

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 Any equipment or control apparatus if its certificate has expired or been revoked.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