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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 program(s) pursuant to N.J.A.C. 7:27-22.28A, such as a facility-specific emissions averaging program within one or more groups of source operations, pursuant to N.J.A.C. 7:27-22.28B.

(k) For any authorization of emissions trading included, the operating permit shall contain permit conditions sufficient to ensure that operation, notwithstanding the emissions trading, meets all permit conditions, applicable requirements, and the requirements of this chapter.

(l) The operating permit shall contain provisions for the assertion of an affirmative defense to liability for penalties or other sanctions for violating certain provisions or conditions of the operating permit. The affirmative defense shall be available for a violation of a provision or condition of the operating permit only if:

1. The violation occurred as a result of an equipment malfunction, an equipment start-up or shutdown, or during the performance of necessary equipment maintenance; and

2. The affirmative defense is asserted and established as required by N.J.S.A. 26:2C-19.1 through 19.5 and any implementing rules.

(m) (Reserved)

(n) Each operating permit shall include a compliance plan which includes all of the elements required for a proposed compliance plan pursuant to N.J.A.C. 7:27-22.9.

(o) Each operating permit shall contain the following provisions with respect to monitoring, recordkeeping and reporting:

1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, provisions for periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the facility's compliance with the permit. Such monitoring requirements shall assure use of terms,

test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(p) Each operating permit will include a permit shield pursuant to N.J.A.C. 7:27-22.17. If requested by the applicant in the application and approved by the Department, an operating permit shield shall acknowledge that specific provision(s) of potentially applicable requirement(s) do not apply to the facility, cite any such specific provision(s), and state that compliance with the provision(s) is not required.

(q) (Reserved)

(r) If proposed by the applicant, pursuant to N.J.A.C. 7:27-22.6(j), and approved by the Department, the operating permit shall include the methods to be used to determine the actual emissions of any significant source operation at the facility.

(s) Each operating permit shall specify an expiration date which shall be no later than five years from the date of issue.

(t) For facilities subject to EPA's acid deposition control program pursuant to Title IV of the CAA, 42 U.S.C. § 7651 et seq., the operating permit shall include a permit condition prohibiting emissions from exceeding any allowances that the source lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).

See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).

Amended (j) and (k).

Amended by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).

See: 35 N.J.R. 3486(a), 36 N.J.R. 1791(a).

Rewrote (j).

#### 7:27-22.17 Permit shield

(a) The Department will include a permit shield in each operating permit as set forth at N.J.A.C. 7:27-22.16(p). A permit shield provides that compliance with the relevant conditions of the operating permit shall be deemed compliance with the specific applicable requirements that are in effect on the date of issuance of the draft operating permit, and which form the basis for the conditions in the operating permit, provided that the requirements of this section are met.

(b) A permit shield shall provide that:

1. For any applicable provision of an applicable requirement, if the provision is specifically included and identified in the operating permit, compliance with the conditions of the operating permit shall be deemed compliance with that provision of the applicable requirement; and

2. For any provision of a potentially applicable requirement, if the provision is specifically identified in the operating permit as not applicable to the facility, the permittee need not comply with the specifically identified provision.

(c) A permit shield shall apply only to operating permit conditions incorporated into the operating permit through certain procedures.

1. A permit shield shall apply to conditions incorporated into the operating permit through the following:

- i. Issuance of an initial operating permit;
- ii. Issuance of an operating permit, renewal; or
- iii. Any change made pursuant to the procedures for significant modification at N.J.A.C. 7:27-22.24;
- iv. Any change made pursuant to the procedures for administrative amendments, provided the administrative amendment incorporates the provisions of a preconstruction permit that was subject to the same review procedures used for significant modification at N.J.A.C. 7:27-22.4, including an opportunity for public comment.

2. A permit shield shall not apply to provisions incorporated into the operating permit through procedures for:

- i. Administrative amendment, except as noted at (c)iv above;
- ii. Changes to insignificant source operations;
- iii. Seven-day-notice changes; or
- iv. Minor modifications.

(d) If an operating permit does not expressly include or exclude an applicable requirement, the applicable requirement is not covered by the permit shield and the permittee shall comply with its provisions to the extent they apply to the permittee.

(e) If it is determined that an operating permit was issued based on inaccurate or incomplete information provided by the permittee, any permit shield provision in that operating permit shall be void as to the portions of the permit which are affected, directly or indirectly, by the inaccurate or incomplete information.

(f) Neither a permit shield, nor any provision in an operating permit, shall alter or affect the following:

1. The emergency orders provisions of 42 U.S.C. § 7603, including the authority of EPA under that section;
2. The liability of an owner or operator of a facility for any violation of any applicable requirement prior to or at the time of permit issuance;

(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).

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

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

Rewrote (h).

### 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).  
Sec: 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).  
Sec: 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.  
Sec: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).  
Section was "intra-facility emissions trading".