

CHAPTER 27

AIR POLLUTION CONTROL

Authority

N.J.S.A. 13:1B-3, 13:1B-3(e), 13:1D-9, 13:1D-134 et seq., 26:2C-1 et seq., in particular 26:2C-9b(7)(b), 9.2 and 9.5, 26:2C-8 et seq., specifically 26:2C-8, 8.1 through 8.5, 8.11, and 39:8-61.

Chapter Expiration Date

Chapter 27, Air Pollution Control, is exempt from expiration under Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1 pursuant to 42 U.S.C. §§7401 et seq.

Chapter Historical Note

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

Subchapter 30, Open Market Emissions Trading, was adopted as 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).

Subchapter 30, Open Market Emissions Trading, was repealed by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).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).

Subchapter 31, NO_x Budget Program, was adopted as new rules by R.1998 d.379, effective July 20, 1998 (operative August 16, 1998). See: 29 N.J.R. 3924(b), 29 N.J.R. 4226(a), 30 N.J.R. 2660(a).

Subchapter 26, National Low Emission Vehicle (NLEV) Program, and Subchapter 26 Appendix were repealed and Subchapter 29, Low Emission Vehicle Program, was adopted as new rules by R.2006 d.34, effective January 17, 2006 (operative January 27, 2006). See: 37 N.J.R. 2762(a), 38 N.J.R. 497(b).

Subchapter 30, CAIR NO_x Trading Program, was adopted as new rules by R.2007 d.223, effective July 16, 2007 (operative August 17, 2007). See: 39 N.J.R. 300(a), 39 N.J.R. 2637(a).

Subchapter 32, Diesel Retrofit Program, was adopted as new rules by R.2007 d.235, effective August 6, 2007 (operative September 8, 2007). See: 38 N.J.R. 5244(a), 39 N.J.R. 3352(a).

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).

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

Limitations on state agency authority to adopt environmental standards more stringent than federal standards: Policy considerations and interpretive problems. Jerome M. Organ, 54 Md.L.Rev. 1373 (1995).

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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.

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

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

“CFR” means the Code of Federal Regulations.

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

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

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

“Rated power output” means the maximum electrical or equivalent mechanical power output stated on the nameplate affixed to an engine or the International Standard Organization (ISO) rated electrical or equivalent mechanical power stated on the nameplate affixed to a turbine by the manufacturer.

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

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

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

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

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

“Registrant” means a person who submits a registration form.

“Registration” means the process of registering with the Department on a registration form, the following:

1. One or more sources under a general permit, in accordance with N.J.A.C. 7:27-8.8; or
2. One or more used oil space heaters that burn on-specification used oil whose total combined gross heat input does not exceed 500,000 British Thermal Units per hour, in accordance with N.J.A.C. 7:27-20.3(a).

“Registration form” means the online or paper form the Department requires a registrant to submit for registration.

“Renewal” means the process of renewing an operating certificate or a registration.

“Renewal application stub” means the part of the renewal invoice that a permittee or registrant detaches and submits

with the renewal fee payment to renew an operating certificate or a registration.

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

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

“Risk assessment” means a procedure for characterizing the probability that potential exposure to air contaminants will result in adverse effects on human health, or welfare or the environment.

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

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

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

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

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

“Solid particles” means particles of rigid shape and definite volume.

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

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

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

“Space heater” is as defined at N.J.A.C. 7:27-20.1.

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

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

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

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

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

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

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

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

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

“Surface impoundment” or “impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liq-

uid 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.

“Technology Acceptance and Reciprocity Partnership” or “TARP” means a workgroup of the Environmental Council of States (ECOS). The workgroup was formed to promote the reciprocal evaluation, acceptance, and approval of innovative environmental technologies.

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

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

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

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

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

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

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

“Used oil” is as defined at N.J.A.C. 7:27-20.1.

“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 pho-

tochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods, or which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC-31)

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

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

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

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
((CF₃)₂CF₂OCH₃)

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

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
((CF₃)₂CF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

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

See: 16 N.J.R. 167(a), 17 N.J.R. 587(a).

Substantially amended.

Amended by R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).

See: 22 N.J.R. 292(a), 22 N.J.R. 593(a), 23 N.J.R. 723(a).

Definitions added and technical revisions made.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

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

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

Amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).

See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).

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

Amended by R.1993 d.428, effective September 7, 1993 (operative October 4, 1993).

See: 24 N.J.R. 4323(a), 25 N.J.R. 4075(b).

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).

Administrative Correction.

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

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Rewrote the section.

Administrative change.

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

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

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

Inserted "Fuel cell system".

Amended by R.1999 d.428, effective December 6, 1999 (operative January 8, 2000).

See: 30 N.J.R. 4003(a), 31 N.J.R. 4016(a).

In "Category I", added 5.

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).

See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

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

Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).

See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).

Rewrote the section.

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).

Added "Former DER credit user"; in "Potential to emit", deleted the fifth sentence and rewrote the last sentence.

Amended by R.2005 d.343, effective October 17, 2005 (operative November 7, 2005).

See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).

Added definitions "Brake horsepower", "Energy and Environmental Technology Verification Act", "Microturbine", "Rated power output" and "Technology Acceptance and Reciprocity Partnership".

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Deleted "carbon dioxide" from "Distillates of air" definition; added "except CO₂" to "Major facility" definition.

Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).

See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).

Added definitions "Application form", "On-specification used oil", "Probe", "Registrant", "Registration", "Registration form", "Renewal", "Renewal application stub", "Space heater" and "Used oil"; and deleted definitions "Category I" and "Category II".

Administrative correction.

See: 38 N.J.R. 5155(b).

Case Notes

Temporary operating certificate was license entitling operator to hearing prior to nonrenewal. New Jersey Dept. of Environmental Pro-

tection v. Atlantic States Cast Iron Pipe Co., 241 N.J.Super. 591, 575 A.2d 895 (A.D.1990).

7:27-8.2 Applicability

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

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

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

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

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

(c) Any equipment or source operation that may emit one or more air contaminants, except carbon dioxide (CO₂), directly or indirectly into the outdoor air and belongs to one of the categories listed below, is a significant source (and therefore requires a preconstruction permit and an operating certificate), unless it is exempted from being a significant source pursuant to (d) or (e) below:

1. Commercial fuel burning equipment, except for a source listed in (c)21 below, that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber, including emergency generators;

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

3. Dry cleaning equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition

of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched, or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)
ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
chlorofluoromethane (HCFC-31)
1-chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

“Voltage reduction” means a reduction in customer supply voltage of at least five percent by an electric distribution company in order to reduce load on an electric distribution system.

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

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

“Worst case operating conditions” means the conditions of operation which result in the maximum VOC emission rate for any hour period for a continuous operation or the

maximum VOC batch cycle emission rate for a batch operation, considering any enforceable limitations on the operation including those set forth in any applicable rule or regulation, permit, or operating certificate.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).

See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).

Substantially amended.

Amended by R.1988 d.44, effective January 19, 1988 (operative February 21, 1988).

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

Added definition "Gasoline dispensing facility".

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

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

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

Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).

See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).

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

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

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

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

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

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

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

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

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

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

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

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

Amended by R.1993 d.666, effective December 20, 1993 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 25 N.J.R. 4551(a), 25 N.J.R. 6002(a).

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

Administrative Correction.

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

Amended by R.1995 d.255, effective May 15, 1995 (operative June 19, 1995).

See: 26 N.J.R. 4478(a), 27 N.J.R. 1979(b).

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

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

Administrative change.

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

Amended by R.2003 d.224, effective June 2, 2003 (operative June 29, 2003).

See: 34 N.J.R. 2489(a), 35 N.J.R. 2509(a).

Rewrote the section.

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).

In the introductory paragraph, substituted "when used in this subchapter, have the same meanings" for "when used in this subchapter, shall have the meanings"; added "Former DER credit user".

Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).

See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).

Added definitions "Brake horsepower", "Boiler serving an electric generating unit", "Combustion turbine", "Construction engine", "Electric distribution company", "Electric distribution system", "Electric generating unit", "Emergency", "Emergency generator", "Industrial/commercial/institutional boiler", "Internal combustion engine", "KW", "MW", "PJM", "Power outage", "Rated power output", "Reciprocating engine" and "Voltage reduction"; rewrote definitions "Combined cycle gas combustion turbine", "Regenerative cycle gas combustion turbine", "Simple cycle gas combustion turbine", "Stationary gas combustion turbine" and "Stationary internal combustion reciprocating engine"; deleted definitions "Gas turbine", "Non-utility boiler", and "Utility boiler".

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Deleted "carbon dioxide" from "Distillates of air" definition.

Administrative corrections.

See: 38 N.J.R. 5155(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 (VOC). The general purposes of this subchapter are as follows:

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

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

"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 = (V²)/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)(D²)(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 excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds

and classes of perfluorocarbons excluded from EPA’s definition of VOC at 40 CFR 51.100(s) are set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched, or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)
ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)

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

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

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

chlorofluoromethane (HCFC-31)

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

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

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

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
((CF₃)₂CF₂OCH₃)

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

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
((CF₃)₂CF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

Amended by R.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).

Administrative change.

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

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Deleted "carbon dioxide" from "Distillates of air" definition.

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.

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

“Oxides of nitrogen” or “NO_x” means all the oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

“Ozone” or “O₃” means a gas having a molecular composition of three oxygen atoms.

“Permit” means preconstruction permit, operating permit, or facility-wide permit.

“Person” means an individual, public or private corporation, company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

“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 same as that term is defined by the EPA at 40 C.F.R. 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 legally valid permit, authorizing construction, installation, reconstruction, or

modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

“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.

“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.

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

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

“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 "SO₂" 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).

Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).

See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Inserted "Alteration", "Facility-wide permit", "Operating permit" and "Preconstruction permit"; rewrote "Permit"; and in "Reconstruct" or "reconstruction", rewrote 2.

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 Pennsylvania 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) This subchapter applies to certain applications, submitted to the Department pursuant to N.J.A.C. 7:27-8 or N.J.A.C. 7:27-22 for authorization to construct, reconstruct, or modify control apparatus or equipment at a facility, if the requirements at (b) or (c) below apply and:

1. The facility has the potential to emit any of the air contaminants listed below in an amount which is equal to or exceeds the following threshold levels:

“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, incorporated herein by reference, as amended or supplemented. This document may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959.

“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.

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

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched, or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)
ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
chlorofluoromethane (HCFC-31)
1-chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂ OCH₃)

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

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂ OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

“Voltage reduction” means a reduction in customer supply voltage of at least five percent by an electric distribution company in order to reduce load on an electric distribution system.

“Wet bottom boiler” means a boiler serving an electric generating unit in which the ash is removed from the boiler in a molten state.

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

Inserted “Facility-wide permit”, “Operating permit” and “Preconstruction permit”; and rewrote “Alteration” and “Permit”.

Administrative change.

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

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).

Added “Former DER credit user”.

Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).

See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).

Rewrote the section.

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Deleted “carbon dioxide” from “Distillates of air” definition.

Administrative correction.

See: 38 N.J.R. 5155(b).

7:27-19.2 Purpose, scope and applicability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by oxides of nitrogen. The general purpose of this subchapter is to require the owner or operator of certain stationary source operations to use reasonably available control technology (RACT) to prevent or 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 boiler serving an electric generating unit, located at a major NO_x facility;

2. Until March 7, 2007, any industrial/commercial/institutional boiler or other indirect heat exchanger that has a maximum gross heat input rate of at least 20 million BTUs per hour, located at a major NO_x facility. On and after March 7, 2007, the applicability of this subchapter to an industrial/commercial/institutional boiler or other indirect heat exchanger shall be determined by (c)1 below;

3. Until March 7, 2007, any stationary combustion turbine that has a maximum gross heat input rate of at least 30 million BTUs per hour, located at a major NO_x facility. On and after March 7, 2007, the applicability of this subchapter to a stationary combustion turbine shall be determined by (c)2 below:

4. Any stationary reciprocating engine capable of producing an output of 500 brake horsepower or more and located at a major NO_x facility. In addition, on and after March 7, 2007, the applicability of this subchapter to a stationary reciprocating engine or group of stationary reciprocating engines, used for generating electricity, shall be determined by (c)3 and 4 below;

5. Any rotary dryer 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 having 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 having the potential to emit more than 10 tons of NO_x per year;

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 having the potential to emit more than 10 tons of NO_x per year; and

9. Any other equipment or source operation not specifically listed at (b)1 through 8 above or (c) below that has the potential to emit more than 10 tons of NO_x per year.

(c) On and after March 7, 2007, in addition to the types of equipment and source operations listed at (b) above, the following types of equipment or source operations shall be subject to the provisions of this subchapter:

“Permit” means preconstruction permit, operating permit, or facility-wide 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.

“PM_{2.5}” means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 2.5 microns.

“PM₁₀” 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 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 legally valid permit, authorizing construction, installation, reconstruction, or modification of a significant source, issued by the Department under N.J.A.C. 7:27-8 pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C-9.2.

“Process intermediate” means any material used in a process which is neither a raw material nor a product.

“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.

“Reasonably available” means, with respect to a method of quantification, utilizing data or information that is already in the possession of a person at the time of reporting or which can be obtained by such person through public sources. For example, a quantification method utilizing emission factors set forth in an AP-42 document is a reasonably available method.

“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.

“Reporting year” means the calendar year during which emissions reported in an Emission Statement were emitted, except that carbon monoxide emissions emitted in December of the preceding calendar year shall also be reported as part of the peak carbon monoxide season emissions in a given year.

“Responsible official” has the same meaning as defined for this term at N.J.A.C. 7:27-1.4.

“SCC code” means the eight digit Source Classification Code published by EPA that provides a detailed specification 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 activity rate/throughput for any specific season, such as the peak carbon monoxide season, the ozone season, or the peak ozone season.

“Significant source operation” has one of the following meanings:

1. In respect to a source operation at a facility which is subject to the operating permit requirements of N.J.A.C. 7:27-22, this term has the meaning defined for the same term at N.J.A.C. 7:27-22.1;

2. Otherwise, this term has the meaning defined for the same term at N.J.A.C. 7:27-8.1, except that, for the purposes of this subchapter, no source operation shall be excluded from being classified as a significant source operation solely because it is a grandfathered source. That is, even though for the purposes of N.J.A.C. 7:27-8, a source operation would be excluded from being classified as a significant source operation if it meets the following three criteria, it is not so excluded for the purposes of this subchapter:

- i. The source operation was in operation prior to the date that source operations of its kind were subject to permit requirements under N.J.A.C. 7:27-8;

- ii. The source operation has not been reconstructed or modified since that date referenced in 2i above; and

- iii. The source operation is still operable.

“Solid particles” means particles of rigid shape and definite volume.

“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 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.

“State Implementation Plan” (SIP) means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to 42 U.S.C. § 7410.

“State Plane Coordinates” means a geographic reference system in the horizontal plane, which has been developed and is maintained by the Department, describing the position of points or features with respect to other points in New Jersey. Information about this system may be obtained from the Department’s website at: <http://www.state.nj.us/dep/GIS>; from the Department’s Bureau of Geographical Information and Analysis by e-mail at: gis-net@gis.dep.state.nj.us.

“Subject to operating permit requirements” means, with respect to a facility, that the owner or operator of the facility:

1. Is required to obtain an operating permit for the facility pursuant to N.J.A.C. 7:27-22; or
2. Has voluntarily applied for an operating permit for the facility and an operating permit has been issued by the Department for the facility.

“Submittal year” means the calendar year in which an Emission Statement is required to be submitted. This term may be contrasted with the term “reporting year,” defined above, which is the temporal period during which the emissions that are reported in an Emission Statement are emitted.

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

“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.

“Toxic air pollutant” or “toxic” means any of the substances listed in N.J.A.C. 7:27-21, Appendix 1, Table 1, incorporated herein by reference.

“U.S.C.” 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 the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA’s definition of VOC at 40 CFR 51.100(s) are set forth below:

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

- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HCFC-134)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)
- parachlorobenzotrifluoride (PCBTF)
- cyclic, branched, or linear completely methylated siloxanes
- acetone
- perchloroethylene (tetrachloroethylene)
- 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
- 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
- 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
- difluoromethane (HFC-32)
- ethylfluoride (HFC-161)
- 1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
- 1,1,2,2,3-pentafluoropropane (HFC-245ca)
- 1,1,2,3,3-pentafluoropropane (HFC-245ea)
- 1,1,1,2,3-pentafluoropropane (HFC-245eb)
- 1,1,1,3,3-pentafluoropropane (HFC-245fa)
- 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
- 1,1,1,3,3-pentafluorobutane (HFC-365mfc)
- chlorofluoromethane (HCFC-31)
- 1-chloro-1-fluoroethane (HCFC-151a)
- 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
- 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
- 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃)
- 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
- 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅)
- methyl acetate
- perfluorocarbon compounds which fall into these classes:
 - cyclic, branched, or linear, completely fluorinated alkanes
 - cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
 - cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

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

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

Amended by R.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).
 Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
 See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
 Rewrote "Federally enforceable", "Operating permit", "Permit" and "Preconstruction permit"; and inserted "Facility-wide permit".
 Administrative change.
 See: 31 N.J.R. 639(b).
 Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).
 See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).
 Rewrote the section.

7:27-21.2 Applicability

(a) This subchapter applies to a facility if the facility emits or has the potential to emit, directly or indirectly to the outdoor atmosphere, any air contaminant listed in Table 1 below at a rate greater than or equal to the applicable reporting threshold given in Table 1.

**TABLE 1
 AIR CONTAMINANT REPORTING THRESHOLDS**

Air Contaminant	Reporting Threshold (Tons per Year)
VOC	10
NO _x	25
CO	100
SO ₂	100
TSP	100
PM _{2.5}	100
PM ₁₀	100
NH ₃	100
Pb	5

(b) With respect to the provisions of (a) above, the following apply to the determination of either a facility's potential to emit or its actual emissions:

1. Emissions associated with any delivery vessel loading operation shall be included in the determination;
2. Emissions from any delivery vessel that is to be considered a stationary 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(j) also shall be included in the determination; and
3. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from the determination.

(c) Notwithstanding (a) above, no facility is required, pursuant to this subchapter, to submit an emission statement for SO₂, TSP, PM₁₀, 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.

Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).

See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).

Rewrote (a) and (b).

7:27-21.3 General provisions

(a) The owner or operator of a facility to which this subchapter applies, pursuant to N.J.A.C. 7:27-21.2 and (c) below, shall submit to the Department an Emission Statement for each reporting year in accordance with this subchapter. The Emission Statement shall report the actual air contaminant emissions released from the facility directly or indirectly into the outdoor atmosphere during the year.

(b) An Emission Statement shall include the information required under N.J.A.C. 7:27-21.5 and shall include emission information for the following air contaminants:

1. If the facility's potential to emit VOC is less than 25 tons per year and if the facility's potential to emit each of the other air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2 is less than the applicable reporting threshold set forth in Table 1 such that the facility is subject to Emission Statement requirements only because its potential to emit VOC is equal to or greater than 10 tons per year, emission information shall be reported only for:

i. The following three Table 1 air contaminants: VOC, NO_x and CO; and

ii. Beginning with the Emission Statement for reporting year 2005 and for each year thereafter, each of the toxic air pollutants which are listed in N.J.A.C. 7:27-21, Appendix 1, Table 1 and for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold given in N.J.A.C. 7:27-8, Appendix 1, Table B, Reporting and SOTA Thresholds for HAPs;

2. If the facility's potential to emit VOC is equal to or greater than 25 tons per year or if the facility's potential to emit any other air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2 is equal to or greater than the reporting threshold, emission information shall be reported for the following:

i. Each of the air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2, except that the reporting of emission information for PM_{2.5} and NH₃ shall not begin until the Emission Statement for reporting year 2003;

ii. Beginning with the Emission Statement for reporting year 2003 and for each year thereafter, the greenhouse gases CO₂ and CH₄; and

iii. Beginning with the Emission Statement for reporting year 2003 and for each year thereafter, each of the toxic air pollutants which are listed in N.J.A.C. 7:27-21, Appendix 1, Table 1 and for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold listed in N.J.A.C. 7:27-8, Appendix 1, Table B, Reporting and SOTA Thresholds for HAPs.

(c) Once an Emission Statement has been submitted for a facility, the owner or operator shall submit an Emission Statement for such facility in each subsequent submittal year unless the following conditions are met:

1. By February 1 of the submittal year the owner or operator submits a claim of non-applicability to the Department pursuant to N.J.A.C. 7:27-21.10; and

2. By April 1 of the submittal year, the Department affirms that it concurs that the requirements of this subchapter no longer apply to the facility.

(d) The owner or operator of a facility subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. An owner or operator who fails to submit an Emission Statement that is required under this subchapter, submits an Emission Statement with incomplete information, or otherwise fails to comply with any provision of this subchapter shall be subject 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.A.C. 26:2C-19(f). If there is more than one person who is an owner or operator of a facility, each such person shall be jointly and severally liable for such civil and criminal penalties.

(e) 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.

(f) 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.

(g) 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.

outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus.

“Space heater” is as defined at N.J.A.C. 7:27-20.1.

“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 “SO₂” means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

“Technology Acceptance and Reciprocity Partnership” or “TARP” means a workgroup of the Environmental Council of States (ECOS). The workgroup was formed to promote the reciprocal evaluation, acceptance, and approval of innovative environmental technologies.

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

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

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

“TXS” means a substance regulated by N.J.A.C. 7:27-17.

“U.S.C.” means the United States Code.

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

“Used oil” is as defined at N.J.A.C. 7:27-20.1.

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved

in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA’s definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

1,1,2,2,3-pentafluoropropane (HFC-245ca)
 1,1,2,3,3-pentafluoropropane (HFC-245ea)
 1,1,1,2,3-pentafluoropropane (HFC-245eb)
 1,1,1,3,3-pentafluoropropane (HFC-245fa)
 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
 1,1,1,3,3-pentafluorobutane (HFC-365mfc)
 chlorofluoromethane (HCFC-31)
 1-chloro-1-fluoroethane (HCFC-151a)
 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane
 (C₄F₉OCH₃)
 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-
 heptafluoropropane ((CF₃)₂CF₂ OCH₃)
 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane
 (C₄F₉OC₂H₅)
 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-
 heptafluoropropane ((CF₃)₂CF₂ OC₂H₅)
 methyl acetate
 perfluorocarbon compounds which fall into these
 classes:
 cyclic, branched, or linear, completely fluorinated
 alkanes
 cyclic, branched, or linear, completely fluorinated ethers
 with no unsaturations
 cyclic, branched, or linear, completely fluorinated tertiary
 amines with no unsaturations
 sulfur containing perfluorocarbons with no unsaturations
 and with sulfur bonds only to carbon and fluorine

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

Administrative correction

See: 27 N.J.R. 1406(a)
 Amended by R.1995 d.492, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 22(b), 27 N.J.R. 3472(a).
 Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
 Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).

See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
 In "Federally enforceable", inserted a reference to certificates in 4; in "Modify" or "modification", inserted "of actual emissions" following "amount" in the first sentence; and in "Reconstruct" or "reconstruction", inserted "part(s) of" preceding "control" in the introductory paragraph, and rewrote 1.

Administrative change.

See: 31 N.J.R. 639(b).
 Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).

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

In "Exempt activity", added 8; inserted "Fuel cell system"; and in "Insignificant source operation", substituted "rate" for "rather" following "production".

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).

See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

In "Potential to emit", inserted a new fifth sentence, and rewrote the last sentence.

Amended by R.2002 d.53, effective February 4, 2002 (operative March 12, 2002).

See: 33 N.J.R. 3290(a), 34 N.J.R. 756(a).

Rewrote "Air quality simulation model", "Exempt Activity", "Grandfathered", "Insignificant source operation", "NESHAP", "PM-10", "Prevention of significant deterioration", "Significant source operation", and "Testing".

Amended by R.2003 d.86, effective February 18, 2003 (operative March 24, 2003).

See: 34 N.J.R. 695(a), 35 N.J.R. 1059(a).

Deleted "Emission statement year"; added "NAICS code"; added "Reporting year".

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).

Added "Former DER credit user"; in "Potential to emit", deleted the fifth sentence and rewrote the last sentence.

Amended by R.2005 d.343, effective October 17, 2005 (operative date of November 7, 2005).

See: 36 N.J.R. 4228(a), 37 N.J.R. 3976(a).

Added "Brake horsepower", "Energy and Environmental Technology Verification Act", "microturbine", "Rated power output" and "Technology Acceptance and Reciprocity Partnership". Rewrote "Exempt activity", "Insignificant source operation" and "Significant source operation".

Amended by R.2005 d.392, effective November 21, 2005.

See: 36 N.J.R. 4607(a), 37 N.J.R. 16(b), 4415(a).

Added "Distillates of air" definition; added ", except CO₂" to "Major facility" definition.

Amended by R.2006 d.212, effective June 19, 2006 (operative June 30, 2006).

See: 37 N.J.R. 4728(a), 38 N.J.R. 2691(b).

Deleted definitions "Category I" and "Category II", added definitions "On-specification used oil", "Probe", "Registrant", "Registration", "Registration form", "Space heater" and "Used oil".

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.

"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.

"Post-consumer coating" means a finished coating that would have been disposed of, having completed its usefulness to a consumer, and does not include manufacturing wastes.

"Pre-treatment wash primer" means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM Designation D 1613-02, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)5, that is formulated and recommended for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer" means a coating formulated and recommended for application to a substrate to provide a firm bond between the substrate and subsequent coats.

"Quick-dry enamel" means a non-flat coating that is labeled as specified in N.J.A.C. 7:27-23.5(b)7 and that is formulated to have the following characteristics:

1. It is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27 degrees Centigrade (60 and 80 degrees Fahrenheit);
2. When tested in accordance with ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)6, it sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and
3. Has a dried film gloss of 70 or above on a 60 degree meter, in accordance with ASTM Designation D 523-89(1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)3.

"Quick-dry primer, sealer, and undercoater" means a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)6.

"Recommended" means, for coatings manufactured before January 1, 2005, recommended by the manufacturer either on the container label, in literature describing the product or on the manufacturer's website, and for coatings manufactured on or after January 1, 2005, recommended by the manufacturer on the coating container's label only.

"Recycled coating" means an architectural coating formulated such that not less than 50 percent of the total weight

consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

"Residence" means an area where people reside, dwell or lodge, including, but not limited to, single and multiple family dwellings, condominiums, townhomes, mobile homes, apartment complexes, motels, and hotels.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Retail outlet" means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

"Roof coating" means a non-bituminous coating formulated and recommended exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. Metallic pigmented roof coatings, that meet the definition of metallic pigmented coatings, shall not be considered roof coatings, but shall be considered metallic pigmented coatings.

"Rust preventive coating" means a coating formulated exclusively for non-industrial use to prevent the corrosion of metal surfaces and labeled as specified in N.J.A.C. 7:27-23.5(b)5. The coating may be used for industrial use, if the coating complies with the industrial maintenance coating VOC limit specified at N.J.A.C. 7:27-23.3(i) Table 1.

"Sanding sealer" means a clear or semi-transparent wood coating formulated and recommended for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer, shall not be considered a sanding sealer, but shall be considered a lacquer.

"SCAQMD" means the South Coast Air Quality Management District, one of 35 air pollution control agencies in California, which regulate air quality in California by jurisdiction of the district, and are overseen by the California Air Resources Board (CARB).

"Sealer" means a coating formulated and recommended for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

"Secondary coating (rework)" means a finished coating or a fragment of a finished coating from a manufacturing process that cannot be sold for the intended purpose and would otherwise be disposed of as a manufacturing waste.

"Shellac" means a clear or pigmented coating formulated solely with the resinous secretions of the lac beetle (laccifer

lacca), thinned with alcohol, and dried by evaporation without a chemical reaction.

“Shop application” means application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (for example, original equipment manufacturing coatings).

“Sign paint or graphic arts coating” means a coating formulated and recommended for hand-application by artists, using brush or roller techniques, to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

“Specialty primer, sealer and undercoater” means a coating that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains, and is labeled as specified in N.J.A.C. 7:27-23.5(b)6. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(d)7.

“Stain” means a clear, semi-transparent, or opaque coating formulated to change the color of a surface, but not conceal the grain pattern or texture.

“Substrate” means a material to which an architectural coating is applied.

“Swimming pool coating” means a coating formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.

“Swimming pool repair and maintenance coating” means a rubber-based coating formulated and recommended to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

“Temperature-indicator safety coating” means a coating formulated and recommended as a color-changing indicator coating for the purpose of monitoring the temperature and safety of a substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Centigrade (400 degrees Fahrenheit).

“Thermoplastic rubber coating and mastic” means a coating or mastic formulated and recommended for application to roofing or other structural surfaces, and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments, and modifying resins.

“Tile-like glaze coating” means a coating that is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and that cures to a hard glaze finish.

“Tint base” means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

“Toxic substance” or “TXS” means a substance listed in Table 1 of N.J.A.C. 7:27-17.

“Traffic marking coating” means a coating formulated and recommended for marking and striping streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, sidewalks, airport runways and parking lots.

“Undercoater” means a coating formulated and recommended to provide a smooth surface for subsequent coatings.

“Varnish” means a clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry, by chemical reaction, on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

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

- methane
- ethane
- methylene chloride (dichloromethane)
- 1,1,1-trichloroethane (methyl chloroform)
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
- trichlorofluoromethane (CFC-11)
- dichlorodifluoromethane (CFC-12)
- chlorodifluoromethane (HCFC-22)
- trifluoromethane (HFC-23)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
 chloropentafluoroethane (CFC-115)
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
 1,1,1,2-tetrafluoroethane (HFC-134a)
 1,1-dichloro-1-fluoroethane (HCFC-141b)
 1-chloro-1,1-difluoroethane (HCFC-142b)
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
 pentafluoroethane (HFC-125)
 1,1,2,2-tetrafluoroethane (HFC-134)
 1,1,1-trifluoroethane (HFC-143a)
 1,1-difluoroethane (HFC-152a)
 parachlorobenzotrifluoride (PCBTF)
 cyclic, branched, or linear completely methylated siloxanes
 acetone
 perchloroethylene (tetrachloroethylene)
 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
 1,1,1,2,3,4,4,5,5-decafluoropentane (HFC 43-10mee)
 difluoromethane (HFC-32)
 ethylfluoride (HFC-161)
 1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
 1,1,2,2,3-pentafluoropropane (HFC-245ca)
 1,1,2,3,3-pentafluoropropane (HFC-245ea)
 1,1,1,2,3-pentafluoropropane (HFC-245eb)
 1,1,1,3,3-pentafluoropropane (HFC-245fa)
 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
 1,1,1,3,3-pentafluorobutane (HFC-365mfc)
 chlorofluoromethane (HCFC-31)
 1-chloro-1-fluoroethane (HCFC-151a)
 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃)
 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

“VOC content” means the weight of VOC per volume of coating, calculated according to the procedures specified in N.J.A.C. 7:27-23.4.

“Waterproof mastic coating” means a weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities that is applied in thicknesses of at least 15 mils.

“Waterproofing concrete/masonry sealer” means a clear or pigmented film-forming coating that is formulated and recommended for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and staining.

“Waterproofing sealer” means a coating formulated and recommended for application to a porous substrate for the primary purpose of preventing the penetration of water.

“Wood preservative coating” means a coating formulated and recommended to protect exposed wood from decay or insect attack, that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

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).
 Administrative change.
 See: 31 N.J.R. 639(b).
 Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
 See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
 Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Association v. Kean*, D.N.J. 1994, 856 F.Supp. 903.

7:27-23.3 Standards

(a) Except as provided in N.J.A.C. 7:27-23.1(b) through (e) and (h) below, no person shall manufacture, blend, repackage, supply or distribute for sale within the State of New Jersey; sell or offer for sale within the State of New Jersey; or apply for compensation within the State of New Jersey, any architectural coating manufactured after the operative date in (i) Table 1 below, and containing a VOC content in excess of the corresponding limit specified in (i) Table 1 below.

(b) If anywhere on the container of an architectural coating, or on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in (i) Table 1 below, then the most restrictive applicable VOC content limit shall apply. This provision does not apply to the following coating categories:

1. Antenna coating;
2. Antifouling coating;
3. Bituminous roof primer;
4. Calcimine recoater;
5. Concrete surface retarder;
6. Conversion varnish;
7. Fire-retardant coating;
8. Flow coating;
9. High-temperature coating;
10. Impacted Immersion coating;
11. Industrial maintenance coating;
12. Lacquer coating (including lacquer sanding sealer);
13. Low-solids coating;
14. Metallic pigmented coating;
15. Nuclear coating;
16. Pretreatment wash primer;

17. Shellac;
18. Specialty primer, sealer, and undercoater;
19. Temperature-indicator safety coating;
20. Thermoplastic rubber coating and mastic; and
21. Wood preservative coating.

(c) With the exception of any coating that does not display on its label the date of manufacture or date code as required by N.J.A.C. 7:27-23.5(a), any coating manufactured prior to the operative date of the VOC limit specified for that coating in (i) Table 1 below, that complied with the VOC content limits in effect at the time of its manufacture, may be:

1. Sold, supplied, or offered for sale before or after that specified operative date; or
2. Applied at any time before or after that specified operative date.

(d) All containers used in the direct application of an architectural coating by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These containers shall include, but are not limited to, drums, buckets, cans, pails or trays. Containers of VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(e) No person, who applies an architectural coating for compensation, shall apply an architectural coating that has been thinned to the extent that it exceeds the applicable VOC limit specified in (i) Table 1 below.

(f) No person, who applies an architectural coating for compensation, shall apply a rust preventive coating for industrial use, unless such rust preventive coating complies with the industrial maintenance coating VOC limit specified in (i) Table 1 below, regardless of the date of manufacture.

(g) For any coating that cannot be classified under any of the specialty coating categories listed in (i) Table 1 below, the VOC content limit shall be determined by classifying the coating as a flat coating or a non-flat coating, based on its gloss, as defined in N.J.A.C. 7:27-23.2. The corresponding VOC content limit shall then apply.

(h) Notwithstanding the provisions of (a) above, a person may add up to 10 percent by volume of VOC to a lacquer and then apply that lacquer, to avoid blushing of the finish, provided that:

1. The relative humidity at the time of application is greater than 70 percent;
2. The temperature at the time of application is below 65 degrees Fahrenheit;
3. The coating contains acetone; and

“Adhesive remover” means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

“Aerosol adhesive” means an adhesive that is an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

“Aerosol product” means a 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 any animal or plant crop. This term does not include the use of pesticides for any of the following uses, provided that the label on the packaging in which the pesticide is sold clearly indicates that the product is intended for one or more of the following uses, rather than for agricultural use:

1. Home use, that is, use in a household or the household’s immediate environment;
2. Use in structural pest control;
3. Industrial use, that is, use for or in a manufacturing, mining, or chemical process, or use in the operation of a factory, processing plant or similar site; or
4. Institutional use, that is, use within the confines of, or on property of, or in the buildings used in the operation of, an institution, such as a hospital, school, library, auditorium, or office complex.

“Air freshener” means a 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 when offered for sale solely through institutional and industrial channels of distribution. This term does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging or in the product’s literature and advertising may be considered. The presence of or 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 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).

“Alternative control plan” or “ACP” means an emissions averaging program for chemically formulated consumer products, which provides a manufacturer with an alternative method to comply with the VOC content limits in Table 1 at N.J.A.C. 7:27-24.4(a), and which was issued in accordance with N.J.A.C. 7:27-24.4(i) and (j) by:

1. CARB pursuant to its 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; or
2. The air pollution control agency of another state pursuant to its consumer product regulations if those consumer product regulations are based on the Ozone Transport Commission (OTC) “Model Rule for Consumer Products” dated November 29, 2001, including subsequent revisions.

“Antimicrobial hand or body cleaner or soap” means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. This term includes, but is not limited to, antimicrobial hand or body washes/cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. This term does not include prescription drug products, antiperspirants, astringent/toners, deodorants, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

“Antiperspirant” means a 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.

“Architectural coating” means architectural coating as that term is defined at N.J.A.C. 7:27-23.2.

“ASTM” means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

“Astringent/toner” means a product not regulated as a drug by the FDA, and that is applied to the skin for the purpose of cleaning or tightening pores. This term also includes clarifiers and substrate impregnated products. This term does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

“Automotive brake cleaner” means a product designed to clean motor vehicle brake mechanisms by removing oil, grease, brake fluid, brake pad material or dirt from them.

“Automotive engine compartment adhesive” means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees Fahrenheit (°F).

“Automotive hard paste wax” means an automotive wax or polish that:

1. Is designed to protect and improve the appearance of automotive paint surfaces;
2. Is a solid at room temperature; and
3. Contains zero percent water by formulation.

“Automobile headliner adhesive” means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

“Automotive instant detailer” means a product designed for use in a pump spray that is designed to be applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

“Automotive rubbing or polishing compound” means a product designed primarily to remove oxidation, old paint, scratches, swirl marks, or other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

“Automotive wax, polish, sealant or glaze” means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle’s painted surfaces. This term includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. This term does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, or products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

“Automotive windshield washer fluid” means a product that is a liquid designed for use in a motor vehicle windshield washer system as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. This term does not include fluids placed by the manufacturer in a new vehicle.

“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 product designed to clean tile or surfaces in bathrooms. This term does not include products specifically designed to clean toilet bowls or toilet tanks.

“Bug and tar remover” means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

1. Biological-type residues such as insect carcasses and tree sap; and

2. Road grime, such as road tar, roadway paint markings, and asphalt.

“CARB” means the California Air Resources Board.

“Carburetor or fuel-injection air intake cleaner” means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. This term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

“Carpet and upholstery cleaner” means a product designed for the purpose of cleaning rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics by eliminating dirt and stains on them. This term includes, but is not limited to, products that make fabric protectant claims. This term does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

“Charcoal lighter material” means a combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This term does not include:

1. Electrical starters and probes;
2. Metallic cylinders using paper tinder;
3. Natural gas;
4. Propane; or
5. Fat wood.

“Chemically formulated consumer product category” means a category listed in Table 1 at N.J.A.C. 7:27-24.4(a) that best describes a chemically formulated consumer product.

“Colorant” means a pigment or coloring material used in a product for an aesthetic effect, or to dramatize an ingredient.

“Construction, panel, and floor covering adhesive” means a one-component adhesive that:

1. Is designed exclusively for the installation, remodeling, maintenance, or repair of:
 - i. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to, drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard), ceiling and acoustical tile, molding, fix-

tures, countertops or countertop laminates, cove or wall bases, or flooring or subflooring; or

ii. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles or other types of tiles, or artificial grass; and

2. Is not a floor seam sealer.

“Consumer” means a person who purchases or otherwise acquires any consumer product for personal, family, household, or institutional use. This term does not include a person acquiring a product for resale.

“Consumer product” means a household or institutional product, including any packaging, that includes, but is not limited to:

1. Chemically formulated products including, but not limited to, products that are detergents; cleaning compounds; floor polishes and waxes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products; and

2. A portable fuel container or spout or both a portable fuel container and spout.

“Contact adhesive” means an adhesive that:

1. Is designed for application to both surfaces to be bonded together;

2. Is designed to be allowed to dry before the two surfaces are placed in contact with each other;

3. Forms an immediate bond that is impossible or difficult to reposition after both adhesive-coated surfaces are placed in contact with each other;

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and

5. Is not a rubber cement that is primarily intended for use on paper substrates.

“Cooking spray” means a product that is an aerosol and is designed either to reduce sticking on cooking and baking surfaces, or to be applied on food, or both.

“Crawling bug insecticide” means an insecticide product that is designed for use against ants, cockroaches, or other household crawling 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, or any house dust mite product.

“Date-code” means a code indicating the day, month and year on which a product was manufactured, filled, or packaged.

"Deodorant" means a 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 or contrivance, other than a firearm, 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.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§ 136 et seq.). This term does not include:

1. Products designed solely for use on humans or animals;
2. Products designed for agricultural use;
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a product is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"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.

"Dry cleaning fluid" means a non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled "dry clean only," such as clothing or drapery, or on "S-coded" fabrics (that is, upholstery fabrics designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee). This term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. This term does not include "spot remover" or "carpet and upholstery cleaner."

"Dusting aid" means a product designed to assist in 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.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Engine degreaser" means a product designed to clean engines and other mechanical parts by removing grease, grime, oil and other contaminants from their external surfaces.

"EPA" means the United States Environmental Protection Agency.

"Establishment" means, when used with respect to an institutional product, any facility (other than living quarters or a residence) including, but not limited to, an office, government agency, factory, school, hospital, sanitarium, prison, retail outlet, restaurant, hotel, store, automobile service and parts center, health club, theater, or transportation facility.

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. This term does not include waterproofers, products designed for use solely on leather, or products sold in packages of 10 fluid ounces or less and designed for use solely on fabrics labeled "dry clean only."

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. This term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. This term does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FDA" means the United States Food and Drug Administration.

"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.

"Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent plasticizer content, by weight.

"Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

"Floor polish or wax" means a wax, polish or any other 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 40 CFR Parts 9 and 59 or N.J.A.C. 7:27-23.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. This term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"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, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"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, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

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

"Furniture maintenance product" means a wax, polish, conditioner, or any other 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 phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a non-aerosol adhesive designed for use on a variety of substrates. This term does not include contact adhesives; construction, panel, and floor covering adhesives; adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials, but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a 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 general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This term does not include:

1. Engine degreasers, general purpose cleaners, adhesive removers, electronic cleaners, or metal polish/cleaners;
2. Products used exclusively in solvent cleaning tanks or related equipment (that is, in tanks or equipment including, but not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container); or
3. Products that are sold exclusively to establishments that manufacture or construct goods or commodities labeled "not for retail sale."

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. This term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial),

heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

“Glass cleaner” means a product designed primarily to clean surfaces made of glass. This term does not include products designed solely to clean optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

“Hair mousse” means a product that is a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

“Hair shine” means a product designed for the primary purpose of creating a shine when applied to the hair. This term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. This term does not include hair spray, hair mousse, hair styling gel, or spray gel, or products whose primary purpose is to condition or hold the hair.

“Hair spray” means a 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, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

“Heavy-duty hand cleaner or soap” means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer’s ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

“Herbicide” means a pesticide designed to kill or retard a plant’s growth, but excludes:

1. Products that are for agricultural use; or
2. Restricted materials that require a permit for use and possession.

“High volatility organic compound” or “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).

“Hospital or medical disinfectant” means an antimicrobial product registered with the EPA that qualifies to bear the name or claim “hospital or medical environment disinfectant” pursuant to EPA guidelines published pursuant to 7 U.S.C. § 136a(c)(2)(a), including, but not limited to, antimicrobial pesticides used in hospitals, doctor and dentist offices, or other medical environments.

“House dust mite” means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

“House dust mite product” means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

“Household product” means a product that is designed to be used primarily inside or outside of living quarters or residences, including their immediate surroundings, that are occupied or intended for occupation by individuals and/or households. This term does not include a product that is designed to be used primarily in the maintenance or operation of an establishment.

“HVOC” (see “high volatility organic compound”).

“Innovative product exemption” or “IPE” means a determination 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. Such determination must be in accordance with N.J.A.C. 7:27-24.4(i) and (j) for a chemically formulated consumer product, and in accordance with N.J.A.C. 7:27-24.8(e) and (f) for a portable fuel container, spout, or portable fuel container and spout, and be issued by:

1. CARB pursuant to the 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; or
2. The air pollution control agency of another state pursuant to its consumer product regulations, if those consumer product regulations are based on the Ozone Transport Commission (OTC) “Model Rule for Consumer Products” dated November 29, 2001, including subsequent revisions.

“Insecticide” means a pesticide designed for use against insects or other arthropods. This term does not include:

1. Products that are for agricultural use;
2. Products that are for use in structural pest control which require a commercial pesticide applicator licensed under N.J.A.C. 7:30-6;
3. Restricted materials that require a permit for use and possession; or
4. Solid fertilizers that also have insecticidal properties.

"Insecticide fogger" means an insecticide designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" means a product that is designed to be used primarily in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. This term does not include a product that is designed to be used primarily inside or outside of living quarters or residences that are occupied or intended for occupation by individuals (that is, is a household product). It also does not include any product that is used as a raw material or other input into, or used exclusively in the manufacture or construction of the goods or commodities at the establishment.

"Institutional use" means, with respect to a product, use within the lines of, or on property of, an establishment, in the maintenance or operation of the establishment.

"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.

"Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

1. The touch-up or repair of items laminated with high pressure laminates (for example, lifted edges, delaminates); or
2. The touch-up, repair, or attachment of edgebanding materials, including, but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminates" are sheet materials which consist of paper, fabric, or other core material that has been laminated at temperatures exceeding 265 degrees Fahrenheit (°F), and at pressures between 1,000 and 1,400 pounds per square inch (psi).

"Laundry prewash" means a 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 product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and 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 under ASTM D-4359-90. This term does not include powders or other materials that are composed entirely of solid particles.

"Low vapor pressure VOC" or "LVP-VOC" means a VOC that is a chemical compound (that is, a molecule of definite chemical formula and isomeric structure) or mixture (that is, a substrate comprised of two or more chemical compounds) that contains at least one carbon atom and meets one of the following conditions:

1. It has a vapor pressure less than 0.1 millimeters of mercury (mm Hg) at 20 degrees centigrade (°C), as determined by CARB Method 310;
2. Its vapor pressure is unknown and it is:
 - i. A chemical compound with more than 12 carbon atoms; or
 - ii. A chemical mixture comprised solely of compounds with more than 12 carbon atoms;
3. It is a chemical compound with a boiling point greater than 216 degrees centigrade (°C), as determined by CARB Method 310; or
4. It is the weight percent of a chemical mixture that boils above 216 degrees centigrade (°C), as determined by CARB Method 310.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. This term does not include:

1. Automotive power steering fluids;
2. Products for use inside power generating motors, engines, or turbines, or their associated power-transfer gearboxes;
3. Two cycle oils or other products designed to be added to fuels;
4. Products for use on the human body or animals; or
5. Products that are sold exclusively to establishments which manufacture or construct goods or commodities and are labeled "not for retail sale."

"Manufacturer" means a person who manufactures, imports, assembles, processes, produces, packages, repackages, or relabels a product. Manufacturer also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label. Manufacturer also includes any person

that hires another person to manufacture a product for compensation.

“Medicated astringent/medicated toner” means a product regulated as a drug by the FDA and that is applied to the skin for the purpose of cleaning or tightening pores. This term includes, but is not limited to, clarifiers and substrate-impregnated products. This term does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor’s prescription.

“Medium volatility organic compound” or “MVOC” means a volatile organic compound that exerts a vapor pressure greater than two millimeters of mercury (mm Hg) and less than or equal to 80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade (°C).

“Metal polish/cleanser” means a product designed primarily to improve the appearance (that is, to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny) of finished metal, metallic, or metallized surfaces by physical or chemical action. This term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. This term does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

“Mist spray adhesive” means an aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

“Mounting adhesive” means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

“Multi-purpose dry lubricant” means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (“moly”), or polytetrafluoroethylene or closely related fluoropolymer (“teflon”) on surfaces; and
2. Designed for general purpose lubrication, or for use in a wide variety of applications.

“Multi-purpose lubricant” means a product that is a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. This term does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

“Multi-purpose solvent” means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. This term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. This term does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

“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 product designed to remove nail polish and coatings from fingernails or toenails.

“Nominal capacity” means, with respect to a portable fuel container, the volume that the manufacturer indicates is the maximum recommended filling level.

“Non-aerosol product” means a product that is not dispensed by a pressurized spray system.

“Non-carbon containing compound” means a compound that does not contain any carbon atoms.

“Nonresilient flooring” means flooring of a mineral content which is not flexible. This term includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

“Non-selective terrestrial herbicide” means a product that is a terrestrial herbicide, toxic to plants without regard to species.

“Outboard engine” means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

“Oven cleaner” means a product designed to clean ovens and to remove dried food deposits from oven walls.

“Package” or “packaging” means the part or parts of a product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the functional item or material (such as a 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.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application, and is used for protection, decoration or identification, or to serve some functional purpose, such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. This term does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a product that is a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. This term does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Permeation" means, with respect to a portable fuel container, the process by which individual fuel molecules may penetrate the walls and various assembly components of the portable fuel container directly to the outside ambient air.

"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 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 in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. §§ 136 et seq.).

"Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

"Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

"Portable fuel container" means a product that is a reusable container or vessel, with a nominal capacity of ten gallons or less, designed or used primarily for receiving, transporting, storing or dispensing fuel or a fuel blend.

"Portable fuel container product category" means the category that best describes a spout and/or a portable fuel container with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the Department.

"Plasticizer" means a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91 or from product formulation data.

"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. If a product and its packaging have more than one principal display panel, all requirements pertaining to the "principal display panel" shall pertain to each such "principal display panel."

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product form" means the applicable form which most accurately describes the product's dispensing form, including aerosols, gels, liquids, pump sprays, and solids.

"Product line" means a group of products of identical form and function belonging to the same chemically formulated consumer product category(ies).

"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.

"Representative code" means a code that identifies a portable fuel container or portable fuel container and spout as subject to and complying with N.J.A.C. 7:27-24.8.

"Restricted materials" means pesticides classified as restricted use pesticides under N.J.A.C. 7:30-2.10 or classified for restricted use by EPA pursuant to section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§ 136 et seq.).

"Retail outlet" means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

"Retailer" means any person who owns, leases, operates, manages, controls, or supervises a retail outlet.

“Roll-on product” means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

“Rubber and vinyl protectant” means a product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. This term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

“Rubbing alcohol” means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, or for massage.

“Safety can” means a closed container that has a nominal capacity of five gallons or less, having a flash-arresting screen, spring-closing lid and spout cover and that is designed so that it will safely relieve internal pressure when exposed to fire.

“Sealant and caulking compound” means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. This term does not include roof cements and roof sealants, insulating foams, removable caulking compounds (that is, compounds which temporarily seal windows or doors for three to six month time intervals), clear/paintable/water resistant caulking compounds (that is, compounds which contain no appreciable level of opaque fillers or pigments, transmit most or all visible light through the caulk when cured, are paintable, and are immediately resistant to precipitation upon application), floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings.

“Semisolid” means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

“Shaving cream” means an aerosol product that 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 body hair.

“Silicone-based multi-purpose lubricant” means a product that is a lubricant which:

1. Is designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane;
2. Is designed and labeled for general purpose lubrication, or for use in a wide variety of applications; and
3. Is not designed and labeled exclusively to release manufactured products from molds.

“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).

“South Coast Air Quality Management District Rule” means a rule issued by California’s South Coast Air Quality Management District (SCAQMD).

“Special purpose spray adhesive” means an aerosol adhesive that is a mounting adhesive, a flexible vinyl adhesive, a polystyrene foam adhesive, an automobile headliner adhesive, a polyolefin adhesive, a laminate repair/edgebanding adhesive, or an automotive engine compartment adhesive.

“Spill-proof spout” means any spout that complies with the applicable standards specified at N.J.A.C. 7:27-24.8.

“Spill-proof system” means any configuration of portable fuel container and firmly attached spout that complies with the applicable standards at N.J.A.C. 7:27-24.8.

“Spot remover” means a product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. This term does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

“Spout” means, with respect to a portable fuel container, any device that can be firmly attached to the container and that serves as the conduit through which the contents of the portable fuel container may be poured out of the container.

“Spray buff product” means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

“Stick product” means an antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

“Structural waterproof adhesive” means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A).

“Target fuel tank” means any receptacle that receives fuel from the portable fuel container.

“Terrestrial” means to live on or grow from land.

“Tire sealant and inflation” means a pressurized product designed to temporarily inflate and seal a leaking tire.

“Type A propellant” means a compressed gas such as CO₂, N₂, N₂O, or compressed air, used as a propellant and either incorporated with the product or contained in a separate chamber within the product’s packaging.

“Type B propellant” means any halocarbon used as a propellant, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

“Type C propellant” means any propellant not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

“Undercoating” means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. This term includes, but is not limited to, rubberized, mastic, or asphaltic products.

“Usage directions” means the text or graphics on the product’s principal display panel, label, or accompanying literature that describes to the end user how or in what quantity the product is to be used.

“Variance” means a temporary exemption based on extraordinary economic hardship granted in accordance with N.J.A.C. 7:27-24.4(i) and (j) to a manufacturer of a chemically formulated consumer product, which temporary exemption relieves the manufacturer from meeting an applicable VOC content standard in Table 1 at N.J.A.C. 7:27-24.4(a), or granted in accordance with N.J.A.C. 7:27-24.8(e) and (f) to a manufacturer of a portable fuel container, spout, or portable fuel container and spout, which temporary exemption relieves the manufacturer from meeting the standards at N.J.A.C. 7:27-24.8.

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

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

- 1,1,2,2,3-pentafluoropropane (HFC-245ca)
- 1,1,2,3,3-pentafluoropropane (HFC-245ea)
- 1,1,1,2,3-pentafluoropropane (HFC-245eb)
- 1,1,1,3,3-pentafluoropropane (HFC-245fa)
- 1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
- 1,1,1,3,3-pentafluorobutane (HFC-365mfc)
- chlorofluoromethane (HCFC-31)
- 1-chloro-1-fluoroethane (HCFC-151a)
- 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
- 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃)
- 2-(difluoromethoxymethyl) 1,1,1,2,3,3,3-heptafluoropropane
(CF₃)₂CFCF₂OCH₃)
- 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅)
- 2-(ethoxydifluoromethyl) 1,1,1,2,3,3,3-heptafluoropropane
(CF₃)₂CFCF₂OC₂H₅)
- methyl acetate
- perfluorocarbon compounds which fall into these classes:
- cyclic, branched, or linear, completely fluorinated alkanes
- cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
- If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

“Wasp and hornet insecticide” means any insecticide that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray a directed stream or burst from a distance at the intended insects or their hiding place.

“Waterproof” means a product designed and labeled exclusively to repel water from fabric or leather substrates. This term does not include fabric protectants.

“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.

“Web spray adhesive” means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

“Wood floor wax” means a wax-based consumer product for use solely on wood floors.

Administrative Correction.

See: 28 N.J.R. 851(a).

Administrative change.

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

Amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section.

7:27-24.2 Applicability

(a) This subchapter applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures for sale in New Jersey any consumer product in (b) or (c) below and that is for use in New Jersey by a consumer or by a person who uses the product in providing a service.

(b) This subchapter applies to the following consumer products, unless the product is excluded under (d) or (e) below:

1. A chemically formulated consumer product which belongs to any of the chemically formulated consumer products categories listed in Table 24A at N.J.A.C. 7:27-24.4(a); and
2. A portable fuel container and spout.

(c) Manufacturers of chemically formulated consumer products that are not covered by (b)1 above but that contain 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 (one millimeter of mercury), absolute or greater measured at standard conditions, shall comply with the recordkeeping requirements at N.J.A.C. 7:27-24.6(c) through (e) and (i). However, the manufacturers of such chemically formulated consumer products are not subject to the following requirements: N.J.A.C. 7:27-24.4; 24.5; 24.6(a), (b), (f) through (h) and (j); and 24.7.

(d) This subchapter does not apply to the following chemically formulated consumer products:

1. Any architectural coating. Architectural coatings are subject to the requirements of N.J.A.C. 7:27-23; and coating operations that are part of manufacturing processes are subject to the requirements of N.J.A.C. 7:27-16;

2. Any bait station insecticide, if the bait is not more than 0.5 ounces by weight;

3. Any air freshener or any insecticide which contains at least 98 percent by weight paradichlorobenzene;

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," as set forth at N.J.A.C. 7:27-24.1; and

iv. Any "low vapor pressure VOC," as that term is defined at N.J.A.C. 7:27-24.1;

5. Any of the following adhesives:

i. An adhesive sold in a package holding one fluid ounce or less;

ii. A contact adhesive that is a non-aerosol product and that is sold in units of product, less packaging, which consist of more than one gallon; and

iii. Either of the following adhesives, provided that it is a non-aerosol product and that it is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces:

(1) A construction, panel, and floor covering adhesive; and

(2) A general purpose adhesive;

6. Any sealant and caulking compound, if the compound is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces; and

7. Any hospital or medical disinfectant.

(e) This subchapter does not apply to the following types of portable fuel containers:

1. A safety can meeting the requirements of Federal regulations at 29 C.F.R. 1926;

2. A portable fuel container if the container has a nominal capacity less than or equal to one quart;

3. A rapid refueling device with nominal capacity greater than or equal to four gallons, if the device:

i. Is designed for use in officially sanctioned off-highway motorcycle competitions;

ii. Creates a leak-proof seal against a target fuel tank; or

iii. Is designed to operate in conjunction with a receiver permanently installed on the target fuel tank; or

4. A portable fuel tank manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

(f) The provisions at N.J.A.C. 7:27-24.4(a) and 24.8 do not apply to a consumer product that is manufactured in New Jersey, or that is sold in New Jersey by a manufacturer or a distributor, provided that:

1. The product is for shipment and use exclusively outside of New Jersey;

2. The manufacturer or distributor ensures that the product's shipping documentation includes a statement that the shipment is not for sale and use in New Jersey and gives its immediate shipping destination;

3. The manufacturer or distributor makes the shipping documentation available to the Department, upon written request, for any product it has shipped or received;

4. The manufacturer or distributor demonstrates, to the satisfaction of the Department, that it has taken reasonably prudent precautions to ensure that the product is not offered for sale, held for sale, sold, or otherwise supplied to a retail outlet or a consumer located in New Jersey; and

5. The manufacturer or a distributor does not offer for sale, hold for sale, sell, or otherwise supply any quantity of the product to a retail outlet located in New Jersey, and has not knowingly allowed or enabled another person to do so.

(g) No manufacturer shall be held liable for the sale of a consumer product that does not comply with the requirements of this subchapter to a consumer in New Jersey if:

1. The product was manufactured for use exclusively outside of New Jersey; and

2. The manufacturer meets each of the obligations listed in (f)2 through 5 above.

(h) A retailer who sells, offers for sale, or holds for sale in New Jersey a chemically formulated consumer product that violates the VOC content standards at N.J.A.C. 7:27-24.4(a) or a portable fuel container and/or spout that violates the design standards at N.J.A.C. 7:27-24.8(a) and (b) may demonstrate compliance with N.J.A.C. 7:27-24.4(a) or 24.8(a) and (b), as applicable, if the retailer provides any one or more of the following types of documentation with respect to its purchase of the consumer product, portable fuel container and/or spout in question:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only consumer products for sale in New Jersey that comply with N.J.A.C. 7:27-24;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufactur-

ers and distributors commit to supply to the retailer only consumer products that comply with N.J.A.C. 7:27-24; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept consumer products that comply with N.J.A.C. 7:27-24.

Amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section.

7:27-24.3 General provisions

(a) Compliance with this subchapter does not exempt a manufacturer, distributor, or retailer of a product regulated under this subchapter from the obligation to also comply with any and all other applicable Federal and State laws and rules, including State fire codes, safety codes, and other safety regulations. Any finding by the Department that a manufacturer, distributor, or retailer of a product is in compliance with this section shall not be construed to be a determination of compliance with such other laws and rules.

(b) Upon the written request of the Department, any person who is subject to this subchapter shall:

1. Identify the distributor, manufacturer, or other person from whom the product identified in the written request was obtained; and

2. Make the shipping documentation for the product identified in the written request available to the Department for any product it has shipped or received.

(c) Except as provided at N.J.A.C. 7:27-24.5(b), 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 and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(d) A non-electronic submittal required pursuant to this subchapter shall be sent to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

(e) Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

(f) In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Former N.J.A.C. 7:27-24.3, VOC content standards, recodified to N.J.A.C. 7:27-24.4.

7:27-24.4 Chemically formulated consumer products: standards

(a) Except as provided at N.J.A.C. 7:27-24.2 and in (c) and (i) below, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey a chemically formulated consumer product that belongs to a chemically formulated consumer product category listed in Table 1 below, that was manufactured on or after the operative date in Table 1 below, and that contains a VOC content in excess of the applicable limit specified in Table 1 below.

TABLE 1

VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

Chemically Formulated Consumer Product Category	Form	Maximum Allowable VOC Content (percent by weight, ¹ unless otherwise indicated) ²	
		State Standard Operative Date 4/30/96-12/31/04 ³	State Standard Operative Date 1/1/05
Adhesives	Aerosol:	75	
	Mist spray		65
	Web spray		55
	Special purpose spray adhesives:		
	Mounting, automotive engine compartment, and flexible vinyl		70
	Polystyrene foam and automotive headliner		65
	Polyolefin and laminate repair/edgebanding		60
	Contact	80	80
	Construction, panel, and floor covering	40	15

	General purpose	10	10
	Structural waterproof	(Reserved)	15
Air fresheners	Single-phase aerosols	70	30
	Double-phase aerosols	30	25
	Liquids/pump sprays	18	18
	Solids/gels	3	3
Antiperspirants	Aerosols	60 HVOC	40 HVOC 10 MVOC
	Non-aerosols	0 HVOC	0 HVOC 0 MVOC
Automotive brake cleaners			45
Automotive rubbing or polishing compounds			17
Automotive waxes, polishes, sealants or glazes	Hard paste waxes		45
	Instant detailers		3
	All other forms		15
Automotive windshield washer fluids			35
Bathroom and tile cleaners	Aerosols	7	7
	All other forms	5	5
Bug and tar remover			40
Carburetor or fuel-injection air intake cleaners	Aerosols	75	45
	Non-aerosols	75	45
Carpet and upholstery cleaners	Aerosols		7
	Non-aerosols (dilutables)		0.1
	Non-aerosols (ready-to-use)		3.0
Charcoal lighter material			0.02 lb start ⁴
Cooking sprays	Aerosols	18	18
Deodorants	Aerosols	20 HVOC	0 HVOC 10 MVOC
	Non-aerosols	0 HVOC	0 HVOC 0 MVOC
Dusting aids	Aerosols	35	25
	All other forms	7	7
Engine degreasers	Aerosols	75	35
	Non-aerosols	75	5
Fabric protectants		75	60
Floor polishes/waxes	Products for flexible flooring materials	7	7
	Products for nonresilient flooring	10	10
	Wood floor wax	90	90
Floor wax stripper	Non-aerosol:		
	For light or medium build-up		3
	For heavy build-up		12
Furniture maintenance products	Aerosols	25	17
	All other forms except solid or paste		7
General purpose cleaners	Aerosols	10	10
	Non-aerosols	10	4
General purpose degreasers	Aerosols		50
	Non-aerosols		4
Glass cleaners	Aerosols	12	12
	All other forms	8	
	Non-aerosols		4
Hair mousses		16	6
Hair shines			55
Hair sprays		80	55
Hair styling gels		6	6
Heavy-duty hand cleaner or soap			8
Insecticides	Crawling bug:	40	
	Aerosols		15
	All other forms		20
	Flea and tick	25	25
	Flying bug:	35	
	Aerosols		25
	All other forms		35
	Foggers	45	45

	Lawn and garden:	20	
	Non-aerosols		3
	All other forms		20
	Wasp and hornet		40
Laundry prewash	Aerosol/solids	22	22
	All other forms	5	5
Laundry starch products		5	5
Metal polishes/cleansers			30
Multi-purpose lubricants (excluding solid or semi-solid products)			50
Nail polish removers		85	75
Non-selective terrestrial herbicide	Non-aerosols		3
Oven cleaners	Aerosols/pump sprays	8	8
	Liquids	5	5
Paint removers or strippers			50
Penetrants			50
Rubber and vinyl protectants	Aerosols		10
	Non-aerosols		3
Sealants and caulking compounds			4
Shaving creams		5	5
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)			60
Spot removers	Aerosols		25
	Non-aerosols		8
Tire sealants and inflators			20
Undercoatings	Aerosols		40
Footnotes to Table:			

¹ Weight is the product's total weight, exclusive of the packaging.

² The Federal VOC limits, which became operative December 10, 1998, are promulgated at 40 CFR 59, Subpart C, Table 1.

³ On and after January 1, 2005, the State limits operative as of April 30, 1996 will no longer be applicable.

⁴ See N.J.A.C. 7:27-24.4(h) for additional State requirements pertaining to charcoal lighter material.

(b) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, if the label, packaging, or accompanying literature specifically states that the consumer product should be diluted prior to use, the VOC content of the product shall be determined as follows:

1. If the label, packaging, or accompanying literature states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content of the product shall be determined only after the minimum recommended dilution has taken place. Such minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains; and

2. If the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content of the product shall be determined only after the maximum recommended dilution has taken place.

(c) Notwithstanding the provisions of (a) above and the specifications of Table 1 above, for a consumer product with a label that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136-136y), the operative date of the applicable State standard is one year after the operative date specified in Table 1.

(d) A chemically formulated consumer product manufactured prior to the operative date specified for that product in Table 1 above, may be sold, supplied, or offered for sale after the specified operative date, if that product complies with the standards in effect at the time that product was manufactured, and if that product displays the date or date-code in accordance with the requirements at N.J.A.C. 7:27-24.5(d), (e) and (f).

(e) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, the VOC content of a consumer product shall not include the following:

1. Any low vapor pressure-VOC;
2. Any fragrances, up to a combined level of two percent by weight, contained in the product, not including the weight of any packaging; and
3. For an antiperspirant or deodorant, the following:
 - i. Any colorants contained in the product, up to a combined level of two percent by weight;
 - ii. With respect to the medium volatility organic compound (MVOC) content standards, ethanol; and
 - iii. Those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20 degrees Celsius.

(f) If an aerosol adhesive could be classified in more than one chemically formulated consumer product category listed in Table 1, the standard for the category with the lowest applicable VOC limit applies.

(g) If anywhere on the principal display panel of a consumer product, any representation is made that the product may be used as, or is suitable for use as, a consumer product that belongs to more than one chemically formulated consumer product category in Table 1 at (a) above, then the lower VOC content limit shall apply. However, this subsection does not apply to general purpose cleaners, antiperspirants, and deodorant products.

(h) No person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, on or after January 1, 2005, a charcoal lighter material product, even if it conforms with the VOC content standards in (a) above, unless the following requirements are met:

1. CARB or the air pollution agency of another state has issued certification that attests that it is satisfied that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pounds of VOC per start;

2. The certification is currently effective at the time of sale. The Department shall consider the certification to be in effect for as long as the issuing State agency considers the certification to remain in effect; and

3. The product usage directions for the charcoal lighter material provided on the label, packaging, or accompanying literature are the same as those on which the certification is based.

(i) A chemically formulated consumer product is exempt from (a) above if:

1. CARB, pursuant to its 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, or the air pollution control agency of another state that has adopted a consumer product rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions (accessible at the OTC's website <http://www.sso.org/otc/Publications/pub2.htm>), has granted to the product's manufacturer an IPE, ACP, or variance for the product; and

2. The IPE, ACP, or variance is valid for use in New Jersey pursuant to (j) below.

(j) An IPE, ACP, or variance in (i) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE, ACP, or variance is currently in effect (the Department shall consider an IPE, ACP, or variance

to be in effect if the issuing agency deems the exemption to be in effect);

2. The product (including its form) for which the IPE, ACP, or variance is being used to comply with this section meets the following:

- i. The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit set in Table 1 above; and

- ii. The VOC content limit promulgated for this product by the agency that issued the IPE, ACP, or variance, is equal to or more stringent than the most stringent applicable VOC content limit in Table 1 above;

3. For a variance, the approval is based on the issuing agency's finding that:

- i. Requiring the manufacturer's compliance with the standard would, because of reasons beyond the reasonable control of the applicant, result in extraordinary economic hardship for the manufacturer;

- ii. The public interest in mitigating this hardship to the manufacturer outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and

- iii. The manufacturer's proposed methods for achieving compliance with the standard can reasonably be implemented and will achieve compliance as expeditiously as possible;

4. For an IPE, the manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factor, the use of the product will result in less VOC emissions as compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits specified in Table 1 above, or as compared to the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in Table 1 above;

5. Prior to relying on an IPE, ACP, or variance for compliance, the manufacturer has submitted to the Department, in accordance with (k) below, the following:

- i. A statement that, for a specified chemically formulated consumer product that it manufactures, it intends to comply with this section under an IPE, ACP, or variance rather than meet the applicable VOC content standards in Table 1 above;

- ii. The brand name of the consumer product, and the specific chemically formulated consumer product category in Table 1 above to which the product belongs, including its form(s) (if applicable);

- iii. A copy of the document(s) setting forth the IPE, ACP, or variance; the issuing agency's approval; the

issuing agency's conditions of its approval; the demonstration of (j)4 above if an IPE; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the IPE, ACP or variance; and

iv. A statement that the IPE, ACP, or variance, as well as the product for which the IPE, ACP, or variance is being used, conforms with (j)1 through 4 above, as applicable; and

6. The manufacturer has included in its electronic registration, submitted pursuant to N.J.A.C. 7:27-24.5(a), (b) and (c), indication that for the specified product it is complying with this section under an IPE, ACP or variance.

(k) Any submittal made pursuant to (j)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows:

1. For an IPE, "Attention: Consumer Product Innovative Product Exemption";
2. For an ACP, "Attention: Consumer Product Alternative Control Plan"; or
3. For a variance, "Attention: Consumer Product Variance."

(l) On and after January 1, 2005, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, an aerosol adhesive product that contains methylene chloride, perchloroethylene, or trichloroethylene, even if its VOC content conforms with the standards required pursuant to (a) above.

Recodified from N.J.A.C. 7:27-24.3 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).
Rewrote the section. Former N.J.A.C. 7:27-2.4, Administrative requirements, recodified to N.J.A.C. 7:27-2.5.

7:27-24.5 Chemically formulated consumer products: registration and labeling

(a) The manufacturer of a chemically formulated consumer product that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall register or re-register (for manufacturers who have submitted registration prior to June 6, 2004) with the Department as follows:

1. The registration or re-registration shall be submitted to the Department on the form provided by the Department at <http://www.state.nj.us/dep/baqp>, and shall be submitted electronically, by email, on diskette, or on CD-ROM, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department is satisfied that a hardship exists and approves a written request from the manufacturer to submit the information on paper pursuant to (c) below;

2. The registration or re-registration shall be submitted in accordance with the following schedule:

i. For a chemically formulated consumer product sold in New Jersey prior to January 1, 2005, the registration or re-registration shall be submitted on or after June 6, 2004 and prior to January 1, 2005; and

ii. For a chemically formulated consumer product sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, if the product belongs to a category that the manufacturer has not previously registered with the Department, the registration shall be submitted prior to selling the product in New Jersey;

3. If, subsequent to the submission of its registration, a manufacturer begins to manufacture a product for sale in New Jersey that belongs to a chemically formulated consumer product category that was not listed in the original registration, or if information provided in the registration changes, the manufacturer shall submit a revised registration including the new information within 90 days of the change; and

4. The registration or re-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 a contact person;

iv. The chemically formulated consumer product category (as listed in Table 1 at N.J.A.C. 7:27-24.4) to which the manufacturer's product belongs or, if the manufacturer manufactures multiple products which belong to more than one chemically formulated consumer product category, a list of the chemically formulated consumer product categories to which the products belong (for example: adhesive, floor polish or wax, insecticide); and

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.4(i), the following:

(1) Product brand name;

(2) The chemically formulated consumer product category to which the product belongs;

(3) The type of exemption; that is, IPE, ACP, or variance; and

(4) The state that previously approved the IPE, ACP, or variance and the issuing state's approval date.

(b) Notwithstanding N.J.A.C. 7:27-24.3(c), any information submitted as part of the registration or re-registration pursuant to (a) above and (e) below may not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(c) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Consumer Product Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and

3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

(d) Except as provided at (f) below, a manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall clearly display, on each product package, the day, month, and year in which the product was manufactured, or a code indicating such date (that is, a date-code). The date or date-code shall be located on the packaging, or inside the cover or cap, so that it is readily observable or obtainable without disassembling any part of the packaging, such as by simply removing the cover or cap.

(e) If for any consumer product, the manufacturer uses a date-code to comply with (d) above, the manufacturer shall submit an explanation of the date-code to the Department. The explanation shall be submitted with the electronic registration or re-registration, in accordance with the requirements of (a), (b) and (c) above.

(f) Subsection (d) above does not apply to a product if:

1. The product contains no VOC; or contains 0.10 percent VOC, or less, by weight;

2. The product is offered to consumers free of charge for the purpose of sampling the product; or

3. The product's label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136-136y).

(g) For aerosol adhesive products manufactured on or after January 1, 2005, the manufacturer shall ensure that:

1. The following information shall be clearly displayed on each product package:

- i. The name (as given in Table 1 at N.J.A.C. 7:27-24.4(a)) of the specific aerosol adhesive category to which the product belongs (for example, automobile headliner adhesive) or, an abbreviation of the name of the category;

- ii. The applicable VOC content standard to which the product is subject, under Table 1 at N.J.A.C. 7:27-24.4(a), expressed as a percentage by weight; and

- iii. If the product is a special purpose spray adhesive, the applicable substrate and/or application that qualifies the product as a special purpose spray adhesive, or an abbreviation of the substrate and/or application;

2. If abbreviation(s) are used, as allowed under (g)1i and iii above, an explanation of the abbreviation shall be submitted electronically with the electronic registration or re-registration; and

3. The information required under (g)1 above shall be displayed on the product packaging such that it is readily observable without removing or disassembling any portion of the product packaging. For the purposes of this subsection, information may be displayed on the bottom of a package as long as it is clearly legible without removing any product packaging.

(h) For floor wax strippers which are non-aerosol products manufactured on or after January 1, 2005:

1. The manufacturer shall ensure that:

- i. The label specifies a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent or less by weight; and

- ii. If the floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent or less by weight; and

2. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required to be used on the label, as long as comparable terminology is used.

(i) No person shall erase, alter, deface, or otherwise remove or make illegible any information required to be displayed on any product packaging under (d), (g) or (h) above, prior to the final sale of the product to a consumer.

Recodified in part from N.J.A.C. 7:27-24.4 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.5, Test methods, recodified to N.J.A.C. 7:27-24.7.

7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

(a) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b)1 shall keep the following records:

1. The results of any testing performed to demonstrate compliance with a VOC content limit;
2. If compliance with a VOC content limit is demonstrated through calculation of the VOC content of the product pursuant to N.J.A.C. 7:27-24.7(b), the data and formulas used in the calculation, the calculations made, and the result of the calculation; and
3. Any information that may be required to be submitted to the Department pursuant to (b)3 below.

(b) The Department may require the manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(a) to submit information which may include the following:

1. The name, address, and telephone number of the manufacturer and the name and telephone number of the manufacturer's designated contact person;
2. Any claim of confidentiality asserted by the manufacturer pursuant to N.J.A.C. 7:27-24.3(c) for information required to be submitted to the Department regarding any of the manufacturer's products;
3. For any of the manufacturer's products subject to the standards in Table 1 at N.J.A.C. 7:27-24.4(a), the following information (if the product is sold in more than one form, this information shall be provided separately for each product form):
 - i. The product brand name;
 - ii. The product label;
 - iii. The chemically formulated consumer product category to which the product belongs;
 - iv. The form (if applicable) of the product, and a list of all the forms in which the product is sold;
 - v. Identification of the product as a household product, institutional product, or both;
 - vi. Sales of the product within the State, given to the nearest pound in pounds of product (not including the weight of packaging) per year, and the method used to calculate the sales; and
 - vii. For each product, the net percent by weight of the total product less packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1 percent):

- (1) Total VOC;

(2) Total of carbon-containing compounds excluded from the definition of "VOC," as defined at N.J.A.C. 7:27-24.1;

(3) Total LVP-VOCs that are not fragrances;

(4) Total of all other carbon-containing compounds that are not fragrances;

(5) Total of all non-carbon-containing compounds;

(6) Total fragrances; and

(7) Total paradichlorobenzene;

viii. For each product containing greater than two percent by weight fragrance:

(1) The percent of fragrance that are LVP-VOCs; and

(2) The percent of fragrance that are all other carbon-containing compounds; and

ix. For a product that is an antiperspirant or deodorant and that contains greater than two percent by weight colorant, the following:

(1) Total LVP-VOCs in the colorant; and

(2) Total of all other carbon-containing compounds in the colorant;

x. For each product, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(1) Each compound excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

(2) Each LVP-VOC that is not a fragrance; and

xi. If the product includes a propellant, the following:

(1) The weight of the propellant, given as a percentage of the weight of the product sold, not including packaging, rounded to the nearest one-tenth of a percent (0.1 percent); and

(2) Identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(c) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(c) shall maintain calendar year records 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 (one millimeter of mercury) absolute or greater, measured at standard conditions, produced by that manufacturer for sale in New Jersey. Different forms of a product that have VOC contents within a range of five percent by weight may be combined as a single type of product for the purpose of this recordkeeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. For each product the following calendar year records shall be maintained:

1. The number of units produced;
2. The product's VOC content by weight per unit and percent weight; and
3. The approximate number of units sold in New Jersey.

(d) Records sufficient to provide the information required pursuant to (a)1 and 2 above shall be maintained by each manufacturer for five years after each calendar year for which the data is collected. Records sufficient to provide the information required pursuant to (a)3, (b) and (c) above shall be maintained by each manufacturer for three years after each calendar year for which the data is collected.

(e) Within 90 days of receipt of a written request by the Department, each manufacturer or distributor of a chemically formulated consumer product subject to this subchapter shall submit the requested information specified in (a), (b) or (c) above to the Department.

(f) A person who holds for sale, offers for sale, or sells any chemically formulated consumer product subject to this subchapter shall, within 30 days of receipt of a written request, identify the distributor, manufacturer, or other person from whom the consumer product was obtained to the Department.

(g) Within 30 days of a receipt of the Department's written request, the manufacturer of a charcoal lighter material product shall submit to the Department:

1. Documentation for the product's certification issued by CARB or the air pollution agency of another state in accordance with N.J.A.C. 7:27-24.4(h); and
2. Any conditions of approval established by the agency that issued the certification.

(h) If the Department requests in writing that any manufacturer of a chemically formulated consumer product test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product, the manufacturer shall submit the test report to the Department within 60 days of the manufacturer's receipt of the written request.

(i) For any record required to be kept or reported in accordance with this section, or that is used or relied on in accordance with this subchapter, no person shall create, alter, falsify, or otherwise modify such record, in such a way that the record does not accurately reflect the information it purports to present (for instance, the amount of product produced, the constituents used to manufacture a product, or the chemical composition of the individual product).

(j) IPE, ACP, and variance documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-24.4(j)5 and (k).

Administrative Correction.

See: 28 N.J.R. 851(a).

Recodified in part from N.J.A.C. 7:27-24.4 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.6, Federal supersession, is repealed.

7:27-24.7 Chemically formulated consumer products: testing

(a) Upon the written request of the Department, any manufacturer of a chemically formulated consumer product subject to the requirements of this subchapter shall test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product (or in the case of charcoal lighter material, its emissions per start). Such testing shall be performed utilizing the test methods in (b) through (g) below, as applicable.

(b) Testing to determine compliance with the VOC content limits at N.J.A.C. 7:27-24.4(a) shall be performed using:

1. CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, amended September 3, 1999, including subsequent revisions, incorporated by reference herein; or
2. An alternative method which is shown to accurately determine the concentration of VOCs in a product. Such methods must first be approved in writing by the Department and EPA.

(c) Compliance with a VOC content limit at N.J.A.C. 7:27-24.4(a) 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 (excluding packaging), pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a chemically formulated consumer product keeps, for each day of production, accurate records of the amount and chemical composition of the individual product constituents. These records must be kept for at least five years;
2. For the purposes of this subsection, the VOC content of a product shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{(B-C)}{A} \times 100$$

where,

- A = total net weight of a unit of product (excluding any packaging);
- B = total weight of all VOCs in the constituents used to make the product, per unit;
- C = total weight of VOCs exempted under N.J.A.C. 7:27-24.4(e), per unit; and

3. If the calculations for VOC content based on product records appear to demonstrate compliance with the VOC limits, but these calculations are contradicted by the results of product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the calculations based on product records and may be used to establish a violation of the requirements of the VOC content limits set forth in this subchapter.

(d) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid," including subsequent revisions, which is incorporated by reference herein.

(e) Testing to determine compliance with the standards for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent revisions, which is incorporated by reference herein.

(f) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (Sept. 28, 1990), including subsequent revisions, which is incorporated by reference herein.

(g) Testing to determine whether a material is a "plasticizer" may be determined using ASTM Method E260-91, including subsequent revisions, which is incorporated by reference herein.

(h) The Department may require any manufacturer that is required to perform testing pursuant to (a) above to provide to the Department product samples that are duplicates of the samples tested.

(i) Test methods can be obtained as follows:

1. ASTM test methods can be purchased from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585; Fax (610) 832-9555; or ASTM test methods can be purchased from the ASTM website at <http://www.ASTM.org>;

2. SCAQMD test methods can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934; Telephone (909) 396-2162;

3. CARB Method 310 is available on the web at <http://www.arb.ca.gov/testmeth/cptm/cptm.htm>.

Recodified from N.J.A.C. 7:27-24.5 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).

See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

Rewrote the section. Former N.J.A.C. 7:27-24.7, Civil or criminal penalties, recodified to N.J.A.C. 7:27-24.12.

7:27-24.8 Portable fuel containers and spill proof spouts: standards

(a) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any portable fuel container or any portable fuel container and spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Has only one opening for both filling and pouring; and

4. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons;

5. Does not exceed a permeation rate of 0.4 grams per gallon per day; and

6. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(b) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons; and

4. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(c) Notwithstanding the provisions of (a) and (b) above, a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2005 may be sold, offered for sale, held for sale, distributed, or supplied for sale until January 1, 2006 if the date of manufacture or a date-code representing the date of manufacture is clearly displayed on the portable fuel container or spout and on the packaging (if any) in which it is sold. The date of manufacture or date-code shall be located so that it is readily observable without disassembling any part of the packaging (if any). If the manufacturer uses a date-code to comply with this subsection, the manufacturer shall electronically register the product, including an explanation of the date-code, in accordance with the requirements at N.J.A.C. 7:27-24.10(c).

(d) The provisions of (a), (b) and (c) above shall not apply to a spout, portable fuel container, or portable fuel container and spout if:

1. The spout, portable fuel container, or portable fuel container and spout has been granted an IPE or variance by CARB or by the air pollution control agency of another state that has adopted a portable fuel container rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Portable

Fuel Container Spillage Control" dated March 6, 2001, including subsequent revisions accessible at the OTC's website <http://www.sso.org/otc/Publications/pub2.htm>; and

2. The IPE or variance is valid for use in New Jersey pursuant to (e) below.

(e) The IPE or variance in (d) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE or variance is currently in effect (the Department shall consider an IPE or variance in effect if the issuing agency deems the IPE or variance to be in effect);

2. The product for which the IPE or variance is being claimed is the same product for which the IPE or variance was issued by the issuing agency;

3. For an IPE, the manufacturer has demonstrated to the issuing agency by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its portable fuel container product category as determined from applicable testing;

4. For a variance, the requirements at N.J.A.C. 7:27-24.4(j)3 are met; and

5. The manufacturer has submitted to the Department, in accordance with (f) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this section under an IPE or variance rather than meet the applicable standards;

ii. The product brand name;

iii. A copy of the document(s) setting forth the IPE or variance, the issuing agency's approval, the issuing agency's conditions of approval, the manufacturer's documentation demonstrating compliance with the IPE or variance conditions, and any documents from the issuing agency that subsequently modify or terminate its conditions of approval;

iv. If an IPE, the demonstration of (e)3 above;

v. If a variance, documents that substantiate the manufacturer's claim of extraordinary economic hardship;

vi. The name of the state that previously approved the IPE or variance and the issuing-state's approval date; and

vii. A statement that the IPE or variance, as well as the product for which the IPE or variance is being used, conforms with (e)1 through 4 above.

(f) Any submittal pursuant to (e)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows: "Attention: Portable Fuel Container Innovative Product Exemption" or "Attention: Portable Fuel Container Variance," whichever is applicable.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

7:27-24.9 Portable fuel containers and spill proof spouts: labeling

(a) On and after January 1, 2005, a manufacturer of a spout, a portable fuel container, or a portable fuel container and spout that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b) shall clearly label the product as follows:

1. The following shall be displayed on a portable fuel container or on a portable fuel container and spout:

i. The phrase "Spill-Proof System" to mean that the product meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the product's date of manufacture; and

iii. A representative code;

2. The following shall be displayed on a portable fuel container or on a portable fuel container and spout, or label, and on any accompanying package:

i. The product's flow rate (that is, the minimum rate at which the container-and-spout dispenses fuel); and

ii. If due to its design or other feature the portable fuel container and spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater;

3. The following shall be displayed on a spout's accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label:

i. The phrase "Spill-Proof Spout" to connote that, when used with a compatible fuel container, the spout meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the spout's date of manufacture;

iii. A representative code; and

iv. The make, model number, and size of only those portable fuel container(s) the spout is designed to accommodate and can demonstrate compliance with N.J.A.C. 7:27-24.8; and

4. The following shall be displayed on a spill-proof spout, or label, and on any accompanying package:

i. The spout's minimum flow rate (that is, the minimum rate at which the spout dispenses fuel); and

ii. If due to its design or other feature the spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater.

(b) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with the applicable standards in N.J.A.C. 7:27-24.8, may not display the phrase "Spill-Proof Spout" or "Spill-Proof System" on the portable fuel container or spout on any sticker affixed thereto, on any label, or on any accompanying package.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting

(a) On or after January 1, 2005, the manufacturer of a spout, a portable fuel container, or a portable fuel container and spout who is required to perform compliance testing pursuant to N.J.A.C. 7:27-24.11(a) shall:

1. Maintain a record of the results of the compliance testing, whether performed before or after January 1, 2005, for as long as the spout, portable fuel container, or portable fuel container and spout is offered for sale, held for sale, sold, or otherwise supplied for household use or institutional use in New Jersey; and

2. Make the test results available to the Department within 60 days of the manufacturer's receipt of a written request from the Department.

(b) Manufacturers shall submit IPE and variance documentation to the Department in accordance with N.J.A.C. 7:27-24.8(e)5 and (f).

(c) If the manufacturer uses a date-code on a product or its packaging, the manufacturer shall electronically register or re-register the product with the Department by following the procedure at N.J.A.C. 7:27-24.5(a)1 and 2, (b) and (c), and by following (d) through (g) below.

(d) The registration or re-registration shall include the following information:

1. The name of the manufacturer;

2. The full mailing address of the manufacturer;

3. The name and telephone number of a contact person;

4. Whether the product is a spout, portable fuel container, or portable fuel container and spout;

5. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.8(d), the following:

- i. The name of the product;
 - ii. Whether the product is a spout, a portable fuel container, or a portable fuel container and spout; and
 - iii. The type of exemption;
6. An explanation of the date-code; and
7. An explanation of the representative code.

(e) The registration shall be submitted in accordance with the following schedule:

1. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after June 6, 2004 and prior to January 1, 2005; and
2. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, the registration shall be submitted prior to selling the product in New Jersey.

(f) Each manufacturer subject to registration shall re-register the product within 90 days after any change in coding of the date-code or representative code.

(g) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Portable Fuel Container Registration";
2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and
3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

7:27-24.11 Portable fuel containers and spill proof spouts: testing

(a) The manufacturer of a spout, or the manufacturer of a portable fuel container and spout, shall perform compliance testing, using the test methods listed in (b) below, prior to allowing the spout or portable fuel container and spout to be distributed, offered for sale, held for sale, sold or other-

wise supplied for household use or institutional use in New Jersey. The compliance testing shall demonstrate that the spout, together with each portable fuel container with which it is compatible, or the portable fuel container and spout, meet the applicable requirements at N.J.A.C. 7:27-24.8(a) and (b), and, therefore, qualify as a "spill-proof system" or a "spill-proof spout," as applicable.

(b) A manufacturer of a spout for a portable fuel container, or the manufacturer of a portable fuel container and spout, shall use the following test methods in performing the testing required at (a) above, unless the manufacturer obtains the Department's approval in writing to use alternative test method(s) pursuant to (c) below:

1. "Test Method 510, Automatic Shut-off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;
2. "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;
3. "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein; and
4. "Test Method 513, Determination of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein.

(c) A manufacturer may submit a written request to the Department for approval to use an alternate test method other than one given in (b) above, in order to demonstrate compliance with the applicable standards in N.J.A.C. 7:27-24.8(a) and (b). The Department shall not approve use of any such alternate test method unless the alternate test method has been approved in writing by the Department and the EPA and unless the manufacturer demonstrates, to the satisfaction of the Department and the EPA, that the alternate method is at least as accurate, precise, and appropriate as the test method given in (b) above, for which it would be substituted. A written request for Department approval to use an alternate test method pursuant to this subsection shall be addressed to:

Attn: Portable Fuel Container Test Method
Bureau of Technical Services
New Jersey Department of Environmental Protection
PO Box 437
380 Scotch Road
West Trenton, New Jersey 08625-0437

New Rule, R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).

7:27-24.12 Penalties and other requirements imposed for failure to comply

(a) 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 to applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f).

(b) If a chemically formulated consumer product subject to this subchapter does not comply with the applicable VOC content requirements at N.J.A.C. 7:27-24.4, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:
 - i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27-24.4;
 - ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or
 - iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;
2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or
3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration to the satisfaction of the Department that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27-24.4.

(c) If a spout, portable fuel container, or portable fuel container and spout subject to this subchapter fails to comply with the applicable requirements at N.J.A.C. 7:27-24.8, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:
 - i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable requirements at N.J.A.C. 7:27-24.8;
 - ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or
 - iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer demonstrates to the satisfaction of the Department that the product to be sold will meet the applicable requirements at N.J.A.C. 7:27-24.8.

Recodified from N.J.A.C. 7:27-24.7 and amended by R.2004 d.182, effective May 3, 2004 (operative June 6, 2004).
See: 35 N.J.R. 4241(b), 36 N.J.R. 2218(a).
Rewrote the section.

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 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.

"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.

"Nonconforming gasoline" means any gasoline with an RVP content that does not satisfy the standards set forth in N.J.A.C. 7:27-25.3 during the applicable control period.

"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 at-

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

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC-31)

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

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

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

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

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

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

methyl acetate

perfluorocarbons compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

"Wholesale purchaser-consumer" means any person who is an ultimate consumer of gasoline, purchases or obtains gasoline from a supplier for use in motor vehicles, and receives delivery of the gasoline into a storage tank which has a maximum capacity of at least 550 gallons and is substantially under the control of that person.

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).

Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

In "Control period", deleted a reference to oxygen content; deleted "Distribution capacity", "National ambient air quality standard" or "NAAQS", "Nitrogen dioxide (NO₂)", "Nitrogen oxide (NO)", "Oxides of nitrogen (NO_x)", "Oxygen content", "Oxygen program control area", "Oxygen program control period", "Oxygenate" and "Oxygenate blend"; and rewrote "Nonconforming gasoline".

Administrative change.

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

Administrative correction.

See: 31 N.J.R. 1487(a).

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) 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).

Amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Deleted former (c) through (g); and recodified former (h) as (c).

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, and for each test prepare a test report which documents the RVP of the gasoline;

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 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).

Recodified from N.J.A.C. 7:27-25:10 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Former N.J.A.C. 7:27-25.8, Labeling, repealed.

7:27-25.9 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.

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).

Recodified from N.J.A.C. 7:27-25:11 and amended by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Deleted former (c) and (d). Former N.J.A.C. 7:27-25.9, Variance for shortage of supply, repealed.

7:27-25.10 (Reserved)

Recodified to N.J.A.C. 7:27-25:8 by R.1998 d.419, effective August 17, 1998 (operative September 9, 1999).

See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).

Section was "Owner and operator responsibility".

7:27-25.11 (Reserved)

Recodified to N.J.A.C. 7:27-25:9 by R.1998 d.419, effective August 17,
1998 (operative September 9, 1999).
See: 29 N.J.R. 3222(a), 30 N.J.R. 3025(b), 31 N.J.R. 3087(b).
Section was "Service fees".

SUBCHAPTER 26. (RESERVED)

SUBCHAPTER 27. CONTROL AND PROHIBITION OF
MERCURY EMISSIONS

(d) The person performing the inspection shall certify on the compliance form, in accordance with N.J.A.C. 7:27-1.39, whether the retrofit requirement has or has not been met, based on verification of (c)1 through 3 above.

(e) If the owner of the regulated vehicle is a licensed diesel emissions inspection center or is otherwise authorized to self-inspect his or her vehicles, the owner may perform the inspection and provide the certification required pursuant to (d) above.

(f) Each regulated vehicle must be inspected one time, in accordance with this section, to confirm installation of the required best available retrofit technology. If the inspector is unable to confirm that the required best available retrofit technology has been installed, the owner of the regulated vehicle shall ensure the installation of the required best available retrofit technology no later than the installation deadline established for the owner of the regulated vehicle in accordance with N.J.A.C. 7:27-32.18(a) and shall have compliance verified in accordance with this section within 30 days after installation.

7:27-32.22 Recordkeeping requirements

(a) Each owner of a regulated school bus, regulated vehicle or regulated equipment shall keep in a single location at his or her place of business, available for Department inspection, the following:

1. The current and completed original compliance form pursuant to N.J.A.C. 7:27-32.20 for each vehicle or piece of equipment, or any other document that may be issued or required pursuant to N.J.S.A. 26:2C-8.45 to verify compliance;
2. Maintenance records for the CCVS or best available retrofit technology;
3. For each vehicle or piece of equipment required to use modified fuel or fuel additives pursuant to N.J.A.C. 7:27-32.8, or the approved fleet plan or approved supplement or approved modification thereto, as applicable, records of fuel purchases since the use of the retrofit and fuel additive or fuel began, or for the two preceding calendar years, whichever is of shorter duration;
4. The original, approved fleet plan, any supporting documentation submitted to the Department, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable;
5. Maintenance records of the usage or documentation demonstrating permanent removal of the engine from service of any vehicle or piece of equipment retired from the fleet and included in a fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan or combined fleet averaging plan; and
6. Any other documentation pertinent to fleet averaging plan approvals.

(b) The Department may call upon the State Police to assist with inspections pursuant to this section, if necessary.

(c) The owner of a regulated school bus, regulated vehicle or regulated equipment shall retain the records listed in (a) above for a minimum of five years.

7:27-32.23 Program support

(a) Any person seeking further information concerning this program or specific technical guidance for the preparation of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto may contact the Department as follows:

1. Visit the Diesel Risk Reduction Program's website at <http://www.state.nj.us/dep/stopthesoot/>;
2. Write the Department at Diesel Risk Reduction Program, 401 E. State St., P.O. Box 418, Trenton, NJ 08625-0418; or
3. Call the Diesel Risk Reduction Program at (609) 292-7953.

7:27-32.24 Application for reimbursement

(a) The State Treasurer will reimburse the authorized installer of a retrofit device or closed crankcase ventilation system for the purchase and installation costs incurred in installing the retrofit device or closed crankcase ventilation system pursuant to the requirements of this subchapter.

(b) The authorized installer will be responsible for the purchase and installation of the retrofit devices or closed crankcase ventilation systems. An authorized installer who is reimbursed for the costs associated with the purchase and installation of a closed crankcase ventilation system or retrofit device may not impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of said device.

(c) To receive reimbursement, the authorized installer shall complete and submit to the Department a reimbursement application on a form or in a format supplied by the Department. The Department will make the reimbursement application available electronically on the Department's website at <http://www.state.nj.us/dep/stopthesoot/>. The authorized installer shall include the following information and support documentation in the reimbursement application:

1. Proof of purchase, such as purchase order, receipt or invoices for the retrofit device or closed crankcase ventilation system, that demonstrates actual costs incurred. The authorized installer shall also include the vehicle identification number or serial number of the regulated vehicle or regulated equipment;
2. Proof of installation to include an itemized listing or work order of the parts, materials, labor and actual costs,

and written authorization by the vehicle owner indicating the vehicle owner's approval to perform the specified work;

3. The authorized installer certification that purchase and installation were in accordance with the manufacturer's instructions and N.J.A.C. 7:27-32.5, if applicable, and warranty requirements at N.J.A.C. 7:27-32.9;

4. The vehicle owner's certification that the installation was completed and that access will be provided to vehicles or equipment to determine compliance with the terms and conditions of the reimbursement award;

5. The authorized installer certification that he or she did not provide false information or withhold information on the application for reimbursement such that the processing of the application based on the false or withheld information could result in the reimbursement of the authorized installer:

i. Where the authorized installer was ineligible for reimbursement;

ii. In an amount greater than that for which the authorized installer would otherwise be eligible; or

iii. In an amount in excess of the actual costs of the installation or the amount to which the authorized installer is legally eligible; and

6. Justification for any difference between the actual cost provided pursuant N.J.A.C. 7:27-32.20(d) or (e) and the estimated cost provided pursuant to N.J.A.C. 7:27-32.4(d), 32.12(a)3 or 32.16(d)3.

(d) The Department will review and approve or deny each application for reimbursement and will forward the approved applications for reimbursement to the State Treasurer for payment. The State Treasurer will pay the reimbursement to the authorized installer only after the installation of the retrofit device or closed crankcase ventilation system, as approved by the Department.

(e) The Department will deny an application for reimbursement upon a finding that the applicant for reimbursement:

1. Provided false information on an application in support of reimbursement from the fund for which he or she was not otherwise eligible; or

2. Withheld information on an application that renders the applicant ineligible for reimbursement from the fund or ineligible for the amount of reimbursement applied for.

(f) Nothing in this section shall be construed to require the Department, the State Treasurer, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in (e) above.

(g) During the review of the application, the Department may request additional information related to the purchase and installation cost estimates, and any support documentation needed from the applicant to warrant and support payment in accordance with Treasury Circular Letter No. 98-17-OMB, as supplemented or amended, available at <http://www.state.nj.us/infobank/circular/circindx.htm>.

(h) The State Treasurer shall pay the reimbursement amount within 30 days after receipt of the approved application for reimbursement from the Department.

7:27-32.25 Recovery of reimbursement

(a) The State Treasurer may recover any reimbursement from the fund, upon a finding that:

1. The purchase or installation of a C CVS or BART on the vehicle or equipment for which the application for reimbursement was filed was not completed; or

2. The applicant for reimbursement:

i. Provided false information or withheld information on an application that renders the applicant ineligible for reimbursement from the fund;

ii. Received a larger reimbursement from the fund than the applicant would otherwise be eligible; or

iii. Received payments from the fund in excess of the actual costs incurred by the applicant or received reimbursement in excess of the amount for which the applicant is legally eligible.

(b) Nothing in this section shall be construed to require the State Treasurer, the Department, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in (a) above.