

CHAPTER 27A

AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

Authority

N.J.S.A. 13:1B-3(e), 13:1D-9 and 26:2C-1 et seq.,
in particular 26:2C-8 and 26:2C-9.2.

Source and Effective Date

R.2005 d.155, effective April 21, 2005.
See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Chapter Expiration Date

Chapter 27A, Air Administrative Procedures and Penalties, expires
on April 21, 2010.

Chapter Historical Note

Chapter 27A, Rules of Practice and Procedure of the Bureau of Air Pollution Control, was adopted as R.1973 d.165, effective June 21, 1973. See: 5 N.J.R. 221(c). Pursuant to Executive Order No. 66(1978), Chapter 27A expired on October 7, 1985.

Chapter 27A, Air Administrative Procedures and Penalties, was adopted as new rules by R.1989 d.596, effective December 4, 1989, operative January 5, 1990. See: 21 N.J.R. 729(a), 21 N.J.R. 3751(a).

Pursuant to Executive Order No. 66(1978), Chapter 27A, Air Administrative Procedures and Penalties, was readopted as R.1995 d.5, effective December 2, 1994. See: 26 N.J.R. 3566(a), 27 N.J.R. 93(a), 27 N.J.R. 498(a).

Pursuant to Executive Order No. 66(1978), Chapter 27A, Air Administrative Procedures and Penalties, was readopted as R.1999 d.423, effective November 9, 1999. See: 31 N.J.R. 2582(a), 31 N.J.R. 4040(a).

Chapter 27A, Air Administrative Procedures and Penalties, was readopted as R.2005 d.155, effective April 21, 2005. See: Source and Effective Date.

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SUBCHAPTERS 1 THROUGH 2. (RESERVED)

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., including violation of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of each provision of the Act, or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by the Act, or any other statute, in connection with the violation for which the assessment is levied.

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are as defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

"Act" means the Air Pollution Control Act (1954), as amended, N.J.S.A. 26:2C-1 et seq.

"AAQS" means Ambient Air Quality Standards, as defined in N.J.A.C. 7:27-13.

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS. Ambient monitors, which measure the impact or concentration of air contaminants emitted by the source operation or facility in nearby areas, are not considered part of a facility's CMS.

"Continuous opacity monitor" or "COM" means a device which continuously measures opacity of flue gases.

"Continuous process monitor" or "CPM" means an instrument or system which continuously measures an operational parameter at a facility, such as temperature or air flow rate.

"EHS" means Extraordinarily Hazardous Substance, as defined in N.J.A.C. 7:31-1.

"Emission increase" means a release of an air contaminant not listed in a permit; a release of an air contaminant above the limit set forth in the applicable permit; a release of an air contaminant above the limit in any State or Federal law, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto; or a release of an air contaminant that may have been caused by a malfunction of a piece of equipment or a pollution control device regulated by State or Federal law, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

"EOR" means Emission Offset Rule, as set forth in N.J.A.C. 7:27-18.

"Grace period" means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

"HAP (Table B)" means a hazardous air pollutant listed in N.J.A.C. 7:27-8, Appendix 1, Table B.

"Hazardous air pollutant" or "HAP" means air contaminant listed in or pursuant to 42 U.S.C. § 7412(b).

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR Part 61 or Part 63.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Offense" means each individual violation of the Act or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto. Subsequent offenses are not conditioned upon a prior conviction, final order, or entry of judgment. In addition, a single administrative order and notice of civil administrative penalty assessment may relate to more than one offense.

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60, Appendix A, methods 7 through 7E.

"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.

"PSD" or "prevention of significant deterioration" means the requirements pursuant to 40 CFR 51.166, administered through the Department's permitting process, which apply to a new or modified major facility located in an attainment area. The Department accepted delegation of the administration of the PSD program from EPA on February 22, 1983.

"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. This term includes the term "emissions unit" as defined at 40 CFR 70.2.

"TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17.3.

"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-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 ($C_4F_9OCH_3$)

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($((CF_3)_2CFCF_2OCH_3)$)

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($((CF_3)_2CFCF_2OC_2H_5)$)

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).

Replaced "TVOS" with "TXS" and "VOS" with definition of "volatile organic compound (VOC)"; added "partial pressure".

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.501, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 4045(a), 25 N.J.R. 4836(a), 26 N.J.R. 4030(a).

Administrative Correction.

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

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

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

Added "Discrete emission reduction" and "Oxides of nitrogen".

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.

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).

Deleted "Discrete emission reduction" or "DER".

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added "Emission increase" and "Grace period".

Case Notes

Incineration company violated permit and certificate; penalties imposed based upon current regulations. New Jersey Department of Environmental Protection v. Trofe Incineration Inc. 93 N.J.A.R.2d (EPE) 177.

7:27A-3.3 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. This Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, administrative order, operating certificate, registration requirement or permit violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:27A-3.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:27A-3.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or
3. If an adjudicatory hearing is conducted, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

7:27A-3.4 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment stated in short and plain terms;
3. An admission or denial of each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order and notice of civil administrative penalty assessment being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative change in (a).
See: 23 N.J.R. 3325(b).

7:27A-3.5 Civil administrative penalty determination—general

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense against each violator who fails to comply with the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each violation of any provision of the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27 for which no penalty amount is specified under N.J.A.C. 7:27A-3.6 through 3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:27A-3.6 through 3.11 for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping requirements, reporting requirements or emission limits) and the nature and extent of the environmental harm likely to result from the type of violation; and

2. The factors listed in (e) below.

(e) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section or under N.J.A.C. 7:27A-3.6, 3.7, 3.8, 3.9, 3.10 or 3.11, based upon any or all of the factors listed in (e)1 through 6 below. The Department may apply such factors in addition to the factors listed in N.J.A.C. 7:27A-3.10(e)5 and 3.11. No such factor constitutes a defense to any violation.

1. The compliance history of the violator;
2. The number of times and the frequency with which the violation occurred;
3. The severity of the violation;
4. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent

to which such measures are in addition to those required under an applicable statute or rule; and

6. Any other mitigating, extenuating or aggravating circumstances.

(f) Except as provided for in (g) and (h) below, the Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(g) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(c) or (e) indicated by a continuous monitoring system, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)1 and may, in its discretion for purposes of determining the statutory maximum penalty for an offense, treat an offense as a first offense for civil administrative penalty determination purposes, at the beginning of each calendar quarter.

(h) For violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(d) or (e) when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)2 and may, in its discretion, treat an offense as a first offense for civil administrative penalty determination purposes, if the violator has not committed the same offense in the four consecutive calendar quarters immediately preceding the first day of the calendar quarter during which the pending offense was committed.

Amended by R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).

See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

Amended by R.1994 d.501, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 4045(a), 25 N.J.R. 4836(a), 26 N.J.R. 4030(a).

Amended by R.1999 d.423, effective December 6, 1999 (operative January 7, 2000).

See: 31 N.J.R. 2582(a), 31 N.J.R. 4040(a).

In (g) and (h), changed N.J.A.C. 7:27A-3.10 references

Case Notes

Summary decision imposing penalty was properly assessed against research company for causing the release of an air contaminant. N.J.S.A. 26:2C-19. *Biopharm Research v. New Jersey Dept. of Environmental Protection*, 91 N.J.A.R.2d 7 (EPE).

7:27A-3.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$2,000 for the first offense, \$4,000 for the second offense, and \$10,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (e).

7:27A-3.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be \$8,000 for the first offense, \$16,000 for the second offense, and \$40,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (e).

7:27A-3.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty against each violator who fails to pay a fee when due.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct offense.

(c) To assess a civil administrative penalty pursuant to this section:

1. The Department shall identify the civil administrative base penalty pursuant to (d) below; and

2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (e) below.

(d) The base penalty shall be as follows:

1. An amount equal to one-third of the unpaid fee or \$50.00, whichever is greater, for the nonpayment of a fee due in any calendar year; or

2. An amount equal to two-thirds of the unpaid fee or \$100.00, whichever is greater, for the nonpayment of a second fee in the same calendar year as in (d)1 above, but not the same fee as in (d)1 above; or

3. An amount equal to the unpaid fee or \$250.00, whichever is greater, for the nonpayment of a third and each subsequent fee due in the same calendar year as in (d)1 above, but not the same fee as in (d)1 or 2 above.

(e) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (d) above by the amount obtained by multiplying the base penalty dollar amount by 0.1 percent for each day that the fee is past due.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.1995 d.5, effective January 3, 1995 (operative January 27, 1995).

See: 26 N.J.R. 3566(a), 27 N.J.R. 93(i)

Amended by R.2005 d.155, effective May 16, 2005.

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Added (f).

(p) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the Department may, in its discretion, assess the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b) for any release of air contaminants that causes persons exposed to the release to suffer acute health effects resulting in death or serious personal injury.

(q) Each violation identified in the penalty tables at (m) and (n) above by an "M" in the Type of Violation column, for which conditions at (s) below are satisfied, is a minor violation, and is subject to a 30-day grace period.

(r) Each violation identified in the penalty tables at (m) and (n) above by an "NM" in the Type of Violation column is a non-minor violation and will not be subject to a grace period.

(s) The Department shall provide a grace period of 30 days for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;
3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and
5. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(t) For a violation determined to be minor under (s) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:
 - i. Identifies the condition or activity that constitutes the violation and the specific statutory provision or other requirement violated; and
 - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.
2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (t)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation and, in addition, shall not consider the minor violation an offense as defined in this chapter.
3. The person responsible for the minor violation shall submit to the Department or a local government agency, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:27-1.39, and signed by the responsible official, as defined at N.J.A.C. 7:27-1.4, detailing the corrective action taken or compliance achieved.
4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing no later than one week before the expiration of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance, and shall be certified in accordance with N.J.A.C. 7:27-1.39. The Department or local government agency may, at its discretion, approve in writing an extension which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department or local government agency may consider the following:
 - i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
 - ii. Whether the delay has been caused by circumstances beyond the control of the violator;

- iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (t)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

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

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

Penalties for violation of recordkeeping requirements added.

Amended by R.1992 d.382, effective October 5, 1992.

See: 24 N.J.R. 2386(a), 24 N.J.R. 3539(a).

Penalties added at (e)25.

Administrative correction to (e)25.

See: 24 N.J.R. 4524(b).

Amended by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).

See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

Added new (e)21 regarding Emission Statements.

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).

New Rule, R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).

See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

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).

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.500, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).

Amended by R.1994 d.501, effective October 3, 1994 (operative October 31, 1994).

See: 25 N.J.R. 4045(a), 25 N.J.R. 4836(a), 26 N.J.R. 4030(a).

New Rule, R.1994 d.537, effective November 7, 1994 (operative November 27, 1994).

See: 26 N.J.R. 1050(a), 26 N.J.R. 4355(a).

Amended by R.1995 d.5, effective January 3, 1995 (operative January 27, 1995).

See: 26 N.J.R. 3566(a), 27 N.J.R. 93(a).

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).

See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

Administrative correction.

See: 27 N.J.R. 2212(b).

Emergency amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).

See: 27 N.J.R. 2752(a).

Adopted concurrent proposal R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).

See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

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

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

Amended by R.1998 d.379, effective July 20, 1998 (operative August 16, 1998).

See: 29 N.J.R. 3924(b), 30 N.J.R. 2660(a).

In (m), added a new 31.

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 (m)25, rewrote the table.

Amended by R.1999 d.423, effective December 6, 1999 (operative January 7, 2000).

See: 31 N.J.R. 2582(a), 31 N.J.R. 4040(a).

Made internal reference changes throughout.

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 (i); and in (m), changed table references throughout, substituted a reference to N.J.A.C. 7:27A-3.10(n) for a reference to N.J.A.C. 7:27A-3.10(m), and inserted a reference to N.J.A.C. 7:27-8.3(l) in 8, inserted a reference to N.J.A.C. 7:27-22.3(uu) and substituted a reference to \$12,000 for a reference to \$12,500 in 22, and rewrote 30.

Amended by R.2000 d.351, effective August 21, 2000 (operative September 29, 2000).

See: 31 N.J.R. 2100(a), 32 N.J.R. 3119(a).

Rewrote (m)31.

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).

Amended the tables in (m) and (n).

Amended by R.2002 d.224, effective June 2, 2003 (operative June 29, 2003).

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

In (m)16, amended the tables.

Administrative correction.

See: 35 N.J.R. 3840(a).

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).

Reserved (i); rewrote (m).

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).

Added (m)24.

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 (m)23.

Administrative correction.

See: 36 N.J.R. 5442(a).

Amended by R.2004 d.443, effective December 6, 2004 (operative January 3, 2005).

See: 36 N.J.R. 123(a), 36 N.J.R. 5406(a).

In (m), rewrote 27.

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Rewrote (m) and (n); added (q) through (t).

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 tables in (m)16 and 19.

Amended 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).

Added (m)29.

Amended by R.2006 d.309, effective September 5, 2006 (operative November 4, 2006).

See: 37 N.J.R. 2783(a), 38 N.J.R. 3572(a).

In (m)27, added entry "N.J.A.C. 7:27-27.7(k)".

Amended by R.2007 d.201, effective July 2, 2007.

See: 38 N.J.R. 3728(b), 39 N.J.R. 2531(a).

In the table in (m)14, added entries "School Bus Owner" and "School District, if the School District Does not Own the Bus" and the corresponding note; and in the entries "Commercial Vehicle Registration" and "Property Owner", substituted "\$250" for "\$200" in the "First Offense" column, "\$500" for "\$400" in the "Second Offense" column and "\$1,000" for "\$3,000" in the "Fourth and Each Subsequent Offense" column.

Amended 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).

Added (m)30.

Amended 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).

In (l), added the last two sentences; rewrote (m)14; and added (m)32.

Case Notes

New rules reducing penalty assessment for remediation of offending odor violation properly applied to reduce penalty for violations that occurred when former rules were in effect. NJDEPE v. American National Can Company, 96 N.J.A.R.2d (EPE) 123.

Debtor charged with excess carbon monoxide emissions was not entitled to stay penalty assessment proceedings based upon subsequent

bankruptcy filing. DEPE v. Prospect Industries Corporation, 96 N.J.A.R.2d (EPE) 118.

Failure to submit required emission statement within mandatory time frame warranted assessment of civil administrative penalty. Department of Environmental Protection and Energy v. Northgate, 95 N.J.A.R.2d (EPE) 190.

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

Perforation of gasoline pump nozzle "vapor boot"; air pollution penalty assessed. New Jersey Department of Environmental Protection v. Columbus Texaco, 92 N.J.A.R.2d (EPE) 235.

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

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

7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provision violated and the frequency of the violation as follows:

Citation	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment	NM	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment	M	\$200	\$400	\$1,000	\$3,000

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).

Reference to TVOS and VOS changed to TXS and VOC.

Amended by R.1995 d.5, effective January 3, 1995 (operative January 27, 1995).

See: 26 N.J.R. 3566(a), 27 N.J.R. 93(a).

Amended by R.2005 d.155, effective May 16, 2005 (operative June 17, 2005).

See: 36 N.J.R. 5293(a), 37 N.J.R. 1789(a).

Rewrote the section.

7:27A-3.12 Economic benefit component of a civil administrative penalty

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include

as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with or by delaying compliance with the requirements of the Act, or any rule, administrative order, operating certificate or permit issued pursuant thereto. If the total economic benefit was derived from more than one offense, the total economic benefit amount may be apportioned among the offenses from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$10,000 for the first offense, no greater than \$25,000 for the second offense, and no greater than \$50,000 for the third offense and each subsequent offense.