

CHAPTER 27

AIR POLLUTION CONTROL

Authority

N.J.S.A. 26:2C-1 et seq. and N.J.S.A. 26:2D-1 et seq.

Executive Order No. 66(1978) Expiration Date

Chapter 27, Air Pollution Control, is exempt from Executive Order No. 66(1978).

Chapter Historical Note

Chapter 27, Air Pollution Control, was adopted 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Subchapter 30, Open Market Emissions Trading, was repealed by R.2004 d.129, effective April 5, 2004 (operative April 25, 2004).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).

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CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:27-1.1 Scope
- 7:27-1.2 Construction
- 7:27-1.3 Practice where rules do not govern
- 7:27-1.4 Definitions
- 7:27-1.5 Municipal ordinances or regulations
- 7:27-1.6 Procedure for making a confidentiality claim
- 7:27-1.7 Designation by claimant of an addressee for notices and inquiries
- 7:27-1.8 Correspondence, inquiries and notices
- 7:27-1.9 Time for making confidentiality determinations
- 7:27-1.10 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim
- 7:27-1.11 Substantiation of confidentiality claims
- 7:27-1.12 Time for submission of substantiation
- 7:27-1.13 Final confidentiality determination
- 7:27-1.14 Treatment of information pending confidentiality determination
- 7:27-1.15 Availability of information to the public after determination that information is not confidential
- 7:27-1.16 Preparation of final public copy
- 7:27-1.17 Class confidentiality determinations
- 7:27-1.18 Classes of information which are not confidential information
- 7:27-1.19 Disclosure of confidential information to other public agencies
- 7:27-1.20 Disclosure of confidential information to contractors
- 7:27-1.21 Disclosure to alleviate an imminent and substantial danger

- 7:27-1.22 Notice to claimants of disclosure of confidential information
- 7:27-1.23 Disclosure by consent
- 7:27-1.24 Incorporation of confidential information into cumulations of data
- 7:27-1.25 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings
- 7:27-1.26 Hearing before disclosure of information for which a confidentiality claim has been made
- 7:27-1.27 Nondisclosure of confidential information
- 7:27-1.28 Safeguarding of confidential information
- 7:27-1.29 Confidentiality agreements
- 7:27-1.30 Wrongful access or disclosure; penalties
- 7:27-1.31 Right to enter
- 7:27-1.32 Request for an adjudicatory hearing
- 7:27-1.33 Request for a stay of the effective date of a departmental decision
- 7:27-1.34 through 7:27-1.35 (Reserved)
- 7:27-1.36 Applicability
- 7:27-1.37 Severability
- 7:27-1.38 Liberal construction
- 7:27-1.39 Certification of information

SUBCHAPTER 2. CONTROL AND PROHIBITION OF OPEN BURNING

- 7:27-2.1 Definitions
- 7:27-2.2 Open burning for salvage operations
- 7:27-2.3 Open burning of refuse
- 7:27-2.4 General provisions
- 7:27-2.5 Infested plant life
- 7:27-2.6 Prescribed burning
- 7:27-2.7 Emergencies
- 7:27-2.8 Dangerous material
- 7:27-2.9 Herbaceous plant life and hedgerows
- 7:27-2.10 Orchard prunings and cullings
- 7:27-2.11 Land clearing
- 7:27-2.12 Special permit
- 7:27-2.13 Fees

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

- 7:27-3.1 Definitions
- 7:27-3.2 Smoke emissions from stationary indirect heat exchangers
- 7:27-3.3 Smoke emissions from marine installations
- 7:27-3.4 Smoke emissions from the combustion of fuel in mobile sources
- 7:27-3.5 Smoke emissions from stationary internal combustion engines and stationary turbine engines
- 7:27-3.6 Stack test
- 7:27-3.7 Exceptions

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

- 7:27-4.1 Definitions
- 7:27-4.2 Standards for the emission of particles
- 7:27-4.3 Performance test principle
- 7:27-4.4 Emission tests
- 7:27-4.5 (Reserved)
- 7:27-4.6 Exceptions

SUBCHAPTER 5. PROHIBITION OF AIR POLLUTION

- 7:27-5.1 Definitions
- 7:27-5.2 General provisions

SUBCHAPTER 6. CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES

- 7:27-6.1 Definitions

- 7:27-6.2 Standards for the emission of particles
- 7:27-6.3 Performance test principles
- 7:27-6.4 Emission tests
- 7:27-6.5 Variances
- 7:27-6.6 (Reserved)
- 7:27-6.7 Exceptions

SUBCHAPTER 7. SULFUR

- 7:27-7.1 Definitions
- 7:27-7.2 Control and prohibition of air pollution from sulfur compounds

SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

- 7:27-8.1 Definitions
- 7:27-8.2 Applicability
- 7:27-8.3 General provisions
- 7:27-8.4 Applications
- 7:27-8.5 Air quality impact analysis
- 7:27-8.6 Service fees
- 7:27-8.7 Operating certificates
- 7:27-8.8 General permits
- 7:27-8.9 Environmental improvement pilot tests
- 7:27-8.10 Public comment
- 7:27-8.11 Standards for issuing a permit
- 7:27-8.12 State of the art
- 7:27-8.13 Conditions of approval
- 7:27-8.14 Denials
- 7:27-8.15 Reporting requirements
- 7:27-8.16 Revocation
- 7:27-8.17 Changes to existing permits and certificates
- 7:27-8.18 Permit revisions
- 7:27-8.19 Compliance plan changes
- 7:27-8.20 Seven-day-notice changes
- 7:27-8.21 Amendments
- 7:27-8.22 Changes to sources permitted under batch plant, pilot plant, and dual plant permitting procedures
- 7:27-8.23 Reconstruction
- 7:27-8.24 Special provisions for construction but not operation
- 7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications
- 7:27-8.26 Civil or criminal penalties for failure to comply
- 7:27-8.27 Special facility-wide permit provisions
- 7:27-8.28 Delay of testing

APPENDIX 1

SUBCHAPTER 9. SULFUR IN FUELS

- 7:27-9.1 Definitions
- 7:27-9.2 Sulfur content standards
- 7:27-9.3 Exemptions
- 7:27-9.4 Waiver of air quality modeling
- 7:27-9.5 Incentive for conversion to coal or other solid fuel

SUBCHAPTER 10. SULFUR IN SOLID FUELS

- 7:27-10.1 Definitions
- 7:27-10.2 Sulfur contents standards
- 7:27-10.3 Expansion, reconstruction or construction of solid fuel burning units
- 7:27-10.4 Exemptions

SUBCHAPTER 11. INCINERATORS

- 7:27-11.1 Definitions
- 7:27-11.2 Construction standards
- 7:27-11.3 Emission standards
- 7:27-11.4 Permit to construct; certificate to operate
- 7:27-11.5 Operation
- 7:27-11.6 Exceptions

SUBCHAPTER 12. PREVENTION AND CONTROL OF AIR POLLUTION EMERGENCIES

- 7:27-12.1 Definitions
- 7:27-12.2 Emergency criteria
- 7:27-12.3 Criteria for emergency termination
- 7:27-12.4 Standby plans
- 7:27-12.5 Standby orders
- 7:27-12.6 (Reserved)

SUBCHAPTER 13. AMBIENT AIR QUALITY STANDARDS

- 7:27-13.1 Definitions
- 7:27-13.2 General ambient air quality standards
- 7:27-13.3 Ambient air quality standards for suspended particulate matter
- 7:27-13.4 Ambient air quality standards for sulfur dioxide
- 7:27-13.5 Ambient air quality standards for carbon monoxide
- 7:27-13.6 Ambient air quality standards for ozone
- 7:27-13.7 Ambient air quality standards for lead
- 7:27-13.8 Ambient air quality standards for nitrogen dioxide

SUBCHAPTER 14. CONTROL AND PROHIBITION OF AIR POLLUTION FROM DIESEL-POWERED MOTOR VEHICLES

- 7:27-14.1 Definitions
- 7:27-14.2 Applicability
- 7:27-14.3 General prohibitions
- 7:27-14.4 General public highway standards
- 7:27-14.5 Test requirements
- 7:27-14.6 Inspection standards
- 7:27-14.7 Non-interference with the motor vehicle codes

SUBCHAPTER 15. CONTROL AND PROHIBITION OF AIR POLLUTION FROM GASOLINE-FUELED MOTOR VEHICLES

- 7:27-15.1 Definitions
- 7:27-15.2 Applicability
- 7:27-15.3 General public highway standards
- 7:27-15.4 New motor vehicle dealer inspections
- 7:27-15.5 Motor vehicle inspections
- 7:27-15.6 Motor vehicle inspection standards
- 7:27-15.7 Prohibition of tampering with emission control apparatus
- 7:27-15.8 Idle standard
- 7:27-15.9 Non-interference with the motor vehicle codes

APPENDIX

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

- 7:27-16.1 Definitions
- 7:27-16.1A Purpose, scope, applicability, and severability
- 7:27-16.2 Stationary storage tanks
- 7:27-16.3 Gasoline transfer operations
- 7:27-16.4 VOC transfer operations, other than gasoline
- 7:27-16.5 Marine tank vessel loading and ballasting operations
- 7:27-16.6 Open top tanks and solvent cleaning operations
- 7:27-16.7 Surface coating and graphic arts operations
- 7:27-16.8 Boilers
- 7:27-16.9 Stationary gas turbines
- 7:27-16.10 Stationary internal combustion engines
- 7:27-16.11 Asphalt plants
- 7:27-16.12 Surface coating operations at mobile equipment repair and refinishing facilities
- 7:27-16.13 Flares
- 7:27-16.14 and 7:27-16.15 (Reserved)
- 7:27-16.16 Other source operations
- 7:27-16.17 Facility-specific VOC control requirements
- 7:27-16.18 Leak detection and repair
- 7:27-16.19 Application of cutback and emulsified asphalts
- 7:27-16.20 Petroleum solvent dry cleaning operations

- 7:27-16.21 Natural gas pipelines
- 7:27-16.22 Emission information, record keeping and testing
- 7:27-16.23 Procedures for demonstrating compliance
- 7:27-16.24 Adjusting combustion processes
- 7:27-16.25 (Reserved)
- 7:27-16.26 Variances
- 7:27-16.27 Exceptions

SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

- 7:27-17.1 Definitions
- 7:27-17.2 Asbestos surface coating
- 7:27-17.3 Storage, transfer, and use of toxic substances
- 7:27-17.4 Discharge of toxic substances
- 7:27-17.5 Operating instructions
- 7:27-17.6 Emission information and tests
- 7:27-17.7 Permit to construct and certificate to operate
- 7:27-17.8 Applicability
- 7:27-17.9 Exceptions

SUBCHAPTER 18. CONTROL AND PROHIBITION OF AIR POLLUTION FROM NEW OR ALTERED SOURCES AFFECTING AMBIENT AIR QUALITY (EMISSION OFFSET RULES)

- 7:27-18.1 Definitions
- 7:27-18.2 Facilities subject to this subchapter
- 7:27-18.2A (Reserved)
- 7:27-18.3 Standards for issuance of permits
- 7:27-18.4 Air quality impact analysis
- 7:27-18.5 Standards for use of emission reductions as emission offsets
- 7:27-18.6 Emission offset postponement
- 7:27-18.7 Determination of a net emission increase or a significant net emission increase
- 7:27-18.8 Banking of emission reductions
- 7:27-18.9 Secondary emissions
- 7:27-18.10 Exemptions
- 7:27-18.11 (Reserved)
- 7:27-18.12 Civil or criminal penalties for failure to comply

SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

- 7:27-19.1 Definitions
- 7:27-19.2 Purpose, scope and applicability
- 7:27-19.3 General provisions
- 7:27-19.4 Utility boilers
- 7:27-19.5 Stationary gas turbines
- 7:27-19.6 Emissions averaging
- 7:27-19.7 Non-utility boilers and other indirect heat exchangers
- 7:27-19.8 Stationary internal combustion engines
- 7:27-19.9 Asphalt plants
- 7:27-19.10 Glass manufacturing furnaces
- 7:27-19.11 and 7:27-19.12 (Reserved)
- 7:27-19.13 Facility-specific NO_x emissions limits
- 7:27-19.14 Procedures for obtaining approvals under this subchapter
- 7:27-19.15 Procedures and deadlines for demonstrating compliance
- 7:27-19.16 Adjusting combustion processes
- 7:27-19.17 Source emissions testing
- 7:27-19.18 Continuous emissions monitoring
- 7:27-19.19 Recordkeeping and recording
- 7:27-19.20 Fuel switching
- 7:27-19.21 Phased compliance—repowering
- 7:27-19.22 Phased compliance—impracticability of full compliance by May 31, 1995
- 7:27-19.23 Phased compliance—use of innovative control technology
- 7:27-19.24 MEG alerts
- 7:27-19.25 Exemption for emergency use of fuel oil
- 7:27-19.26 Penalties
- 7:27-19.27 Use of NO_x budget allowances by a former DER credit user

APPENDIX

SUBCHAPTER 20. USED OIL COMBUSTION

- 7:27-20.1 Definitions
- 7:27-20.2 General provisions
- 7:27-20.3 Burning of on-specification used oil in space heaters covered by a registration
- 7:27-20.4 Burning of on-specification used oil in space heaters covered by a permit
- 7:27-20.5 Demonstration that used oil is on-specification
- 7:27-20.6 Burning of on-specification oil in other combustion units
- 7:27-20.7 Burning of off-specification used oil
- 7:27-20.8 Ash standard
- 7:27-20.9 Exception

SUBCHAPTER 21. EMISSION STATEMENTS

- 7:27-21.1 Definitions
- 7:27-21.2 Applicability
- 7:27-21.3 General provisions
- 7:27-21.4 Procedure for submitting an Emission Statement
- 7:27-21.5 Required contents of an Emission Statement
- 7:27-21.6 Methods to be used for quantifying actual emissions
- 7:27-21.7 Recordkeeping requirements
- 7:27-21.8 Certification of information
- 7:27-21.9 Request for extension
- 7:27-21.10 Determination of non-applicability

APPENDIX 1

SUBCHAPTER 22. OPERATING PERMITS

- 7:27-22.1 Definitions
- 7:27-22.2 Applicability
- 7:27-22.3 General provisions
- 7:27-22.4 General application procedures
- 7:27-22.5 Application procedures for initial operating permits
- 7:27-22.6 Operating permit application contents
- 7:27-22.7 Application shield
- 7:27-22.8 Air quality simulation modeling and risk assessment
- 7:27-22.9 Compliance plans
- 7:27-22.10 Completeness review
- 7:27-22.11 Public comment
- 7:27-22.12 EPA comment
- 7:27-22.13 Final action on an application
- 7:27-22.14 General operating permits
- 7:27-22.15 Temporary facility operating permits
- 7:27-22.16 Operating permit contents
- 7:27-22.17 Permit shield
- 7:27-22.18 Source emissions testing and monitoring
- 7:27-22.19 Recordkeeping, reporting and compliance certification
- 7:27-22.20 Administrative amendments
- 7:27-22.21 Changes to insignificant source operations
- 7:27-22.22 Seven-day-notice changes
- 7:27-22.23 Minor modifications
- 7:27-22.24 Significant modifications
- 7:27-22.24A Reconstruction
- 7:27-22.25 Department initiated operating permit modifications
- 7:27-22.26 MACT and GACT standards
- 7:27-22.27 Operating scenarios
- 7:27-22.28 (Reserved)
- 7:27-22.28A Emissions trading
- 7:27-22.28B Facility-specific emissions averaging programs
- 7:27-22.29 Facilities subject to acid deposition control
- 7:27-22.30 Renewals
- 7:27-22.31 Fees
- 7:27-22.32 Hearings and appeals
- 7:27-22.33 Preconstruction review
- 7:27-22.34 Early reduction of HAP emissions
- 7:27-22.35 Advances in the art of air pollution control

**APPENDIX. THRESHOLDS FOR REPORTING
EMISSIONS OF AIR CONTAMINANTS OTHER
THAN HAZARDOUS AIR POLLUTANTS (HAPS)**

**SUBCHAPTER 23. PREVENTION OF AIR POLLUTION
FROM ARCHITECTURAL COATINGS AND
CONSUMER PRODUCTS**

- 7:27-23.1 Applicability
- 7:27-23.2 Definitions
- 7:27-23.3 Architectural coatings
- 7:27-23.4 (Reserved)
- 7:27-23.5 Labeling requirements
- 7:27-23.6 Administrative requirements
- 7:27-23.7 Inspections

**SUBCHAPTER 24. PREVENTION OF AIR POLLUTION
FROM CONSUMER PRODUCTS**

- 7:27-24.1 Definitions
- 7:27-24.2 Applicability
- 7:27-24.3 General provisions
- 7:27-24.4 Chemically formulated consumer products: standards
- 7:27-24.5 Chemically formulated consumer products: registration and labeling
- 7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting
- 7:27-24.7 Chemically formulated consumer products: testing
- 7:27-24.8 Portable fuel containers and spill proof spouts: standards
- 7:27-24.9 Portable fuel containers and spill proof spouts: labeling
- 7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting
- 7:27-24.11 Portable fuel containers and spill proof spouts: testing
- 7:27-24.12 Penalties and other requirements imposed for failure to comply

**SUBCHAPTER 25. CONTROL AND PROHIBITION OF
AIR POLLUTION BY VEHICULAR FUELS**

- 7:27-25.1 Definitions
- 7:27-25.2 Scope and applicability
- 7:27-25.3 General provisions
- 7:27-25.4 Recordkeeping and compliance determinations
- 7:27-25.5 Inspections
- 7:27-25.6 Petition for rulemaking in the case of imminent supply shortage
- 7:27-25.7 Exemptions
- 7:27-25.8 Owner and operator responsibility
- 7:27-25.9 Service fees
- 7:27-25.10 through 7:27-25.11 (Reserved)

**SUBCHAPTER 26. NATIONAL LOW EMISSION
VEHICLE (NLEV) AND HEAVY-DUTY DIESEL
NEW ENGINE REQUIREMENTS PROGRAM**

- 7:27-26.1 Definitions
- 7:27-26.2 Applicability
- 7:27-26.3 Prohibitions (OTC-LEV Program)
- 7:27-26.4 Emission certification standards (OTC-LEV Program)
- 7:27-26.5 Fleet average (OTC-LEV Program)
- 7:27-26.6 Reporting and new motor vehicle dealer requirements (OTC-LEV Program)
- 7:27-26.7 Additional requirements (OTC-LEV Program)
- 7:27-26.8 Requirements for vehicle transactions (New HDDE Standards Program)
- 7:27-26.9 Exemptions and technology review (New HDDE Standards Program)
- 7:27-26.10 Manufacturer compliance with California orders and voluntary recalls (New HDDE Standards Program)
- 7:27-26.11 Enforcement
- 7:27-26.12 through 7:27-26.14 (Reserved)
- 7:27-26.15 Incorporation by reference
- 7:27-26.16 Severability

APPENDIX

**SUBCHAPTER 27. CONTROL AND PROHIBITION OF
MERCURY EMISSIONS**

- 7:27-27.1 Definitions
- 7:27-27.2 Applicability
- 7:27-27.3 General provisions
- 7:27-27.4 Municipal solid waste (MSW) incinerators
- 7:27-27.5 through 7:27-27.8 (Reserved)
- 7:27-27.9 Reporting and recordkeeping
- 7:27-27.10 Penalties

SUBCHAPTERS 28 THROUGH 30. (RESERVED)

SUBCHAPTER 31. NO_x BUDGET PROGRAM

- 7:27-31.1 Purpose and scope
- 7:27-31.2 Definitions
- 7:27-31.3 Applicability and general provisions
- 7:27-31.4 Opt-in provisions
- 7:27-31.5 Interface with the emission offset program
- 7:27-31.6 Use of allowances by former users of DER credits
- 7:27-31.7 Annual allowance allocation
- 7:27-31.8 Claims for incentive allowances
- 7:27-31.9 Permits
- 7:27-31.10 Allowance use, transfer and retirement
- 7:27-31.11 Allowance banking
- 7:27-31.12 Early reductions
- 7:27-31.13 No_x Allowance Tracking System (NATS)
- 7:27-31.14 Emissions monitoring
- 7:27-31.15 Recordkeeping
- 7:27-31.16 Reporting
- 7:27-31.17 End-of-season reconciliation
- 7:27-31.18 Compliance certification
- 7:27-31.19 Excess emissions deduction
- 7:27-31.20 Program audit
- 7:27-31.21 Guidance documents and sources incorporated by reference
- 7:27-31.22 Compliance supplement pool

**APPENDIX. CHEMICALS DEFINING SYNTHETIC
ORGANIC CHEMICAL AND POLYMER
MANUFACTURING**

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.

**SUBCHAPTER 23. PREVENTION OF AIR
POLLUTION FROM ARCHITECTURAL
COATINGS AND CONSUMER PRODUCTS**

Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

Source and Effective Date

R.1989 d.119, effective February 21, 1989 (operative March 26, 1989).
See: 20 N.J.R. 2002(a), 21 N.J.R. 462(a).

Subchapter Historical Note

Notice of Rule Invalidation: Provisions of N.J.A.C. 7:27-23 held to require repromulgation and remanded to Commissioner, Department

of Environmental Protection, for action consonant with the Administrative Procedure Act. In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27-23, ___ N.J. Super. ___, Dkt. No. A-1226-89T1 (App. Div. February 26, 1990). See: 22 N.J.R. 1134(b).

7:27-23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the VOC content of architectural coatings and consumer products. The following sections shall govern the content of architectural coatings and consumer products used and provided for use in the State and the method to be followed by manufacturers, distributors, and retailers to assure these standards are met.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II TXS until the Department amends this rule in response to EPA rulemaking or otherwise.

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

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

Language added specifying architectural coatings are the subject of regulations.

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

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

Case Notes

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

Rule requiring reduction in volatile organic substances (VOS) content in certain air fresheners. *Matter of Adoption of Regulations Governing Volatile Organic Substances in Consumer Products*, N.J.A.C. 7:27-23, 239 N.J.Super. 407, 571 A.2d 971 (A.D.1990).

7:27-23.2 Definitions

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

"Air freshener" means any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including, but not limited to, sprays, wicks, powders, and crystals. This does not include products for use on the human body.

"All other architectural coatings" means any coating which does not meet any other architectural coating definition.

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

"ASTM" means the American Society for Testing and Materials.

"Bituminous coating" or "bituminous sealer" means a coating material, consisting mainly of hydrocarbons and soluble in carbon disulfide, which is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bond breaker" means any coating whose sole purpose, when applied between layers of concrete, is to prevent the freshly poured top layer of concrete from bonding to the substrate on which it is poured.

"Concrete curing compound" means any coating whose sole purpose is to retard the evaporation of water from the surface of freshly cast concrete, thereby strengthening it.

"Consumer insecticide" means those insecticide formulations available to a direct consumer which are not classified as restricted-use pesticides under the provisions of N.J.A.C. 7:30-2 of the New Jersey Pesticide Control Code and which are liquids marketed in containers of one gallon (3.79 liters) or less, or which are marketed in pressurized containers of four pounds (1.8 kilograms) or less net weight.

"Consumer product" means any of the wide variety of household products such as architectural coatings, toiletries, and cleaning agents, used by a direct or indirect consumer and available in retail markets, and includes, but is not limited to, personal products, pesticides, automotive products, cleaners, air fresheners, and food products.

"Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

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

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Direct consumer" means an individual who utilizes a consumer product in the satisfaction of his or her personal wants.

"Dry fog coating" means any spray coating which is formulated so that overspray droplets dry before falling on floors and other surfaces.

"EPA" means the United States Environmental Protection Agency.

"Fire retardant coating" means any coating which is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature.

"Flat architectural coating" means any coating which registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, or which is labeled as a flat coating.

"High heat resistant coating" means any coating formulated specifically for use in high temperature applications. These coatings are designed to withstand temperatures in excess of 400 degrees Fahrenheit.

"High performance coating" means an architectural coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all the time, or temperatures consistently above 95 degrees Centigrade or below zero degrees Centigrade; or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Indirect consumer" means a person who utilizes a consumer product in providing a service to others.

"Industrial maintenance primer" means any coating which is intended to be applied to the surface of a substrate, prior to the application of an industrial maintenance topcoat, to provide a firm bond between the substrate and subsequent coatings.

"Industrial maintenance topcoat" means any high performance coating which is formulated for the purpose of protecting against heavy abrasion or water immersion, or providing resistance to chemicals, corrosion, temperature extremes, electric potential, or solvents.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any insect, and includes, but is not limited to, ant and roach killers, room and outdoor foggers, flea and tick sprays, and personal and area insect repellants.

"Label" means anything functioning as a means of identification, such as any paper, plastic or printed inscription, placed on the container provided to direct or indirect consumers.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resins which dries by evaporation without chemical reaction and provides a quick drying, solid protective film.

"Mastic texture coating" means any coating, except waterproof mastic coatings, which is formulated to cover holes and minor cracks and to conceal surface irregularities.

"Metallic pigmented coating" means any coating which is formulated with a minimum of 0.4 pounds per gallon (0.05 kilograms per liter) of metallic pigment.

"Multicolored coating" means any coating which exhibits more than one color when applied in a single coat and which is packaged in a single container.

"Non-flat architectural coating" means a coating which registers a gloss of 15 or greater on a glossmeter held at an 85 degree angle to the coated surface or five or greater on a glossmeter held at a 60 degree angle.

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees Centigrade).

"Opaque stain" means any stain not classified as a semi-transparent stain.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, or virus, bacteria, or other micro-organism (except viruses, bacterial or other micro-organisms on or in living man or other animals) which is injurious to health or the environment.

"Pesticide" means and includes any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator; provided that the term "pesticide" shall not include any substance or mixture of substances which the EPA does not consider to be a pesticide.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Primer, sealer, and undercoater" means any coating which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; protect porous substrates; prevent subsequent coatings from being absorbed by the substrate; prevent harm to subsequent coatings by materials in the substrate; provide a smooth surface for subsequent coats; seal fire, smoke, or water damage; neutralize odors; block stains; block efflorescence; condition chalky surfaces; or coat acoustical materials without affecting their acoustical properties.

"Quick-dry primer, sealer, and undercoater" means any primer, sealer or undercoater which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; seal fire, smoke, or water damage; block stains; or condition porous surfaces; and which dries to touch within one-half hour and can be recoated in two hours, as determined by ASTM-D-1640, or other method approved by the Department based on a study of comparability data.

"Roof coating" means any coating which is formulated for the sole purpose of preventing penetration of the substrate by water, including but not limited to, bituminous roof and waterproof mastic coatings.

"Room fogger" means any pressurized consumer insecticide used in a room empty of occupants in order to mitigate infestations of insects such as fleas or cockroaches.

"Semitransparent stain" means any coating which is formulated to change the color of a surface but not conceal or change the texture of the surface.

"Shellac" means any clear or pigmented coating formulated solely with the resinous secretions of the lac beetle (*Laccifer lacca*), thinned with alcohol, and dried by evaporation without a chemical reaction.

"Sign paint" means any coating which is marketed solely for the application to indoor or outdoor signs, including lettering enamels, poster colors, and bulletin colors.

"Substrate" means any material to which an architectural coating is applied.

"Swimming pool coating" means any coating used on the interior surface of swimming pools which is specifically formulated to resist swimming pool chemicals.

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

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17; that is, Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), Trichloroethylene (Trichloroethane), Methylene chloride (Dichloromethane), and 1,1,1-Trichloroethane (Methyl Chloroform).

"Traffic coating" means any coating formulated to be applied to public streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, and parking lots.

"Varnish" means any clear or pigmented coating formulated with various resins to dry by chemical reaction on exposure to air and intended to provide a durable transparent or translucent solid protective film.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of

determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term 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.

"Waterproof mastic coating" means any weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities and which is applied in thicknesses of at least 15 mils.

"Waterproofing sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.

"Wood preservative coating" means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative product registered by the EPA.

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).

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 Architectural coatings

(a) No person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings which contains more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide or hold for sale within New Jersey any architectural coating which contains more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(c) For a specific architectural coating to which more than one VOC content limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertising literature, any indication that more than one VOC content limit in Table 1 is applicable, the most stringent limit is applicable.

(d) The provisions of (a), (b) and (c) above shall not apply to architectural coatings sold in:

1. New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

2. Containers with a capacity of less than one quart (0.95 liter).

(e) Compliance with this section shall be determined using the following test methods: ASTM D-3960; ASTM D-1475-60; ASTM D-3792-79; ASTM D-2698-73; ASTM D-2369-81; ASTM D-4017-81; ASTM D-95-83; any other method approved by the Department.

(f) Table 1 contains the VOC content limits for architectural coatings:

TABLE 1
VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable VOC Content Per Volume of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
Group I		
Bituminous pavement sealer	0.8	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
Industrial maintenance primer or topcoat	3.8	0.45
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Non-flat architectural coating	3.2	0.38
Primer, sealer, and undercoater	2.9	0.35
Roof coating	2.5	0.30
Swimming pool coating	5.0	0.60
Traffic coating	2.1	0.25
Waterproof mastic coating	2.5	0.30
Wood preservative coating	4.6	0.55
Group II		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.6	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All other architectural coatings	2.1	0.25

Petition for Rulemaking: grandfathering of existing stock of architectural coatings.

See: 21 N.J.R. 2132(d), 21 N.J.R. 2403(c).

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

Coatings categorized by groups and exemption for small containers at (c)2.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Subsection (b) added, effective February 28, 1993.

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

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

"VOS" replaced by "VOC"; at Table 1, Group II, Stain: semitransparent, maximum changed to 4.6 from 4.5.

Case Notes

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

7:27-23.4 (Reserved)

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

Includes prohibition against holding or storage as well as sale or manufacture.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Subsection (b) added, effective February 28, 1993.

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. The label on any side of the container except the bottom shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall either specify that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that after thinning the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27-23.3(f).

2. The label on any side of the container except the bottom shall include a statement which specifies the maximum pounds of VOC in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. For architectural coatings manufactured after August 9, 1991, this statement shall be prominent and in print no smaller than 0.08 inches (two millimeters or eight point) in size.

(b) For all consumer products subject to (a) above, the label shall display the date on which the contents were manufactured or a code indicating the date of manufacture. The manufacturer shall supply an explanation of any code used to the Assistant Director, Enforcement Element, Division of Environmental Quality, PO Box 027, Trenton, New Jersey, 08625-0027, by February 28, 1990, and thereafter, 30 days prior to the use of any new or altered code.

(c) For labeling purposes only, terms other than VOC may be used provided that the volatile organic content level cited on the label is an accurate reflection of the VOC content of the coating, as defined in this subchapter.

(d) The provisions of this subchapter shall not apply to any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., provided the manufacturer has filed an application for any registration amendment necessary for compliance with this subchapter with EPA. A copy of this application shall be submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, PO Box 027, Trenton, New Jersey 08625-0027 by August 31, 1990. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as EPA has rendered a decision upon the amendment request. Within 30 calendar days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above. Within 180 calendar days of the receipt of an approval of any necessary change, the manufacturer shall begin use of the complying product or label.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

New (c) added and (c) recodified to (d) with provisions for applications for amended registrations to be filed with EPA.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Location and print size of information specified; (a)2 and (b) deleted; new (a)2, (b) and (c) added; FIFRA manufacturers required to submit data to DEP; six months between approval and use of labels allowed in (e).

Administrative Correction in (a)2 changing the date from February 28 to August 9, 1991 for the statement; and change type size from 12 to eight.

See: 23 N.J.R. 303(a).

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

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

"VOS" replaced by "VOC".

Case Notes

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

7:27-23.6 Administrative requirements

(a) Each manufacturer and distributor of an architectural coating subject to N.J.A.C. 7:27-23.3 shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the architectural coatings included on that shipping document and subject to N.J.A.C. 7:27-23.3, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. These documents shall be maintained by the manufacturer and the person receiving them for no less than five years and shall be made available to the Department upon request.

(b) Each manufacturer of a consumer product which contains greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions and is sold for use in New Jersey shall maintain calendar year records indicating the types of products containing greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions produced by that manufacturer for sale in New Jersey, the number of units produced, the VOC content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. Within a given product category variations of products that have VOC contents within a range of five percent by weight may be combined for the purpose of record keeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. Upon the request of the Department, the manufacturer shall submit, within 90 days of the request, a report on forms obtained from the Department about products sold in New Jersey containing greater than five percent by weight VOC. Records sufficient to provide the above information shall be maintained by each manufacturer for five years after each calendar year for which the data is collected.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Recordkeeping requirements revised.

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

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

"VOS" replaced by "VOC".

Case Notes

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

7:27-23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a coating will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or indirect consumer shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale by the indirect consumer or at the retail or distribution outlet. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of architectural coating at the facility are available on site, these equipment or facilities shall be made available for Department use.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Requirements for manufacturing facilities separated from those for distributors and retailers.

Case Notes

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

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

Source and Effective Date

R.1995 d.567, effective November 6, 1995
(operative December 2, 1995).

See: 27 N.J.R. 1077(a), 27 N.J.R. 4291(a).

7:27-24.1 Definitions

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

“Adhesive” means a product that is used to bond one surface to another by attachment. This term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

“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-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