preconstruction permit and operating certificate requirements under N.J.A.C. 7:27–8 shall continue to obtain, maintain, and renew all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27–8 until an operating permit is issued for the facility.

(z) For a facility with an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq., the facility-wide permit shall constitute the operating permit under N.J.A.C. 7:27–22 if:

1. The air pollution control portion of the facility-wide permit meets the requirements of N.J.A.C. 7:27–22 and EPA approves the Department's request to allow a facility-wide permit to constitute a facility's operating permit; and

2. The facility-wide permit was issued after the date of such EPA approval.

(aa) The provisions of N.J.A.C. 7:27–22.20, 22.22, 22.23, and 22.24, concerning modifications to operating permits, shall not apply to repair or maintenance of a significant source operation.

(bb) This subchapter shall not preclude the owner or operator of a facility from voluntarily treating an insignificant source operation as a significant source operation for the purposes of obtaining or modifying an operating permit. Treating an insignificant source operation in such a manner shall subject it to all of the requirements in this subchapter which apply to a significant source operation.

(cc) The Department shall deny an application for an initial operating permit, minor modification, significant modification, or renewal, if approval of the application would authorize a violation of any applicable requirement, or a contravention of other criteria established by the Department by rule or pursuant to technical manuals published with public input, to protect human health and welfare and the environment, unless the Department simultaneously approves a compliance schedule to achieve compliance.

(dd) The Department will deny an application for a minor modification or significant modification of an operating permit that constitutes construction, reconstruction, or modification unless the applicant shows, to the satisfaction of the Department, that the significant source operation covered by the proposed permit provisions incorporates advances in the art of air pollution control pursuant to N.J.A.C. 7:27–22.35, Advances in the art of air pollution control.

(ee) No person shall carry out, or allow to be carried out, any change designated in this subchapter as a minor modification or significant modification to any source operation unless the changed source operation meets the requirements of N.J.A.C. 7:27–22.35, Advances in the Art of Air Pollution Control.

(ff) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(gg) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, if the applicant fails to pay any monies due and owing to the Department, and those monies are related to the fees specified in N.J.A.C. 7:27–22.31.

(hh) The Department will deny an operating permit application, or modification to an operating permit, that includes a paint spray operation that is a significant source operation, unless at a minimum the operation is served by particulate control apparatus.

(ii) No person may construct, install, or change any source operation for which a minor modification or significant modification of the operating permit is required pursuant to this subchapter other than as described in N.J.A.C. 7:27–22.23 and 22.24, respectively. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the permit.

(jj) The Department may establish conditions of approval of any operating permit, administrative amendment, minor modification, or significant modification. In the event that a discrepancy exists between the information in an application and the conditions of its approval, the conditions of approval shall prevail.

(kk) The Department may withdraw its approval of an operating permit, minor modification, or significant modification if the person to whom the Department has issued the permit or modification:

1. Does not begin construction or installation within one year from the date of approval of the permit or modification; or

2. Discontinues construction or installation for a period of more than one year.

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

(mm) Any information which the Department needs to take into consideration in making a decision on an application shall be submitted to the Department for incorporation into the application prior to the Department making a decision on the application. If the Department needs any information beyond what is submitted in the application, the Department shall request such additional information from the applicant.

(nn) An affirmative defense to liability shall be available pursuant to the conditions of this section for penalties or other sanctions for violating certain provisions or conditions of an operating permit. The affirmative defense shall be available for a violation of a provision or condition of the operating permit only if:

1. The violation occurred as a result of an equipment malfunction, an equipment start-up or shutdown, or during the performance of necessary equipment maintenance; and

2. The affirmative defense is asserted and established as required by N.J.S.A. 26:2C–19.1 through 19.5 and any implementing rules.

(oo) Any person who has submitted to the Department an administratively complete application for an initial operating permit or for a modification to an operating permit may, during the Department's review of the application, place the equipment or control apparatus covered by the application on the footings or foundation where it is intended to be used, provided that:

1. The person notifies the Department, via certified mail, of the intent to so place the equipment or control apparatus, at least seven days prior to commencing the placement; and

2. Such placement is not prohibited by Federal law.

(pp) If a person constructs or places equipment or control apparatus in accordance with (oo) above, and the Department determines that the equipment or control apparatus or its placement is inconsistent with applicable State law or rules, the person shall be subject to civil or criminal penalties for the inconsistent action only if the construction or placement results in air contaminant emissions. Any costs incurred by the person in connection with the construction or placement may not be used as grounds for an appeal of the Department's decision on the permit application.

(qq) No permittee shall test or operate air pollution control apparatus or process equipment that has been installed at risk, pursuant to (oo) above, until a minor modification or significant modification of the operating permit has been submitted and a preconstruction approval has been issued by the Department.

(rr) For a person seeking approval of an environmental improvement pilot test, as defined at N.J.A.C. 7:27–22.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for preconstruction approval within 30 days of 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) 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
CN 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).

### 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 predefined standards and information exchange protocols to be contained in the Department's Technical Manual on Electronic Transfer of Information, which will be available from the Department at the address listed at N.J.A.C. 7:27–22.3(t). This technical manual will specify a data dictionary and a file format, and any ANSI X12 compliant conventions required by the Department.

(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).

### 7:27–22.5 Application procedures for initial operating permits

(a) The application procedures in this section apply to all applications submitted to the Department for initial operating permits.

(b) The owner or operator of a facility subject to this subchapter shall submit a timely and administratively complete application for an initial operating permit. To be considered timely, an administratively complete application for an initial operating permit shall be submitted to the Department no later than the applicable deadline established in this section. An applicant for an initial operating permit is encouraged to submit the application to the Department no less than 90 days prior to the applicable application deadline set forth in this section. Within 30 days of receipt of an application, the Department will issue a letter detailing any deficiencies in respect to administrative completeness in the application, thereby providing the applicant the opportunity to correct the deficiencies prior to the complete application deadline listed at (c) below. An application shall be deemed administratively complete if the Department does not notify the applicant, within 60 days of its receipt of the application, that additional information is required.

(c) For an existing facility subject to this subchapter, the applicable deadline for submitting an administratively complete application for an initial operating permit is the earliest deadline below which applies to the facility:

1. For affected Title IV facilities with source operations subject to the acid deposition control program Phase II requirements for initial operating permits, the applicable deadline specified at N.J.A.C. 7:27–22.29(b);

2. For facilities with any source operation designated by EPA pursuant to 40 CFR 70.3(a)(5) as requiring an operating permit, within 12 months after the effective date of EPA's designation, or by a later deadline specified by EPA in its designation; and

3. For all other facilities, by the deadline in the table below as determined by the facility's primary SIC code, as reported to the New Jersey Secretary of State:

| SIC Code | Complete Application deadline | Suggested Early Submittal |
|---|---|---|
| 2000 through 2086 | 8/15/95 | 5/15/95 |
| 2088 through 2199 | 8/15/95 | 5/15/95 |
| 4900 through 4910 | 8/15/95 | 5/15/95 |
| 4911[1] | 8/15/95 | 5/15/95 |
| 4912 through 4939 | 8/15/95 | 5/15/95 |

| SIC Code | Complete Application deadline | Suggested Early Submittal |
|---|---|---|
| 6400 through 6999 | 8/15/95 | 5/15/95 |
| 8300 through 9999 | 8/15/95 | 5/15/95 |
| 4911[2] | 11/15/95 | 8/15/95 |
| 4200 through 4399 | 11/15/95 | 8/15/95 |
| 5900 through 6399 | 11/15/95 | 8/15/95 |
| 7000 through 7199 | 11/15/95 | 8/15/95 |
| 7500 through 8299 | 11/15/95 | 8/15/95 |
| 0000 through 1299 | 5/15/96 | 2/15/96 |
| 1400 through 1999 | 5/15/96 | 2/15/96 |
| 3200 through 3599 | 5/15/96 | 2/15/96 |
| 4000 through 4199 | 5/15/96 | 2/15/96 |
| 4400 through 4499 | 5/15/96 | 2/15/96 |
| 4800 through 4899 | 5/15/96 | 2/15/96 |
| 5300 through 5499 | 5/15/96 | 2/15/96 |
| 1300 through 1399 | 11/15/96 | 8/15/96 |
| 2700 through 2799 | 11/15/96 | 8/15/96 |
| 2900 through 2999 | 11/15/96 | 8/15/96 |
| 3600 through 3999 | 11/15/96 | 8/15/96 |
| 4500 through 4799 | 11/15/96 | 8/15/96 |
| 7300 through 7499 | 11/15/96 | 8/15/96 |
| 2200 through 2599 | 5/15/97 | 2/15/97 |
| 3000 through 3199 | 5/15/97 | 2/15/97 |
| 5000 through 5299 | 5/15/97 | 2/15/97 |
| 5500 through 5899 | 5/15/97 | 2/15/97 |
| 7200 through 7299 | 5/15/97 | 2/15/97 |
| 2087 | 11/15/97 | 8/15/97 |
| 2600 through 2699 | 11/15/97 | 8/15/97 |
| 2835 through 2899 | 11/15/97 | 8/15/97 |
| 2800 through 2834 | 5/15/98 | 2/15/98 |
| 4940 through 4999 | 5/15/98 | 2/15/98 |

(1) If the facility is located in Atlantic, Burlington, Gloucester, Hudson, Hunterdon, Salem, Union, Camden, Monmouth, Sussex, or Warren County.
(2) If the facility is located in Bergen, Cape May, Cumberland, Essex, Mercer, Middlesex, Ocean, Morris, Passaic, or Somerset County.

(d)-(e) (Reserved)

(f) For a new facility subject to this subchapter, the deadline for submitting an initial operating permit application is the later of the following:

1. The applicable deadline set forth at (c) above; or

2. Twelve months after the new facility commences operation.

(g) A new facility subject to this subchapter may either obtain preconstruction permit and operating certificate approval pursuant to N.J.A.C. 7:27–8 or such facility may elect to obtain both preconstruction and operating permit approval by the submittal and approval of an operating permit application pursuant to this subchapter prior to construction of the facility. In either situation, the facility must submit an application for an operating permit pursuant to (f) above.

(h) For an existing facility that becomes subject to this subchapter through a change to the facility or to any source operation, or to the use thereof, the applicable deadline for submitting the application for an initial operating permit is the later of the following:

1. The applicable deadline set forth at (c) above; or

2. Twelve months after the new or changed facility commences operation.

(i) For a facility that becomes subject to this subchapter through a change to any applicable requirement, or creation of a new applicable requirement, the applicable deadline for submitting the application for an initial operating permit, if no deadline is specified in the new requirement, is the later of the following:

1. The applicable deadline set forth at (c) above; or

2. Twelve months after the effective date of the new applicable requirement.

(j) If a facility has over 100 source operations, the owner or operator may elect to divide the facility into two or more components, and submit a separate application for an initial operating permit for each component. Such applications shall be submitted on a schedule proposed by the owner or operator and approved by the Department, except that the application for the final component shall be submitted no later than the application deadline established for the facility pursuant to (c) above.

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).

**7:27–22.6 Operating permit application contents**

(a) To be administratively complete, an application for an initial operating permit shall include all information required by this section and all application fees required pursuant to N.J.A.C. 7:27–22.31. The required information shall be provided on and with forms obtained from the Department, which will direct the applicant to set the information forth in a format such that the Department can incorporate the information readily into the draft operating permit.

(b) The required contents of an application for authorization to operate under a general operating permit, an administrative amendment, a minor modification, a significant modification, or a renewal of an operating permit are not set forth in this section, but rather are set forth at N.J.A.C. 7:27–22.14, 22.20, 22.23, 22.24, and 22.30, respectively. Requirements for submitting a notice of a seven-day-notice change are set forth at N.J.A.C. 7:27–22.22.

(c) Any source operation at a facility subject to this subchapter shall be included in the facility's application for an operating permit, except for exempt activities as defined at N.J.A.C. 7:27–22.1.

(d) All source operations which are not exempt as defined at N.J.A.C. 7:27–22.1 and are significant or insignificant source operations shall be included in a facility's application for an operating permit. Source operations shall be classified as either significant or insignificant, as defined at N.J.A.C. 7:27–22.1. Different types and amounts of information are required for significant and insignificant source operations in the application for an operating permit.

(e) In an application, an owner or operator may claim a source operation to be an insignificant source operation as defined at N.J.A.C. 7:27–22.1.

(f) An application for an initial operating permit shall include all information required by the application form, the instructions accompanying the application form, and the applicable completeness checklist(s) for the application. This shall include, but is not limited to, the following:

1. Information pertaining to the identification of the applicant, including:

i. The company name and mailing address, division name and the plant name and address (if different);

ii. The name and address of each owner, each owner's agent (if any), and each operator of the facility;

iii. The name and telephone number of the on-site facility manager and of any additional on-site contact person; and

iv. The name and address of any responsible official, as defined at N.J.A.C. 7:27–1.4;

2. For the source operations proposed to be classified as insignificant source operations pursuant to (d) or (e) above, the following information:

i. A list of the types of insignificant source operations found at the facility; and

ii. An estimate of the total emissions from all insignificant source operations, listed separately for each criteria pollutant; and

iii. A listing of applicable requirements which generally apply to insignificant source operations at the facility;

3. For each significant source operation at the facility which will be subject to the operating permit, information including but not limited to the following:

i. A brief description of the source operation;

ii. The identification number of any preconstruction permit issued by the Department for the source operation;

iii. Identification of any stack or chimney which serves the source operation and specification of:

(1) Any stack designation assigned by the Department for the stack or chimney; and

(2) Any stack designation assigned by the facility for the stack or chimney; and

iv. Identification of the production process in which the source operation is used;

4. A general description of each of the facility's production processes and products, identified by SIC Code, in sufficient detail to determine which applicable requirements apply to the facility. This description shall set forth for each production process:

i. The significant source operations associated with the production process pursuant to (f)3iv above;

ii. The product(s) or intermediate product(s), together with any associated co-products, produced by the production process; and

iii. A general description of the operating scenario used to produce the product(s) or intermediate product(s), and a description of any operating scenarios which may be used to produce the same product(s) or intermediate product(s). Such description of an operating scenario shall be prepared pursuant to N.J.A.C. 7:27–22.27;

5. The following information pertaining to emissions at the facility:

i. For each significant source operation, each air contaminant that it may emit and its potential to emit that air contaminant, including any non-captured emissions, in tons per year, and any other units, for example pounds per hour, required to verify compliance with any applicable requirement. If the source operation's potential to emit a given air contaminant does not exceed the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, the air contaminant need not be included;

ii. For the facility, each air contaminant, if any, emitted as fugitive emissions and not associated with any source operation; the cause of that air contaminant being emitted as fugitive emissions; and a reasonable estimate of the facility's fugitive emissions of that air contaminant, in tons per year, and any other units required to verify compliance with any applicable requirement. However, if the facility's potential to emit a given air contaminant as fugitive emissions does not exceed the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, the information required by this paragraph need not be given in respect to that air contaminant;

iii. For the facility as a whole, the facility's aggregate potential to emit, in tons per year, each air contaminant that may be emitted within the facility, including the emissions determined pursuant to (a)5i and ii above;

iv. Identification of each stack or chimney at the facility and, for each stack or chimney, designation of which significant source operations are vented through the stack and chimney;

v. For each source operation, a listing of any fuels used and the maximum quantity of each commercial fuel or non-commercial fuel to be used annually;

vi. For each production process, the raw materials to be used, and either the maximum rate of production

and the maximum annual hours of operation, or the maximum batch size and the maximum number of batches per year;

vii. For each source operation, a description of the control apparatus, if any, serving the source operation; if the control apparatus is not used for all operating scenarios, a description of the circumstances under which it is not used;

viii. For the facility, identification and description of all monitoring devices or activities proposed to verify compliance with applicable requirements;

ix. Any additional emissions information or emissions-related information needed to verify whether any potentially applicable requirement applies to the facility or to any source operation at the facility;

x. Any other information required by an applicable requirement;

xi. Any calculations upon which information in (f)5i through x is based; and

xii. For each criteria pollutant, any emission reductions which have been banked, pursuant to N.J.A.C. 7:27–18.8, and an indication as to whether they are held by the owner or operator of the facility or by another person;

6. For each significant source operation at the facility or, if applicable, for each group of source operations or for the facility as a whole, information pertaining to air pollution control requirements as follows:

i. Description of each applicable requirement;

ii. Citation to the State or Federal rule, regulation, permit or other authority, which establishes each applicable requirement upon which the proposed permit conditions are based;

iii. For each applicable requirement, each provision of the applicable requirement which sets forth a maximum allowable emissions limitation, a limitation on operation affecting emissions, or a work practice standard affecting emissions applicable to the facility;

iv. The proposed permit conditions which incorporate and reflect each provision provided pursuant to (f)6ii above;

v. Identification of any difference in form between a proposed permit condition and the applicable requirement upon which the proposed permit condition is based; and

vi. If the owner or operator seeks to have, pursuant to N.J.A.C. 7:27–22.3(m), the operating permit include an alternative emission limit for any significant source operation or any group of significant source operations, a demonstration that:

(1) The proposed alternative emissions limit is allowed in the SIP;

(2) The proposed alternative emissions limit is equivalent to, or more stringent than, that contained in an applicable requirement; and

(3) The proposed alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures;

7. An explanation of any proposed exemption from an otherwise applicable provision of an applicable requirement, including a citation of the legal authority authorizing the exemption;

8. A proposed compliance plan meeting the requirements of N.J.A.C. 7:27–22.9;

9. A listing of any preconstruction permits issued by the Department pursuant to N.J.A.C. 7:27–8 prior to the date of application and any applications for preconstruction permits not yet finally acted upon;

10. A statement that a copy of the application, or a summary of the application with any relevant portion of the permit application as determined by EPA under 40 CFR 70.8, has been sent to EPA; and

11. Certification of the application pursuant to N.J.A.C. 7:27–1.39; and

12. Any other information that is reasonably necessary to enable the Department to determine whether the applicant has satisfied the requirements of this subchapter for the issuance of a permit.

(g) Any applicant who seeks an operating permit authorizing the operation of a production process in one or more alternative modes shall propose these modes as operating scenarios, in the application for an operating permit or significant modification, pursuant to N.J.A.C. 7:27–22.27. If the Department approves one or more operating scenarios as part of an operating permit, the production process may be operated in any of the modes specified in the approved operating permit, and may be changed between those modes, without modification of the operating permit or notification to the Department.

(h) Any applicant who seeks an operating permit authorizing emissions trading pursuant to N.J.A.C. 7:27–22.28 shall propose the emissions trading in an application for an initial operating permit. An applicant may propose emissions trading for more than one group of source operations at the facility.

(i) Any applicant who seeks an operating permit including different emissions limits that apply to a source operation during startup, shutdown, or necessary equipment maintenance, shall propose such emissions limits in the application for the operating permit or significant modification. An applicant may propose such startup, shutdown, or maintenance emissions limits for more than one source operation in the application provided that these limits do not conflict with the SIP or any state or Federal regulation.

(j) An applicant may elect to propose, in the application for an initial operating permit, the methods to be used to determine the actual emissions of each significant source operation at the facility, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27–21.

(k) (Reserved)

(*l*) Any applicant who, pursuant to N.J.A.C. 7:27–22.14, seeks to include as a component of the operating permit for the facility, one or more general operating permits shall specify the general operating permit(s) proposed to be included, identify each source operation to which the general operating permit would apply, and meet all other general operating permit application requirements set forth at N.J.A.C. 7:27–22.14. The conditions of such general operating permit, if applicable, will be incorporated into the operating permit for the facility.

(m) If an applicant seeks acknowledgement in the operating permit that any specific provision of a potentially applicable requirement does not in fact apply to the facility, the applicant may cite such a specific provision, explain why it does not apply, and request that the provision be specifically identified in the operating permit as being inapplicable to the facility.

(n) If an applicant for an initial operating permit seeks to have a compliance extension for a MACT or GACT standard incorporated into the operating permit, the applicant shall demonstrate in the application, pursuant to N.J.A.C. 7:27–22.34, that sufficient early reductions of HAP emissions have been achieved.

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).

### 7:27–22.7 Application shield

(a) An application shield provides that the owner or operator of a facility subject to this subchapter will not be subject to penalties for operating the facility without an operating permit during the time the application shield is in effect.

(b) An application shield is in effect for a facility if:

1. The owner or operator of the facility has submitted to the Department an application for an initial operating permit or for a renewal, in accordance with N.J.A.C. 7:27–22.5 or 22.30, whichever applies; and

2. The application is administratively complete by the applicable deadline for submittal of the application, as set forth at N.J.A.C. 7:27–22.5 or 22.30, whichever applies.

(c) The protection afforded by the application shield begins the date the application is due to the Department.

(d) An application which is administratively incomplete at the time of the application deadline applicable to the facility, but which is later completed, is ineligible for coverage by an application shield. Similarly, an administratively complete application which is submitted after the applicable deadline for its submittal is ineligible for an application shield. As set forth at N.J.A.C. 7:27–22.4(e), applicants are advised to submit the application 90 days prior to the application deadline to ensure that any deficiencies may be corrected by the deadline.

(e) An application shield does not relieve an applicant of the responsibility for compliance with all other requirements of this chapter, or any permit, order, or other legal document issued pursuant thereto.

(f) An application shield terminates automatically upon either of the following:

1. The Department's final action on the application for the initial operating permit or for the renewal; or

2. Failure of the applicant to submit additional information requested by the Department within the deadline established by the Department pursuant to N.J.A.C. 7:27–22.10, Completeness review.

### 7:27–22.8 Air quality simulation modeling and risk assessment

(a) An applicant for an initial operating permit for a new major facility, or for a minor modification or significant modification to an existing operating permit, shall conduct air quality simulation modeling in accordance with (c) below if:

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

2. The application is subject to the air quality impact analysis requirements set forth at N.J.A.C. 7:27–18.4;

3. The application includes relocation of a temporary facility to a site not specifically authorized in the operating permit, and air quality simulation modeling or risk assessment was required for the location(s) authorized in the operating permit; or

4. The application includes source operations which, based on screening procedures published in technical manuals by the Department, have the potential to cause any of the adverse air quality effects listed in (b)1 through 4 below.

(b) The air quality simulation modeling shall be used to determine whether the potential to emit proposed in the permit application may cause:

1. A violation of any New Jersey Ambient Air Quality Standard (NJAAQS) or National Ambient Air Quality Standard (NAAQS);

2. An exceedance of a Prevention of Significant Deterioration (PSD) increment as defined in 40 CFR 52;

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

4. Air pollution as defined in P.L. 1954 c.212 (N.J.S.A. 26:2C–1 et seq.).

(c) The air quality simulation modeling shall be conducted using procedures published in technical manuals by the Department and in accordance with a protocol approved in advance by the Department. The protocol shall document how the air quality simulation modeling is to be conducted and how the results of the analysis are to be presented to the Department. The protocol shall be prepared in accordance with the Department's technical manuals on Air Quality Modeling (technical manual 1002) and Risk Assessment (technical manual 1003), available at the following address:

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

(d) An applicant not subject to (a) above may voluntarily perform air quality simulation modeling and risk assessment for existing source operations and submit these to the Department, to be made available as part of the public review process for applications for initial operating permits or renewals.

1. Performance of voluntary modeling and risk assessment should be considered by the applicant if the facility's potential to emit any hazardous air pollutant exceeds the thresholds contained in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

2. Guidance on conducting air quality simulation modeling and risk assessment is available in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

3. An applicant for an initial operating permit or the renewal of an operating permit may voluntarily prepare a risk assessment based on ambient air quality monitoring of actual levels of hazardous air pollutants, in lieu of an assessment based on air quality simulation modeling. Guidance on conducting air monitoring is available at the following address:

New Jersey Department of Environmental Protection
Office of Air Quality Management
CN 418
Trenton, New Jersey 08625–0418
Attention: Air Monitoring
Telephone: (609) 292–0138

(e) Any new or revised technical manuals referenced in this section will be subject to public input prior to finalization.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

### 7:27–22.9 Compliance plans

(a) Pursuant to N.J.A.C. 7:27–22.6(f)8, an applicant for an initial operating permit shall submit a proposed compliance plan, drafted in accordance with this section and certified in accordance with N.J.A.C. 7:27–1.39, as part of an application for the initial operating permit.

(b) An applicant for a renewal, significant modification, or minor modification shall draft proposed revisions to any portion of the facility's compliance plan affected by any change to the facility made since the operating permit was issued. The proposed revisions shall be drafted in accordance with this section and submitted as part of the application for the renewal, significant modification, or minor modification.

(c) A proposed compliance plan shall include the following:

1. A description of the current compliance status of the facility with respect to all applicable requirements;

2. For each applicable requirement, a statement setting forth the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, reporting or test methods, and any other information necessary to verify compliance with or enforce any proposed permit condition or any applicable requirement. This statement shall include, but is not limited to:

i. All monitoring, analysis procedures, recordkeeping, reporting, or test methods required by any applicable requirement, including any applicable monitoring procedures or methods required under the Federal "enhanced monitoring program" set forth at 40 CFR Part 64;

ii. Where the applicable requirement does not require monitoring, recordkeeping, reporting, or test methods sufficient to demonstrate the facility's compliance with the operating permit, proposed monitoring, recordkeeping, reporting, or test methods which:

(1) Are sufficient to demonstrate compliance;

(2) Use terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(3) Can be used for enforcement of the applicable requirement;

iii. Proposed requirements concerning the use, maintenance, and installation of monitoring equipment and concerning monitoring, recordkeeping, reporting, or test methods. This shall include, but is not limited to, schedules for monitoring, recordkeeping, reporting, and source emissions testing; specification of parameters to be measured, recorded, and reported; and formats for recording and reporting; and

iv. Where the permittee proposes to use monitoring of operating parameters to demonstrate compliance (as opposed to direct emissions testing or monitoring), a proposed enforceable limit or range of operation for the parameter monitored, and how this parameter correlates to the emission limit.

3. For each applicable requirement with which the facility is in compliance at the time the application for an operating permit is submitted to the Department, a statement that the facility will continue to comply with the applicable requirement;

4. For each promulgated applicable requirement which will become applicable to the facility after the application for an operating permit is submitted to the Department, but prior to the anticipated end of the term of the operating permit:

i. The date the provision will become applicable to the facility or to any part thereof;

ii. A statement that the facility will comply with the applicable requirement on a timely basis; and

iii. A detailed compliance schedule, if such schedule is expressly required by the applicable requirement;

5. For each applicable requirement for which the facility is not in compliance at the time the application for an operating permit is submitted to the Department:

i. A narrative description of how the facility will achieve compliance with the applicable provision(s) of the applicable requirement;

ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and

iii. A schedule for submittal of progress reports, certified in accordance with N.J.A.C. 7:27–1.39, every six months, or more frequently if specified by the underlying applicable requirement, order, consent decree;

6. The following statements:

i. The permittee will ensure the compliance of the facility with the accidental release provisions at 42 U.S.C. 7412(r) and N.J.A.C. 7:31;

ii. The permittee will ensure the compliance of the facility with any employee trip reduction rules promulgated by NJDOT; and

iii. The permittee will ensure that any architectural coatings used at the facility conform with the standards set forth at N.J.A.C. 7:27–23; and

7. A schedule for the periodic submittal of compliance certifications, prepared in accordance with N.J.A.C. 7:27–22.19(f). Submittal shall be annual, or more frequent if so specified by the underlying applicable requirement or by the Department in the operating permit.

(d) If any source operation or any aspect of a facility's operation is in violation of any applicable requirement, and the facility is not subject to an order or consent decree for the violation, the owner or operator of the facility may request an administrative consent order from the Department to address the violation pursuant to N.J.A.C. 7:27A. A request to enter into an administrative consent order shall be submitted to:

Air and Environmental Quality Enforcement
NJDEP
401 E. State Street
CN 422
Trenton, New Jersey 08625–422

(e) The Department's approval of a compliance plan or compliance schedule does not constitute any approval or sanction by the Department of any noncompliance with any applicable requirement, nor does it relieve any owner or operator from liability for penalties for any noncompliance. Applicants are encouraged to seek an administrative consent order from the Department to address the possibility of penalties for noncompliance, and other enforcement actions.

**7:27–22.10 Completeness review**

(a) Within 30 days of receipt of an application for an initial operating permit, a renewal, a minor modification, or significant modification, the Department will:

1. Determine that the application is administratively complete, and so notify the applicant; or

2. Notify the applicant that the application is administratively incomplete, specify in writing the additional information required for the Department to commence review of the application, and provide a reasonable due date by which the applicant shall submit the information to the Department.

(b) An application shall be deemed administratively complete upon the earliest of the following dates that is applicable:

1. The date the application is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the application, that additional information is required;

2. The date upon which any additional information requested in writing by the Department is submitted, if the Department does not notify the applicant, within 60 days of its receipt of the information, the further information is required; or

3. The date that the Department determines that the application is administratively complete.

(c) The Department may request additional information from an applicant at any time after the submittal of an application, regardless of whether or not the application is administratively complete at the time of the Department's information request. A Department request for additional information in regard to an application which has been determined to be complete pursuant to (b) above shall not alter the administrative completeness status of the application.

(d) In a request for additional information, the Department shall establish a reasonable date by which the information is due to the Department. Upon receipt of a written request for additional time, the Department may extend the due date for the submittal of the additional information.

(e) If an applicant fails to submit the information requested by the Department by its due date, the Department shall deny the application. In addition, the Department shall void any application shield in effect pursuant to N.J.A.C. 7:27–22.7(f) effective the day following the due date.

(f) If an application is denied, the applicant may reapply at any time. The new application shall meet all requirements for an operating permit application, including the fee requirement.

**7:27–22.11 Public comment**

(a) This section sets forth the procedures by which the Department will obtain comment from the public and affected states on each of the following:

1. A draft operating permit developed by the Department following the receipt of an administratively complete application for an initial operating permit;

2. A draft operating permit developed by the Department following the receipt of an administratively complete application for a significant modification of an operating permit;

3. A draft operating permit developed by the Department following the receipt of an administratively complete application for renewal of an operating permit; and

4. A draft general operating permit developed by the Department pursuant to N.J.A.C. 7:27–22.14(a).

(b) The Department will provide a public comment period on each draft operating permit and each draft general operating permit, during which the Department will accept written comments on the draft permit. The public comment period will be specified in the notice published pursuant to (c) and (d) below, and shall be at least 30 days.

(c) The Department will provide public notice of the opportunity for public comment on each draft operating permit. The notice will:

1. Identify the facility that will be subject to the operating permit, and provide the name and address of the owner or operator;

2. Indicate whether the draft operating permit is an initial operating permit, a significant modification, a renewal or a general operating permit;

3. Indicate the type of production processes involved in the draft operating permit and, for a significant modification, the emissions change that will result from the modification;

4. Give the name and address of the Department, including the name and telephone number of a person at the Department from whom interested persons may obtain additional information;

5. Announce the opportunity for public comment, and provide a description of the public comment procedures set forth in this section;

6. Specify the length of the public comment period; and

7. Include the time and location of any public hearing to be held on the draft operating permit. If no public hearing is scheduled, the notice shall include procedures for requesting a public hearing.

(d) The Department will provide public notice of the opportunity for public input on each draft general operating permit. The notice will include:

1. Proposed criteria for the types and sizes of source operations that may be covered by the general operating permit;

2. Proposed conditions of construction or operation, including monitoring, recordkeeping, and reporting requirements, for persons who obtain this general operating permit; and

3. The public comment information listed in (c)4 through 7 above.

(e) The Department will publish the notice for each draft operating permit in a newspaper of general circulation in the area where the facility which is the subject of the application is located and will mail the notice to persons on a mailing list developed by the Department, including to persons who request in writing to be on the mailing list. The Department will publish the notice for each draft general operating permit in the New Jersey Register to ensure that the notice is published Statewide. The Department may also provide additional notice by using any other means the Department finds appropriate for assuring adequate notice to the public of the opportunity for public comment.

(f) Whenever there is a significant degree of public interest, the Department will hold a public hearing on the draft operating permit or draft general operating permit. The Department may schedule a public hearing and include it in the notice of opportunity for public comment pursuant to (c) or (d) above or, if the Department does not schedule a hearing, any person may request that the Department hold a public hearing on the draft permit. A request for a public hearing shall be submitted in writing to the Department no later than the published date of the close of the comment period, and shall include a statement of issues to be raised at the public hearing. The issues raised shall be relevant to the draft permit under review by the Department.

(g) If a public hearing is held, the Department shall provide public notice of the public hearing at least 30 days in advance of the date the public hearing is scheduled.

(h) If in response to a request for a public hearing, the Department schedules a public hearing on a draft operating permit or draft general operating permit, the close of the public comment period shall be at 5:00 P.M. on the second State business day following the date of the public hearing unless a later date is specified in the notice provided pursuant to (g) above. The Department may further extend the comment period by announcing the extension and its duration at the public hearing.

(i) At any public hearing on a draft operating permit or draft general operating permit, the Department may, at its discretion:

1. Limit the time allowed for oral statements; and

2. Request a person offering oral testimony to submit the statement also in writing.

(j) The Department shall maintain for five years a record of all persons who provided oral or written comment during the public comment period for an operating permit or general operating permit and of the issues raised. Such records will be available to the public.

(k) The Department, on or before publishing notice of a draft operating permit or draft general operating permit pursuant to (b) or (c) above, shall also give notice to the head of the designated air pollution control agency of any affected state, and will accept and consider any comments which are received from the affected state prior to the close of the public comment period. If the Department does not accept any recommendation provided in writing by an affected state during the public comment period, the Department will so inform the affected state and EPA in writing, setting forth the Department's reasons for not accepting the recommendation.

(*l*) Notwithstanding (a) above, the Commissioner of the Department may also seek or accept public comment whenever it finds a significant degree of public interest in any application, including, but not limited to, applications for minor modifications, or whenever the Department determines such comment might clarify one or more issues involved in the decision on the permit application. In determining whether to seek or accept public comment, the Department shall consider factors germane to the subject application and the applicable requirements. These factors may include, but are not limited to, the following:

1. The extent of any emissions increase;

2. The applicant's record of compliance with air pollution control requirements; and

3. Any other air pollution control aspects of the application or facility which might make the application of particular interest to the public.

(m) The Department shall notify those who submitted a written request of the Department's decision regarding their request. The Department's notification shall be in writing, and if the decision is a denial, the notification shall include a discussion of the factors in (*l*) above, as well as a description of all other factors which formed the basis for the Department's decision.

(n) The Department shall grant a facility's request to operate under a general operating permit without repeating the public comment procedures specified in this section if the general operating permit includes applicable requirements for all relevant source operations at the facility.

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).

**7:27–22.12 EPA comment**

(a) After the close of the public comment period and consideration of the comments on a draft operating permit or draft general operating permit, the Department will prepare a proposed operating permit or proposed general operating permit for EPA review. The Department will provide a copy of the proposed operating permit or proposed general operating permit to EPA and, upon request, to any other interested person. The Department will also provide a copy of the proposed operating permit to the applicant.

(b) The Department will transmit the proposed operating permit or proposed general operating permit to EPA, together with a copy of any comments received from the public and from any affected state during the public comment period, and the Department's response to these comments.

(c) In addition to the information transmitted to EPA pursuant to (b) above, the Department will transmit the following with any proposed operating permit:

1. Any information provided by the applicant to the Department subsequent to the application being deemed administratively complete; and

2. Any other supporting information necessary for EPA to review the application.

(d) If EPA objects to the proposed operating permit or proposed general operating permit pursuant to the requirements of 40 CFR 70.8 during the 45 days following EPA's receipt of the proposed permit, the Department will revise the proposed permit to address EPA objection(s), and will submit the revised proposed permit to EPA, the applicant (if applicable), and, upon request, to any other interested person.

(e) If the Department does not, within 90 days after its receipt of an objection from EPA, submit to EPA a proposed operating permit or proposed general operating permit, revised to the satisfaction of EPA, the EPA may take final action on the permit.

(f) If EPA does not object to the proposed operating permit or proposed general operating permit within the 45 days following EPA's receipt of the proposed permit pursuant to (d) above or within 45 days following EPA's receipt of the revised proposed permit pursuant to (e) above, the Department will take final action on the application related to the proposed operating permit pursuant to N.J.A.C. 7:27–22.13 or on the proposed general operating permit, except as provided in (h) below.

(g) If EPA does not object to the proposed operating permit or general operating permit within the 45 day period as set forth at (f) above, any person may petition the EPA during the 60 days after the expiration of EPA's 45–day comment period, and may request that EPA object to the proposed operating permit or proposed general operating permit. Any petition to EPA shall be based only on an objection that was raised by the petitioner with reasonable specificity during the public comment period unless:

1. The petitioner demonstrates that it was impracticable for the petitioner to raise the objection during the public comment period; or

2. The grounds for the objection arose after the public comment period closed.

(h) If EPA, in response to a petition made pursuant to (g) above, objects to the proposed operating permit or proposed general operating permit before the Department has issued the permit, the Department will not issue a final operating permit or final general operating permit until the EPA's objection is addressed to EPA's satisfaction.

(i) If EPA, in response to a petition made pursuant to (g) above, objects to the proposed operating permit or proposed general operating permit after the Department has issued a final operating permit or final general operating permit, the EPA may modify, terminate, or revoke the operating permit or general operating permit.

(j) A final general operating permit, including applicability criteria, application procedures, and conditions, will be published by the Department in the New Jersey Register.

(k) The Department shall grant a facility's request to operate under a general operating permit without repeating the EPA comment procedures specified in this section if all significant source operations at the facility are covered by 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).

**7:27–22.13 Final action on an application**

(a) The Department will take final action on an application:

1. For an initial operating permit, within 18 months after the Department's receipt of an administratively complete application for an initial operating permit;

2. For an application for an operating permit renewal, within 12 months after the Department's receipt of an administratively complete renewal application;

3. For an application for a minor modification, within 90 days after the Department's receipt of an administratively complete application;

4. For an application for group processing of minor modifications, within 180 days after the Department's receipt of an administratively complete application;

5. For an application for a significant modification, within 12 months after the Department's receipt of an administratively complete application; or

6. For an application for an administrative amendment, within 60 days after the Department's receipt of an administratively complete application.

(b) Except pursuant to (c) below, final action by the Department on an application for an initial operating permit, renewal, significant modification, or minor modification shall be:

1. Issuance of the final operating permit, modification, or amendment;

2. Written determination that the improper procedure was followed for requesting a modification or Departmental action, and identification of the proper procedure for processing the modification or obtaining the Departmental action; or

3. Denial of the application. If an application is denied, the Department shall state the reason(s) for the denial.

(c) If the Department does not take final action on an application within the deadlines provided for each type of application, the applicant, and any person who commented on the draft operating permit during the public comment period, shall be entitled to bring an action, in accordance with N.J.A.C. 7:27–22.32, Hearings and appeals, to compel the Department to take final action on the application.

(d) After the Department has issued an initial operating permit, or a minor modification, significant modification, or operating permit renewal, the Department will provide a copy of the permit, as issued, to EPA.

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).

**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).

### 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 may contain provisions for emissions trading within one or more groups of source operations, pursuant to N.J.A.C. 7:27–22.28.

(k) For any authorization of emissions trading included, the operating permit shall contain permit conditions, including, but not limited to, the following:

1. The permittee shall maintain a record of the emissions trading that has occurred at the facility consistent with the specific terms and conditions of the emissions trading approval; and

2. The permittee shall 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 dur-

ing 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).

### 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)1iv 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.

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).

### 7:27–22.19 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;

2. For each applicable requirement, a statement of the methods used to determine the facility's compliance status, including a description of any monitoring, record-keeping, and reporting requirements and test methods; and

3. Certification in accordance with the certification procedures at N.J.A.C. 7:27–1.39.

(g) Any deviation from operating permit requirements which results in a release of air contaminants shall be reported to the Department as follows:

1. If the air contaminants are released in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints, the permittee shall report the release to the Department:

i. Immediately on the Department hotline at (609) 292–7172, pursuant to N.J.S.A. 26:2C–19(e); and

ii. As part of the compliance certification required in (f) above. However, if the deviation is identified through source emissions testing, it shall be reported through the source emissions testing and monitoring procedures at N.J.A.C. 7:27–22.18(e)3; or

2. If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, the permittee shall report the release to the Department as part of the compliance certification required in (f) above, except for deviations identified by source emissions testing reports, which shall be reported through the procedures at N.J.A.C. 7:27–22.18(e)3; or

3. If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, and the permittee intends to assert the affirmative defense afforded by N.J.A.C. 7:27–22.16(*l*), the violation shall be reported by 5:00 P.M. of the second full calendar day following the occurrence or of becoming aware of the occurrence, consistent with the N.J.A.C. 7:27–22.16(*l*).

(h) A permittee shall, upon the Department's request, submit any record relevant to the operating permit or to the emission of any air contaminant from the facility. Such record shall be submitted to the Department within 30 days of the request by the Department, or within a longer time period if approved in writing by the Department, and shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(i) A permittee shall make all information in (a) through (d) above, as well as following, readily available for inspection at the facility. If the facility is not regularly staffed, the information shall be available at the New Jersey office of the permittee which is closest to the permitted facility. The information shall be available at all times, pursuant to the Department's right to inspect the facility set forth at N.J.A.C. 7:27–1:

1. The operating permit together with any revisions thereto, including any administrative amendments, changes to insignificant source operations, seven-day-notice changes, minor modifications, and significant modifications;

2. Up-to-date diagrams of the facility indicating:

i. The location of all source operations, including all equipment and control apparatus; and

ii. All stacks or chimneys, together with any stack designation included in the operating permit;

3. Records required by the operating permit, and records relevant to the use of any source operation including, but not limited to, manufacturer's instructions for operation and maintenance, the kind and amount of air contaminants emitted, rates of production, and hours of operation;

4. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus during the term of the operating permit;

5. The date of commencement of operation of any equipment or control apparatus, if operation commenced during the term of the operating permit; and

6. Any preconstruction permit issued for the equipment or control apparatus.

(j) Requirements for recordkeeping and reporting shall be consistent with the Federal rules for enhanced monitoring of stationary sources set forth at 40 CFR Part 64.

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).

**Case Notes**

Penalty; failure to immediately inform department of air pollution leak. DEPE v. Occidential Chemical Corporation, 94, N.J.A.R.2d (EPE) 25.

### 7:27–22.20 Administrative amendments

(a) A permittee may make any of the changes to an operating permit listed at (b) below through the procedures for an administrative amendment set forth in this section. If the requirements of this section are met, the permittee may, at its own risk, make the change at the facility upon submittal of the amendment, but no sooner. For those changes specified at (b)1 and (b)3 below, the change can be made up to 30 days prior to submittal of the amendment. The Department will act on an application for an administrative amendment within 60 days of receipt of an administratively complete application, pursuant to (g) below.

(b) A change may be made as an administrative amendment if the proposed change does not increase actual emissions, does not cause the emission of a new air contaminant or class of air contaminants, does not violate an applicable requirement, does not result in the source being subject to an applicable requirement to which it was not previously subject, and does not constitute a seven-day-notice change, minor modification, or significant modification, and the change is:

1. A change in company name or mailing address; division name; plant name or address; name or address of each 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. Correction of any typographical error, including a mistake in the spelling, punctuation, or formatting of text, but excluding a change to any word, term, number or usage which would allow an emission increase or would constitute a seven-day-notice change, minor modification, or significant modification;

3. A transfer of ownership or operational control of the facility;

4. A change in any company stack designation;

5. Any of the following decreases, provided that the decrease is measurable and verifiable, and that a method by which the Department can verify and enforce the decrease is already included in the operating permit in effect, and a 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;

6. An increase in the frequency of any monitoring, recordkeeping or reporting required by the operating permit in effect, and a permittee requests such increase to be incorporated into its operating permit;

7. A change that incorporates into the operating permit provisions of a preconstruction permit, provided that the preconstruction permit:

i. Was issued through public participation requirements substantially equivalent to those for operating permits pursuant to N.J.A.C. 7:27–22.11 and 22.12; and

ii. Includes compliance requirements substantially equivalent to those for operating permits pursuant to N.J.A.C. 7:27–1.31, 22.9, 22.18, and 22.19;

8. 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 does not:

i. Involve the use or storage of any new HAP; or

ii. Cause the storage tank to become, pursuant to N.J.A.C. 7:27–16.2(b), subject to any control requirement to which the storage tank was not previously subject;

9. Any of the following changes to a stack or chimney, or the use thereof, provided the change complies with EPA's stack height regulations at 40 CFR 51 (governing stacks over 65 meters high):

i. A change in the number of stacks or chimneys serving the significant source operation, provided that the change does not result in any effective stack height lower than that of the tallest stack or chimney existing prior to the change;

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

iii. The replacement of an existing stack or chimney with a taller stack or chimney, provided that 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 if the temperature or volume is limited in the operating permit;

10. A change in the relative use of any raw material in a process outside of the range authorized in the operating permit, provided there is no increase in actual emissions from the process unit;

11. The introduction of a raw material, not authorized in the operating permit in effect, provided there is no increase in actual emissions from the process unit, and provided such change does not involve the use of any new HAP;

12. Reconstruction of a process unit or control apparatus if the date of installation of the reconstructed process unit or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the original process unit or control apparatus, provided the reconstruction causes no increases in actual emissions from the process unit or control apparatus; or

13. Notification that the facility is in compliance with a new applicable requirement which was not previously applicable to the facility, provided that:

i. The facility is operating in compliance with the applicable requirement as of the date it becomes applicable to the facility;

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).

### 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, any 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, may be made as a seven-day-notice change, pursuant to the procedures of this section, provided that:

1. 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.;

2. The proposed change, construction, or installation 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–1.5; and

3. The proposed change, construction, or installation does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the significant source operation 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.

(e) A permittee shall, pursuant to (f) and (g) 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) 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) 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) No permittee shall make a change at a facility 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.

(j) 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.

(k) 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.

(*l*) 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.

(m) The permit shield described at N.J.A.C. 7:27–22.17 shall not apply to any change made pursuant to this section.

(n) 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).

**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(oo).

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 require-

ments 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;

2. The proposed sections of the draft operating permit reflecting the proposed change; and

3. Certification by a responsible official, consistent with N.J.A.C. 7:27–1.39, that the proposed change is eligible to be processed as a minor modification pursuant to (c) above.

(g) To be deemed administratively complete, any application proposing the incorporation into the operating permit of a new operating scenario or a new authorization for emissions trading, not authorized by the existing operating permit, shall also meet the requirements set forth at N.J.A.C. 7:27–22.27 or 22.28, respectively.

(h) If the application for a minor modification of the operating permit is administratively incomplete, the Department may deny the application, or request additional information.

(i) If the Department determines that an application for a minor modification of the operating permit is administratively complete, the Department will, within five working days, notify the EPA and any affected state that the application is administratively complete. EPA and affected states will have 45 days from their receipt of such notice to notify the Department of any objection to, or comment on, the application. Such objection or comment shall be sent to the Department at the address set forth at N.J.A.C. 7:27–22.3(t). When the Commissioner of the Department determines that there is a significant degree of public interest in an application for a minor modification, the Department may provide an opportunity for public comment consistent with N.J.A.C. 7:27–22.11.

(j) Within 90 days after the application is administratively complete, or 15 days after the completion of EPA's 45 day review period, whichever is later, the Department will:

1. Approve the modification;

2. Deny the modification;

3. Determine that the modification requires processing as a significant modification. In such a case, the Department will terminate the application and so notify the applicant; or

4. In consultation with the applicant, revise the applicant's proposed operating permit modifications, submit a new proposed permit modification to EPA for review, approve the modification as revised, and transmit it to the applicant.

(k) Once the Department approves a minor modification, the Department will send a copy of the revised portions of the operating permit to EPA.

(*l*) The Department will not take final action on an application for a minor modification until EPA's 45–day review period has expired, or until EPA has notified the Department that it will not object to the approval of the modification, whichever comes first, or until any EPA objections have been resolved. As stated in (a)1 above, equipment or control apparatus may be installed at risk pursuant to the requirements of N.J.A.C. 7:27–22.3(oo).

(m) If the Department does not, in its final action on the application, accept any recommendation on the proposed minor modification submitted by an affected state, the Department will notify EPA and the affected state of its reasons for not accepting the recommendation.

(n) An applicant may request that the Department group-process two or more applications for minor modifications to operating permits if they meet the requirements of (n)1 below. Under group processing procedures, a permittee may request that all pending applications for minor modifications be group-processed. The Department will then process the applications together, using the procedures set forth in this section, including the provisions at (n)1, 2, and 3 below, which apply specifically to group processing of minor modification applications.

1. Minor modifications may be submitted for group processing only if:

i. Each proposed permit modification meets the criteria in this section for minor permit modifications; and

ii. The allowable emissions increases which would be caused by the modifications would, in the aggregate, be less than the least of the following:

(1) Ten percent of the total allowable emissions allowed by the operating permit for the source operations for which the changes are requested. If the source operation emits more than one contaminant, the increase of each contaminant shall be calculated separately. For example, if a unit is permitted to emit 10 tons per year of $SO_2$ and one ton per year of lead, minor modifications could not be group processed unless the aggregate increase in allowable $SO_2$ emissions resulting from the modifications would be less than one ton per year, and the aggregate increase in allowable lead emissions resulting from the modifications would be less than 0.1 ton per year;

(2) Twenty percent of the threshold amount of the contaminant listed at N.J.A.C. 7:27–22.2(a)1, Applicability. For example, for a facility which emits VOCs, modifications could not be group processed unless the total allowable emission increases of VOCs resulting from the modifications would be less than five tons per year; or

(3) Five tons per year.

2. To obtain approval for group processing, the permittee shall submit an application for group processing which shall consist of a list of all of the facility's pending applications for minor modifications of the operating permit, and a determination of whether the aggregated modifications equals or exceeds the threshold set under (n)1ii above.

3. Within five business days of receipt of an application for group-processing, the Department will notify EPA and affected States of the requested minor modifications. The Department will also prepare a quarterly report for EPA and affected states listing the group-processed minor modification applications that have been received during the quarter.

4. The Department shall act on an application for a minor modification of the operating permit submitted for group processing within 180 days of receipt of the request for group processing or within 15 days after the end of EPA's 45 day review period, whichever is later.

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).

**7:27–22.24 Significant modifications**

(a) Notwithstanding any other provision of this subchapter, a permittee is required to make any of the changes listed at (b) through the significant modification procedures set forth in this section. The Department shall, upon its approval of an application for a significant modification of the operating permit, incorporate the change(s) into the permit. A separate application for a preconstruction permit is not required. Approval of the significant modification shall also constitute preconstruction approval. The permittee shall not make the change proposed in a significant modification of the operating permit until the Department has approved the significant modification.

(b) 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 changes to existing significant source operations, shall be made as a significant modification if any of the following criteria apply:

1. A change which causes the facility to be subject to, or which would constitute a modification pursuant to, any of the following:

i. Emission offset requirements at N.J.A.C. 7:27–18.2(a) and (b);

ii. NSPS regulations at 40 CFR 60;

iii. NESHAPS regulations at 40 CFR 61 or 63;

iv. PSD regulations at 40 CFR 52; or

v. Federal visibility regulations promulgated pursuant to 42 USC 7491 or 7492;

2. Any significant change in existing Federally enforceable operating permit conditions related to changing the monitoring method from continuous emission monitoring to parametric monitoring or periodic stack testing;

3. A change which relaxes any Federally enforceable recordkeeping or reporting required by the operating permit;

4. A change which relaxes any Federally enforceable provision of the compliance plan, including any lengthening of the time that a source operation is in noncompliance beyond the schedule contained in the compliance plan;

5. A change which requires a case-by-case determination of an emission limitation or other specific standard contained in a State or Federal rule. This includes, for example, an application for a variance from a specific emission limit. This does not include determination of advances in the art of air pollution control;

6. A relocation of a temporary facility to a site, other than is authorized in the operating permit, if air quality simulation modeling or risk assessment is required for the application pursuant to N.J.A.C. 7:27–22.8;

7. A change which establishes or changes a permit condition for which there is no corresponding underlying applicable requirement, and which the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such conditions include:

i. A Federally enforceable emissions cap assumed to avoid classification as a major facility or to avoid becoming subject to:

(1) Emission offset requirements pursuant to N.J.A.C. 7:27–18.2;

(2) NSPS regulations at 40 CFR 60;

(3) NESHAPS regulations at 40 CFR 61 or 63;

(4) PSD regulations at 40 CFR 52; or

(5) Federal visibility regulations promulgated pursuant to 42 USC 7491 or 7492; or

ii. An alternative emissions limit for early reductions of HAPs approved pursuant to N.J.A.C. 7:27–22.34 and the regulations promulgated under 42 USC 7412(i)(5);

8. Any incorporation into the operating permit of a new operating scenario if such an incorporation does not qualify as a seven-day-notice change pursuant to N.J.A.C. 7:27–22.22, or a minor modification pursuant to N.J.A.C. 7:27–22.23; or

9. Any incorporation into the operating permit of a new authorization of emissions trading, if such an incorporation does not qualify as a seven-day-notice change pursuant to N.J.A.C. 7:27–22, or a minor modification pursuant to N.J.A.C. 7:27–22.23.

(c) Any change that is a significant 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.

(d) Compliance with N.J.A.C. 7:27–18 shall be demonstrated for any significant modification that includes an emission increase.

(e) A permittee shall, pursuant to (f) below, submit an administratively complete application for the significant modification of the operating permit for any change at a facility which, pursuant to (b) above, constitutes a significant modification.

(f) To be deemed administratively complete, an application for a significant 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 significant modification of the operating permit shall include only such information as is relevant to the proposed modification.

(g) The permit shield described at N.J.A.C. 7:27–22.17 shall apply to any change approved under this section.

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).

### 7:27–22.24A Reconstruction

(a) Reconstruction of a process unit or control apparatus shall be made as an administrative amendment to the operating permit pursuant to N.J.A.C. 7:27–22.20 if:

1. The date of installation of the reconstructed process unit or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the original process unit or control apparatus;

2. The reconstruction causes no increases in actual emissions from the process unit or control apparatus; and

3. The reconstruction is not a significant modification.

(b) Reconstruction of a process unit or control apparatus shall be made as a significant modification to the operating permit pursuant to N.J.A.C. 7:27–22.24 if the reconstruction would trigger any of the criteria for significant modifications listed at N.J.A.C. 7:27–22.24(b).

(c) Reconstruction of a process unit or control apparatus shall be made as a minor modification to the operating permit pursuant to N.J.A.C. 7:27–22.23 if the reconstruction cannot be processed as an administrative amendment or significant modification, as set forth at (a) and (b) above.

(d) In the case of an emergency, as defined at N.J.A.C. 7:27–22.1, the Department may authorize a permittee to reconstruct and to operate a process unit or control apparatus for 90 days at risk, in order to allow time for the permittee to apply for Department approval of a minor or significant modification authorizing the reconstruction. An example of such an emergency would be a fire which destroys a process unit which the person wishes to replace and operate immediately. The emergency approval shall not be granted if prohibited by federal law or regulations, and shall be conditioned on the permittee submitting an application for the reconstruction pursuant to (a), (b), or (c) above within 30 days of the Department's emergency authorization, cooperating fully with the Department during the application and review process, and complying with all applicable requirements.

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).

### 7:27–22.25 Department initiated operating permit modifications

(a) An operating permit may be revoked, or reopened and modified, for cause by the Department pursuant to this section. Any Department initiated permit revocation or reopening and modification shall affect only those parts of the operating permit for which cause to reopen exists.

(b) Upon a written request from the Department, a permittee shall furnish to the Department, within 30 days or within a longer time period established by the Department in the request, any information that the Department may request to determine whether cause exists for revoking, or reopening and modifying the permit.

(c) At least 30 days prior to reopening an operating permit, the Department will notify the permittee that action is necessary to modify the operating permit and that the Department will revoke, or reopen and modify, the operating permit unless the permittee acts to apply for the necessary modification(s). A shorter time period may be provided if the Department determines that continued operation of the facility under its current operating permit may adversely affect human health or welfare, or the environment.

(d) The notice of a reopening made pursuant to (c) above will contain a requirement that the permittee act to resolve the issue which caused the need for the reopening, and a reasonable deadline for action. Such action shall be processed as a significant modification if the permittee does not act to apply for the necessary modification(s).

(e) The Department shall reopen and modify an operating permit if any of the following occur:

1. The permittee fails to act within the time specified in the notice in (d) above to incorporate any of the following into the operating permit:

i. An additional applicable requirement which has become applicable to the facility and the remaining term of the existing permit is three years or more; or

ii. A change to an applicable requirement which was previously applicable to the facility and the remaining term of the existing permit is three years or more;

2. The permittee fails to act within the time specified in the notice in (d) above to incorporate any of the following into the operating permit:

i. An additional applicable requirement which has become applicable to an affected Title IV facility; or

ii. A change to an applicable requirement which was previously applicable to an affected Title IV facility;

3. The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations or other provisions or conditions of the permit;

4. EPA requires the reopening of an operating permit for cause pursuant to 40 CFR 70.7(g); or

5. The Department or EPA determines that the operating permit must be revised to assure compliance with applicable requirements.

(f) No reopening is required to incorporate an applicable requirement pursuant to (e) above, if the date the requirement will become applicable to the facility is later than the date on which the operating permit is due to expire, unless the original permit or any of its provisions and conditions has been extended pursuant to a permit shield in accordance with N.J.A.C. 7:27–22.17.

(g) If a reopening is required pursuant to (e)1 or 2 above, the permittee shall submit an administratively complete application, within the time specified by the Department, for an operating permit modification pursuant to N.J.A.C. 7:27–22.24, significant modifications. The Department shall ensure that final action to incorporate the additional applicable requirement into the operating permit is completed within 18 months of the promulgation of the applicable requirement.

(h) During the period that the reopening is pending, the permittee shall comply with the compliance schedule provided in any additional applicable requirement which applies to the facility and: until the final compliance deadline for any applicable requirement, the current operating permit; or after the final compliance deadline for any applicable requirement, the new applicable requirement and any provisions of the current operating permit which are not affected by the new applicable requirements.

(i) The Department may revoke an operating permit, or a portion of the operating permit, if the Department determines that continued use of the facility, or a portion of the facility, pursuant to the current operating permit, poses a potential threat to public health, welfare, or the environment, or that emissions from the facility would unreasonably interfere with the enjoyment of life or property.

(j) If EPA notifies the Department that cause exists to revoke or reopen and modify an operating permit, the Department shall, within 90 days of its receipt of the notice, forward to the EPA a proposed determination of revocation, or of reopening and modification, as appropriate. EPA may extend the 90–day deadline (for the Department to provide a proposed determination) an additional 90 days, if the EPA determines that additional information from the permittee, is needed. The Department will transmit a copy of EPA's notification and DEP's determination to the permittee.

(k) As required by 40 CFR Part 70.7(g), if EPA approves the determination proposed by the Department pursuant to (j) above, or fails to act on it within 90 days of EPA's receipt of the proposed determination, the Department shall proceed with a permit reopening. At least 30 days prior to reopening the operating permit, the Department will notify the permittee that action is necessary to modify the operating permit and that the Department will revoke, or reopen and modify, the operating permit unless the permittee acts to apply for the necessary modification(s). A shorter time period may be provided if the Department determines that continued operation of the facility under its current operating permit may adversely affect public health or welfare, or the environment.

(*l*) As required by 40 CFR Part 70.7(g)(4), if EPA objects to the Department's proposed determination within 90 days, the Department has 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to re-open, modify and reissue, or to revoke, the operating permit in accordance with the EPA's objection.

(m) Notwithstanding (j), (k) and (*l*) above, if the permittee, at any time during the reopening process, submits an administratively complete application for the necessary modification which will, if issued, obviate the necessity for the reopening, the Department will process the modification application if this is the most expeditious procedure to resolve the issue. If the modification procedure does not resolve the issue which caused the reopening, the Department will then proceed with the reopening.

(n) This section shall not be construed to allow the extension of the compliance deadline in any applicable requirement. Implementation of applicable requirements shall proceed in accordance with any deadlines established in the applicable requirement.

(*o*) This section shall not limit the Department's authority to pursue any form of relief or remedy provided by law or regulation, including injunctive relief, pursuant to N.J.S.A. 26:2C–19(a), civil administrative penalties pursuant to N.J.S.A. 26:2C–19(b), civil penalties pursuant to N.J.S.A.26:2C–19(d) and criminal sanctions pursuant to N.J.S.A. 26:2C–19(f).

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).

**7:27–22.26 MACT and GACT standards**

(a) This section shall take effect upon EPA's interim approval of the Department's operating permit program except for (f)1, 2 and 3 below, which shall take effect upon EPA's interim approval of the Department's operating permit program or EPA promulgation of rules implementing 42 U.S.C. 7412(g), whichever is later.

(b) Except as provided at (c) and (d) below, an owner or operator of a facility subject to an EPA-promulgated MACT or GACT standard, or a case-by-case MACT standard, shall submit an application to the Department to have the MACT or GACT standard incorporated into the facility's operating permit pursuant to the relevant provisions of N.J.A.C. 7:27–22.5 for initial operating permits, N.J.A.C. 7:27–22.20 for administrative amendments, N.J.A.C. 7:27–22.23 for minor modifications, or N.J.A.C. 7:27–22.24 for significant modifications.

(c) An owner or operator of an area source subject to an EPA-promulgated MACT or GACT standard is not required to obtain an operating permit if the MACT or GACT standard as promulgated by EPA explicitly states that state agencies are given the option of excluding affected area sources from the requirement to obtain operating permits, provided that the only reason for needing an operating permit is the MACT or GACT standard.

(d) An owner or operator of an area source subject to an EPA-promulgated MACT or GACT standard may postpone applying for an operating permit for five years from the promulgation of the MACT or GACT standard, if the MACT or GACT standard as promulgated by EPA explicitly states that state agencies may defer the requirement to obtain operating permits for affected area sources, provided that the only reason for needing an operating permit is the MACT or GACT standard.

(e) A facility or source operation shall be subject to a MACT or GACT standard promulgated by EPA if:

1. The facility or source operation is in operation at the time the MACT or GACT standard is promulgated, and the facility or source operation meets the applicability criteria set forth in the MACT or GACT standard;

2. The facility or source operation is subsequently modified such that the facility or source operation would meet the applicability criteria set forth in the MACT or GACT standard; or

3. A new facility or source operation is constructed such that the new facility or source operation meets the applicability criteria set forth in the MACT or GACT standard.

(f) A case-by-case MACT standard shall be established for a facility or any source operation(s) which constitutes a major HAP facility if any of the following occur:

1. The construction of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the new source operation(s);

2. The reconstruction of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the reconstructed source operation(s);

3. The modification of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the new or modified source operation(s), provided that:

i. Any physical change in, or change in the method of operation of, the major HAP facility increases the facility's actual emissions of any HAP by an amount that exceeds the de minimis emission rates set forth in the EPA document "Documentation of De minimis Rates for Proposed 40 CFR 63 Subpart B" (EPA 453/R–93–035); or

ii. Any physical change in, or change in the method of operation of, the major HAP facility results in the emission of any HAP not previously emitted in an amount that exceeds the de minimis emission rates set forth in the EPA document "Documentation of De minimis Rates for Proposed 40 CFR 63 Subpart B" (EPA 453/R–93–035); or

4. The failure of EPA to promulgate the specific MACT standard applicable to an existing major HAP facility by 18 months after the deadline set by EPA for such promulgation at 58 FR 63941.

(g) Case–by–case MACT standards established for major HAP facilities, or source operations which constitute a major HAP facility, shall be established in accordance with the provisions of 40 C.F.R. 63.

(h) The Department may allow a six year extension of time for complying with a MACT or GACT standard promulgated by EPA for one or more source operations at a facility, if the source operation achieves sufficient early reductions of HAP emissions as described in N.J.A.C. 7:27–22.34.

(i) A source operation for which construction or reconstruction is commenced after EPA proposes an applicable MACT or GACT standard, but before the MACT or GACT standard is promulgated, shall not be required to comply

with the standard as promulgated until three years after the date construction or reconstruction is commenced, provided that the source operation, as authorized in the preconstruction permit, complies with the MACT or GACT standard as proposed. However, the source operation will still be subject to the operating permit application requirements described in (b) above.

(j) A facility which has installed BACT, pursuant to a permit required under 40 CFR 52.21, or LAER, pursuant to N.J.A.C. 7:27–18, prior to EPA's promulgation of a MACT or GACT standard applicable to that facility, shall not be required to comply with the MACT or GACT standard until five years after the date of that installation of BACT or LAER, if the BACT or LAER controls the same pollutant(s) as that identified in the MACT or GACT standard. However, the facility will still be subject to the operating permit application requirements described in (b) above.

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).

### 7:27–22.27 Operating scenarios

(a) The Department will include operating scenarios in an operating permit, if the operating scenarios meet all applicable requirements, including, but not limited to, all applicable emission standards.

1. Operating scenarios may, as appropriate, be incorporated into a permit through an application for an initial operating permit, a significant modification, or a minor modification pursuant to N.J.A.C. 7:27–22.5, 22.24 or 22.23, respectively.

2. New operating scenarios may be authorized through a notice of a seven-day-notice change pursuant to N.J.A.C. 7:27–22.22, provided the emission limit for a source operation included in operating scenarios which are being added by a seven-day-notice to an existing operating permit shall not exceed the maximum allowable emission limits in the existing operating permit for the source operation.

(b) At a facility authorized to operate under one or more operating scenarios, the permittee shall maintain contemporaneous information on the change from one operating scenario to another. This can be any means of recording information associated with the scenario in question, either manually or electronically, including but not limited to: batch sheets, production sheets, fuel records, and process records.

(c) The permittee shall ensure that operation under an operating scenario meets all permit conditions, applicable requirements, and the requirements of this chapter.

(d) An applicant or permittee seeking authorization for operating scenarios shall provide to the Department, in the application for an initial operating permit, significant modification, or minor modification, or in a seven-day-notice, at least the following information:

1. A description of each proposed operating scenarios, including, but not limited to, information on any emission changes from existing approved operating scenarios;

2. The specific source operations that are to be included in the proposed operating scenarios;

3. If the equipment combusts fuel, the fuels that will be used under the proposed operating scenarios, and the maximum quantity of fuel proposed to be used annually;

4. The product(s) that will be produced under the proposed operating scenarios; and

5. For any operating parameter addressed or limited in the existing operating permit that may be changed under the proposed operating scenario, proposed ranges or limits for that parameter relevant to air contaminant emissions. This shall include, but not be limited to, parameters such as the quantity or type of raw material used. Operating parameters which do not affect emissions need not be included in the operating scenario. As long as the facility operates within the range or limit of each specified parameter in an approved operating scenario, such operation shall be considered consistent with that operating scenario.

(e) In addition to the information required at (d) above, the following information shall be provided to the Department if the operating scenario is proposed to be added to an existing operating permit as a seven-day-notice:

1. For each source operation included in the operating scenario:

i. The maximum allowable emissions limits established in the operating permit for each air contaminant;

ii. A demonstration that each of the emissions limits listed pursuant to (e)i above will not be exceeded under the proposed operating scenario; and

iii. A demonstration that, under the proposed operating scenario, any new air contaminant not authorized by the existing operating permit would be emitted at a rate less than the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter.

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).

### 7:27–22.28 (Reserved)

Repealed and recodified to 7:27–22.28A and 7:27–22.28B by R.1995 d.493, effective September 5, 1995.
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Section was "intra-facility emissions trading".

**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) Such an emissions trading program may be:

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;

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. A case-by-case revision to New Jersey's SIP is not required for emissions trading programs established pursuant to rules that have been promulgated and incorporated into the SIP; or

4. Any other emissions trading program set forth in this chapter.

(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(c)2 or 3, 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(b) 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 and 4 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(b) 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. 7:27–22.17 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 a program, or any modifications to a program, which is attached to an operating permit through a seven-day-notice to an operating permit.

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).

**7:27–22.28B 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 (i)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).

### 7:27–22.29 Facilities subject to acid deposition control

(a) The Department hereby adopts and incorporates by reference the provisions of 40 CFR part 72, 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 part 72 conflict with or are not included in this subchapter, the part 72 provision 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 $SO_2$ 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 $SO_2$ and $NO_x$ requirements must meet both deadlines. The 1996 application shall address all $SO_2$ 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.

(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).

**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; and

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.

(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).

**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. $NO_x$ 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
CN 417
Trenton, New Jersey 08625

(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

| | FY95 | FY96 | FY97 | FY98 and on |
|---|---|---|---|---|
| Emission fee | $25[1]/ton on: up to 8,000 tons of $NO_x$, VOC; ½ of CO emissions, 4,000 tons of all other RACs[2] | Same as FY95, except that all facilities must pay at least $1,000 | Same as FY96 | $25[3]/ton on all RACs except CO, all facilities must pay at least $1,000. No emission caps |
| Initial application fee | $125 per significant source operation, 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 adjustment pursuant 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 application | Same as FY95, except that, for certain source operations, the fee is limited to $500 per piece of equipment modified[4] | Same as FY96 | Fees for significant modifications only, as set forth at N.J.A.C. 7:27-22.31(k) through (s), up to $25,000 per application |

[1] In 1989 dollars adjusted by the CPI.
[2] For purposes of this table, RAC means regulated air contaminant.
[3] In 1989 dollars adjusted by the CPI.
[4] 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)2 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[1] | Per application | $100.00 |
| 2. Category II | Per first new or modified significant source operation, | $500.00 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. | $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 |

[1] 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 |

| Activity | Basis | Amount |
|---|---|---|
| 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. 7:27–8.12.

(b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27–8.12, 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. 7:27–8.12, 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.

### 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.

(e) The Department will perform the preconstruction and operating permit reviews of an application for a minor or significant modification simultaneously. Ordinarily, the Department will issue an operating permit modification which includes preconstruction approval. However, if requested by an applicant for a modification, the Department will issue the preconstruction approval simultaneously with the draft permit which is forwarded to EPA pursuant to N.J.A.C. 7:27–22.12. This preconstruction approval will authorize the permittee to begin construction and operation of a minor modification, at the permittee's own risk, in accordance with N.J.A.C. 7:27–22.23. For a significant modification of the operating permit, the permittee may begin construction of a significant modification, but may not operate the modified facility until final issuance of the significant modification.

(f) If a facility or source operation becomes subject to a case-by-case MACT standard pursuant to N.J.A.C. 7:27–22.26(c) prior to issuance of an operating permit for the facility, the owner or operator of the facility shall establish a case-by-case MACT standard pursuant to N.J.A.C. 7:27–22.26(e). The owner or operator of the facility shall obtain and maintain a preconstruction permit and operating certificate pursuant to N.J.A.C. 7:27–8, which applies the case-by-case MACT standard to the appropriate source operation(s), until an operating permit covering the facility is issued which incorporates the case-by-case MACT standard.

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).

**7:27–22.34 Early reduction of HAP emissions**

(a) This section shall take effect upon EPA's interim approval of the Department's operating permit program.

(b) The Department may allow a six year extension of time for complying with a MACT or GACT standard promulgated by EPA for one or more source operations at a facility, if the source operation achieves sufficient early reductions of HAP emissions. To be eligible for such a compliance extension, an applicant shall demonstrate that, between the end of a representative year and the date upon which EPA proposed the MACT or GACT standard, the relevant source operation(s) at the facility achieved at least the following emission reductions:

1. Ninety percent of all non-particulate HAP emissions; and

2. Ninety-five percent of all particulate HAP emissions.

(c) An applicant seeking an extension pursuant to (b) above shall, in accordance with the procedures at 40 CFR 63 Subpart D, provide to the Department:

1. The quantity of verifiable actual emissions released from the facility during a representative year no earlier than 1987. No year may be used as the representative year for which there is any evidence that emissions during that year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures; and

2. A demonstration that the emissions in (c)1 above were reduced by at least the amounts required in (b) above, between the end of the representative year and the date upon which EPA proposed the MACT or GACT standard.

(d) If the Department approves the compliance extension, the Department will incorporate the compliance extension into the operating permit for the facility. The owner or operator of a source operation for which a compliance extension is approved, and incorporated by the Department into the operating permit, may delay compliance with the MACT or GACT standard otherwise applicable to the source operation for six years after the original compliance date, provided that all conditions of the operating permit are met, and the emission reductions demonstrated to have been achieved pursuant to (c) above are maintained throughout that time.

(e) A compliance extension pursuant to this section shall not be available with respect to any standard or requirement promulgated by EPA to protect health and the environment pursuant to 42 USC 7412(f). If EPA promulgates such a health-based standard, any facility subject to the health-based standard shall comply with such standard according to the schedule set by EPA.

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).

**7:27–22.35 Advances in the art of air pollution control**

(a) Newly constructed, reconstructed, or modified equipment and control apparatus which constitutes a significant source operation shall incorporate advances in the art of air pollution control as developed for the kind and amount of air contaminant emitted by the applicant's equipment and control apparatus as provided in this section.

(b) For equipment and control apparatus with a potential to emit hazardous air pollutants at less than the de minimis levels specified by the EPA pursuant to 42 U.S.C. 7412(g) and with a potential to emit less than five tons per year of any other air contaminant, the applicant need not document advances in the art of air pollution control, but instead shall document compliance with:

1. Reasonably available control technology (RACT) for the air contaminants emitted as set forth in this chapter;

2. Standards of Performance for New Sources of Air Pollution (NSPS), where applicable, as set forth at 40 CFR 60;

3. Any National Emission Standards for Hazardous Air Pollutants (NESHAP), where applicable, as set forth at 40 CFR 61, 63 or promulgated under 42 USC 7412; and

4. Any other applicable State or Federal standard or regulation, including any general operating permit issued pursuant to N.J.A.C. 7:27–22.14 which applies to that source operation.

(c) For equipment and control apparatus with a potential to emit any hazardous air pollutant equal to or greater than the de minimis levels specified by the EPA pursuant to 42 U.S.C. 7412(g) or with a potential to emit five tons per year or more of any other air contaminant, the applicant shall document advances in the art of air pollution control, in accordance with the following criteria, as applicable:

1. Best Available Control Technology (BACT) where applicable, as set forth at 50 CFR 52.21 for air contaminant emission increases subject to standards for prevention of significant deterioration (PSD) pursuant to 40 CFR 51;

2. Lowest Achievable Emission Rate (LAER) where applicable, as set forth at 40 CFR 51.165(a)(xiii) and N.J.A.C. 7:27–18 for air contaminants which cause a significant net emissions increase of a nonattainment air contaminant in an area which is nonattainment for that contaminant;

3. Maximum Achievable Control Technology (MACT) or Generally Achievable Control Technology (GACT), where applicable, for air contaminants subject to 40 CFR Subpart 63, governing HAPs;

4. A general operating permit issued pursuant to N.J.A.C. 7:27–22.14 which applies to that source operation; and

5. For any other air contaminant not covered under (c)1, 2, 3, or 4 above, emitted by a source operation with the potential to emit five or more tons per year of that air contaminant, the use of up-to-date technology and methods, reflected in equipment, control apparatus, and procedures, that when applied to an emission source will reasonably minimize emissions of that contaminant.

i. The Department will periodically publish technical manuals containing technology, methods, and performance levels which can be used by applicants for demonstrating advances in the art of air pollution control, after public input and comment. Such technology, methods and performance levels shall have been demonstrated to be reliable for similar air contaminant discharge parameters, and shall be available at reasonable cost commensurate with the reduction in air pollution.

ii. Once the Department has published a technical manual for advances in the art of air pollution control pursuant to (c)5i above, any application submitted which shows compliance with the technical manual shall be considered to incorporate advances in the art of air pollution control for the source operations covered by the technical manual. The Department will periodically review and update the technical manuals, with public notice and input. If the Department amends a technical manual, only applications submitted after the final publication of the amended technical manual shall be subject to it.

iii. Instead of relying on a technical manual for advances in the art of air pollution control, the applicant may propose case by case advances in the art of air pollution control, applicable to a specific source operation. If the Department confirms that the proposal includes up-to-date technology and methods reflected in equipment and procedures, that when applied to an emission source will reasonably minimize emissions, this shall constitute advances in the art of air pollution control for that specific source operation.

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).

## APPENDIX

### TABLE A

Thresholds for Reporting Emissions of Air Contaminants Other than Hazardous Air Pollutants (HAPs)

| Air Contaminant | Hourly Emissions (pounds per hour) |
|---|---|
| VOC | 0.05 |
| TSP | 0.05 |
| PM-10 | 0.05 |
| $NO_x$ | 0.05 |
| CO | 0.05 |
| $SO_2$ | 0.05 |
| Any other air contaminant(1) | 0.05 |

(1) This air contaminant category shall apply to any other air contaminant, other than hazardous air pollutants (HAPs) that the facility has the potential to emit in a quantity greater than or equal to 100 tons per year.

### TABLE B

Thresholds for Reporting Emissions of Hazardous Air Pollutants (HAPs)

| CAS Number | Air Contaminant | Annual Emissions (tons per year) | Annual Emissions (pounds per year) |
|---|---|---|---|
| 75070 | Acetaldehyde | 0.9 | 1800 |
| 60355 | Acetamide | 0.1 | 200 |
| 75058 | Acetonitrile | 0.4 | 800 |
| 98862 | Acetophenone | 0.1 | 200 |
| 53963 | 2-Acetylaminofluorene | 0.0005 | 1 |
| 107028 | Acrolein | 0.004 | 8 |
| 79061 | Acrylamide | 0.002 | 4 |
| 79107 | Acrylic acid | 0.06 | 120 |
| 107131 | Acrylonitrile | 0.03 | 60 |
| 107051 | Allyl chloride | 0.1 | 200 |
| 92671 | 4-Aminobiphenyl | 0.1 | 200 |
| 62533 | Aniline | 0.1 | 200 |
| 90040 | o-Anisidine | 0.1 | 200 |
| 71432 | Benzene | 0.2 | 400 |
| 92875 | Benzidine | 0.00003 | 0.06 |
| 98077 | Benzotrichloride | 0.0006 | 1.2 |
| 100447 | Benzyl chloride | 0.01 | 20 |
| 92524 | Biphenyl | 1 | 2000 |
| 117817 | Bis(2-ethylhexyl)phthalate | 0.5 | 1000 |
| 542881 | Bis(chloromethyl)ether | 0.00003 | 0.06 |
| 75252 | Bromoform | 1 | 2000 |
| 106990 | 1,3-Butadiene | 0.007 | 14 |
| 156627 | Calcium cyanamide | 1 | 2000 |
| 105602 | Caprolactam | 1 | 2000 |
| 133062 | Captan | 1 | 2000 |
| 63252 | Carbaryl | 1 | 2000 |
| 75150 | Carbon disulfide | 0.1 | 200 |
| 56235 | Carbon tetrachloride | 0.1 | 200 |
| 463581 | Carbonyl sulfide | 0.5 | 1000 |
| 120809 | Catechol | 0.5 | 1000 |
| 133904 | Chloramben | 0.1 | 200 |
| 57749 | Chlordane | 0.001 | 2 |
| 7782505 | Chlorine | 0.01 | 20 |
| 79118 | Chloroacetic acid | 0.01 | 20 |
| 532274 | 2-Chloroacetophenone | 0.006 | 12 |
| 108907 | Chlorobenzene | 1 | 2000 |
| 510156 | Chlorobenzilate | 0.04 | 80 |
| 67663 | Chloroform | 0.09 | 180 |
| 107302 | Chloromethyl ethyl ether | 0.01 | 20 |
| 126998 | Chloroprene | 0.1 | 200 |
| 1319773 | Cresols/Cresylic acid | 0.1 | 200 |
| 95487 | o-Cresol | 0.1 | 200 |
| 108394 | m-Cresol | 0.1 | 200 |
| 106445 | p-Cresol | 0.1 | 200 |
| 98828 | Cumene | 1 | 2000 |
| 94757 | 2,4-D | 1 | 2000 |
| 547044 | DDE | 0.001 | 2 |
| 334883 | Diazomethane | 0.1 | 200 |
| 132649 | Dibenzofurans | 0.5 | 1000 |
| 96128 | 1,2-Dibromo-3-chloropropane | 0.001 | 2 |
| 84742 | Dibutylphthalate | 1 | 2000 |

| CAS Number | Air Contaminant | Annual Emissions (tons per year) | Annual Emissions (pounds per year) |
|---|---|---|---|
| 106467 | 1,4-Dichlorobenzene | 0.3 | 600 |
| 91941 | 3,3-Dichlorobenzidine | 0.02 | 40 |
| 111444 | Dichloroethyl ether | 0.006 | 12 |
| 542756 | 1,3-Dichloropropene | 0.1 | 200 |
| 62737 | Dichlorvos | 0.02 | 40 |
| 111422 | Diethanolamine | 0.5 | 1000 |
| 121697 | N,N-Diethyl aniline | 0.1 | 200 |
| 64675 | Diethyl sulfate | 0.1 | 200 |
| 119904 | 3,3-Dimethoxybenzidine | 0.01 | 20 |
| 60117 | Dimethyl aminoazobenzene | 0.1 | 200 |
| 119937 | 3,3-Dimethyl benzidine | 0.0008 | 1.6 |
| 79447 | Dimethyl carbamoyl chloride | 0.002 | 4 |
| 68122 | Dimethyl formamide | 0.1 | 200 |
| 57147 | 1,1-Dimethyl hydrazine | 0.0008 | 1.6 |
| 131113 | Dimethyl phthalate | 1 | 2000 |
| 77781 | Dimethyl sulfate | 0.01 | 20 |
| 534521 | 4,6-Dinitro-o-cresol | 0.01 | 20 |
| 51285 | 2,4-Dinitrophenol | 0.1 | 200 |
| 121142 | 2,4-Dinitrotoluene | 0.002 | 4 |
| 123911 | 1,4-Dioxane | 0.6 | 1200 |
| 122667 | 1,2-Diphenylhydrazine | 0.009 | 18 |
| 106898 | Epichlorohydrin | 0.2 | 400 |
| 106887 | 1,2-Epoxybutane | 0.1 | 200 |
| 140885 | Ethyl acrylate | 0.1 | 200 |
| 100414 | Ethyl benzene | 1 | 2000 |
| 51796 | Ethyl carbamate | 0.08 | 160 |
| 75003 | Ethyl chloride | 1 | 2000 |
| 106934 | Ethylene dibromide | 0.01 | 20 |
| 107062 | Ethylene dichloride | 0.08 | 160 |
| 107211 | Ethylene glycol | 1 | 2000 |
| 151564 | Ethylene imine | 0.0003 | 0.6 |
| 75218 | Ethylene oxide | 0.01 | 20 |
| 96457 | Ethylene thiourea | 0.06 | 120 |
| 75343 | Ethylidene dichloride | 0.1 | 200 |
| 50000 | Formaldehyde | 0.2 | 400 |
| 76448 | Heptachlor | 0.002 | 4 |
| 118741 | Hexachlorobenzene | 0.001 | 2 |
| 87683 | Hexachlorobutadiene | 0.09 | 180 |
| 77474 | Hexachlorocyclopentadiene | 0.01 | 20 |
| 67721 | Hexachloroethane | 0.5 | 1000 |
| 822060 | Hexamethylene-1,6-diisocyante | 0.002 | 4 |
| 680319 | Hexamethylphosphoramide | 0.001 | 2 |
| 110543 | Hexane | 1 | 2000 |
| 302012 | Hydrazine | 0.0004 | 0.8 |
| 7647010 | Hydrochloric acid | 1 | 2000 |
| 7664393 | Hydrogen fluoride | 0.01 | 20 |
| 123319 | Hydroquinone | 0.1 | 200 |
| 78591 | Isophorone | 1 | 2000 |
| 58899 | Lindane | 0.001 | 2 |
| 108316 | Maleic anhydride | 0.1 | 200 |
| 67561 | Methanol | 1 | 2000 |
| 72435 | Methoxychlor | 1 | 2000 |
| 74839 | Methyl bromide | 1 | 2000 |
| 74873 | Methyl chloride | 1 | 2000 |
| 71556 | Methyl chloroform | 1 | 2000 |
| 78933 | Methyl ethyl ketone | 1 | 2000 |
| 60344 | Methyl hydrazine | 0.006 | 12 |
| 74884 | Methyl iodide | 0.1 | 200 |
| 108101 | Methyl isobutyl ketone | 1 | 2000 |
| 624839 | Methyl isocyanate | 0.01 | 20 |
| 80626 | Methyl methacrylate | 1 | 2000 |
| 1634044 | Methyl tert butyl ether | 1 | 2000 |
| 101144 | 4,4-Methylene bis(2-chloraniline) | 0.02 | 40 |
| 75092 | Methylene chloride | 1 | 2000 |
| 101688 | Methylene diphenyl diisocyanate | 0.01 | 20 |
| 101779 | 4,4'-Methylenedianiline | 0.1 | 200 |
| 91203 | Naphthalene | 1 | 2000 |
| 98953 | Nitrobenzene | 0.1 | 200 |
| 92933 | 4-Nitrobiphenyl | 0.1 | 200 |
| 100027 | 4-Nitrophenol | 0.5 | 1000 |
| 79469 | 2-Nitropropane | 0.1 | 200 |
| 684935 | N-Nitroso-N-methylurea | 0.00002 | 0.04 |
| 62759 | N-Nitrosodimethylamine | 0.0001 | 0.2 |
| 59892 | N-Nitrosomorpholine | 0.1 | 200 |
| 56382 | Parathion | 0.01 | 20 |
| 82688 | Pentachloronitrobenzene | 0.03 | 60 |
| 87865 | Pentachlorophenol | 0.07 | 140 |
| 108952 | Phenol | 0.01 | 20 |
| 106503 | p-Phenylenediamine | 1 | 2000 |
| 75445 | Phosgene | 0.01 | 20 |
| 7803512 | Phosphine | 0.5 | 1000 |
| 7723140 | Phosphorus | 0.01 | 20 |
| 85449 | Phthalic anhydride | 0.5 | 1000 |
| 1336363 | Polychlorinated biphenyls | 0.0009 | 1.8 |
| 1120714 | 1,3-Propane sultone | 0.003 | 6 |
| 57578 | beta-Propiolactone | 0.01 | 20 |
| 123386 | Propionaldehyde | 0.5 | 1000 |
| 114261 | Propoxur | 1 | 2000 |
| 78875 | Propylene dichloride | 0.1 | 200 |
| 75569 | Propylene oxide | 0.5 | 1000 |
| 75558 | 1,2-Propylenimine | 0.0003 | 0.6 |
| 91225 | Quinoline | 0.0006 | 1.2 |
| 106514 | Quinone | 0.5 | 1000 |
| 100425 | Styrene | 0.1 | 200 |
| 96093 | Styrene oxide | 0.1 | 200 |
| 1746016 | 2,3,7,8-TCDD | 0.00000006 | 0.00012 |
| 79345 | 1,1,2,2-Tetrachloroethane | 0.03 | 60 |
| 127184 | Tetrachloroethylene | 1 | 2000 |
| 7550450 | Titanium tetrachloride | 0.01 | 20 |
| 108883 | Toluene | 1 | 2000 |
| 95807 | 2,4-Toluene diamine | 0.002 | 4 |
| 584849 | 2,4-Toluene diisocyanate | 0.01 | 20 |
| 95534 | o-Toluidine | 0.1 | 200 |
| 8001352 | Toxaphene | 0.001 | 2 |
| 120821 | 1,2,4-Trichlorobenzene | 1 | 2000 |
| 79005 | 1,1,2-Trichloroethane | 0.1 | 200 |
| 79016 | Trichloroethylene | 1 | 2000 |
| 95954 | 2,4,5-Trichlorophenol | 0.1 | 200 |
| 88062 | 2,4,6-Trichlorophenol | 0.6 | 1200 |
| 121448 | Triethylamine | 1 | 2000 |
| 1582098 | Trifluralin | 0.9 | 1800 |
| 540841 | 2,2,4-Trimethylpentane | 0.5 | 1000 |
| 108054 | Vinyl acetate | 0.1 | 200 |
| 593602 | Vinyl bromide | 0.06 | 120 |
| 75014 | Vinyl chloride | 0.02 | 40 |
| 75354 | Vinylidene chloride | 0.04 | 80 |
| 1330207 | Xylenes | 1 | 2000 |
| 95476 | o-Xylenes | 1 | 2000 |
| 108380 | m-Xylenes | 1 | 2000 |
| 106423 | p-Xylenes | 1 | 2000 |
| | CHEMICAL COMPOUND CLASSES | | |
| | Antimony compounds (except those listed*) | 0.5 | 1000 |
| 7783702 | Antimony pentafluoride | 0.01 | 20 |
| 8300745 | Antimony potassium tartrate | 0.1 | 200 |
| 1309644 | Antimony trioxide | 0.1 | 200 |
| 1345046 | Antimony trisulfide | 0.01 | 20 |
| | Arsenic & inorganic arsenic compounds | 0.0005 | 1 |
| 7784421 | Arsine | 0.0005 | 1 |
| | Beryllium compounds (except Be salts*) | 0.0008 | 1.6 |
| | Beryllium salts | 0.000002 | 0.004 |
| | Cadmium compounds | 0.001 | 2 |
| 130618 | Cadmium oxide | 0.001 | 2 |
| | Chromium compounds (except hexavalent & trivalent) | 0.5 | 1000 |
| | Hexavalent Chromium compounds | 0.0002 | 0.4 |
| | Trivalent Chromium compounds | 0.5 | 1000 |
| 10025737 | Chromic chloride | 0.001 | 2 |
| 744084 | Cobalt metal and compounds | | |

| CAS Number | Air Contaminant | Annual Emissions (tons per year) | Annual Emissions (pounds per year) |
|---|---|---|---|
| | (except those listed*) | 0.01 | 20 |
| 10210681 | Cobalt carbonyl | 0.01 | 20 |
| 62207765 | Fluomine | 0.01 | 20 |
| | Coke oven emissions | 0.003 | 6 |
| | Cyanide compounds (except those listed*) | 0.5 | 1000 |
| 151508 | Potassium cyanide | 0.01 | 20 |
| 143339 | Sodium cyanide | 0.01 | 20 |
| | Glycol ethers (except those listed*) | 0.5 | 1000 |
| 110805 | 2-Ethoxy ethanol | 1 | 2000 |
| 111762 | Ethylene glycol monobutyl ether | 1 | 2000 |
| 108864 | 2-Methoxy ethanol | 1 | 2000 |
| | Lead and compounds (except those listed*) | 0.001 | 2 |
| 78002 | Tetraethyl lead | 0.001 | 2 |
| 75741 | Tetramethyl lead | 0.001 | 2 |
| 7439965 | Manganese and compounds (except those listed*) | 0.08 | 160 |
| 12108133 | Methylcyclopentadienyl manganese | 0.01 | 20 |
| | Mercury compounds (except those listed*) | 0.001 | 2 |
| | Elemental mercury | 0.001 | 2 |
| 748794 | Mercuric chloride | 0.001 | 2 |
| 10045940 | Mercuric nitrate | 0.001 | 2 |
| 62384 | Phenyl mercuric acetate | 0.001 | 2 |
| | Nickel compounds (except those listed*) | 0.1 | 200 |
| 13463393 | Nickel carbonyl | 0.01 | 20 |
| 12035722 | Nickel refinery dust | 0.008 | 16 |
| | Nickel subsulfide | 0.004 | 8 |
| | Polycyclic organic matter (except those listed*) | 0.001 | 2 |
| 56553 | Benz(a)anthracene | 0.001 | 2 |
| 225514 | Benz(c)acridine | 0.001 | 2 |
| 50328 | Benzo(a)pyrene | 0.001 | 2 |
| 205992 | Benzo(b)fluoranthene | 0.001 | 2 |
| 218019 | Chrysene | 0.001 | 2 |
| 53703 | Dibenz(a,h)anthracene | 0.001 | 2 |
| 189559 | 1,2:7,8-Dibenzopyrene | 0.001 | 2 |
| 57976 | 7,12-Dimethylbenz(a)anthracene | 0.001 | 2 |
| 193395 | Indeno(1,2,3-c,d)pyrene | 0.001 | 2 |
| 7782492 | Selenium compounds (except those listed*) | 0.01 | 20 |
| 7783075 | Hydrogen selenide | 0.01 | 20 |
| 7488564 | Selenium sulfide (mono and di) | 0.01 | 20 |
| 13410010 | Sodium selenate | 0.01 | 20 |
| 10102188 | Sodium selenite | 0.01 | 20 |

* For this chemical group, specific compounds or subgroups are named specifically in this table. For the remainder of the chemicals of the chemical group, a single de minimis value is listed; this value applies to compounds which are not named specifically.

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).

## SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS AND CONSUMER PRODUCTS

### Authority

N.J.S.A. 13:1B–3 and 26:2C–1 et seq., specifically N.J.S.A. 26:2C–8.

### Source and Effective Date

R.1989 d.119, effective February 21, 1989 (operative March 26, 1989).
See: 20 N.J.R. 2002(a), 21 N.J.R. 462(a).

### Subchapter Historical Note

Notice of Rule Invalidation: Provisions of N.J.A.C. 7:27–23 held to require repromulgation and remanded to Commissioner, Department of Environmental Protection, for action consonant with the Administrative Procedure Act. In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27–23, ___ *N.J. Super.* ___, *Dkt. No. A–1226–89T1 (App. Div. February 26, 1990).* See: 22 N.J.R. 1134(b).

### 7:27–23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the VOC content of architectural coatings and consumer products. The following sections shall govern the content of architectural coatings and consumer products used and provided for use in the State and the method to be followed by manufacturers, distributors, and retailers to assure these standards are met.

(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.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Language added specifying architectural coatings are the subject of regulations.
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

#### Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

Rule requiring reduction in volatile organic substances (VOS) content in certain air fresheners. Matter of Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27–23, 239 N.J.Super. 407, 571 A.2d 971 (A.D.1990).

### 7:27–23.2 Definitions

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

"Air freshener" means any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including, but not limited to, sprays, wicks, powders, and crystals. This does not include products for use on the human body.

"All other architectural coatings" means any coating which does not meet any other architectural coating definition.

"Architectural coating" means a surface coating formulation applied and dried at ambient conditions, and used to coat all or parts of stationary structures and their appurtenances, such as buildings, bridges, the interior or exterior of houses, and other items such as signs, curbs and pavements.

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

"Bituminous coating" or "bituminous sealer" means a coating material, consisting mainly of hydrocarbons and soluble in carbon disulfide, which is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bond breaker" means any coating whose sole purpose, when applied between layers of concrete, is to prevent the freshly poured top layer of concrete from bonding to the substrate on which it is poured.

"Concrete curing compound" means any coating whose sole purpose is to retard the evaporation of water from the surface of freshly cast concrete, thereby strengthening it.

"Consumer insecticide" means those insecticide formulations available to a direct consumer which are not classified as restricted-use pesticides under the provisions of N.J.A.C. 7:30–2 of the New Jersey Pesticide Control Code and which are liquids marketed in containers of one gallon (3.79 liters) or less, or which are marketed in pressurized containers of four pounds (1.8 kilograms) or less net weight.

"Consumer product" means any of the wide variety of household products such as architectural coatings, toiletries, and cleaning agents, used by a direct or indirect consumer and available in retail markets, and includes, but is not limited to, personal products, pesticides, automotive products, cleaners, air fresheners, and food products.

"Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

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

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Direct consumer" means an individual who utilizes a consumer product in the satisfaction of his or her personal wants.

"Dry fog coating" means any spray coating which is formulated so that overspray droplets dry before falling on floors and other surfaces.

"EPA" means the United States Environmental Protection Agency.

"Fire retardant coating" means any coating which is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature.

"Flat architectural coating" means any coating which registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, or which is labeled as a flat coating.

"High heat resistant coating" means any coating formulated specifically for use in high temperature applications. These coatings are designed to withstand temperatures in excess of 400 degrees Fahrenheit.

"High performance coating" means an architectural coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all the time, or temperatures consistently above 95 degrees Centigrade or below zero degrees Centigrade; or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Indirect consumer" means a person who utilizes a consumer product in providing a service to others.

"Industrial maintenance primer" means any coating which is intended to be applied to the surface of a substrate, prior to the application of an industrial maintenance topcoat, to provide a firm bond between the substrate and subsequent coatings.

"Industrial maintenance topcoat" means any high performance coating which is formulated for the purpose of protecting against heavy abrasion or water immersion, or providing resistance to chemicals, corrosion, temperature extremes, electric potential, or solvents.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing,

destroying, repelling, or mitigating any insect, and includes, but is not limited to, ant and roach killers, room and outdoor foggers, flea and tick sprays, and personal and area insect repellants.

"Label" means anything functioning as a means of identification, such as any paper, plastic or printed inscription, placed on the container provided to direct or indirect consumers.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resins which dries by evaporation without chemical reaction and provides a quick drying, solid protective film.

"Mastic texture coating" means any coating, except waterproof mastic coatings, which is formulated to cover holes and minor cracks and to conceal surface irregularities.

"Metallic pigmented coating" means any coating which is formulated with a minimum of 0.4 pounds per gallon (0.05 kilograms per liter) of metallic pigment.

"Multicolored coating" means any coating which exhibits more than one color when applied in a single coat and which is packaged in a single container.

"Non-flat architectural coating" means a coating which registers a gloss of 15 or greater on a glossmeter held at an 85 degree angle to the coated surface or five or greater on a glossmeter held at a 60 degree angle.

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees Centigrade).

"Opaque stain" means any stain not classified as a semitransparent stain.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, or virus, bacteria, or other micro-organism (except viruses, bacterial or other micro-organisms on or in living man or other animals) which is injurious to health or the environment.

"Pesticide" means and includes any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator; provided that the term "pesticide" shall not include any substance or mixture of substances which the EPA does not consider to be a pesticide.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Primer, sealer, and undercoater" means any coating which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; protect porous substrates; prevent subsequent coatings from being absorbed by the substrate; prevent harm to subsequent coatings by materials in the substrate; provide a smooth surface for subsequent coats; seal fire, smoke, or water damage; neutralize odors; block stains; block efflorescence; condition chalky surfaces; or coat acoustical materials without affecting their acoustical properties.

"Quick-dry primer, sealer, and undercoater" means any primer, sealer or undercoater which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; seal fire, smoke, or water damage; block stains; or condition porous surfaces; and which dries to touch within one-half hour and can be recoated in two hours, as determined by ASTM–D–1640, or other method approved by the Department based on a study of comparability data.

"Roof coating" means any coating which is formulated for the sole purpose of preventing penetration of the substrate by water, including but not limited to, bituminous roof and waterproof mastic coatings.

"Room fogger" means any pressurized consumer insecticide used in a room empty of occupants in order to mitigate infestations of insects such as fleas or cockroaches.

"Semitransparent stain" means any coating which is formulated to change the color of a surface but not conceal or change the texture of the surface.

"Shellac" means any clear or pigmented coating formulated solely with the resinous secretions of the lac beetle (laccifier lacca), thinned with alcohol, and dried by evaporation without a chemical reaction.

"Sign paint" means any coating which is marketed solely for the application to indoor or outdoor signs, including lettering enamels, poster colors, and bulletin colors.

"Substrate" means any material to which an architectural coating is applied.

"Swimming pool coating" means any coating used on the interior surface of swimming pools which is specifically formulated to resist swimming pool chemicals.

"Tile-like glaze coating" means any coating which is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and which cures to a hard glaze finish.

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27–17; that is, Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4–Diethylene dioxide), 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), Trichloroethylene (Trichloroethane), Methylene chloride (Dichloromethane), and 1,1,1–Trichloroethane (Methyl Chloroform).

"Traffic coating" means any coating formulated to be applied to public streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, and parking lots.

"Varnish" means any clear or pigmented coating formulated with various resins to dry by chemical reaction on exposure to air and intended to provide a durable transparent or translucent solid protective film.

"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 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 the classes of perfluorocarbons set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

trifluoromethane (HFC–23)

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

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

chloropentafluoroethane (CFC–115)

chlorodifluoromethane (HCFC–22)

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

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

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1,2–tetrafluoroethane (HFC–134a)

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

"Waterproof mastic coating" means any weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities and which is applied in thicknesses of at least 15 mils.

"Wood preservative coating" means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative product registered by the EPA.

"Waterproofing sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
Definitions added for "all others", "flat architectural coating", "high heat resistant coating", "opaque stain", "quick-dry primer, sealer and undercoater", "semitransparent stain" and "waterproofing sealer".
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Definitions for all other architectural coatings, label, shellac, volatile organic substance and wood preservative coating amended.
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).
Definitions for "Volatile organic substances (VOS)" replaced by "volatile organic compound (VOC)" and new definition "ASTM" added; others amended for consistency with preceding subchapters' definitions.
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).

**Case Notes**

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

### 7:27–23.3 Architectural coatings

(a) No person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings which contains more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide or hold for sale within New Jersey any architectural coating which contains more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(c) For a specific architectural coating to which more than one VOC content limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertising literature, any indication that more than one VOC content limit in Table 1 is applicable, the most stringent limit is applicable.

(d) The provisions of (a), (b) and (c) above shall not apply to architectural coatings sold in:

1. New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

2. Containers with a capacity of less than one quart (0.95 liter).

(e) Compliance with this section shall be determined using the following test methods: ASTM D–3960; ASTM D–1475–60; ASTM D–3792–79; ASTM D–2698–73; ASTM D–2369–81; ASTM D–4017–81; ASTM D–95–83; any other method approved by the Department.

(f) Table 1 contains the VOC content limits for architectural coatings:

TABLE 1

VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

| Type of Architectural Coating | Maximum Allowable VOC Content Per Volume of Coating Excluding Water | |
|---|---|---|
| | Pounds Per Gallon | Kilograms Per Liter |
| **Group I** | | |
| Bituminous pavement sealer | 0.8 | 0.10 |
| Bond breaker | 5.0 | 0.60 |
| Concrete curing compound | 2.9 | 0.35 |
| Dry fog coating | 3.3 | 0.40 |
| Industrial maintenance primer or topcoat | 3.8 | 0.45 |
| Mastic texture coating | 1.7 | 0.20 |
| Metallic pigmented coating | 4.2 | 0.50 |
| Non-flat architectural coating | 3.2 | 0.38 |
| Primer, sealer, and undercoater | 2.9 | 0.35 |
| Roof coating | 2.5 | 0.30 |
| Swimming pool coating | 5.0 | 0.60 |
| Traffic coating | 2.1 | 0.25 |
| Waterproof mastic coating | 2.5 | 0.30 |
| Wood preservative coating | 4.6 | 0.55 |
| **Group II** | | |
| Fire retardant coating | | |
| opaque | 4.2 | 0.50 |
| all others | 7.1 | 0.85 |
| Flat architectural coating | 2.1 | 0.25 |
| High heat resistant coating | 5.4 | 0.65 |
| Lacquer | 5.7 | 0.68 |
| Multicolored coating | 5.0 | 0.60 |
| Quick-dry primer, sealer, undercoater | 4.2 | 0.50 |
| Shellac | | |
| clear | 6.1 | 0.73 |
| pigmented | 4.6 | 0.55 |
| Sign paint | 3.8 | 0.45 |
| Stain | | |
| semitransparent | 4.6 | 0.55 |
| opaque | 2.9 | 0.35 |
| Tile-like glaze coating | 4.6 | 0.55 |
| Varnish | 3.8 | 0.45 |
| Waterproofing sealer | 5.0 | 0.60 |
| All other architectural coatings | 2.1 | 0.25 |

Petition for Rulemaking: grandfathering of existing stock of architectural coatings.
See: 21 N.J.R. 2132(d), 21 N.J.R. 2403(c).
Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
Coatings categorized by groups and exemption for small containers at (c)2.
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Subsection (b) added, effective February 28, 1993.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC"; at Table 1, Group II, Stain: semitransparent, maximum changed to 4.6 from 4.5.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

### 7:27–23.4 (Reserved)

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
Includes prohibition against holding or storage as well as sale or manufacture.
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Subsection (b) added, effective February 28, 1993.

### 7:27–23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27–23.3, the following shall apply:

1. The label on any side of the container except the bottom shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall either specify that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that after thinning the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27–23.3(f).

2. The label on any side of the container except the bottom shall include a statement which specifies the maximum pounds of VOC in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. For architectural coatings manufactured after August 9, 1991, this statement shall be prominent and in print no smaller than 0.08 inches (two millimeters or eight point) in size.

(b) For all consumer products subject to (a) above, the label shall display the date on which the contents were manufactured or a code indicating the date of manufacture. The manufacturer shall supply an explanation of any code used to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey, 08625–0027, by February 28, 1990, and thereafter, 30 days prior to the use of any new or altered code.

(c) For labeling purposes only, terms other than VOC may be used provided that the volatile organic content level cited on the label is an accurate reflection of the VOC content of the coating, as defined in this subchapter.

(d) The provisions of this subchapter shall not apply to any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., provided the manufacturer has filed an application for any registration amendment necessary for compliance with this subchapter with EPA. A copy of this application shall be submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey 08625–0027 by August 31, 1990. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as EPA has rendered a decision upon the amendment request. Within 30 calendar days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above. Within 180 calendar days of the receipt of an approval of any necessary change, the manufacturer shall begin use of the complying product or label.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).
See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).
New (c) added and (c) recodified to (d) with provisions for applications for amended registrations to be filed with EPA.
Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Location and print size of information specified; (a)2 and (b) deleted; new (a)2, (b) and (c) added; FIFRA manufacturers required to submit data to DEP; six months between approval and use of labels allowed in (e).
Administrative Correction in (a)2 changing the date from February 28 to August 9, 1991 for the statement; and change type size from 12 to eight.
See: 23 N.J.R. 303(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC".

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

### 7:27–23.6 Administrative requirements

(a) Each manufacturer and distributor of an architectural coating subject to N.J.A.C. 7:27–23.3 shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the architectural coatings included on that shipping document and subject to N.J.A.C. 7:27–23.3, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. These documents shall be maintained by the manufacturer and the person receiving them for no less than five years and shall be made available to the Department upon request.

(b) Each manufacturer of a consumer product which contains greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions and is sold for use in New Jersey shall maintain calendar year records indicating the types of products containing greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions produced by that manufacturer for sale in New Jersey, the number of units produced, the VOC content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. Within a given product category variations of products that have VOC contents within a range of five percent by weight may be combined for the purpose of record keeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. Upon the request of the Department, the manufacturer shall submit, within 90 days of the request, a report on forms obtained from the Department about products sold in New Jersey containing greater than five percent by weight VOC. Records sufficient to provide the above information shall be maintained by each manufacturer for five years after each calendar year for which the data is collected.

Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Recordkeeping requirements revised.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
"VOS" replaced by "VOC".

**Case Notes**

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

### 7:27–23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a coating will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or indirect consumer shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale by the indirect consumer or at the retail or distribution outlet. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of architectural coating at the facility are available on site, these equipment or facilities shall be made available for Department use.

Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).
Requirements for manufacturing facilities separated from those for distributors and retailers.

**Case Notes**

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Ass'n v. Kean, D.N.J.1994, 856 F.Supp. 903.

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## SUBCHAPTER 24. CONTROL AND PROHIBITION OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS

**Authority**

N.J.S.A. 13:1B–3 and 26:2C–1 et seq., in particular 26:2C–8.

**Source and Effective Date**

R.1995 d.567, effective November 6, 1995
(operative December 2, 1995).
See: 27 N.J.R. 1077(a), 27 N.J.R. 4291(a).

### 7:27–24.1 Definitions

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

"Aerosol product" means a consumer product that incorporates a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This term does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of animal or plant crops. This term does not include pesticides which are intended for and are labeled in packages or containers for:

1. Home use, that is use in a household or immediate environment;

2. Structural pest control;

3. Industrial use, that is use for or in a manufacturing, mining, or chemical process, or in use in the operation of factories, processing plants, and similar sites; or

4. Institutional use, that is within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means a consumer product including, but not limited to, sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This term does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants offered for sale solely through institutional and industrial channels of distribution. In determining whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representation about a product's fragrance and ability to deodorize resulting from surface application shall not constitute a claim of air freshening.

"All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, this term includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Antiperspirant" means a consumer product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, gels, and squeeze bottles, which is marketed for the purpose of reducing perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"ASTM" means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Bait station insecticide" means an insecticide consisting of a container enclosing an insecticidal bait that is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

"Bathroom and tile cleaner" means a consumer product designed to clean tile or surfaces in bathrooms. This term does not include products specifically designed to clean toilet bowls or toilet tanks.

"CARB" means the California Air Resources Board.

"Carburetor–choke cleaner" means a consumer product designed to remove dirt and other contaminants from a carburetor. This term does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.

"Construction and panel adhesive" means a one-component household adhesive which has gap filling capabilities and which distributes stress uniformly throughout the bonded area resulting in a reduction or elimination of the need for use of mechanical fasteners.

"Consumer" means a person who seeks, purchases, or acquires any consumer product for personal, family, household or institutional use. This term does not include a person acquiring a consumer product for resale.

"Consumer product" means a chemically formulated product sold at retail or wholesale and used by household, commercial or institutional consumers. This term does not include paint, or architectural coatings.

"Contact adhesive" means a household adhesive that meets all of the following four criteria:

1. Is nitrile based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex;

2. Forms an instantaneous, non-repositionable bond when applied to two substrates;

3. Exhibits a minimum 30 minute bonding range when dry to the touch; and

4. Bonds only to itself without the need for reactivation by solvents or heat.

"Container" means the part or parts of the consumer product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsi-

ble for accomplishing the purposes for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed or attached.

"Cooking spray" means an aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Crawling bug insecticide" means any insecticide that is designed for use against ants, cockroaches, or other crawling household arthropods, including, but not limited to, mites, silverfish, or spiders. This term does not include products designed to be used exclusively on humans or animals.

"Deodorant" means a consumer product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

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

"Device" means an instrument which is designed for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than humans and other than bacteria, virus or other microorganism on or in living humans or other living animals. This term does not include equipment used for the application of pesticides if the equipment is sold separately from the pesticide. Additionally, the term does not include any instrument which is a firearm.

"Double phase aerosol air freshener" means an aerosol air freshener with liquid contents in two or more distinct phases that requires the product container to be shaken before use to mix the phases, producing an emulsion.

"Dusting aid" means a consumer product designed to assist removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This term does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

"Engine degreaser" means a consumer product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"EPA" means the United States Environmental Protection Agency.

"Fabric protectant" means a consumer product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This term does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled for "dry clean only" and sold in containers of 10 fluid ounces or less.

"Flea and tick insecticide" means an insecticide that is designed for use against fleas, ticks, their larvae, or their eggs. This term does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

"Floor polish or wax" means a wax, polish or any other consumer product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This term does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coating rules at N.J.A.C. 7:27–23.

"Flying bug insecticide" means an insecticide that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths or gnats. This term does not include wasp and hornet insecticides or products that are designed to be used exclusively on humans or animals.

"Fogger insecticide" means an insecticide designed to release all or most of its contents, as a fog or mist, into indoor areas during a single application.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, or other functional components with a combined vapor pressure not in excess of two millimeters of mercury at 20 degrees Celsius (°C), the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or any other consumer product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. This term does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Gel" means a colloid in which the disperse and continuous phases combine to form a semisolid material such as jelly.

"General purpose adhesive" means a non-aerosol household adhesive designed for use on a variety of substrates. This term does not include contact adhesives, structural waterproof adhesives, or construction and panel adhesives.

"General purpose cleaner" means a consumer product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This term includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces, but does not include degreasers.

"Glass cleaner" means a consumer product designed primarily for the purpose of cleaning surfaces made of glass. This term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Hair mousse" means a consumer product that is a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair styling gel" means a high viscosity, often gelatinous, consumer product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"High volatility organic compound (HVOC)" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20 degrees Celsius (°C).

"Household adhesive" means any household product that is used to bond one surface to another by attachment. This term does not include products used on humans or animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

"HVOC" (see "high volatility organic compound").

"Innovative product exemption" means a determination from the California Air Resources Board that a particular consumer product will result in less VOC emissions as compared to a representative compliant consumer product or as compared to the reformulation of the particular product in order to comply with a VOC content limit due to some characteristic of the product formulation, design, delivery system, or other factor pursuant to the CARB's consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations.

"Insecticide" means a pesticide that is designed for use against insects or other arthropods. This term does not include any product that is:

1. Designed for agricultural use;
2. Designed for structural pest control; or
3. A restricted material that requires a permit for use and possession.

Additionally, for the purpose of this subchapter, this term does not include solid fertilizers that also have insecticidal properties.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a consumer product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a consumer product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and that may also act to help ease ironing of the fabric. This term includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined pursuant to ASTM D–4359–90. This term does not include powders or other materials that are composed entirely of solid particles.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product. If the container or package of the consumer product lists two companies, firms or establishments, the manufacturer is the party which the product is "manufacturer for" or "distributed by," as noted on the container or package of the consumer product.

"Maximum allowable VOC content (percent by weight)" means the total weight of VOC, except those VOCs exempted at N.J.A.C. 7:27–24.2(f), allowed to be in the consumer product. This term is expressed as a percentage of the total net weight of the product exclusive of the container or package and is calculated according to the following equation:

$$\text{Percent by weight} = \frac{B - C}{A} \times 100$$

where:

A = net weight of unit (excluding container and packaging)
B = weight of VOCs per unit
C = weight of VOCs exempted under N.J.A.C. 7:27-24.2(f) per unit

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails including, but not limited to, lacquers, enamels, acrylics, base coats and top coats.

"Nail polish remover" means a consumer product designed to remove nail polish and coatings from fingernails or toenails.

"Nonresilient flooring" means flooring of a mineral material(s) which is not flexible. This term includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

"Oven cleaner" means any consumer product designed to clean and to remove dried food deposits from oven walls.

"Packaging" means the part or parts of the consumer product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed or attached.

"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.

"Pesticide" means a consumer product which includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator. This term does not include any substance, mixture of substances, or device which the EPA does not consider to be a pesticide.

"Principal display panel or panels" means that part, or those parts, of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase.

"Product category" means the category which best applies to a given consumer product as defined in this section and listed at N.J.A.C. 7:27–24.3 Table 1.

"Product form" means the applicable form which most accurately describes the product's dispensing form, including aerosols, gels, liquids, pump sprays, and solids.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and from which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Restricted materials" means pesticides established for restricted use under section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136–136y).

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system in the removal of facial or other bodily hair.

"Single phase aerosol air freshener" means an aerosol air freshener which has the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

"Solid" means a substance or mixture of substances which is not capable of visually detectable flow as determined under ASTM D–4359–90. The substance or mixture of substances may be in a form either whole or subdivided (such as particles comprising a powder).

"Spray buff product" means a consumer product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Structural waterproof adhesive" means a household adhesive that:

1. Is designed for applications where the bond line must be resistant to condition of continuous immersion in fresh or salt water; and

2. Has passed Federal Specification MMM–A–181 (Type 1, Grade A), and MIL–A–46051 (Type 1, Grade A and Grade C).

"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 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 the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1–trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC–11)
dichlorodifluoromethane (CFC–12)
trifluoromethane (HFC–23)
1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)
1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)
chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1– trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

"Wasp and hornet insecticide" means an insecticide that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray a high volume directed stream or burst from a safe distance at the intended pest or its hiding place.

"Wax" means a natural material or synthetic thermoplast substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). This term includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Wood floor wax" means a wax-based consumer product for use solely on wood floors.

Administrative Correction.
See: 28 N.J.R. 851(a).

**7:27–24.2 Applicability, exemptions, and exclusions**

(a) This subchapter applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures any consumer product for use in New Jersey as specified at N.J.A.C. 7:27–24.3.

(b) The provisions of N.J.A.C. 7:27–24.3, 24.4, and 24.5 below do not apply to the following:

1. Any consumer product that is sold, supplied, offered for sale, held for sale, or manufactured for sale in New Jersey for shipment and use exclusively outside of the State of New Jersey. For such products that do not comply with the VOC content limits at N.J.A.C. 7:27–24.3, the shipping documentation shall include a statement that the shipment is not for sale and use in New Jersey and shall include the immediate destination. Documentation of product shipments shall be made available to representatives of the Department upon request;

2. Any bait station insecticide that contains bait that is not more than 0.5 ounces by weight;

3. Any air freshener or any insecticide which contains at least 98 percent by weight para-dichlorobenzene;

4. Any air freshener consisting entirely of one or more of the following:

i. Fragrance;

ii. Inorganic compounds;

iii. Compounds excluded from the definition of VOC; and

iv. The compounds specified in (f) below; and

5. Any household adhesive sold in:

i. A container of one fluid ounce or less; or

ii. A container of more than one U.S. gallon (128 fluid ounces).

(c) The maximum allowable VOC content limits (percent by weight) in N.J.A.C. 7:27–24.3 below do not apply to any consumer product manufactured prior to April 30, 1996, provided that the product is labelled with the date of manufacture or a date code as specified at N.J.A.C. 7:27–24.4(b) below which shows that the product was manufactured prior to April 30, 1996.

(d) The maximum allowable VOC content limits in N.J.A.C. 7:27–24.3 below do not apply to any consumer product if CARB has granted to the manufacturer of that product an Innovative Product Exemption pursuant to the CARB's consumer products regulations at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations, provided that the manufacturer claiming this exclusion submits a copy of

the CARB exemption decision and CARB's statement of the conditions of its approval of the exemption to the following address:

Attn: Innovative Consumer Product
Bureau of Air Quality Planning
Department of Environmental Protection—CN 418
401 East State Street, 7th Floor
Trenton, New Jersey 08625–0418

(e) The maximum allowable VOC content limits in N.J.A.C. 7:27–24.3 below do not apply to any consumer product if an agency of another state which has an adopted consumer product variance provision in its rules as of December 2, 1995 has granted to the manufacturer of that product a variance (such as pursuant to the CARB consumer products regulations at Title 17, Subchapter 8.5, Article 1, Section 94514 or Article 2, Section 94505 of the California Code of Regulations or pursuant to Texas Natural Resources Conservation Commission's regulations at Title 30, Chapter 115, subchapter G, paragraph 613). This exclusion shall be effective in New Jersey until the other state agency's approved variance expires or is revoked, at which time the exclusion from the requirements of this subchapter shall automatically expire. This exclusion shall be effective in New Jersey provided that the manufacturer claiming this exclusion submits a copy of the state agency's exemption decision and statement of the conditions of its approval of the exemption to the following address:

Attn: Consumer Product Variance
Bureau of Air Quality Planning
Department of Environmental Protection—CN 418
401 East State Street, 7th Floor
Trenton, New Jersey 08625–0418

(f) The following compounds are excluded when determining compliance with the VOC limits specified at N.J.A.C. 7:27–24.3:

1. Any VOC which exerts a vapor pressure less than or equal to 0.1 millimeters of mercury at 20 degrees Celsius (°C);

2. Any VOC which consists of more than 12 atoms of carbon per molecule, if its vapor pressure is unknown;

3. Any VOC which has a melting point higher than 20 degrees Celsius and does not sublime, if its vapor pressure is not known; or

4. Any fragrances up to a combined level of two percent by weight contained in any consumer product.

(g) The requirements of N.J.A.C. 7:27–24.4(b) and (c) below do not apply to consumer products registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. section 136–136y).

**7:27–24.3 VOC content standards**

(a) Except as provided at N.J.A.C. 7:27–24.2(b) through (e) and subsection (c) below, no person shall manufacture, distribute, or supply any consumer product for use in New Jersey which was manufactured after April 30, 1996, and contains VOC in excess of the limits specified in Table 1 below:

TABLE 1

VOC CONTENT LIMITS FOR CONSUMER PRODUCTS

| Consumer Product Category | Maximum Allowable VOC Content (percent by weight) |
|---|---|
| Air fresheners | |
| Single phase aerosol | 70 |
| Double-phase aerosol | 30 |
| Liquid/pump | 18 |
| Solid/gel | 3 |
| Antiperspirants | |
| Aerosol | HVOC 60 |
| Non-aerosol | HVOC 0 |
| Bathroom and tile cleaners | |
| Aerosols | 7 |
| All other forms | 5 |
| Carburetor choke cleaners | 75 |
| Cooking sprays, aerosol | 18 |
| Deodorants | |
| Aerosol | HVOC 20 |
| Non-aerosol | HVOC 0 |
| Dusting aids | |
| Aerosol | 35 |
| All other forms | 7 |
| Engine degreasers | 75 |
| Fabric protectants | 75 |
| Floor polishes/waxes | |
| Products for flexible flooring material | 7 |
| Products for nonresilient flooring | 10 |
| Wood floor wax | 90 |
| Furniture maintenance products, aerosol | 25 |
| General purpose cleaners | 10 |
| Glass cleaners | |
| Aerosols | 12 |
| All other forms | 8 |
| Hair mousses | 16 |
| Hair sprays | 80 |
| Hair styling gels | 6 |
| Household adhesives | |
| Aerosol | 75 |
| Contact | 80 |
| Construction and panel | 40 |
| General purpose | 10 |
| Structural waterproof | (Reserved) |
| Insecticides | |
| Crawling bug | 40 |
| Flea and tick | 25 |
| Flying bug | 35 |
| Foggers | 45 |
| Lawn and garden | 20 |
| Laundry prewash | |
| Aerosol/solids | 22 |
| All other forms | 5 |
| Laundry starch products | 5 |
| Nail polish removers | 85 |
| Oven cleaners | |
| Aerosol/pump sprays | 8 |
| Liquids | 5 |
| Shaving creams | 5 |

(b) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted prior to use, the limits specified in (a) above shall apply to the product only after the minimum recommended dilution has taken place. Such minimum recommended dilution does not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(c) For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. Section 136–136y), the most effective date of the VOC standards specified in (a) above is April 30, 1997.

**7:27–24.4 Administrative requirements**

(a) Any manufacturer that manufactures a consumer product for sale in New Jersey that is required to meet a VOC content limit in N.J.A.C. 7:27–24.3 above shall submit a registration report to the Department by no later than October 1, 1996. Any manufacturer of a new consumer product for sale in New Jersey that is required to meet a VOC content limit in N.J.A.C. 7:27–24.3 above shall submit a registration report by no later than five months after the initial date of manufacture for sale in New Jersey.

1. The registration shall include the following information:

i. The name of the manufacturer;

ii. The full mailing address of the manufacturer;

iii. The name and telephone number of contact person; and

iv. A list of the categories of products manufactured that are subject to a VOC content limit at N.J.A.C. 7:27–24.3 (for example: lawn and garden insecticides, aerosol household adhesives, floor wax for non-resilient flooring).

2. The registration shall be sent to the Department at the following address:

Attn: Consumer Product Registration
Bureau of Air Quality Planning
Department of Environmental Protection—CN 418
401 East State Street
Trenton, New Jersey 08625–0418

(b) Each manufacturer of a consumer product subject to N.J.A.C. 7:27–24.3 above shall clearly display on each consumer product container or packaging the month and year in which the product was manufactured (or a code indicating such date). This subsection does not apply to products which are offered to consumers free of charge for the purpose of sampling the product.

(c) If a manufacturer uses a code indicating the date of manufacture in order to comply with (b) above, the manufacturer shall provide to the Department or its representative within 30 days a description of such code upon request.

(d) Each manufacturer of a product subject to a VOC content limit in N.J.A.C. 7:27–24.3 shall keep records demonstrating compliance with the VOC content limits. Such records shall consist of the results of testing or the calculations based upon the constituents used to manufacture the product as required at N.J.A.C. 7:27–24.5(a) or (b). These records are required to be kept for a period of at least three years. Such records shall be made available within 30 days of receipt of request by the Department.

(e) Within 90 days of a request by the Department, each manufacturer shall submit the information required to be kept in (d) above in addition to estimates of the quantities of consumer products sold in New Jersey on forms provided by the Department.

(f) A person who holds for sale, offers for sale, or sells any consumer product to a consumer shall, upon request, identify the distributor or company from whom the consumer product was obtained to the Department or its representative upon request.

(g) Any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27–1.6. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27–1.6 through 1.30 inclusive.

**7:27–24.5 Test methods**

(a) Any person performing tests to determine compliance with the VOC content limits in N.J.A.C. 7:27–24.3 shall use methods which are shown to accurately determine the concentration of VOCs in a product. Such methods shall include any methods issued by EPA or CARB which have been established for the measurement of VOCs in consumer products.

(b) Compliance determinations may also be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product.

(c) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D4359–90, which is incorporated by reference herein.

**7:27–24.6 Federal supersession**

(a) If EPA promulgates any consumer or commercial product regulation pursuant to 42 U.S.C. 7511b(e) which conflicts with the applicability standards or VOC content limits in this subchapter, the applicability standards or VOC content limits of the conflicting portion of the Federal

regulation shall automatically supersede the applicability standards or the VOC content limits in this subchapter as follows:

1. If the Federal regulation establishes a VOC content standard for a category of consumer products that is also regulated in this subchapter, the VOC content standard shall be superseded where:

i. The Federal VOC content standard is either more stringent or less stringent than the VOC content standard in this subchapter; or

ii. The Federal standard is expressed in units other than the units expressed in this subchapter (for example: percent by volume, weight by VOC per volume of product, or emissions per use);

2. If the Federal regulation establishes a scope of applicability for a category of consumer products that is also regulated in this subchapter, the scope of applicability in this subchapter shall be superseded where:

i. The scope of applicability of the category in the Federal rule is defined differently; or

ii. The scope of applicability in the Federal rule provides a different exclusion or exemption as to which products within the category are required to meet the VOC standard; or

3. If the Federal regulation excludes specific compounds or substances from the allowable VOC content for any specific category of consumer products or all categories of consumer products, the same compounds or substances shall be excluded from the allowable VOC content for the same categories in this subchapter.

(b) If the Federal regulation does not establish a VOC content standard (or does not otherwise limit the emissions of VOC) for a category of consumer products that is regulated in this subchapter, the provisions of this subchapter that regulate such a category shall remain in full force and effect.

Administrative Correction.
See: 28 N.J.R. 851(a).

### 7:27–24.7 Civil or criminal penalties for failure to comply

Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C–19(f)1 and 2.

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## SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

**Authority**

N.J.S.A. 13:1B–3, 26:2C–1 et seq., specifically N.J.S.A. 26:2C–8.

**Source and Effective Date**

R.1989 d.123, effective February 21, 1989.
See: 20 N.J.R. 1631(a), 21 N.J.R. 483(a).

**Subchapter Historical Note**

Public Notice: Pre-publication meeting on proposal. See: 24 N.J.R. 2128(a).

**Law Review and Journal Commentaries**

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda, 132 N.J.L.J. No. 8, S10 (1992).

### 7:27–25.1 Definitions

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

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

"Blender" means any person who carries out a blending process.

"Blending process" means the combination of physical and chemical operations in which components including, but not limited to, gasoline, gasoline blendstocks, and other chemical components are combined to create a finished gasoline or gasoline blendstock.

"Carbon monoxide (CO)" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Control area" means a geographic area within which gasoline to be used, sold, or dispensed as vehicular fuel in New Jersey is subject to the applicable standards set forth at N.J.A.C. 7:27–25.3 during the specified control period.

"Control period" means the applicable period each year during which gasoline within a control area is subject to the oxygen content or RVP standards set forth at N.J.A.C. 7:27–25.3.

"Crude oil" means a petroleum liquid removed from the earth and not previously used including, but not limited to, partially refined oil.

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

"Distribution capacity" means capacity for transportation, storage and blending.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

"EPA" means the United States Environmental Protection Agency.

"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.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate 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.

"Importer" means a person who imports gasoline from a foreign country into the United States.

"Motor vehicle" means all vehicles propelled by an internal combustion engine, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

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

"Nitrogen dioxide ($NO_2$)" 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.

"Nonconforming gasoline" means any gasoline the RVP or oxygen content of which does not during the applicable control period conform with the standards set forth in N.J.A.C. 7:27–25.3.

"Oxides of nitrogen ($NO_x$)" means any of the oxides of nitrogen including, but not limited to, nitrogen oxide and nitrogen dioxide.

"Oxygen content" means, in respect to the composition of gasoline, the percentage of oxygen by weight (unless specified as being by volume) contained in the gasoline. The percentage of oxygen by weight of the gasoline shall be based upon its percentage oxygenate by volume excluding denaturants and other non-oxygen-containing components. All volume measurements are adjusted to 60 degrees Fahrenheit.

"Oxygen program control area" means the area containing the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren.

"Oxygen program control period" means the control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27–25.3 are applicable to gasoline.

"Oxygenate" means any substance which, when blended into gasoline, increases the amount of oxygen in that gasoline blend and which is allowed to be used as a gasoline additive pursuant to 42 USC 7545.

"Oxygenate blend" means a gasoline produced by blending one or more oxygenates into a base gasoline.

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

"Petroleum distillate" means any mixture of volatile organic compounds produced by a refining process including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

"Product development" means investigations directed toward the establishment of methods of manufacture or of specific designs of salable substances, devices, or procedures, based on previously discovered facts, scientific principles or substances.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

"Refinery" means a facility which carries out refining processes.

"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products, including gasoline.

"Reid vapor pressure" (RVP) means the absolute vapor pressure of a petroleum product in pounds per square inch (or kilopascals) at 100 degrees Fahrenheit (37.8 degrees Celsius).

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

"Retail outlet" means any establishment at which gasoline is provided, sold, or offered for sale directly for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"RVP control area" means the entire geographic area within the State of New Jersey.

"RVP control period" means the period from May 1 through and including September 15 of each year during which the RVP standard set forth at N.J.A.C. 7:27–25.3 is applicable to gasoline to be used in New Jersey as vehicular fuel.

"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" means the State of New Jersey.

"Trial use" means use of a product in an experiment or series of experiments by the manufacturer or importer of that product.

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

"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.

"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 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 the classes of perfluorocarbons set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

trifluoromethane (HFC–23)

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

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

chloropentafluoroethane (CFC–115)

chlorodifluoromethane (HCFC–22)

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

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

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1,2–tetrafluoroethane (HFC–134a)

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Changed heading; old title "Applicability." Added "as motor vehicle fuels,".
Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Substantial revision of definitions; added definitions for "ASTM", "EPA", "Facility", "Nonconforming gasoline", "Product development", "Research", "Trial use", "Volatile organic substances".
Amended by R.1992 d.102, effective March 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Added definition for "volatile organic compound" and amended "petroleum distillate" table consistent with change from "substance" to "compound".
Recodified from N.J.A.C. 7:27–25.2 and amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Fifteen definitions added.
The former section N.J.A.C. 7:27–25.1, Scope, was repealed by this rulemaking. Prior rulemaking activities are as follows:
Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).

Administrative correction to the definition of "southern oxygen program control area".
See: 24 N.J.R. 4524(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.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).
Administrative Correction.
See: 27 N.J.R. 1406(a).
Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).
See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).
Provisions of emergency amendment, R.1995 d.129, adopted without change.
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency Amendment R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).
Emergency Amendment R.1995 d.607, effective October 27, 1995 (expires December 26, 1995).
See: 27 N.J.R. 4731(a).
Adopted Concurrent Proposal, R.1996 d.49, effective December 26, 1995 (operative February 24, 1996).
See: 27 N.J.R. 4731(a), 28 N.J.R. 851(b).

### 7:27–25.2 Scope and applicability

(a) This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. This subchapter governs the standards for fuels used as motor vehicle fuels and provided for use as motor vehicle fuels in the State and the methods to be followed by refiners, importers, blenders, distributors, wholesaler purchaser-consumers and retailers to assure these standards are met.

(b) Any refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer of gasoline for use as motor vehicle fuel in the State is subject to the provisions of this subchapter.

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).

### 7:27–25.3 General provisions

(a) Except as provided for use in (b) and (h) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) The following compliance schedule shall be in effect in 1989 only; after 1989, the compliance schedule set out in (a) above shall be in effect:

1. No refiner or importer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period May 1 through September 15, 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

2. No blender or distributor shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period June 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

3. No wholesale purchaser-consumer or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period July 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

(c) Except as provided for at N.J.A.C. 7:27–25.9, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in the oxygen program control area, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent from November 1 through and including the last day of the following February; and

2. The oxygen content of the gasoline equals or is less than 3.5 percent.

(d) The standards set forth in (c) above shall become operative on November 1, 1992 or on such delayed effective date as EPA establishes, pursuant to 42 USC 7545(m)(3)(C), due to a determination that there is or is likely to be, for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or

2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.

(e) At no time shall a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey gasoline unless, pursuant to 42 USC 7545, the EPA has:

1. Determined to its satisfaction that the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline are substantially similar to any gasoline and any concentration of an oxygenate or a combination of oxygenates utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine; or

2. Waived the requirement for the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline to be substantially similar to any fuel or fuel additive utilized, pursuant to 42 USC 7525, in the certifi-

cation of any model year 1975, or subsequent model year, vehicle or engine.

(f) Notwithstanding the provisions of (c) above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:

1. The gasoline is destined for one of the following uses:

i. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a facility located outside the oxygen program control area;

ii. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a time which is outside the oxygen program control period applicable to that retailer or wholesale purchaser-consumer;

iii. Provision, sale, or exchange in trade to another refiner, importer, blender, or distributor; or

iv. Blending with oxygenate so that the gasoline has an oxygen content which equals or exceeds 2.7 percent prior to providing, selling, or otherwise exchanging in trade the gasoline to a retailer or wholesale purchaser-consumer;

2. Documents associated with the gasoline, including, but not limited to, any record, invoice, or bill of lading, specify which one of the uses given in (f)1 above applies to the gasoline; and

3. The refiner, importer, blender or distributor ensures that gasoline is provided, sold, stored, transported, imported, or exchanged in trade in accordance with the use specified in (f)2 above.

(g) Upon the request of any consumer, a retailer shall inform the consumer as to the category of oxygenate, either alcohol or ether blends, being dispensed from any of the gasoline dispensing devices at the facility.

(h) Wholesale purchaser-consumers and retailers shall be exempt from the RVP standard established in (a) above during the month of May.

Amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
New (c) through (e) added.
Administrative correction to (a).
See: 24 N.J.R. 4524(b).
Amended by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).
Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).
See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).
Provisions of emergency amendment, R.1995 d.129, adopted without change.
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency Amendment R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).
Emergency Amendment R.1995 d.607, effective October 27, 1995 (expires December 26, 1995).
See: 27 N.J.R. 4731(a).
Adopted Concurrent Proposal, R.1996 d.49, effective December 26, 1995 (operative February 24, 1996).
See: 27 N.J.R. 4731(a), 28 N.J.R. 851(b).

**7:27–25.4 Recordkeeping and compliance determinations**

(a) Each refiner, importer, blender or distributor shall:

1. During any applicable control period established pursuant to N.J.A.C. 7:27–25.3, test all gasoline prior to its release from a refinery, import facility, blending facility or distribution facility for use in a control area within the State to determine its RVP or oxygen content, as applicable, and for each test prepare a test report which documents the RVP or oxygen content, as applicable, of the gasoline;

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during the oxygen program control period, the gasoline conforms with the oxygen content requirements of this subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i. A copy of the test report prepared pursuant to (a)1 above with the certification contained therein; or

ii. The certification in writing on the invoice, bill of lading, or other transfer document; and

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the RVP and the oxygen content of gasoline; the category of the oxygenate, either alcohol or ether blends, in the gasoline; shipment quantity; shipment date; and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including RVP and the oxygen content of gasoline, the category of the oxygenate, either alcohol or ether blends, in the gasoline; delivery quantity; date of delivery; and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with the following methods:

1. For determining the RVP of gasoline:

i. For manual sampling: ASTM D4057; or

ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987); and

2. For determining the oxygen content of gasoline:

i. The methods set forth at 40 CFR 80, Appendix D; or

ii. Any other method approved in writing in advance by the Department and EPA.

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. "Method 1—Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;

2. "Method 2—Herzog Semi–Automatic Method" promulgated at 40 CFR 80, Appendix E;

3. "Method 3—Grabner Method" promulgated at 40 CFR 80, Appendix E; or

4. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e) Any determination of the oxygen content of any sample of gasoline required pursuant to the provisions of this subchapter shall be conducted as follows:

1. The sample of gasoline shall be tested to determine the concentration, in percent by volume, of each oxygenate in the gasoline. All volume measurements used in the testing shall be adjusted to 60 degrees Fahrenheit. Only the oxygen-containing components of the oxygenate shall be taken into consideration in determining the concentration; any denaturant or other non-oxygen-containing components shall be excluded from the determination of the concentration. The testing of the sample of gasoline shall be conducted using one of the following test methods:

i. ASTM D4815; or

ii. Any other equivalent test method approved in advance in writing by the Department and EPA;

2. The densities (or specific gravities) of each oxygenate and of the oxygenate blend shall be established as follows:

i. The density of each oxygenate is given in Table 1 at N.J.A.C. 7:27–25.4; and

ii. The density of the oxygenate blend shall be calculated as follows:

(1) The density of the base gasoline into which the oxygenate(s) are blended is assumed to be 0.7420; and

(2) The density of the oxygenate blend obtained when the oxygenate(s) are blended into the base gasoline shall be calculated by determining the weighted average of the densities of the oxygenate(s) and the base gasoline. In determining this weighted average, the density of each component shall be weighted in proportion to the volumetric fraction of that component in the oxygenate blend;

3. The mass concentration of the oxygen-containing components of each oxygenate in the gasoline shall be obtained by multiplying the concentration of each oxygenate in the gasoline, determined in (e)1 above, by the following ratio: the specific gravity (or density) given for the oxygenate in Table 1 below to the specific gravity (or density) of the oxygenate blend, determined in (e)2ii above;

4. The contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, shall be determined by multiplying the mass concentration of the oxygenate in the gasoline determined in (e)3 above by the oxygen molecular weight fraction of the oxygenate, obtained from Table 1 below; and

5. The total oxygen content in percent by weight of the gasoline shall be obtained by summing the oxygen content contribution of each oxygenate in the gasoline.

(f) In order to provide allowance for test method variation, the Department shall consider any gasoline which is tested using ASTM D4815, pursuant to (e)1i above, to comply with the standards of N.J.A.C. 7:27–25.3 if its oxygen content, calculated pursuant to (e) above, is within 10 percent of the standard.

TABLE 1
Specific Gravity and Oxygen Molecular Weight Fraction of Common Oxygenates

| Oxygenate | Oxygen Molecular Weight Fraction | Specific Gravity at 60 degrees F |
|---|---|---|
| methyl alcohol | 0.4993 | 0.7963 |
| ethyl alcohol | 0.3473 | 0.7939 |
| normal propyl alcohol | 0.2662 | 0.8080 |
| isopropyl alcohol | 0.2662 | 0.7899 |
| normal butyl alcohol | 0.2158 | 0.8137 |
| isobutyl alcohol | 0.2158 | 0.8058 |
| secondary butyl alcohol | 0.2158 | 0.8114 |
| tertiary butyl alcohol | 0.2158 | 0.7922 |
| methyl tertiary butyl ether (MTBE) | 0.1815 | 0.7460 |
| tertiary amyl methyl ether (TAME) | 0.1566 | 0.7752 |
| ethyl tertiary butyl ether (ETBE) | 0.1566 | 0.7452 |
| diisopropyl ether (DIPE) | 0.1566 | 0.7300 |

(g) All records and documentation required to be made or maintained in accordance with this section, including any calculations performed, shall be maintained by each refiner, importer, blender, distributor, retailer, and wholesale purchaser-consumer, as applicable, for not less than three years from the date the record is made. Records made within the past year (the previous 12 months) shall, upon request of the Department or its authorized representatives, be immediately available for review. Records made in previous years shall, upon the request of the Department or its authorized representatives, be available for review within five business days.

(h) Notwithstanding the requirements in this section for testing to determine the oxygen content of gasoline, a refiner, importer, blender or distributor may apply to the Department for approval to use an alternative method of determining the oxygen content of gasoline. The application shall be certified in accordance with N.J.A.C. 7:27–8.24. The Department shall not approve such an application unless the alternative method proposed would ensure that the oxygen content of the fuel would be determined with no less accuracy and reliability than would be achieved through testing in accordance with this section.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
In (a)1, changed "September 1" to "September 15"; added reference to State and Federal regulations. In (c), stylistic revisions. In (d), added 1, 2, 3.
Amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Changes reflect oxygen content requirements.
Amended by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).
Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).
See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).
Provisions of emergency amendment, R.1995 d.129, adopted without change.
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Public Notice: Emergency Amendment R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).

**Case Notes**

Private inspection center license not suspended; licensee did not improperly certify repairs. Division of Motor Vehicles v. Joe's Auto Service, 92 N.J.A.R.2d (MVH) 1.

### 7:27–25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, any exemption, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of gasoline being provided, stored, transported, exchanged in trade, sold, or offered for sale at that refinery, import facility, blending facility, retail, wholesale purchaser-consumer or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

Amended by R.1991 d.462, effective September 3, 1991 (operative November 2, 1991).
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
In (a) added "any exemption".

### 7:27–25.6 Petition for rulemaking in the case of imminent supply shortage

If at any time a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B–4(f) and N.J.A.C. 1:30–3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B–4.4 and N.J.A.C. 1:30–4.5.

### 7:27–25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use nonconforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625–0422

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;

2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27–25.3 standards;

3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:

i. To be used from May 1 through September 15; and

ii. To be stored at the facility during the May 1 through September 15 period;

4. A calculation of the maximum potential additional VOC emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:

i. Stored at the facility; and

ii. Consumed that day in research, product development, or trial use;

2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;

3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

(j) The Department may deny an application for an exemption if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27–25.8 within 60 days after receipt of a fee invoice.

(*l*) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1991 d.462, effective September 3, 1991.
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Administrative change to (b).
See: 25 N.J.R. 309(a).

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

### 7:27–25.8 Labeling

(a) During any oxygen program control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in trade at a facility owned or operated by any retailer is subject to the oxygen content standards set forth at N.J.A.C. 7:27–25.3, the retailer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

(b) The label shall, except as provided in (c) below, contain the text given below. This statement shall not be altered and no additional language shall be inserted within the text. However, a phrase indicating the dates of the oxygen program control period may be added before or after this text. If a label does not contain the dates of the oxygen program control period then that label shall be removed from the fuel pump or other gasoline dispensing device at the end of the oxygen program control period. This label shall state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(c) If the fuel pump or other gasoline dispensing device is dispensing nonconforming fuel in accordance with a variance issued by the Department pursuant to N.J.A.C. 7:27–25.9, the label shall state the following:

The fuel dispensed from this pump does not meet standards established to reduce carbon monoxide pollution from motor vehicles but is temporarily authorized to be distributed due to a shortage of supply of fuel that meets the standard.

(d) Any label required pursuant to this section shall be:

1. Posted on the vertical surface of the gasoline dispensing device on each side of the device from which gasoline can be dispensed, on the upper two-thirds of the surface, in a position clear, conspicuous, and easily readable from the position of the driver in the vehicle to which gasoline is being dispensed; and

2. Clearly legible and in block letters that are:

i. No less than 20–point bold type; and

ii. In a color that contrasts with the background on which they are placed.

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Amendment, R.1995 d.129, effective February 8, 1995 (to expire April 9, 1995).
See: 27 N.J.R. 787(a).
Adopted Concurrent Proposal, R.1995 d.236, effective April 7, 1995 (operative June 5, 1995).
See: 27 N.J.R. 787(a), 27 N.J.R. 1479(a), 27 N.J.R. 1794(b).
Provisions of emergency amendment, R.1995 d.129, adopted without change.
Emergency Repeal, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Section was "Labeling".
Public Notice: Emergency repeal by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).

### 7:27–25.9 Variance for shortage of supply

(a) The Department may issue to a refiner, importer, blender, or distributor who has or may have an insufficient supply of conforming gasoline, a temporary variance from the oxygen content standards set forth at N.J.A.C. 7:27–25.3 which would allow the refiner, importer, blender, or distributor to provide, offer for sale, sell, transfer, import, or exchange in trade gasoline that does not conform with the oxygen content requirements of this subchapter.

(b) Application for a temporary variance pursuant to this section shall be made on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and
Environmental Quality Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625–0422

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or an "Act of God";

2. A statement of the cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

3. A statement of how an adequate supply of conforming fuel will be expeditiously obtained;

4. A comprehensive listing of all facilities to which the applicant would, pursuant to the variance, provide or sell the nonconforming gasoline. This listing shall include the name and address of each facility and the name and phone number of a contact person at each facility;

5. Specification of the minimum oxygen content of the nonconforming gasoline which will be provided or sold, during the period in which the variance is in effect; and

6. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27–25.11(c) and shall be certified in accordance with N.J.A.C. 7:27–8.24.

(e) No applicant for a variance pursuant to this section may provide, offer for sale, sell or otherwise exchange in trade any non-conforming gasoline before the Department approves the variance in writing.

(f) The Department shall deny any application for a variance if:

1. The Department determines that approval of the variance may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate to the satisfaction of the Department, that:

i. There is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or an "Act of God";

ii. The cause(s) of the shortage of conforming gasoline are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

iii. The applicant has taken all reasonable steps to minimize the extent and duration of the inadequate supply of conforming gasoline; or

iv. The applicant has taken all reasonable steps to obtain an adequate supply of gasoline.

(g) The Department may deny an application for a variance if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(h) Any variance issued by the Department under this section shall be valid for a period stated in the variance. The period shall be no longer than 45 days.

(i) Any refiner, importer, blender, and distributor to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each distributor, retailer or wholesale purchaser-consumer named in the variance in accordance with (c)4 above.

(j) No retailer who provides or sells nonconforming gasoline and no wholesale purchaser-consumer who uses nonconforming gasoline shall be deemed by the Department to have violated the provisions of this subchapter if:

1. The retailer or wholesale purchaser-consumer is named, in accordance with (c)4 above, in a variance issued by the Department pursuant to this section; and

2. The retailer or wholesale purchaser-consumer demonstrates, to the satisfaction of the Department, that the nonconforming gasoline was provided to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility pursuant to that variance.

(k) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;

3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27–25.11(d), within 60 days after receipt of a fee invoice.

(*l*) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Maintain records, on a daily basis, showing the actual oxygen content and the volume in gallons of each shipment of nonconforming gasoline provided or sold or otherwise exchanged in trade during the period that the variance was in effect. Such records shall be maintained on the operating premises for no less than three years from the date the record was made;

2. Submit to the Department, within 60 days of the Department's issuance of the variance, a report indicating the total number of gallons of nonconforming gasoline provided, sold or otherwise exchanged in trade, or used during the period the variance was valid and the actual oxygen content of that gasoline. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27–8.24;

3. Remit to the Department with the report specified in (*l*)2 above penalties pursuant to N.J.A.C. 7:27A–3.10(e)25. Any penalties due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which penal-

ties are required acceptable, unless the penalties are remitted with the report;

4. Make the records required to be kept pursuant to (*l*)1 above available, upon request, for review by the Department or its authorized representatives; and

5. Upon the request of the Department, submit to the Department all or any part of the information contained in the records required to be kept pursuant to (*l*)1 above.

(m) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that the person to whom the Department has issued the variance has failed to:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction;

3. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27–25.11(d), within 60 days after receipt of a fee invoice; or

4. Comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department.

(n) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C. 7:27–8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 E. State Street
CN 402
Trenton, New Jersey 08625–0402

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Administrative change to (b).
See: 25 N.J.R. 309(a).
Repeal and Recodification, R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Recodified from 7:27–25.10; repealed prior text at 7:27–25.9, "Variance for contemporaneous averaging" (see 24 N.J.R. 3539(a), 25 N.J.R. 309(a), 25 N.J.R. 2720(a)).
Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Repeal, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).
Section was "Variance for shortage of supply".
Public Notice: Emergency repeal by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).

### 7:27–25.10 Owner and operator responsibility

The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and criminal penalties pursuant to N.J.S.A. 26:2C–19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

New Rule, R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
Recodified from 7:27–25.11 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).

### 7:27–25.11 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27–25.7 shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27–25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of $500.00 for each year that the exemption remains in effect.

(c) Any person who applies for a variance pursuant to N.J.A.C. 7:27–25.9 shall submit with the application a non-refundable service fee of $500.00. No application shall be deemed complete without the required fee.

(d) Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27–25.9 shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of $200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

New Rule, R.1991 d.462, effective September 3, 1991.
See: 23 N.J.R. 45(b), 23 N.J.R. 2656(a).
Recodified from N.J.A.C. 7:27–25.8 and amended by R.1992 d.382, effective October 5, 1992.
See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).
New subsections (c) and (d) added.
Recodified from 7:27–25.12 by R.1994 d.85, effective February 22, 1994 (operative March 14, 1994).
See: 25 N.J.R. 4039(a), 26 N.J.R. 1148(a).
Amended by R.1994 d.483, effective September 19, 1994 (operative October 24, 1994).
See: 26 N.J.R. 1048(a), 26 N.J.R. 3835(a).
Emergency Amendment, R.1995 d.562, effective September 28, 1995 (expires November 27, 1995).
See: 27 N.J.R. 4004(a).

Public Notice: Emergency amendment by R.1995 d.562 terminated October 2, 1995 by order of the United States District Court, District of New Jersey.
See: 27 N.J.R. 4116(a).

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## SUBCHAPTER 26. OZONE TRANSPORT COMMISSION—LOW EMISSION VEHICLES PROGRAM

**Authority**

N.J.S.A. 13:1B–3(e), 13:10–9 and 26:2C–1 et seq., specifically 26:2C–8.

**Source and Effective Date**

R.1995 d.661, effective December 18, 1995
(operative January 21, 1996).
See: 27 N.J.R. 1910(a), 27 N.J.R. 5016(a).

### 7:27–26.1 Definitions

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

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to California Health & Safety Code Sections 39500 et seq.

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C.A. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. Section 7507.

"CCR" shall the mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of the California Air Resources Board, or the United States Environmental Protection Agency.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to the California Air Resources Board in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means the finding by the California Air Resources Board that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has satisfied the criteria adopted by the California Air Resources Board for the control of specified air contaminants from motor vehicles.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

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

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Evaporative emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Field fixes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer's authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Fleet average" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are produced and delivered for sale in the State of New Jersey in any model year, beginning with model year 1996, based on the calculation in N.J.A.C. 7.27–26.5(a).

"49–State Low Emission Vehicle (49SLEV) Program" means an alternative voluntary nationwide program that would achieve emission reductions from new motor vehicles in the Ozone Transport Region (OTR) equivalent to or greater than would be achieved by the OTC–LEV Program and that would advance motor vehicle control technology.

"Fuel flexible" means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

"Fuel system" means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

"G/mi" means grams per mile.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy–duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

"HEV contribution factor" means the NMOG emission contribution of HEVs to the fleet average NMOG value.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and also includes any limited-access highway designated as a "freeway" or "parkway" by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statutes, N.J.S.A. 39:1–1 et seq., have been made applicable pursuant to the provisions of N.J.S.A. 39:5A–1.

"Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery–powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

"Intermediate compliance standards" means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

"Intermediate volume manufacturer" means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

"In–use compliance" means the adherence of a motor vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

"Light–duty truck" means any motor vehicle, rated at 6,000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

"Light–duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

"Low emission vehicle" or "LEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27–26.4.

"Manufacturer's sales fleet" means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

"Medium–duty vehicle" means any pre–1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model–year" or "MY" means the manufacturers' annual production period as set forth in 40 C.F.R. Part 85, Subpart X.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"Non–methane organic gas" or "NMOG" shall mean the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off–highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by the California Air Resources Board as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light–Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"OTC–LEV Program" means a LEV program as set forth in 40 CFR 51.120(c).

"Ozone Transport Region or OTR" means the ozone transport region established pursuant to 42 U.S.C. 7511c(a), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Pennsylvania, Vermont, the Consolidated Metropolitan Statistical Area that includes northern portions of Virginia and the District of Columbia.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level. The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3,000 new light-duty vehicles and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27–26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27–26.4.

"Type A HEV" shall mean an HEV which achieves a minimum range of 60 miles over the All–Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light–Duty Trucks and Medium–Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title–13, California Code of Regulations.

"Type B HEV" shall mean an HEV which achieves a range of 40 to 59 miles over the All–Electric Range Test as defined in "California Exhaust Emission Standards and Test

Procedures for 1988 and Subsequent Model Passenger Cars, Light–Duty Trucks and Medium–Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title–13, California Code of Regulations.

"Type C HEV" shall mean an HEV which achieves a range of 0 to 39 miles over the All–Electric Range Test and all other HEVs excluding "Type A" and "Type B" HEVs as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light–Duty Trucks, and Medium–Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title–13, California Code of Regulations.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27–26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles and hybrid electric vehicles (HEVs) certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. 86.082–24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which is certified by the Executive Officer of the California Air Resources Board to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel-fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel-fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.

**7:27–26.2 Applicability**

(a) This subchapter shall apply to all 1999 model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines.

(b) Notwithstanding (a) above, the provisions of this subchapter shall not apply in the event that:

1. The USEPA determines through rulemaking that the 49SLEV is an acceptable alternative for the OTC–LEV Program; and

2. The USEPA finds that the 49SLEV program is in effect.

(c) In the event that the USEPA makes the determination and finding at (b)1 and 2 above, but then the USEPA or the Department in conjunction with the USEPA subsequently determines that the 49SLEV Program is not timely implemented or no longer an acceptable alternative to the OTC–LEV Program or finds that the 49SLEV Program is no longer in effect throughout the OTR, the provisions of this subchapter shall apply.

(d) Notwithstanding (a) above, the provisions of this subchapter shall not apply unless the combined number of registrations or new motor vehicles in those states and the District of Columbia, excluding New Jersey, within the OTR that have enacted legislation or adopted rules and regulations establishing and implementing a low emission vehicle program for a motor vehicle model year not later than 1999, is equal to or greater than 40 percent of the total number of registrations of new motor vehicles in all of the states and the District of Columbia within the OTR.

**7:27–26.3 Prohibitions**

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, lease, give, acquire, receive or otherwise transfer a 1999 model year or subsequent model-year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) No person who is a resident of or who operates an established place of business within this State shall offer for rent a 1999 model year or subsequent model year motor vehicle for use within this State unless such motor vehicle has been certified in accordance with this subchapter.

1. If a vehicle which is delivered to a New Jersey rental car agency from a non-New Jersey origination point is not rented to a final destination outside of New Jersey within 30 days from such delivery to the New Jersey rental car agency, it shall remain idle until it is next rented with a final destination outside of New Jersey.

(c) The prohibitions contained in (a) and (b) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

2. A vehicle transferred by inheritance;

3. A vehicle transferred by court decree;

4. A vehicle transferred after the date on which this subchapter becomes applicable under N.J.A.C. 7:27–26.2, if the vehicle was registered in this State before such date;

5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State;

6. A vehicle which is an offset vehicle;

7. A vehicle transferred by a dealer to another dealer;

8. A vehicle transferred for the purpose of being wrecked or dismantled;

9. A vehicle transferred for use exclusively off-highway; or

10. A vehicle transferred for registration out of State.

(d) To register any vehicle exempted under (c) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Division of Motor Vehicles, demonstrating that the exemption is applicable.

(e) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

### 7:27–26.4 Emission certification standards

(a) Except as otherwise provided in N.J.A.C. 7:27–26.3(c), all 1999 model year and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for 1999 model year and subsequent model year passenger cars and light duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

Table 1

1999 MODEL YEAR AND SUBSEQUENT MODEL YEAR PASSENGER CAR AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS

| Vehicle Type[1] | Loaded Vehicle Weight (lbs) | Durability Vehicle Basis (mi) | Non-Methane Hydrocarbons (g/mi)[2] | Carbon Monoxide (g/mi) | Oxides of Nitrogen (g/mi) |
|---|---|---|---|---|---|
| PC | All | 50,000 | 0.25 | 3.4 | 0.4 |
| PC | All | 100,000 | 0.31 | 4.2 | 0.6 |
| Diesel PC (Option 2) | All | 100,000 | 0.31 | 4.2 | 1.0 |
| LDT | 0–3,750 | 50,000 | 0.25 | 3.4 | 0.4 |
| LDT | 0–3,750 | 100,000 | 0.31 | 4.2 | 0.6 |
| Diesel LDT (Option 2) | 0–3,750 | 100,000 | 0.31 | 4.2 | 1.0 |
| LDT | 3,751–5,750 | 50,000 | 0.32 | 4.4 | 0.7 |
| LDT | 3,751–5,750 | 100,000 | 0.40 | 5.5 | 0.97 |
| Diesel LDT (Option 1) | 3,751–5,750 | 100,000 | 0.40 | 5.5 | 1.5 |

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) For methanol- or ethanol-fueled vehicles certifying to these standards, including fuel-flexible vehicles when certifying on methanol or ethanol, "Non-Methane Hydrocarbons" shall mean "Organic Material Non-Methane Hydrocarbon Equivalent" (or "OMNMHCE").

2. Methanol-fueled passenger cars, and methanol-fueled light-duty trucks up to 3,750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi., determined on a 50,000 mile durability vehicle basis. Methanol-fueled light-duty trucks from 3,751 to 5,750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi., determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR Part 600 Subpart B) shall be not greater than 1.33 times the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table 1. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) E29–67 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi, determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1995 and 1996 model years, all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance. Alternative in-use compliance is permitted for 60 percent of a manufacturer's vehicles in the 1995 model year and 20 percent of a manufacturer's vehicles in the 1996 model year. For the 1995 and 1996 model years, small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers' total projected sales of California-certified passenger cars and light-duty trucks for the model-year. "Alternative in-use compliance" shall consist of the following:

i. For all passenger cars and those light-duty trucks from zero to 3,750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3,751 to 5,750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In–use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on an 100,000 mile durability basis.

8. 100,000 mile $NO_x$ standards are applicable for 1996 and subsequent model-year vehicles.

9. Each manufacturer shall also comply with the requirements specified in California Code of Regulations, Title–13, Section 1960.1(g)(2).

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen ($NO_x$), carbon monoxide (CO) and particulates for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and $NO_x$ are set forth in Table 2.

Table 2

EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR AND LIGHT-DUTY TRUCK VEHICLE CLASSES[3]

| Vehicle Type[1] | Loaded Vehicle Weight (lbs.) | Durability Vehicle Basis (mi) | Vehicle Emission Category[2] | Non-Methane Organic Gases (g/mi) | Carbon Monoxide (g/mi) | Oxides of Nitrogen (g/mi) |
|---|---|---|---|---|---|---|
| PC and LDT | All 0–3,750 | 50,000 | TLEV | 0.125 (0.188) | 3.4 (3.4) | 0.4 (0.4) |
| | | | LEV | 0.075 (0.100) | 3.4 (3.4) | 0.2 (0.3) |
| | | | ULEV | 0.040 (0.058) | 1.7 (2.6) | 0.2 (0.3) |
| | | 100,000 | TLEV | 0.156 | 4.2 | 0.6 |
| | | | LEV | 0.090 | 4.2 | 0.3 |
| | | | ULEV | 0.055 | 2.1 | 0.3 |
| LTD | 3,751–5,751 | 50,000 | TLEV | 0.160 (0.238) | 4.4 (4.4) | 0.7 (0.7) |
| | | | LEV | 0.100 (0.128) | 4.4 (4.4) | 0.4 (0.5) |

| Vehicle Type[1] | Loaded Vehicle Weight (lbs.) | Durability Vehicle Basis (mi) | Vehicle Emission Category[2] | Non-Methane Organic Gases (g/mi) | Carbon Monoxide (g/mi) | Oxides of Nitrogen (g/mi) |
|---|---|---|---|---|---|---|
| | | | ULEV | 0.050 (0.075) | 2.2 (3.3) | 0.4 (0.5) |
| | | 100,000 | TLEV | 0.200 | 5.5 | 0.9 |
| | | | LEV | 0.130 | 5.5 | 0.5 |
| | | | ULEV | 0.070 | 2.8 | 0.5 |

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.

(3) The standards in parentheses are intermediate in-use compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non–Methane Organic Gas Test Procedures" as adopted July 12, 1991 and last amended September 22, 1993. For TLEVs, LEVs and ULEVs certified to operate exclusively on any fuel other than conventional gasoline, and for fuel-flexible and dual-fuel TLEVs, LEVs and ULEVs when certifying on a fuel other than gasoline, manufacturers shall multiply NMOG exhaust certification levels by the applicable reactivity adjustment factor set forth in section 13 of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light–Duty Trucks, and Medium–Duty Vehicles:" as incorporated by reference in section 1960.1(k), Title 13, California Code of Regulations or established by the Executive Officer of the CARB pursuant to Appendix VIII of the foregoing test procedures. In addition, natural gas vehicles certifying to TLEV, LEV or ULEV standards shall calculate a reactivity-adjusted methane exhaust emission value by multiplying the methane exhaust certification level by the applicable methane reactivity adjustment factor set forth in section 13 of the above-referenced test procedures. The product of the NMOG exhaust certification levels and the reactivity adjustment factor shall be compared to the exhaust NMOG mass emission standards established for the particular vehicles emission category to determine compliance. For natural gas vehicles, the reactivity-adjusted NMOG value shall be added to the reactivity-adjusted methane value and then compared to the exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

3. Fuel–flexible and dual-fuel PCs and LDTs from zero to 5,750 pounds LVW shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than gasoline, and gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than gasoline, manufacturers shall multiply exhaust NMOG certification levels by the applicable reactivity adjustment factor. In addition to multiplying the exhaust NMOG certification levels the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane certification level by the applicable methane reactivity adjustment factor and add that value to the reactivity-adjusted NMOG value. The exhaust NMOG certification levels for fuel-flexible or dual-fuel vehicles when certifying on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For PCs and LDTs from zero to 3,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively.

(3) For ULEVs, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3,751 to 5,750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on gasoline shall be:

(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29–67 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than gasoline, intermediate in-use compliance standards shall apply to TLEVs through the 1995 model year, and LEVs and ULEVs through the 1998 model-year. In–use compliance with standards beyond 50,000 miles shall be waived through the 1995 model year for TLEVs, and through the 1998 model year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than gasoline, exhaust NMOG mass emissions results shall be multiplied by the applicable reactivity adjustment factor to determine compliance with intermediate in-use compliance standards for NMOG. In addition to multiplying the exhaust NMOG emission results by the applicable reactivity adjustment factor, natural gas vehicles shall multiply the exhaust methane emission results by the applicable methane reactivity adjustment factor and add that value to the reactivity-adjusted NMOG value. Exhaust NMOG mass emissions from fuel-flexible or dual-fuel vehicles when operating on gasoline shall not be multiplied by a reactivity adjustment factor.

ii. For fuel-flexible and dual-fuel PCs and LDTs from zero to 3,750 pounds LVW, intermediate in-use compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.32 g/mi, 0.188 g/mi, and 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel LDTs from 3,751 to 5,750 pounds LVW, intermediate in-use compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from zero to 5,750 pounds loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and $NO_x$ at 50 degrees Fahrenheit according to the procedure specified in Section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light–Duty Trucks, and Medium Duty Vehicles" as adopted May 20, 1987 and last amended September 22, 1993. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees fahrenheit test requirements.

8. In–use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

9. Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and demonstrating compliance with 100,000 mile emission standards shall not be required. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS
FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES,
AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLES WEIGHT CLASS

| Vehicle Type[1] | Loaded Vehicle Weight (lbs.) | Durability Vehicle Basis (mi) | Vehicle Emission Category[2] | Formaldehyde (mg/mi)[3] [4] |
|---|---|---|---|---|
| PC and LDT | All 0–3,751 | 50,000 | TLEV | 15 (23) |
| | | | LEV | 15 (15) |
| | | | ULEV | 8 (12) |
| | | 100,000 | TLEV | 18 |
| | | | LEV | 18 |
| | | | ULEV | 11 |
| LTD | | 50,000 | TLEV | 18 (27) |

| Vehicle Type[1] | Loaded Vehicle Weight (lbs.) | Durability Vehicle Basis (mi) | Vehicle Emission Category[2] | Formaldehyde (mg/mi)[3] [4] |
|---|---|---|---|---|
| | 3,751–5,751 | | LEV | 18 (18) |
| | | | ULEV | 9 (14) |
| | | 100,000 | TLEV | 23 |
| | | | LEV | 23 |
| | | | ULEV | 13 |

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.

(3) The standards in parentheses are intermediate compliance standards for 50,000 miles applicable under (d)2 below.

(4) Formaldehyde exhaust emission standards apply to vehicles certified to operate on any available fuel, including fuel-flexible and dual-fuel vehicles.

2. For PCs and LDTs from zero to 5,750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate in-use compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. In–use compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as incorporated by reference in section 1960.1(k), Title–13, California Code of Regulations. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees Fahrenheit test requirements.

4. In–use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all 1999 model year and subsequent model-year gasoline-fueled, liquefied petroleum gas-fueled and methanol-fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. Evaporative emissions for 1979 and subsequent model gasoline-fueled, 1983 and subsequent model liquefied petroleum gas-fueled, and 1993 and subsequent model alcohol-fueled motor vehicles and hybrid electric vehicles subject to exhaust emission standards under this article, except petroleum-fueled diesel vehicles, compressed natural gas-fueled vehicles, hybrid electric vehicles that have sealed fuel systems which can be demonstrated to have no evaporative emissions, and motorcycles, shall not exceed the following standards.

i. For the vehicles identified below, tested in accordance with the test procedure which includes the running loss test, the hot soak test, and the 72 hour diurnal test, the evaporative emission standards are:

Table 4

| Vehicle Type | Model Year | Hydrocarbons or OMHCE[1] Three-Day Diurnal + Hot Soak (grams/test) Useful Life[2] | Running Loss (grams/mile) Useful Life[2] |
|---|---|---|---|
| PC | 1995 and | 2.0 | 0.05 |
| LDT | subsequent | 2.0 | 0.05 |
| HEPC | 1993 and | 2.0 | 0.05 |
| HELDT | subsequent | 2.0 | 0.05 |

PC = Passenger Cars
LDT = Light-Duty Trucks
HEPC = Hybrid Electric Passenger Cars
HELDT = Hybrid Electric Light-Duty Trucks

(1) The applicable evaporative emission standards for alcohol-fueled vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

(2) For purposes of this paragraph, "useful life" shall have the same meaning as provided in section 2112, Title-13, California Code of Regulations. Approval of vehicles which are not exhaust emission tested using a chassis dynamometer pursuant to section 1960.1, Title-13, California Code of Regulations shall be based on an engineering evaluation of the system and data submitted by the applicant.

2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles", adopted April 16, 1975, as last amended December 15, 1994.

3. Beginning with the 1999 model year, all motor vehicles subject to the running loss and useful life standards, including those produced by small volume manufacturers, shall be certified to the specified standards.

### 7:27–26.5 Fleet average

(a) The fleet average non-methane organic gas exhaust emissions from passenger cars and light-duty trucks produced and delivered for sale in New Jersey by a manufacturer each model year shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES(5)

| Vehicle Type | Loaded Vehicle Weight (lbs.) | Durability Vehicle Basis (mi) | Model Year (g/mi) | Fleet Average Non-Methane Organic Gases (1, 2, 3, 4) |
|---|---|---|---|---|
| PC and LDT | All 0–3,750 | 50,000 | 1996 | 0.225 |
| | | | 1997 | 0.202 |
| | | | 1998 | 0.157 |
| | | | 1999 | 0.113 |
| | | | 2000 | 0.073 |
| | | | 2001 | 0.070 |
| | | | 2002 | 0.068 |
| | | | 2003 and subsequent | 0.062 |
| LDT | 3,751–5,750 | 50,000 | 1996 | 0.287 |
| | | | 1997 | 0.260 |
| | | | 1998 | 0.205 |
| | | | 1999 | 0.150 |
| | | | 2000 | 0.099 |
| | | | 2001 | 0.098 |
| | | | 2002 | 0.095 |
| | | | 2003 and subsequent | 0.093 |

1. For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

i. For the purpose of calculating fleet average NMOG values, vehicles which have no tailpipe emissions but use fuel-fired heaters and which are not certified as ZEVs shall be treated as "Type A HEV ULEVs."

2. Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from zero to 3,750 pounds loaded vehicle weight produced and delivered for sale in New Jersey shall be calculated in units of grams per mile NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey: {[(No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(e)(1) of Title–13, California Code of Regulations, and produced) × (0.39)] + [No. of standard vehicles produced × (0.25)] + [(No. of Transitional Low–Emission Vehicles excluding HEVs produced) × (0.125)] + [(No. of Low–Emission Vehicles excluding HEVs produced) × (0.075)] + [(No. of Ultra–Low Emission Vehicles excluding HEVs produced) × (0.040)] + (HEV contribution factor)}/(Total No. of vehicles produced, including ZEVs and HEVs):

i. The HEV contribution factor shall be calculated in units of g/mi as follows:

(1) HEV contribution rate = {[No. of "Type A HEV" TLEVs produced] × (0.100) + [No. of "Type B HEV" TLEVs produced] × (0.113) + [No. of "Type C HEV" TLEVs produced] × (0.125)]} + {[No. of "Type A HEV" LEVs produced] × (0.057) + [No. of "Type B HEV" LEVs produced] × (0.066) + [No. of "Type C HEV" LEVs produced] × (0.075)} + ([No. of "Type A HEV" ULEVs produced] × (0.020) + [No. of "Type B HEV" ULEVs produced] × (0.030) + [No. of "Type C HEV" ULEVs produced] × (0.040)}

ii. Zero–emission vehicles classified as light-duty trucks, 3,751 to 5,750 pounds LVW, may be designated by the manufacturer as passenger cars and light-duty trucks zero to 3,750 pounds LVW, for the purposes of calculating fleet average NMOG values.

3. Manufacturers that certify LDTs from 3,751 to 5,750 pounds LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG according to the following equation, where the term "produced" means produced and delivered for sale in New Jersey: {[No. of standard vehicles produced × (0.32)] + [(No. of TLEVs produced excluding HEVs) × (0.160)] + [(No. of LEVs produced excluding HEVs) × (0.100)] + [(No. of ULEVs produced excluding HEVs) × (0.050)] + (HEV contribution factor)} ÷ (Total No. of vehicles produced, including ZEVs and HEVs).

i. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term "produced" means produced and delivered for sale in New Jersey:

(1) HEV contribution rate = {[No. of "Type A HEV" TLEVs produced] × (0.130) + [No. of "Type B HEV" TLEVs produced] × (0.145) + [No. of "Type C HEV" TLEVs produced] × (0.160)} + {[No. of "Type A HEV" LEVs produced] × (0.075) + [No. of "Type B HEV" LEVs produced] × (0.087) + [No. of "Type C HEV" LEVs produced] × (0.100)} + {[No. of "Type A HEV" ULEVs produced] × (0.025) + [No. of "Type B HEV" ULEVs produced] × (0.037) + [No. of "Type C HEV" ULEVs produced] × (0.050)}

4. In 2000 and subsequent model-years, small volume manufacturers shall comply with fleet average NMOG requirements.

i. Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

ii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from zero to 3,750 pounds LVW.

iii. In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3,751 to 5,750 pounds LVW.

iv. If a manufacturer's average California sales exceeds 3,000 units of new PCs, LDTs, and medium duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall no longer be treated as a small volume manufacturer and shall comply with the fleet average requirements applicable for larger manufacturers as specified in section 1960.1(g)(2), Title–13, California Code of Regulations, beginning with the fourth model year after the last of the three consecutive model years.

v. If a manufacturer's average California sales falls below 3,000 units of new PCs, LDTs, and medium-duty vehicles based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in section 1960.1(g)(2), Title–13, California Code of Regulations, beginning with the next model year.

(b) In 1992 and subsequent model years, manufacturers that achieve fleet average NMOG values lower than the fleet average NMOG requirements for the corresponding model year shall receive credits in units of grams per mile NMOG determined as: {[Fleet Average NMOG Requirement) – (Manufacturer's Fleet Average NMOG Value)] × (Total No. of Vehicles Produced and Delivered for Sale in New Jersey, Including ZEVs and HEVs)}.

1. Manufacturers with fleet average NMOG values greater than the fleet average requirement for the corresponding model year shall receive debits in units of gram per mile NMOG equal to the amount of negative credits determined by the aforementioned equation. For any given model year, the total grams per mile NMOG credits or debits earned for PCs and LDTs zero to 3,750 pounds LVW and for LDTs 3,751 to 5,750 pounds LVW shall be summed together. The resulting amount shall constitute the grams per mile NMOG credits or debits accrued by the manufacturer for the model year.

2. For the 1994 through 1997 model years, manufacturers shall equalize emission debits within three model years and prior to the end of the 1998 model year by earning gram per mile NMOG emission credits in an amount equal to their grams per mile NMOG debits, or by submitting a commensurate amount of grams per mile NMOG credits that were earned previously or acquired from another manufacturer. For 1998 and subsequent model years, manufacturers shall equalize emission debits by the end of the following model year.

3. The grams per mile NMOG emission credits earned in any given model year shall retain full value through the subsequent model year.

4. The grams per mile NMOG value of any credits not used to equalize the previous model year's debit, shall be discounted by 50 percent at the beginning of the second model year after being earned, discounted to 25 percent of its original value if not used by the beginning of the third model year after being earned, and will have no value if not used by the beginning of the fourth model year after being earned.

**7:27–26.6 Enforcement**

(a) Commencing with the 1999 model year, each manufacturer shall report to the Department the fleet average NMOG emissions of its total deliveries for sale of vehicles in each engine family for New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in each engine family delivered for sale in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements.

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

i. Ignition timing is set to manufacturer's specification with an allowable tolerance of ±three degrees;

ii. Idle speed is set to manufacturer's specification with an allowable tolerance of ±100 revolutions per minute;

iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;

iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and

v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(c) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(d) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27–26.5(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C–19.

**7:27–26.7 Additional requirements**

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27–26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control labels which conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.

2. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title–13, Section 1968.1.

3. Passenger cars, and light-duty trucks up to 5,750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

**7:27–26.8 through 7:27–26.14 (Reserved)**

**7:27–26.15 Incorporation by reference**

(a) Any reference in this subchapter to any of the documents or sources listed in (e) below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedures Act, N.J.S.A 52:14B–1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title–13, Section 1968.1;

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light–Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non–Methane Organic Gas Test Procedures" adopted September 22, 1993, CARB;

4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light–Duty Trucks, and Medium–Duty Vehicles," adopted May 20, 1987, as last amended September 22, 1993, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended December 15, 1994, CARB;

6. "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978, as last amended July 12, 1991, CARB;

7. California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29–88;

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B; and

10. 40 C.F.R. 86.082–24

11. "Control of Air Pollution from New and In–Use Motor Vehicles and New and In–Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B.

12. 40 Code of Federal Regulations (CFR) Parts 51, 52 and 85.

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection
Office of Air Quality Management
Bureau of Transportation Control
CN 411
Trenton, New Jersey 08625

### 7:27–26.16 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

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## SUBCHAPTER 27. CONTROL AND PROHIBITION OF MERCURY EMISSIONS

**Authority**

N.J.S.A. 13:1B–3 and 26:2C–1 et seq., specifically 26:2C–8.

**Source and Effective Date**

R.1994 d.537, effective November 7, 1994
(operative November 27, 1994).
See: 26 N.J.R. 1050(a), 26 N.J.R. 4355(a).

### 7:27–27.1 Definitions

The following words and terms, when used in this subchapter, shall 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.

"Annual average" means the arithmetic average of all compliance tests conducted during a calendar year. The annual average is obtained by first determining the arithmetic average of all test runs conducted each quarter and then determining the arithmetic average of the quarterly averages.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials, Designation D388–77.

"Coal burning boiler" means a furnace used in the process of burning coal for the purpose of producing steam by heat transfer.

"Compliance testing" means a series of no fewer than three test runs conducted in a calendar quarter. The results of compliance testing shall be expressed as the arithmetic average of the results of all test runs conducted during the quarter.

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

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

"Equipment" means any device capable of causing the emission of any air contaminant either directly or indirectly into the outdoor atmosphere, 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, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth in N.J.A.C. 7:26–8.

"Hazardous waste incinerator" means any enclosed device burning hazardous waste using controlled flame combustion that neither meets the criteria for classification as an industrial boiler nor is defined as an industrial furnace. It also includes boilers and industrial furnaces which do not conform with the criteria for these devices under N.J.A.C. 7:26–9.1(c)9.

"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.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, method 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.

"Medical waste" means any solid waste which is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under 40 CFR Part 261 or any household waste generated from home self-care as defined in N.J.A.C. 7:26–3A.5.

"Mercury (Hg)" means all inorganic and organic compounds of mercury, including elemental mercury, expressed as elemental mercury.

"μg/dscm" means a measurement of the concentration of a specified substance, expressed as micrograms per dry standard cubic meter.

"Municipal solid waste (MSW)" means residential, commercial and institutional solid waste generated within a community.

"Municipal solid waste incinerator" means an incinerator which burns municipal solid waste.

"Operator" means any person who operates, leases, controls, or supervises a facility.

"Owner" means any person who owns a facility.

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

"Preconstruction permit" means a "Permit to Construct, Install, or Alter 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.

"Sewage sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge.

"Solid waste" has the meaning as defined for this term at N.J.A.C. 7:26–1.6.

"Test run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted to the outdoor atmosphere during a specified time interval.

### 7:27–27.2 Applicability

Any municipal solid waste incinerator, including any municipal solid waste incinerator located at an apartment building or commercial facility, regardless of size, is subject to all applicable provisions of this subchapter.

### 7:27–27.3 General provisions

(a) Each owner or operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all applicable requirements of this subchapter.

(b) 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 violation of this subchapter.

(c) Any person who fails to comply with any applicable provision of this subchapter shall be subject to civil penalties in accordance with N.J.A.C. 7:27A–3 and to applicable criminal penalties and sanctions 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.

### 7:27–27.4 Municipal solid waste (MSW) incinerators

(a) Each owner or operator of a MSW incinerator, which is capable of incinerating 9.6 tons or more of MSW per day, shall install and operate mercury emissions control apparatus by December 31, 1995, designed to reduce at a minimum 80 percent of the emissions of mercury from any MSW incinerator. Such design shall be capable of reducing the concentration of mercury in the flue gas from the MSW incinerator from 140 μg/dscm (corrected to seven percent oxygen) to 28 μg/dscm (corrected to seven percent oxygen) or less after the control apparatus. Compliance with this section shall be determined by comparing the design of the mercury emission control apparatus with the design of the control apparatus installed on similar operating facilities.

(b) Each owner or operator of a MSW incinerator of any size shall operate the MSW incinerator in accordance with provisions specified in either (b)1 or 2 below:

1. The emission of mercury from any MSW incinerator, as determined pursuant to (c) below, shall not exceed:

i. Commencing on January 1, 1996 through and including December 31, 1999, 65 μg/dscm, based on an annual average and with each test run corrected to seven percent oxygen, as tested in accordance with a test protocol approved pursuant to (f) and (g) below; and

ii. On and after January 1, 2000, 28 μg/dscm, based on an annual average and with each test run corrected to seven percent oxygen, as tested in accordance with a test protocol approved pursuant to (f) and (g) below; or

2. On and after January 1, 1996, mercury emissions at the exit of the control apparatus of any MSW incinerator, as determined pursuant to (c) below, shall not exceed 20 percent of the mercury emissions in the effluent from the MSW incinerator, prior to the inlet to the control apparatus, based on each quarterly average.

(c) Commencing in January 1996, the owner or operator of a MSW incinerator served by control apparatus shall perform compliance testing every quarter to measure mercury in the gas stream at the inlet of the air pollution control apparatus serving each incinerator and simultaneously perform compliance testing every quarter to measure mercury in the gas stream at the exit of the control apparatus. There shall be at least a 45 calendar day interval between the testing performed for a given quarter and the testing performed for the preceding quarter, unless a shorter period is approved by the Department. Any MSW incinerator without control apparatus shall perform compliance testing every quarter to measure mercury in the gas stream in the stack. The compliance testing shall be conducted in accordance with a test protocol approved pursuant to (f) and (g) below.

(d) Compliance with (b) above shall be determined as follows:

1. Compliance with (b)1 above shall be determined annually based on the average of all compliance testing performed in a calendar year; or

2. Compliance with (b)2 above shall be determined quarterly based on the compliance testing performed during that quarter.

(e) Notwithstanding the provisions of (c) above, any person who achieves and maintains compliance with (b)1 or 2 above, for all applicable incinerators located at a facility, during two consecutive calendar years, may reduce the frequency of compliance testing from each quarter to compliance testing performed only in the first quarter of each calendar year. However, if subsequent compliance testing fails to demonstrate compliance with (b) above, then the frequency of compliance testing shall revert to that indicated in (c) above.

(f) Compliance testing performed pursuant to (c) and (e) above shall be conducted in accordance with a test protocol approved by the Department. To obtain the approval of the Department of a test protocol, the owner or operator shall submit to the Department a proposed test protocol, setting forth all test methods, including, but not limited to, sampling and analytical procedures; a description of sampling equipment and the source sampling location(s); and provide sample calculations that will be used to determine the concentration of mercury in the gas stream. The owner or operator shall submit for review and approval a proposed test protocol each year, no less than 90 calendar days prior to the conduct of first quarter compliance testing for that calendar year to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection
CN–411
Trenton, New Jersey 08625–0411

(g) The Department shall not approve any proposed test protocol submitted pursuant to (f) above unless the test method proposed to measure mercury is:

1. EPA Reference Method 29, including all supplements and amendments thereto. This method is published in the EPA Main Bulletin Board, the Technical Transfer Network of the USEPA, under the area of Emissions Measurement Technical Information, with the file name of "M–29.ZIP–Multiple Metals" under the access number of (919) 541–5742; or

2. An equivalent method demonstrated, to the satisfaction of the Department, to be as conservative and reliable as EPA Reference Method 29 for measuring mercury.

(h) Any person who is required to alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall apply to the Department for a preconstruction permit in accordance with N.J.A.C. 7:27–8.3, by December 27, 1994.

(i) The owner or operator of any MSW incinerator that has a reagent based mercury emission control system shall conduct optimization tests to determine the optimized reagent feed rate, for mercury emissions control apparatus, to determine the reagent feed rate at which the emissions of mercury below the applicable limits of (b) above are optimally minimized, as follows:

1. The optimization tests shall be performed during first quarter compliance testing required pursuant to (c) above.

2. If the owner or operator of any MSW incinerator owns or operates more than one identical incinerator at the same facility, then optimization tests may be performed on one incinerator, and the results applied to the other incinerators which are identical to that incinerator at that facility.

(j) The owner or operator of any MSW incinerator that has a reagent based mercury emission control system shall, within 60 calendar days of the conclusion of the optimization tests, submit to the Department for approval a proposed optimized reagent feed rate which minimizes mercury

emission below the applicable limits, while considering the amount of reagent used. The optimized reagent feed rate is the reagent feed rate such that a higher reagent feed rate will not appreciably reduce mercury emissions compared to the amount of reagent added.

(k) The owner or operator of any MSW incinerator that has a reagent based mercury emission control system shall operate each MSW incinerator at, or above, the optimized reagent feed rate approved by the Department.

**7:27–27.5 through 7:27–27.8 (Reserved)**

**7:27–27.9 Reporting and recordkeeping**

(a) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the testing requirements of N.J.A.C. 7:27–27.4(c) or (e) shall submit a copy of the report of the results of compliance testing, including all test runs, conducted at any MSW incinerator pursuant to this subchapter within 60 calendar days after completion of the compliance testing required for that quarter to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection
CN–411
Trenton, New Jersey 08625–0411

(b) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the optimization requirements of N.J.A.C. 7:27–27.4(i) shall submit a copy of the report of the results of optimization tests conducted at any MSW incinerator pursuant to this subchapter within 60 calendar days after completion of the required tests, to the following address:

Chief
Bureau of Air Quality Engineering
Department of Environmental Protection
CN–027
Trenton, NJ 08625–0027

(c) If compliance is based on annual averages pursuant to N.J.A.C. 7:27–27.4(d)1 or (e), an owner or operator of a MSW incinerator shall report, for the preceding calendar year, the annual average mercury emissions by February 28, or the next business day if February 28 falls on a weekend or holiday, of each year. If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27–27.4(d)2 or (e), an owner or operator of a MSW incinerator shall report the quarterly average control efficiency within 60 calendar days after completion of each calendar quarter. Such reports shall be submitted to:

Assistant Director
Air and Environmental Quality Enforcement
Department of Environmental Protection
CN–422
Trenton, NJ 08625–0422

(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.

## APPENDIX I

### CHEMICALS DEFINING SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

| CAS # | Chemical |
|---|---|
| 105–57–7 | Acetal |
| 75–07–0 | Acetaldehyde |
| 107–89–1 | Acetaldol |
| 60–35–5 | Acetamide |
| 103–84–4 | Acetanilide |
| 64–19–7 | Acetic acid |
| 108–24–7 | Acetic anhydride |
| 67–64–1 | Acetone |
| 75–86–5 | Acetone cyanohydrin |
| 75–05–8 | Acetonitrile |
| 96–86–2 | Acetophenone |
| 75–36–5 | Acetyl chloride |
| 74–86–2 | Acetylene |
| 107–02–8 | Acrolein |
| 79–06–1 | Acrylamide |
| 79–10–7 | Acrylic acid |

| CAS # | Chemical |
|---|---|
| 107–13–1 | Acrylonitrile |
| 124–04–9 | Adipic acid |
| 111–69–3 | Adiponitrile |
| †† | Alkyl naphthalenes |
| 107–18–6 | Allyl alcohol |
| 107–05–1 | Allyl chloride |
| 1321–11–5 | Aminobenzoic acid |
| 111–41–1 | Aminoethylethanolamine |
| 123–30–8 | p-Aminophenol |
| 628–63–7, 123–92–2 | Amyl acetates |
| 71–41–0,† | Amyl alcohols |
| 110–58–7 | Amyl amine |
| 543–59–9 | Amyl chloride |
| 110–66–7,† | Amyl mercaptans |
| 1322–06–1 | Amyl phenol |
| 62–53–3 | Aniline |
| 142–04–1 | Aniline hydrochloride |
| 29191–52–4 | Anisidine |
| 100–66–3 | Anisole |
| 118–92–3 | Anthranilic acid |
| 84–65–1 | Anthraquinone |
| 100–52–7 | Benzaldehyde |
| 55–21–0 | Benzamide |
| 71–43–2 | Benzene |
| 98–48–6 | Benzenedisulfonic acid |
| 98–11–3 | Benzenesulfonic acid |
| 134–81–6 | Benzil |
| 76–93–7 | Benzilic acid |
| 65–85–0 | Benzoic acid |
| 119–53–9 | Benzoin |
| 100–47–0 | Benzonitrile |
| 119–61–9 | Benzophenone |
| 98–07–7 | Benzotrichloride |
| 98–88–4 | Benzoyl chloride |
| 100–51–6 | Benzyl alcohol |
| 100–46–9 | Benzylamine |
| 120–51–4 | Benzyl benzoate |
| 100–44–7 | Benzyl chloride |
| 98–87–3 | Benzal chloride |
| 92–52–4 | Biphenyl |
| 80–05–7 | Bisphenol A |
| 108–86–1 | Bromobenzene |
| 27497–51–4 | Bromonaphthalene |
| 106–99–0 | Butadiene |
| 106–98–9 | l-butene |
| 123–86–4 | n-butyl acetate |
| 141–32–2 | n-butyl acrylate |
| 71–36–3 | n-butyl alcohol |
| 78–92–2 | s-butyl alcohol |
| 75–65–0 | t-butyl alcohol |
| 109–73–9 | n-butylamine |
| 13952–84–6 | s-butylamine |
| 75–64–9 | t-butylamine |
| 98–73–7 | 4–tert–butyl benzoic acid |
| 107–88–0 | 1,3–butylene glycol |
| 123–72–8 | n-butyraldehyde |
| 107–92–6 | Butyric acid |
| 106–31–0 | Butyric anhydride |
| 109–74–0 | Butyronitrile |
| 105–60–2 | Caprolactam |
| 75–15–50 | Carbon disulfide |
| 558–13–4 | Carbon tetrabromide |
| 56–23–5 | Carbon tetrachloride |
| 9004–35–7 | Cellulose acetate |
| 79–11–8 | Chloroacetic acid |
| 108–42–9 | m-chloroaniline |
| 95–51–2 | o-chloroaniline |
| 106–47–8 | p-chloroaniline |
| 35913–09–8 | Chlorobenzaldehyde |
| 108–90–7 | Chlorobenzene |
| † | Chlorobenzoic acid |
| † | Chlorobenzotrichloride |
| 1321–03–5 | Chlorobenzoyl chloride |
| 25497–29–4 | Chlorodifluoromethane |
| 75–45–6 | Chlorodifluoroethane |
| 67–66–3 | Chloroform |
| 25586–43–0 | Chloronaphthalene |
| 88–73–3 | o-chloronitrobenzene |
| 100–00–5 | p-chloronitrobenzene |
| 25167–80–0 | Chlorophenols |
| 126–99–8 | Chloroprene |
| 7790–94–5 | Chlorosulfonic acid |
| 108–41–8 | m-chlorotoluene |
| 95–49–8 | o-chlorotoluene |
| 106–43–4 | p-chlorotoluene |
| 75–72–9 | Chlorotrifluoromethane |
| 108–39–4 | m-cresol |
| 95–48–7 | o-cresol |
| 106–44–5 | p-cresol |
| 1319–77–3 | Mixed cresols |
| 1319–77–3 | Cresylic acid |
| 4170–30–0 | Crotonaldehyde |
| 3724–65–0 | Crotonic acid |
| 98–82–8 | Cumene |
| 80–15–9 | Cumene hydroperoxide |
| 372–09–8 | Cyanoacetic acid |
| 506–77–4 | Cyanogen chloride |
| 108–80–5 | Cyanuric acid |
| 108–77–0 | Cyanuric chloride |
| 110–82–7 | Cyclohexane |
| 108–93–0 | Cyclohexanol |
| 108–04–1 | Cyclohexanone |
| 110–83–8 | Cyclohexene |
| 108–91–8 | Cyclohexylamine |
| 111–78–4 | Cyclooctadiene |
| 112–30–1 | Decanol |
| 123–42–2 | Diacetone alcohol |
| 27576–04–1 | Diaminobenzoic acid |
| † | Dichloroaniline |
| 541–73–1 | m-dichlorobenzene |
| 95–50–1 | o-dichlorobenzene |
| 106–46–7 | p-dichlorobenzene |
| 75–71–8 | Dichlorofluoromethane |
| 107–06–2 | 1,2–dichloroethane (EDC) |
| 111–44–4 | Dichloroethyl ether |
| 96–23–1 | Dichlorohydrin |
| 26952–23–8 | Dichloropropene |
| 101–83–7 | Dicyclohexylamine |
| 109–89–7 | Diethylamine |
| 111–46–6 | Diethylene glycol |
| 112–36–7 | Diethylene glycol diethyl ether |
| 111–96–6 | Diethylene glycol dimethyl ether |
| 112–34–5 | Diethylene glycol monobutyl ether |
| 124–17–4 | Diethylene glycol monobutyl ether acetate |
| 111–90–0 | Diethylene glycol monoethyl ether |
| 112–15–2 | Diethylene glycol monoethyl ether acetate |
| 111–77–3 | Diethylene glycol monomethyl ether |
| 64–67–5 | Diethyl sulfate |
| 75–37–6 | Difluoroethane |
| 25167–70–8 | Diisobutylene |
| 26761–40–0 | Diisodecyl phthalate |

| CAS # | Chemical |
|---|---|
| 27554–26–3 | Diisooctyl phthalate |
| 674–82–8 | Diketene |
| 124–40–3 | Dimethylamine |
| 121–69–7 | N,N-dimethylaniline |
| 115–10–6 | N,N-dimethyl ether |
| 68–12–2 | N,N-dimethylformamide |
| 57–14–7 | Dimethylhydrazine |
| 77–78–1 | Dimethyl sulfate |
| 75–18–3 | Dimethyl sulfide |
| 67–68–5 | Dimethyl sulfoxide |
| 120–61–6 | Dimethyl terephthalate |
| 99–34–3 | 3,5–dinitrobenzoic acid |
| 51–28–5 | 2,4–dinitrophenol |
| 25321–14–6 | Dinitrotoluene |
| 123–91–1 | Dioxane |
| 646–06–0 | Dioxolane |
| 122–39–4 | Diphenylamine |
| 101–84–8 | Diphenyl oxide |
| 102–08–9 | Diphenyl thiourea |
| 25265–71–8 | Dipropylene glycol |
| 25378–22–7 | Dodecene |
| 28675–17–4 | Dodecylaniline |
| 27193–86–8 | Dodocylphenol |
| 106–89–8 | Epichlorohydrin |
| 64–17–5 | Ethanol |
| † | Ethanolamines |
| 141–78–6 | Ethyl acetate |
| 141–97–9 | Ethyl acetoacetate |
| 140–88–5 | Ethyl acrylate |
| 75–04–7 | Ethylamine |
| 100–41–4 | Ethylbenzene |
| 74–96–4 | Ethyl bromide |
| 9004–57–3 | Ethylcellulose |
| 75–00–3 | Ethyl chloride |
| 105–39–5 | Ethyl chloroacetate |
| 105–56–6 | Ethylcyanoacetate |
| 74–85–1 | Ethylene |
| 96–49–1 | Ethylene carbonate |
| 107–07–3 | Ethylene chlorohydrin |
| 107–15–3 | Ethylenediamine |
| 106–93–4 | Ethylene dibromide |
| 107–21–1 | Ethylene glycol |
| 111–55–7 | Ethylene glycol diacetate |
| 110–71–4 | Ethylene glycol dimethyl ether |
| 111–76–2 | Ethylene glycol monobutyl ether |
| 112–07–2 | Ethylene glycol monobutyl ether acetate |
| 110–80–5 | Ethylene glycol monoethyl ether |
| 111–15–9 | Ethylene glycol monoethyl ether acetate |
| 109–86–4 | Ethylene glycol monomethyl ether |
| 110–49–6 | Ethylene glycol monomethyl ether acetate |
| 122–99–6 | Ethylene glycol monophenyl ether |
| 2807–30–9 | Ethylene glycol monopropyl ether |
| 75–21–8 | Ethylene oxide |
| 60–29–7 | Ethyl ether |
| 104–76–7 | 2–ethylhexanol |
| 122–51–0 | Ethyl orthoformate |
| 95–92–1 | Ethyl oxalate |
| 41892–71–1 | Ethyl sodium oxalacetate |
| 50–00–0 | Formaldehyde |
| 75–12–7 | Formamide |
| 64–18–6 | Formic acid |
| 110–17–8 | Fumaric acid |
| 98–01–1 | Furfural |
| 56–81–5 | Glycerol |
| 26545–73–7 | Glycerol dichlorohydrin |
| 25791–96–2 | Glycerol triether |
| 56–40–6 | Glycine |
| 107–22–2 | Glyoxal |
| 118–74–1 | Hexachlorobenzene |
| 67–72–1 | Hexachloroethane |
| 36653–82–4 | Hexadecanol |
| 124–09–4 | Hexamethylenediamine |
| 629–11–8 | Hexamethylene glycol |
| 100–97–0 | Hexamethylenetramine |
| 74–90–8 | Hydrogen cyanide |
| 123–31–9 | Hydroquinone |
| 99–06–9 | p-hydroxybenzoic acid |
| 26760–64–5 | Isoamylene |
| 78–83–1 | Isobutanol |
| 110–19–0 | Isobutyl acetate |
| 115–11–7 | Isobutylene |
| 78–84–2 | Isobutyraldehyde |
| 79–31–2 | Isobutyric acid |
| 25339–17–7 | Isodecanol |
| 26952–21–6 | Isooctyl alcohol |
| 78–78–4 | Isopentane |
| 78–59–1 | Isophorone |
| 121–91–5 | Isophthalic acid |
| 78–79–5 | Isoprene |
| 67–63–0 | Isopropanol |
| 108–21–4 | Isopropyl acetate |
| 75–31–0 | Isopropylamine |
| 75–29–6 | Isopropyl chloride |
| 25168–06–3 | Isopropylphenol |
| 463–51–4 | Ketene |
| †† | Linear alkyl sulfonate |
| 123–01–3 | Linear alkylbenzene |
| 110–16–7 | Maleic acid |
| 108–31–6 | Maleic anhydride |
| 6915–15–7 | Malic acid |
| 141–79–7 | Mesityl oxide |
| 121–47–1 | Metanilic acid |
| 79–41–4 | Methacrylic acid |
| 563–47–3 | Methallyl chloride |
| 67–56–1 | Methanol |
| 79–20–9 | Methyl acetate |
| 105–45–3 | Methyl acetoacetate |
| 74–89–5 | Methylamine |
| 100–61–8 | n-methylaniline |
| 74–83–9 | Methyl bromide |
| 37365–71–2 | Methyl butynol |
| 74–87–3 | Methyl chloride |
| 108–87–2 | Methylcyclohexane |
| 1331–22–2 | Methylcyclohexanone |
| 75–09–2 | Methylene chloride |
| 101–77–9 | Methylene dianiline |
| 101–68–8 | Methylene diphenyl diisocyanate |
| 78–93–3 | Methyl ethyl ketone |
| 107–31–3 | Methyl formate |
| 108–11–2 | Methyl isobutyl carbinol |
| 108–10–1 | Methyl isobutyl ketone |
| 80–62–6 | Methyl methacrylate |
| 77–75–8 | Methylpentynol |
| 98–83–9 | a-methylstyrene |
| 110–91–8 | Morpholine |
| 85–47–2 | a-naphthalene sulfonic acid |
| 120–18–3 | b-naphthalene sulfonic acid |
| 90–15–3 | a-naphthol |
| 135–19–3 | b-naphthol |
| 75–98–9 | Neopentanoic acid |
| 88–74–4 | o-nitroaniline |
| 100–01–6 | p-nitroaniline |

| CAS # | Chemical |
|---|---|
| 91–23–6 | o-nitroanisole |
| 100–17–4 | p-nitroanisole |
| 98–95–3 | Nitrobenzene |
| † | Nitrobenzoic acid (o, m, & p) |
| 79–24–3 | Nitroethane |
| 75–52–5 | Nitromethane |
| 88–75–5 | 2–Nitrophenol |
| 25322–01–4 | Nitropropane |
| 1321–12–6 | Nitrotoluene |
| 27215–95–8 | Nonene |
| 25154–52–3 | Nonylphenol |
| 27913–28–8 | Octylphenol |
| 123–63–7 | Paraldehyde |
| 115–77–5 | Pentaerythritol |
| 109–66–0 | n-pentane |
| 109–67–1 | l-pentene |
| 127–18–4 | Perchloroethylene |
| 594–42–3 | Perchloromethyl mercaptan |
| 94–70–2 | o-phenetidine |
| 156–43–4 | p-phenetidine |
| 108–95–2 | Phenol |
| † | Phenolsulfonic acids |
| 91–40–7 | Phenyl anthranilic acid |
| †† | Phenylenediamine |
| 75–44–5 | Phosgene |
| 85–44–9 | Phthalic anhydride |
| 85–41–6 | Phthalimide |
| 108–99–6 | b-picoline |
| 110–85–0 | Piperazine |
| † | Polybutenes |
| 25322–68–3 | Polyethylene glycol |
| 25322–69–4 | Polypropylene glycol |
| 123–38–6 | Propionaldehyde |
| 79–09–4 | Propionic acid |
| 71–23–8 | n-propyl alcohol |
| 107–10–8 | Propylamine |
| 540–54–5 | Propyl chloride |
| 115–07–1 | Propylene |
| 127–00–4 | Propylene chlorohydrin |
| 78–87–5 | Propylene dichloride |
| 57–55–6 | Propylene glycol |
| 75–56–9 | Propylene oxide |
| 110–86–1 | Pyridine |
| 106–51–4 | Quinone |
| 108–46–3 | Resorcinol |
| 27138–57–4 | Resorcylic acid |
| 69–72–7 | Salicyclic acid |
| 127–09–3 | Sodium acetate |
| 532–32–1 | Sodium benzoate |
| 9004–32–4 | Sodium carboxymethyl cellulose |
| 3926–62–3 | Sodium chloracetate |
| 141–53–7 | Sodium formate |
| 139–02–6 | Sodium phenate |
| 110–44–1 | Sorbic acid |
| 100–42–5 | Styrene |
| 110–15–6 | Succinic acid |
| 110–61–2 | Succinonitrile |
| 121–57–3 | Sulfanilic acid |
| 126–33–0 | Sulfolane |
| 1401–55–4 | Tannic acid |
| 100–21–0 | Terephthalic acid |
| † | Tetrachloroethanes |
| 117–08–8 | Tetrachlorophthalic anhydride |
| 78–00–2 | Tetraethyl lead |
| 119–64–2 | Tetrahydronaphthalene |
| 85–43–8 | Tetrahydrophghalic anhydride |
| 75–74–1 | Tetramethyl lead |
| 110–60–1 | Tetramethylenediamine |
| 110–18–9 | Tetramethylethylenediamine |
| 108–88–3 | Toluene |
| 95–80–7 | 2,4,–diaminotoluene |
| 584–84–9 | Toluene–2,4–diisocyanate |
| 26471–62–5 | Toluene diisocyanates (mixture) |
| 1333–07–9 | Toluenesulfonamide |
| † | Toluenesulfonic acids |
| 98–59–9 | Toluenesulfonyl chloride |
| 26915–12–8† | Toluidines |
| † | Trichlorobenzenes |
| 71–55–6 | 1,1,1–trichloroethane |
| 79–00–5 | 1,1,2–trichloroethane |
| 79–01–6 | Trichloroethylene |
| 75–69–4 | Trichlorofluoromethane |
| 96–18–4 | 1,2,3–trichloropropane |
| 76–13–1 | 1,1,2–trichlorotrifluoroethane |
| 121–44–8 | Triethylamine |
| 112–27–6 | Triethylene glycol |
| 112–49–2 | Triethylene glycol dimethyl ether |
| 7756–94–7 | Triisobutylene |
| 75–50–3 | Trimethylamine |
| 57–13–6 | Urea |
| 108–05–4 | Vinyl acetate |
| 75–01–4 | Vinyl chloride |
| 75–35–4 | Vinylidene chloride |
| 25013–15–4 | Vinyl toluene |
| 1330–20–7 | Xylenes (mixed) |
| 95–47–6 | o-xylene |
| 106–42–3 | p-xylene |
| 1300–71–6 | Xylenol |
| 1300–73–8 | Xylidine |
| 1634–04–4 | Methyl tert-butyl ether |
| 9002–88–4 | Polyethylene |
| 9003–07–0 | Polypropylene |
| 9003–53–6 | Polystyrene |

† CAS numbers for the various isomers and mixtures have not been listed here.
†† CAS numbers not available.

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