

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

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 26:2C-8 and 26:2C-9 and were filed and became effective prior to September 1, 1969. Subsequent revisions were filed January 4, 1973, as R.1973 d.10 to become effective on March 5, 1973. See: 4 N.J.R. 184(b), 5 N.J.R. 38(a). Additional revisions were filed March 29, 1976, as R.1976 d.96 to become effective on June 1, 1976. See: 7 N.J.R. 308(a), 8 N.J.R. 221(c). See section annotations for subsequent rulemakings.

7:27-8.1 Definitions

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

“Actual emissions” means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified by the Department.

“Agricultural commodity” means any vegetable matter or animal matter.

“Air contaminant” means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

“Air quality impact analysis” means a procedure, entailing the use of air quality simulation modeling, for determining whether air contaminant emissions will result in ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

“Air quality simulation model” means a mathematical procedure, taking into account the dispersive capacity of the atmosphere, meteorological data, topography, and other relevant factors, to predict the concentration of an air contaminant in the ambient air. Such procedure may entail use of a mathematical model or a physical model.

“Air stripping equipment” means equipment used to transfer any air contaminant from water or other liquids directly or indirectly into the outdoor atmosphere including, but not limited to, packed columns and water spray equipment.

“Ambient air monitoring” means the measurement of concentrations of one or more air contaminants in the outdoor atmosphere.

“Amendment” means a change made to a permit and certificate under N.J.A.C. 7:27-8.21, Amendments.

“AP-42” means the manual, published by the EPA, entitled “Compilation of Air Pollutant Emission Factors”, which is incorporated herein by reference, as amended and supplemented. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487-4650; or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3228. In addition, this document can be downloaded electronically from the EPA’s Technology Transfer Network Bulletin Board Service by dialing (919) 541-5742.

“Banking” means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

“Category I” means a class of applications which require less review and are therefore subject to a lower fee than Category II applications. A Category I application is an application which covers a significant source which includes the following types of equipment:

1. Metalworking equipment including, but not limited to, welders, grinders, and drill presses;
2. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum removal efficiency of 99 percent and the particulate control apparatus serving the equipment;
3. Plastics machining or extruding equipment; and
4. An open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

“Category II” means a class of applications for a preconstruction permit or certificate for certain types of significant sources. Category II applications are subject to different fees than Category I applications. Applications which are not defined above as belonging to Category I are Category II applications.

“Certificate” means either an operating certificate or a temporary operating certificate, which is legally valid.

“CFR” means the Code of Federal Regulations.

“Class I substance” means an air contaminant that is listed in 42 U.S.C. § 7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.

“Class II substance” means an air contaminant that is listed in 42 U.S.C. § 7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

“Clean Air Act” or “CAA” means the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. and all subsequent amendments or supplements to that Act.

“Commercial fuel” means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

“Compliance inspection” means the on-site examination by representatives of the Department of equipment or control apparatus to determine if the requirements of this subchapter and other applicable laws have been and are being complied with.

“Compliance plan change” means a change made to a permit and certificate under N.J.A.C. 7:27-8.19, Compliance plan changes.

“Construct” or “construction” means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used, but shall not include the dismantling of existing equipment or control apparatus, site preparation, or the ordering, receiving, temporary storage, or installation of equipment or control apparatus. Unless otherwise prohibited by Federal law, this term shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used.

“Consumer Price Index” or “CPI” means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

“Control apparatus” means any device which prevents or controls emissions.

“Conveyorized surface cleaner” means a surface cleaner through which the parts to be cleaned are moved by means of a continuous, automatic system.

“Criteria pollutant” means any air contaminant for which a national ambient air quality standard has been promulgated under 40 CFR 50 or for which a State ambient air quality standard has been promulgated in N.J.A.C. 7:27-13.

“Delivery vessel” means any vehicle designed and constructed or converted to be capable of transporting liquid VOC cargo such as gasoline or fuel oil. This term includes, but is not limited to, tank trucks, tank trailers, railroad tank cars, and marine tank vessels.

“Department” means the New Jersey Department of Environmental Protection.

“Distillates of air” means helium (He), nitrogen (N₂), oxygen (O₂), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO₂).

“Domestic treatment works” means a publicly or privately owned treatment works and includes a treatment works processing primarily domestic wastes together with any ground water, surface water, storm water, or industrial process wastewater that may be present.

“Domestic waste” means waste derived from humans, animals, households, restaurants, cafeterias, hotels, hospitals, markets, and similar installations.

“Dry cleaning equipment” means equipment, located at a commercial establishment, used for cleaning textiles or garments, in which the cleaning agent is a chemical or petroleum solvent.

“Dump” means a land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors and scavengers.

“Effective stack height” means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

“Effluent limitation” means any restriction on quantities, quality, discharge rates, concentration of chemical, physical, thermal, biological, or other constituents of a pollutant. This term shall have the same meaning as defined for the term “effluent limitation” at N.J.A.C. 7:14A-1.9.

“Emergency” means any situation which arises from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emissions limitation set forth in its preconstruction permit and certificate in effect. This term shall not include non-compliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

“Emissions” means any air contaminant or category of air contaminants discharged directly or indirectly into the outdoor atmosphere.

“Emissions unit” means any part of activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under 42 U.S.C. § 7412(b).

“Emit” means to cause or release emissions.

“Environmental improvement pilot test” means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

“EPA” means the United States Environmental Protection Agency.

“Equipment” means any device capable of causing the emission of an air contaminant, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

“Facility” means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons.

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5.

“Farm” means any land which meets the eligibility requirements of the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 et seq.) for land deemed in agricultural use.

“Federally enforceable” means any limitation or condition on operation, production, or emissions which can be enforced by the EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60 or promulgated under 42 U.S.C. § 7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;
3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or
4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any pre-construction permit and certificate issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

“Gasoline dispensing facility” means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

“General permit” means a type of standardized permit and certificate, issued by the Department under N.J.A.C. 7:27-8.8.

“Graphic arts operation” means the application of one or more surface coating formulations non-uniformly across a surface, using one or more printing units, together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

“Greenhouse gas” means any of the following: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), any hydrofluorocarbon (HFC), and sulphur hexafluoride (SF₆).

“Group 1 TXS” means an air contaminant that is found on the list of Group 1 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of June 12, 1998, the following is the complete list of Group 1 TXS: Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide; 1,4-Dioxane), Ethylenimine (Aziridine), 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), and Trichloroethylene (Trichlorethene).

“Group 2 TXS” means an air contaminant that is found on the list of Group 2 TXS at N.J.A.C. 7:27-17.3, which is incorporated by reference herein, together with all amendments and supplements. As of June 12, 1998, the following is the complete list of Group 2 TXS: Methylene chloride (Dichloromethane), 1,1,1-Trichloroethane (Methyl chloroform).

“HAP” or “hazardous air pollutant” means any air pollutant listed in or pursuant to subsection (b) of section 112 of the Federal Clean Air Act (42 U.S.C. § 7412).

“Hazardous waste” means those materials defined as hazardous waste under N.J.A.C. 7:26-8.

“Hazardous waste landfill” means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

“Identical” means, in relation to the replacement of equipment or control apparatus, that the equipment or

control apparatus is of the same type and size as the equipment or control apparatus being replaced, and is used in the same process, with the same materials.

“Incinerator” means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment.

“Indirect emissions” means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.

“Insignificant source” means, for the purposes of this subchapter, equipment or control apparatus that does not need a permit and certificate under N.J.A.C. 7:27-8.2.

“Install” or “installation” means to carry out final setup activities necessary to provide equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, connection of equipment or control apparatus, associated utilities, piping, ductwork or conveyor systems. This term does not include construction, as defined above, nor the reconfiguration of equipment or control apparatus to an alternate configuration specified in a permit application and approved by the Department. This term includes relocation of existing equipment or control apparatus.

“Intermediate product” means one or more desired result(s) of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term “intermediate product” at N.J.A.C. 7:1K-1.5.

“Laboratory operations” means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations.

“Land treatment facility” means a facility, or part of a facility, at which waste is applied onto or incorporated into the soil surface so as to change the physical, chemical, or biological characteristics or composition of the waste.

“Liquid particles” means particles which have volume but are not of rigid shape.

“MACT standard” or “Maximum Achievable Control Technology standard” means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. § 7412; or
2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. § 7412(g) or (j).

“Major facility” means a facility which has the potential to emit any of the air contaminants listed below in an amount which is equal to or exceeds the applicable major facility threshold level given below. The major facility threshold levels are as follows:

<u>Air Contaminant</u>	<u>Major Facility Threshold Level</u>
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxides	100 tons per year
NO _x	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year
Any other air contaminant	100 tons per year

“Manufacturing process” means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

“Modify” or “modification” means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of actual emissions of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. Also, for the purposes of this definition, “air contaminant” shall have the meaning of “category of air contaminants” in a case where the regulatory limit is placed on a grouping of contaminants (such as VOCs) rather than on a single species of contaminant.

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

“Nonattainment area” means any area identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard.

“Non-commercial fuel” means solid, liquid or gaseous fuel not normally produced or manufactured, and sold for the purpose of creating useful heat.

“Nonproduct output” or “NPO” means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. NPO includes fugitive releases. This term shall have the same meaning as defined for the term “nonproduct output” at N.J.A.C. 7:1K-1.5.

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

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

“112(r) contaminant” means an air contaminant that is listed by EPA pursuant to 42 U.S.C. § 7412 as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

“Operating certificate” or “certificate” means a certificate issued by the Department under this subchapter to authorize operation of equipment or control apparatus, pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

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

“Operational parameter” means a measurable characteristic of the operation of a piece of equipment or control apparatus.

“Order” means any and all orders issued by the Department including, but not limited to, Administrative Orders, and Administrative Consent Orders.

“Particles” means any material, except uncombined water, which exists as liquid particles or solid particles at standard conditions.

“Performance test” means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

“Periodic compliance inspection” means any compliance inspection carried out in accordance with a schedule includ-

ed in the conditions of approval of a permit or certificate. This term does not include a compliance inspection which the Department may carry out as part of its consideration as to whether to approve or renew an operating certificate.

“Permit” means a preconstruction permit as defined in this section.

“Permit revision” means a change made to a permit and certificate under N.J.A.C. 7:27-8.18, Permit revisions.

“Permittee” means, for the purpose of this subchapter, any person to whom the Department has issued a permit or certificate pursuant to this subchapter.

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

“Plume rise” means the vertical distance from the point at which an effluent stream is discharged into the outdoor atmosphere to the highest point attained by the center line of the effluent stream.

“PM-10” means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

“Pollution Prevention Assessment” means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term “Pollution Prevention Assessment” at N.J.A.C. 7:1K-1.5.

“Pollution Prevention Plan” means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term “Pollution Prevention Plan” at N.J.A.C. 7:1K-1.5.

“Pollution prevention process modification” means any physical or operational change to a process which reduces air contaminant emissions to the environment. This definition is solely for purposes of at risk construction or operation in accordance with N.J.S.A. 26:2C-9.4 and this subchapter and shall not be deemed to amend or otherwise affect the definition of “pollution prevention” set forth in the New Jersey Pollution Prevention Act at N.J.S.A. 13:1D-37.

“Potential to emit” means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, source-related fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

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

“Private entity” means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include any municipal, county, or State agency or authority or any agency, authority or subdivision created by any municipal, county or State government.

“Process material testing” means the testing of any solid, liquid, or gaseous substance involved in a manufacturing process or other operation. This term includes, but is not limited to, fuel and other feed material, process intermediates, products, by-products, and wastes, but excludes any source emission testing.

“Process unit” means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of making reconstruction determinations. Product recovery equipment shall be considered to be part of the process unit, not part of the control apparatus.

“Product” means one or more desired result(s) of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator. This term shall have the same meaning as defined for the term “product” at N.J.A.C. 7:1K-1.5.

“Production process” means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques, used to produce a product or reach a planned result. This term shall have the same meaning as defined for the term “production process” at N.J.A.C. 7:1K-1.5.

“PSD” or “prevention of significant deterioration” means the permitting process defined in 40 CFR Part 52, which applies to new or modified major sources located in areas which are in attainment of the national ambient air quality standards for at least one air contaminant.

“Publicly owned treatment works” (POTW) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a “State or municipality.” This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

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

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

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

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

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

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

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

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

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

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

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

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

“Significant source operation” or “significant source” means, for the purposes of this subchapter, equipment or control apparatus that requires a permit and certificate under N.J.A.C. 7:27-8.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Surface impoundment” or “impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

“Surface stripping” means the removal of paints and other coatings from the surface of materials.

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

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

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

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

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

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

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

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

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC-31)

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

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

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

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OCH₃)

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

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OC₂H₅)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

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

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

Substantially amended.

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

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

Definitions added and technical revisions made.

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

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

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

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

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

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

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

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

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

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

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

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

Administrative Correction.

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

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

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

Rewrote the section.

Administrative change.

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

Case Notes

Temporary operating certificate was license entitling operator to hearing prior to nonrenewal. New Jersey Dept. of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J.Super. 591, 575 A.2d 895 (A.D.1990).

7:27-8.2 Applicability

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

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

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

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

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

(c) The following equipment and control apparatus, if it emits air contaminants, requires a preconstruction permit and an operating certificate:

1. Commercial fuel burning equipment with a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber;

2. Equipment which has the potential to emit any Group 1 or Group 2 TXS (or a combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

3. Dry cleaning equipment;

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

- i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;
 - ii. A heated open top surface cleaner;
 - iii. A conveyORIZED surface cleaner; or
 - iv. A stationary spray cleaning or surface stripping operation using one half gallon or more of cleaning solution in any one hour;
5. Equipment used in a graphic arts operation which includes newspaper, lithographic, gravure, flexographic, letterpress and screen printing, in which the quantity of ink, fountain solution, or cleaning material used by a source in any one hour is equal to or greater than one half gallon;
6. Any tank or vessel which has a capacity of more than 100 gallons and which is used:
- i. In etching, pickling, or plating; or
 - ii. In chromium electroplating or chromium anodizing;
7. A transfer operation involving gasoline or other VOCs regulated under N.J.A.C. 7:27-16.3 or 16.4, or a marine tank vessel loading or ballasting operation regulated under N.J.A.C. 7:27-16.5, if the operation is required to have a control device other than bottom fill or submerged fill;
8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air;
9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of a VOC or mixture of VOCs having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1.0 millimeters of mercury) or greater at standard conditions;
10. Tanks, reservoirs, containers and bins which have a capacity in excess of 2,000 cubic feet and which are used for the storage of solid particles;
11. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which emissions occur;
12. Equipment used in a surface coating operation including, but not limited to, spray and dip painting, roller coating, and electrostatic depositing, in which the quantity of coating or cleaning material used by a source in any one hour is equal to or greater than one half gallon of liquid;
13. Any equipment used for the burning of noncommercial fuel, crude oil or process by-products in any form;
14. An incinerator, except an incinerator exempted under (d)9 below;
15. Equipment which is used for treating groundwater, industrial waste water, or municipal wastewater with a solids content of less than two percent by weight as it enters the equipment (typical operations performed by this type of equipment include, but are not limited to, air stripping, aeration, digestion, thickening, flocculating, surface impounding, and dewatering), if the equipment does either of the following:
- i. Treats or handles influent which has one or both of the following:
 - (1) A total concentration of VOCs and Group 2 TXS in the influent of 3,500 parts per billion by weight (ppbw) or more; or
 - (2) A total Group 1 TXS concentration in the influent of 100 ppbw or more; or
 - ii. Discharges more than 50 pounds per hour of sludge. For the purposes of this paragraph, wastewater with a solids content of two percent by weight or greater is considered sludge;
16. Equipment used for treating waste soils or sludges, including municipal solid wastes, industrial solid wastes, or recycled materials, if the influent to the equipment has a solids content of two percent by weight or greater. Typical operations performed by this type of equipment include, but are not limited to, soil cleaning, composting, pelletizing, grit classifying, drying, and transfer station operations. However this shall not include an area used as a temporary storage area, such as a concrete pad or a roll-off container, provided that the area is not also used for treatment;
17. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility, directly or indirectly into the outdoor atmosphere including, but not limited to, any transfer station, recycling facility, or municipal solid waste composting facility;
18. Any control apparatus serving equipment for which a permit and certificate is required pursuant to this section; and
19. Equipment in which the combined weight of all raw materials used, excluding air and water, exceeds 50 pounds in any one hour, except for equipment excluded from permit requirements under (c)3 through 18 above.
- (d) Even if a source is listed in (c) above, it does not need a permit and certificate if it is:
1. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

2. Storage tanks, reservoirs, containers, or bins used on any farm for the storage of agricultural commodities produced by or consumed in the farm's own operations. This exemption does not include storage tanks, reservoirs, containers or bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production;

3. Equipment or control apparatus located at a facility with an operating permit issued under N.J.A.C. 7:27-22. Until the operating permit is issued, however, the equipment and control apparatus remain subject to this subchapter;

4. Aeration basins, lagoons and settling basins at publicly owned treatment works or domestic treatment works;

5. Equipment which is used for the sole purpose of wood working by sanding, drilling, cutting or planing, unpainted wood or wood products, and which vents solely into a room;

6. Hand held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood,

metal or plastic. For the purposes of this subsection, "hand held" means "can reasonably be carried by one person";

7. Equipment at a battery charging station, except at a battery manufacturing plant;

8. A source used in any of the following, if the source is not part of a production process:

i. The activities of maintenance shops, such as welding, gluing, and soldering, performed indoors or outdoors;

ii. A laundry operation that does not use dry cleaning processes, and which services uniforms or other clothing which is used at the facility;

iii. Architectural maintenance activities conducted to take care of the buildings and structures at a facility, including repainting, reroofing, and sandblasting; and

iv. Food preparation to service facility cafeterias and dining rooms;

9. An incinerator which serves a one or two family dwelling; or which serves a multi-occupied dwelling containing six or fewer family units, one of which is occupied by the owner of the dwelling; and

10. A source which:

i. Was in operation prior to the date that sources of its kind were first subject to permit requirements under this subchapter;

ii. Has not been reconstructed or modified since that date; and

iii. Is still operable.

(e) Although an insignificant source does not require a permit, emissions information from an insignificant source may be required on an application under N.J.A.C. 7:27-8.4 if the insignificant source vents to a control device, stack or chimney which also serves a significant source.

(f) A permit and certificate are not required for equipment, control apparatus, or a source operation at a facility which is covered by a facility-wide permit issued by the Department pursuant to N.J.S.A 13:1D-35 et seq. However, the holder of the facility-wide permit must comply with N.J.A.C. 7:27-8.27, Special facility-wide permit provisions.

(g) This subchapter shall not preclude the owner or operator of a facility from voluntarily obtaining a preconstruction permit and operating certificate for a source not otherwise required to obtain a permit.

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

See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).

Substantially amended.

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

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

Heading changed from "Permits and certificates required" to "Applicability".

Clarification of types of equipment and control apparatus reported in permit and certificate process.

Added (a)17(b)1 and 2.

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).

VOC parameters added at (a)9 and (a)15i.

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

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

Administrative change in (a)15.

See: 26 N.J.R. 4184(a).

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

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

Rewrote the section.

Case Notes

Orders to cease violation in failure to obtain a permit and certificate to install and operate furnace boosting equipment were upheld. *Midland Glass Co., Inc. v. Dept. of Environmental Protection*, 136 N.J. Super. 194, 345 A.2d 353 (App.Div.1975), certification dismissed 70 N.J. 152, 358 A.2d 199 (1976).

Both "smog hog"/electrostatic precipitator and "Binks" spray booth were control apparatus requiring permits and operating certificates. *Affiliated Manufacturers, Inc. v. State of New Jersey*, 92 N.J.A.R.2d (EPE) 186.

7:27-8.3 General provisions

(a) No person may construct, reconstruct, install, or modify a significant source that is not covered by a permit and certificate without first obtaining a preconstruction permit under this subchapter.

(b) No person shall operate (nor cause to be operated) a significant source without a valid operating certificate.

(c) No permittee may take any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit, under any applicable provision at N.J.A.C. 7:27-8.17 through 8.23, without complying with that applicable provision.

(d) Any person holding a permit or certificate shall make said permit or certificate, together with any amendments, seven-day-notices, or other documents related to the permit and certificate, readily available for Department inspection on the operating premises.

(e) No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.

(f) A preconstruction permit or certificate shall not be transferable either from the location authorized in the preconstruction permit or certificate in effect to another location, or from any one piece of control apparatus or equipment to another piece of control apparatus or equipment.

(g) Once a permit and certificate is issued, the permittee is fully responsible for compliance with this subchapter and with the permit and certificate, including adequate design, construction, and operation of the source, even if employees, contractors, or others work on or operate the permitted source. If the Department issues any other requirement with the force of law, such as an order, which applies to the source, the permittee is also responsible for compliance with that requirement.

(h) Preconstruction permits and certificates issued under this subchapter do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.

(i) A person conducting only normal repair or maintenance of control apparatus or equipment, as defined at N.J.A.C. 7:27-8.1, need not comply with (a), (b) or (c) above.

(j) No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy. In determining whether an odor unreasonably interferes with the enjoyment of life or property, the Department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances.

(k) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 30.13(c), the permit must specifically allow such use.

(l) (Reserved)

(m) The Department and its representatives have the right to enter and inspect any facility or property in accordance with N.J.A.C. 7:27-1.31.

(n) There shall be an affirmative defense to liability for penalties for a violation of a preconstruction permit or certificate, occurring as a result of an equipment malfunction, an equipment startup, an equipment shutdown, or during the performance of necessary equipment maintenance. The affirmative defense shall be asserted and established as required by P.L. 1993, c.89 (adding N.J.S.A. 26:2C-19.1 through 2C-19.5) and any rules that the Department promulgates thereunder, and shall meet all of the requirements thereof. There shall also be an affirmative defense to liability for penalties or other sanctions for noncompliance with any technology based emission limitation in the preconstruction permit or certificate, if the noncompliance was due to an emergency as defined at N.J.A.C. 7:27-22.1, provided that the affirmative defense is asserted and established in compliance with 40 CFR 70.6(g) and meets all the requirements thereof.

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

See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).

Substantially amended.

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

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

Replaced (b) and (c). Added (j).

Clarification of procedural requirements for permit process.

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

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

New subsection (k) added.

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

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

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

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

Public Notice: Temporary enforcement response policy and permit amnesty program.

See: 26 N.J.R. 4225(b).

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

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

Rewrote the section.

Law Review and Journal Commentaries

New Rules Establish Clean Air Act Standards, 132 N.J.L.J. No. 8, S10 (1992).

State Operating Permits Bring Major changes to New Jersey's Air Pollution Control Program. Paul H. Schneider, Peter L. Benza, 160 N.J.Law. 20 (Mag.) (April 1994).

Case Notes

Temporary operating certificate was license entitling operator to hearing prior to nonrenewal. New Jersey Dept. of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J.Super. 591, 575 A.2d 895 (A.D.1990).

Orders to cease violation of failure to obtain a permit and certificate to install and operate furnace boosting equipment were upheld. Midland Glass Co., Inc. v. Dept. of Environmental Protection, 136 N.J.Super. 194, 345 A.2d 353 (App.Div.1975), certification dismissed 70 N.J. 152, 358 A.2d 199 (1976).

Permit requirement for structural changes. D.E.P. v. Midland Glass Co., 145 N.J.Super. 108, 366 A.2d 1343 (App.Div.1976), certification denied 73 N.J. 65, 372 A.2d 330 (1977).

Failure to fulfill stack testing conditions set forth in permits for asphalt plants warranted imposition of civil penalties. Department of Environmental Protection v. Hamilton, 95 N.J.A.R.2d (EPE) 63

Violations of Solid Waste Management Act warranted imposition of civil penalties totaling \$204,400. Department of Environmental Protection v. Standard Tank Cleaning, 95 N.J.A.R.2d (EPE) 31.

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

Storage of hazardous chemical and use of reactor without proper permit; penalty. Department of Environmental Protection, Div. of Environmental Quality v. Polymer Systems Corp., 93 N.J.A.R.2d (EPE) 133.

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

Both "smog hog"/electrostatic precipitator and "Binks" spray booth were control apparatus requiring permits and operating certificates. Affiliated Manufacturers, Inc. v. State of New Jersey, 92 N.J.A.R.2d (EPE) 186.

Use of temporary certificate application as emissions limitations under certificate was not improper; stack tests established violations. U.S. Intec., Inc. v. Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 167.

(e) If a notification of non-applicability is received by the Department after February 1, the Department is under no obligation to respond to the notification and may take enforcement action pursuant to N.J.A.C. 7:27A-3.10 if the facility does not submit an emission statement pursuant to this subchapter and the Department determines that the facility was required to do so.

New Rule, 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).

7:27-21.10 Severability

If any section, subsection, provision, clause or portion of this subchapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this subchapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

Recodified from 7:27-21.8 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).

SUBCHAPTER 22. OPERATING PERMITS

Authority

N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq.

Source and Effective Date

R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a),
26 N.J.R. 793(a), 26 N.J.R. 3943(b).

Cross References

Application of N.J.A.C. 7:27-18 to applications submitted pursuant to this subchapter, see N.J.A.C. 7:27-18.2.

Law Review and Journal Commentaries

Business-Friendly Regulators Ease Air Pollution Rules. Neale R. Bedrock. 139 N.J.L.J. No.8, S10 (1995).

State Operating Permits Bring Major changes to New Jersey's Air Pollution Control Program. Paul H. Schneider, Peter L. Benza, 160 N.J.Law. 20 (Mag.) (April 1994).

7:27-22.1 Definitions

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

“Accountable” means, in respect to compliance with an emissions limit, verifiable through the keeping, maintenance, and accessibility of clear, appropriately comprehensive, and reliable records.

“Actual emissions” means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified by the Department.

“Administrative amendment” means the type of change made at a facility, and incorporated into an operating permit, through the procedures for administrative amendments at N.J.A.C. 7:27-22.20.

“Administratively complete application” means an application which includes sufficient information for the Department to commence review of the application. This information shall include all of the information required by this subchapter for the type of application being submitted, submitted on or with forms obtained from the Department and in accordance with the instructions accompanying the application forms. To be complete, an application shall include all preconstruction permits issued for the facility as of the date of the operating permit application. An application which is administratively complete may require supplementary information in order for the Department to take final action on the application.

“Affected state” means, in respect to an application for an operating permit, operating permit renewal, minor modification, or significant modification, any state in the United States that:

1. Is contiguous to New Jersey; or
2. Is located within 50 miles of the facility which is the subject of the application.

“Affected Title IV facility” means a facility that includes one or more “affected units,” as that term is defined in the acid deposition control provisions (commonly known as “acid rain” provisions) of Title IV of the CAA, 42 U.S.C. § 7651 et seq. This term has the same meaning as the term “affected source” as defined in 40 CFR 70.

“Affected Title IV unit” has the same meaning as the term “affected unit” in the regulations promulgated by EPA under the acid deposition control program, set forth at Title IV of the CAA.

“Air contaminant” means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

“Air quality impact analysis” means a procedure entailing the use of air quality simulation modeling, for determining whether air contaminant emissions will result in ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

“Air quality simulation model” means a mathematical procedure, taking into account the dispersive capacity of the

atmosphere and other relevant factors, to predict the concentration of an air contaminant in the ambient air.

“Allowance” means an authorization granted to an affected Title IV unit by the EPA under acid deposition control requirements at Title IV of the CAA. The authorization allows the unit to emit one ton of SO₂ during or after a specified calendar year.

“Ambient air monitoring” means the measurement of concentrations of one or more air contaminants in the outdoor atmosphere.

“Applicable Federal requirement” means any of the following standards, provisions or requirements as they apply to any source operation in a facility which is subject to this subchapter. Applicable requirements include requirements that have been promulgated or approved by EPA through rulemaking but have future-effective compliance dates:

1. Any standard or other requirement provided for in New Jersey’s approved SIP (or FIP, if applicable), including any approved revisions;

2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I of the CAA, including Parts C or D;

3. Any NSPS or other standard or requirement under 42 U.S.C. § 7411 including 42 U.S.C. § 7411(d);

4. Any standard or other requirement concerning HAPs under 42 U.S.C. § 7412, including any requirement concerning accident prevention under 42 U.S.C. § 7412(r)(7);

5. Any standard or other requirement of the acid deposition control program under Title IV of the CAA or the regulations promulgated thereunder;

6. Any requirement established pursuant to the provisions for monitoring in Title V of the CAA at 42 U.S.C. § 7661c(b) or pursuant to the monitoring requirements at 42 U.S.C. § 7414(a)(3);

7. Any standard or other requirement governing solid waste incineration under 42 U.S.C. § 7429;

8. Any standard or other requirement for consumer and commercial products under 42 U.S.C. § 7511b(e);

9. Any standard or other requirement for marine tank vessels under 42 U.S.C. § 7511b(f);

10. Any standard or other requirement of the program to prevent or control the emission of air contaminants from outer continental shelf sources under 42 U.S.C. § 7627;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless EPA has determined that such a requirement need not be contained in an operating permit;

12. Any of the following, but only as it would apply to temporary facilities permitted pursuant to the provisions for temporary facilities at 42 U.S.C. § 7661c(e):

i. A NAAQS; or

ii. An increment under the PSD provisions at 42 U.S.C. § 7473; or

iii. A visibility requirement under 42 U.S.C. § 7491 or 7492.

“Applicable requirement” means any requirement which is an applicable State requirement or an applicable Federal requirement or both.

“Applicable State requirement” means any provision, standard or requirement in any statute or rule, as it applies to air contaminant emissions from a facility or source operation which is subject to this subchapter, except an applicable Federal requirement. This term includes requirements that have been promulgated by the Department and submitted to EPA as SIP revisions but have not yet been approved by EPA.

“Applicable VOC” means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.

“Application shield” means the protection from enforcement action set forth at N.J.A.C. 7:27-22.7.

“Area source” means, in respect to MACT and GACT standards, any stationary source of hazardous air pollutant that is not a major HAP facility.

“Attainment area” means any area of the State which is not a nonattainment area.

“BACT” or “best available control technology” has the meaning set forth for this term in the PSD regulations at 40 CFR 52.21.

“Banking” means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

“Carbon monoxide” or “CO” means a gas having a molecular composition of one carbon atom and one oxygen atom.

“Category I” means the class of modification application for the following types of significant source operations:

1. Any gasoline vapor recovery system constructed, installed, or operated at any gasoline dispensing facility; this does not include gasoline vapor recovery systems at bulk terminals;

2. Any woodworking equipment including, but not limited to, saws, planers, and sanders, that has particulate control apparatus which achieves a minimum collection efficiency of 99 percent, and the particulate control apparatus serving the equipment;

3. Any metal working equipment including, but not limited to, welders, grinders, and drill presses, that has particulate control apparatus that achieves a minimum collection efficiency of 99 percent, and the particulate control apparatus serving the equipment.

4. Fossil fuel burning equipment used only for the **burning** of liquid or gaseous commercial fuel and having a designed heat input rate of less than 10 million BTU per hour; this does not include any equipment used for the burning of coal or other solid fuel, non-commercial fuel, crude oil or process by-products in any form;

5. Stationary storage tanks which have a capacity of less than 20,000 gallons and which are used for the storage of liquid substances and any control apparatus serving such tanks; this does not include any tank used to store a substance which is a TXS;

6. Emergency diesel generators with less than 10 megawatts of electrical output that operate less than 500 hours per year;

7. Any tank, reservoir, container or bin that is used for the storage of solid particles and has particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any tank, reservoir, container or bin that is used for the storage of any TXS;

8. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any equipment used to handle any material which is a TXS;

9. Any paint spray operation or other surface coating operation that has particulate control and that uses less than one half gallon of paint per hour and the particulate control apparatus serving the spray booth; this does not include any paint spray operation or surface coating operation which emits any TXS;

10. Any enclosed sandblasting equipment that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;

11. Any plastics grinding equipment; and

12. Any open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

“Category II” means the class of modification application for any type of significant source operation except those types which are defined above as belonging to Category I.

“CFR” means the United States Code of Federal Regulations.

“Chemical Abstract Service number” or “CAS number” means a number assigned to a chemical by the American Chemical Society’s Chemical Abstract Service Registry.

“Class I substance” means an air contaminant that is listed in 42 U.S.C. § 7671a(a), or promulgated by EPA in a Federal rule, as a substance that has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer.

“Class II substance” means an air contaminant that is listed in 42 U.S.C. § 7671a(b), or promulgated by EPA in a Federal rule, as a substance that is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

“Clean Air Act” or “CAA” or “Federal Clean Air Act” means the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., and any subsequent amendments or supplements to that act.

“Commercial fuel” means solid, liquid, or gaseous fuel normally produced or manufactured, and sold for the purpose of creating useful heat.

“Compliance plan” means a plan meeting the requirements of N.J.A.C. 7:27-22.9, which is developed and submitted as part of an application for an operating permit, renewal, or significant modification.

“Compliance schedule” means the portion of a compliance plan which fulfills the requirements of N.J.A.C. 7:27-22.9(c)5ii.

“Construct” or “construction” means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used, but shall not include the dismantling of existing equipment or control apparatus, site preparation, or the ordering, receiving, temporary storage, or installation of equipment or control apparatus. Unless otherwise prohibited by federal law, this term shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used.

“Construction of a major HAP facility” means, when used at N.J.A.C. 7:27-22.26, the fabrication (on site), erection, or installation of a new major HAP facility, or the fabrication (on site), erection, or installation of a new source operation at an existing facility if the new construction in and of itself constitutes a major HAP facility.

“Consumer Price Index” or “CPI” means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

“Continuous data recorder” means a mechanism which continuously records the information gathered by a CEM, CPM, COM, or other continuous measurement device.

“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.

“Control apparatus” means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

“Co-product” means one or more incidental results of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered nonproduct output. Increases in quantities of co-products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term “co-product” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-5 shall control.

“Criteria pollutant” means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a NJAAQS has been promulgated at N.J.A.C. 7:27-13.

“Designated Title IV representative” means a responsible natural person authorized by the owners and operators of an affected Title IV facility and of all affected units at the Title IV facility, as evidenced by a certificate of representation submitted to EPA in accordance with Subpart B of 40 CFR Part 72, and to the Department, to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Federal Acid Rain Program. Whenever the term “responsible official” is used in this subchapter with regard to any matter under the federal Acid Rain Program, it shall be deemed to refer to the “designated Title IV representative.”

“DOT” means the New Jersey Department of Transportation.

“Draft general operating permit” means the version of a general operating permit which is developed by the Department and released for public input and an opportunity for a public hearing pursuant to N.J.A.C. 7:27-22.11. After receiving and considering the comments on the draft general operating permit, the Department will develop a proposed general operating permit for submittal to EPA for approval prior to issuing a final general operating permit.

“Draft operating permit” means the version of an operating permit which is developed by the Department after the Department’s receipt of an administratively complete application, and released for public comment and an opportunity for a public hearing pursuant to N.J.A.C. 7:27-22.11. After receiving and considering the comments on the draft operating permit, the Department will develop a proposed operating permit for submittal to EPA for approval prior to issuing a final operating permit.

“Effective stack height” means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

“Emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of a facility, such as an act of God, which requires immediate corrective action to restore normal operation, and which causes the facility, due to unavoidable increases in emissions attributable to the emergency to exceed a technology-based emission limitation set forth in its operating permit. This term shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

“Emission fee” means an annual fee that is based on the emissions of any regulated air contaminant.

“Emission statement” means an annual reporting of actual emissions of air contaminants as prescribed by the Department at N.J.A.C. 7:27-21.

“Emission statement year” means the reporting period required by the emission statement rules at N.J.A.C. 7:27-21. The reporting period runs from December 1 through November 30. Each emission statement year is designated according to the calendar year in which 11 of the 12 months of the reporting period fall. For example, the period from December 1, 1998 through November 30, 1999 is emission statement year 1999, for which an emission statement submission is due in April 2000.

“Emissions” means any air contaminant or category of air contaminants discharged directly or indirectly into the atmosphere.

“Emissions cap” means an emissions limit, or limits, established in a permit for a group of source operations, which establishes the maximum quantity of emissions which **may be released**, in the aggregate, from a specified group of source operations.

“Enforceable” means, in respect to an emissions limit, based on sufficient statutory and regulatory authority to be recognized in a court of law.

“Environmental improvement pilot test” means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

“Equipment” means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

“Exempt activity” means one of the following:

1. Source operations which have no potential for emitting any air contaminant, including but not limited to:
 - i. Stationary storage tanks which are used for the storage of water or distillates of air; and
 - ii. Enclosed stationary material handling equipment using pneumatic, bucket or belt conveying systems from which no emissions of air contaminants occur;
2. Any of the following activities, if the activity supports the one or more production processes of the facility, and does not itself constitute a facility production process or a part thereof:
 - i. Office activities and the equipment and implements used therein, such as typewriters, printers, and pens;

- ii. Interior maintenance activities and the equipment and supplies used therein, such as janitorial cleaning products and air fresheners; this does not include any cleaning of production equipment;

- iii. Bathroom and locker room ventilation and maintenance;

- iv. Copying and duplication activities for internal use and for support of office activities at the facility;

- v. The activities of maintenance shops, such as welding, gluing, and soldering, performed indoors or outdoors;

- vi. First aid or emergency medical care provided at the facility, including related activities such as sterilization and medicine preparation;

- vii. Laundry operations that service uniforms or other clothing used at the facility;

- viii. Architectural maintenance activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing, and sandblasting;

- ix. Exterior maintenance activities conducted to take care of the grounds of the facility, including lawn maintenance;

- x. Food preparation to service facility cafeterias and dining rooms;

- xi. The use of portable space heaters which reasonably can be carried and relocated by an employee; and

- xii. Any laboratory hood used for research and development, quality assurance and quality control testing and sampling activities;

3. The engine of any vehicle, including but not limited to any marine vessel, aircraft, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment;

4. Storage tanks, reservoirs, containers, or bins used on any farm for the storage of agricultural commodities produced by or consumed in the farm's own operations. This does not include storage tanks, reservoirs, containers or bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production;

5. Potable water treatment equipment, not including air stripping equipment;

6. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions; or

7. Equipment which is used for the sole purpose of woodworking by sanding, drilling, cutting or planing, un-

painted wood or wood products, and which vents into a room.

“Existing facility” means a facility which is in operation as of the applicable date of the provision for which this term is being used.

“Facility” means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons. Research and development facilities that are located with other facilities shall be considered separate and independent entities for the purposes of complying with the operating permit requirements of N.J.S.A. 26:2C-1 et seq., or any codes, rules, or regulations adopted pursuant thereto.

“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

“Federally enforceable” means any limitation or condition on operation, production, or emissions that can be enforced by EPA. These limitations and conditions that can be enforced by EPA include, but are not limited to, those established pursuant to:

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60, or promulgated under 42 U.S.C. § 7411;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;
3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or
4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any pre-construction permit and certificate issued pursuant to N.J.A.C. 7:27-8 or any operating permit issued pursuant to N.J.A.C. 7:27-22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

“Federal Implementation Plan (FIP)” means a plan, or portion thereof, promulgated by EPA pursuant to the CAA to address or otherwise correct all or a portion of an inadequacy in a SIP.

“Final general operating permit” means the version of the general operating permit issued by the Department after completion of the procedures required by this subchapter for a draft general operating permit and a proposed general operating permit.

“Final operating permit” means the version of an operating permit issued by the Department after completion of the procedures required by this subchapter for a draft operating permit and a proposed operating permit.

“Fiscal year” or “FY” means the period from July 1 through June 30. Each fiscal year is designated according to the calendar year in which the end of the period falls. For example, the period from July 1, 1998 through June 30, 1999 is fiscal year 1999, or FY99.

“Fugitive emissions” means any air contaminant emissions released directly or indirectly into the outdoor atmosphere which can not reasonably pass through a stack or chimney.

“GACT standard” or “Generally Available Control Technology standard” means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of area sources that emit hazardous air pollutants (HAPs), which NESHAP has been promulgated by EPA pursuant to 42 U.S.C. § 7412.

“General operating permit” means a standardized operating permit, which may be used to provide authorization to operate numerous similar source operations, groups of source operations, or facilities, each of which meets the applicability criteria set forth in the general operating permit, and is issued pursuant to the procedures in N.J.A.C. 7:27-22.14.

“Grandfathered” means, in reference to equipment or control apparatus, that construction, reconstruction, or modification occurred prior to the enactment of N.J.S.A. 26:2C-9.2 on June 15, 1967, or prior to the subsequent applicable revisions to rules and regulations codified at N.J.A.C. 7:27-8 that occurred March 5, 1973, June 1, 1976, April 5, 1985, and October 31, 1994, and no construction, reconstruction or modification of the equipment or control apparatus has occurred since.

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

“Initial operating permit” means the first operating permit issued pursuant to this subchapter which applies to a particular facility, or a portion thereof.

“Insignificant source operation” means a source operation which is one of the types of source operations set forth in paragraphs 1, 2, 5, 6, 7, 8, 9, 11, 14, 16, 17, or 18, in the definition of “significant source operation,” and which is smaller than, or has a lower production rather than, specified in the applicability levels for significant source operations.

“Install” or “installation” means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, duct work or conveyor systems. This term does not include the construction or reconfiguration of equipment or control apparatus to an alternate configuration specified in the permit application and approved by the Department.

“Intermediate product” means one or more desired results of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals. This term shall have the same meaning as defined for the term “intermediate product” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

“Lowest achievable emission rate” or “LAER” has the meaning assigned to this term at N.J.A.C. 7:27-18.1.

“Lead” or “Pb” means elemental lead or any compound containing lead measured as elemental lead.

“MACT standard” or “Maximum Achievable Control Technology standard” means a National Emission Standard for a Hazardous Air Pollutant (NESHAP) establishing an emission limitation for a specific category or subcategory of facilities which emit one or more hazardous air pollutants (HAPs), which NESHAP is:

1. Promulgated by EPA pursuant to 42 U.S.C. § 7412; or
2. Determined by the Department on a case-by-case basis pursuant to 42 U.S.C. § 7412(g) or (j).

“Major facility” means a facility which constitutes a major source, as defined by EPA at 40 CFR § 70.2 or any subsequent amendments thereto, and that has the potential to emit any of the air contaminants listed below in an amount that is equal to or exceeds the applicable major facility threshold level. The major facility threshold levels are as follows:

<u>Air Contaminant</u>	<u>Major Facility Threshold Level</u>
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year
Any other air contaminant	100 tons per year

“Major Hazardous Air Pollutant (HAP) facility” means a major facility, or part thereof, which emits or has the potential to emit:

1. Ten tons or more per year of any HAP;
2. Twenty five tons or more per year of any combination of HAPs; or
3. Such lesser quantity, or different criterion, as the EPA may establish by rule.

“Manufacturing process” means any action, operation, or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, and absorbers.

“Maximum allowable emissions” means, for the purpose of this subchapter, the maximum amount of an air contaminant allowed to be emitted, as specified in the final operating permit issued by the Department.

“Minor modification” means a change made at a permitted facility in accordance with N.J.A.C. 7:27-22.23.

“Modification of a major HAP facility” means, when used at N.J.A.C. 7:27-22.26, any physical change in, or change in the method of operation of, a major HAP facility, which:

1. Increases the facility’s actual emissions of any HAP by more than an amount established by EPA as de minimis for that HAP at 40 CFR 63; or
2. Results in the emission of any HAP not previously emitted, in more than the amount established by EPA as de minimis for that HAP at 40 CFR 63.

“Modify” or “modification” means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of actual emissions of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. A modification

may be incorporated into an operating permit through a significant modification, a minor modification, or a seven-day-notice change.

“Monitoring” means to evaluate a facility’s processes, operations, emissions or other aspects over a period of time. Monitoring can be accomplished using CEMs, COMs, CMS, CPMs, or other measurement or evaluation mechanisms.

“National ambient air quality standard” or “NAAQS” means an ambient air quality standard promulgated at 40 CFR 50.

“NESHAP” means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 63 and 61.

“New facility” means a facility which has not commenced operation as of the applicable date of the provision for which this term is being used.

“New Jersey ambient air quality standard” or “NJAAQS” means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

“Nonattainment area” means any area of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds a NAAQS or NJAAQS; or
2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

“Nonproduct output” or “NPO” means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. Nonproduct output includes fugitive releases. This term shall have the same meaning as defined for the term “nonproduct output” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

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

“Operating certificate” or “certificate” means a “Certificate to Operate Control Apparatus or Equipment” issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., and in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8. An operating certificate is generally issued for new or altered equipment at non major facilities for which operating permits are not required and for new or altered equipment at major facilities which are not yet required to have a final operating permit.

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

“Operating scenario” means a plan for operating a facility or a portion thereof in a way, or according to a method, or using methods or processes, which are different from other methods or processes used at the facility, or portion thereof. An operating scenario may be incorporated into a permit through issuance of an initial operating permit, minor modification, significant modification, or authorized through a seven-day-notice.

“Order” means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

“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.

“Permittee” means, for the purpose of this subchapter, any person to whom the Department has issued an operating permit.

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

“Phase I” means a time period designated pursuant to the Title IV acid deposition control program as commencing January 1, 1995, and ending December 31, 1999.

“Phase II” means a time period designated pursuant to the Title IV acid deposition control program as commencing January 1, 2000, and continuing indefinitely.

“PM-10” means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to 10 micrometers.

“Pollution Prevention Assessment” means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term “Pollution Prevention Assessment” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

“Pollution Prevention Plan” means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term “Pollution Prevention Plan” at N.J.A.C. 7:1K-1.5.

“Potential to emit” means the same as that term is defined by the EPA at 40 CFR § 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

“Preconstruction permit” means a “Permit to Construct, Install, or Alter Control Apparatus or Equipment” issued by the Department pursuant to N.J.S.A. 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9.2, and implementing rules at N.J.A.C. 7:27-8.

“Prevention of significant deterioration” or “PSD” means the permitting process, set forth at 40 CFR 52.21, which applies to new or modified major emitting facilities located in attainment areas. The EPA has delegated the administration of the PSD program in New Jersey to the Department.

“Process unit” means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of making reconstruction determinations. Product recovery equipment shall be con-

sidered to be part of the process unit, not part of the control apparatus.

“Product” means one or more desired results of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator. This term shall have the same meaning as defined for the term “product” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

“Production process” means a process, line, method, activity or technique, or a series or combination of processes, lines, method or techniques, used to produce a product or reach a planned result. This term shall have the same meaning as defined for the term “production process” at N.J.A.C. 7:1K-1.5.

“Proposed general operating permit” means the version of a general operating permit which is developed by the Department pursuant to N.J.A.C. 7:27-22.12, after receipt and consideration of public comments on the draft general operating permit. The Department forwards the proposed general operating permit to EPA for review, pursuant to the procedures at N.J.A.C. 7:27-22.12, prior to the issuance by the Department of the final general operating permit.

“Proposed operating permit” means the version of an operating permit which is developed by the Department pursuant to N.J.A.C. 7:27-22.12, after receipt and consideration of public comments on the draft operating permit. The Department forwards the proposed operating permit to EPA for review, pursuant to the procedures at N.J.A.C. 7:27-22.12 prior to the issuance by the Department of the final operating permit.

“Quantifiable” means measurable with an acceptable degree of accuracy and reliability.

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

“Raw material” means any input to a significant source operation, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds, and elemental substances.

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

1. Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit; or,

if it is part(s) of control apparatus that is being replaced, 50 percent of the fixed capital cost that would be required to construct comparable new control apparatus; and

2. \$80,000, in 1995 dollars, adjusted by the Consumer Price Index (CPI).

“Reconstruction of a major HAP facility” means, when used at N.J.A.C. 7:27-22.26, the replacement of components at a facility to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to replace the facility at which the components are being replaced.

“Regulated air contaminant” means the same as the term “regulated air pollutant” as defined by EPA at 40 CFR § 70.2 or any subsequent amendments thereto.

“Renewal” means the procedure set forth at N.J.A.C. 7:27-22.30 by which an applicant may seek reissuance of an operating permit prior to its expiration date.

“Replace” means, in respect to equipment or control apparatus, to remove equipment or control apparatus and place or install a different piece of equipment or control apparatus at the same location and at the same point in the manufacturing process, provided that the newly placed equipment or control apparatus serves the same function, in the same manner.

“Replicable procedure” means a procedure, including any sampling, source emissions testing, or other monitoring procedure, which gives the same result when administered on a different occasion or by a different person.

“Research and development facility” means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

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

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

“Seven-day notice change” means, for the purpose of this subchapter, a change made at a facility covered by an operating permit in accordance with N.J.A.C. 7:27-22.22.

“Shutdown” means to discontinue use of a process, piece of equipment, control apparatus, or a source operation.

“SIC code” means the Standard Industrial Classification code, assigned by the United States Office of Management and Budget, which classifies establishments according to the type of economic activity in which they are engaged. An SIC manual is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

“Significant modification” means a change made at a facility covered by an operating permit and incorporated into the operating permit in accordance with N.J.A.C. 7:27-22.24.

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

“Significant source operation” means any source operation which is one of the following:

1. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;
2. All unheated open top surface cleaners having a top opening of greater than six square feet (0.56 square meters);
3. All heated open top surface cleaners;
4. All conveyORIZED surface cleaners;
5. Equipment, in addition to that set forth in paragraph 2, 3, and 4 above, used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of any air contaminant occur from a tank or vessel, the capacity of which is in excess of 100 gallons;
6. Equipment, used in a process, other than as set forth in paragraphs 1, 2, 3, 4, and 5 above, from which direct or indirect emissions of any air contaminant occur and in which the combined weight of all raw materials, excluding air and water introduced into any one source operation is in excess of 50 pounds in any one hour;
7. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air, not including a storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

8. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of VOC having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (one millimeter of mercury) or greater at standard conditions, not including a storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

9. Tanks, reservoirs, containers and bins which have a capacity in excess of 2,000 cubic feet and which are used for the storage of solid particles;

10. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which direct or indirect emissions of air contaminants occur;

11. Commercial fuel burning equipment having a heat input rate of 1,000,000 BTU per hour or greater to the burning chamber;

12. Any equipment used for the burning of noncommercial fuel, crude oil or process by-products in any form;

13. Any incinerator, except incinerators constructed, installed or used in one or two-family dwellings or in multi-occupied dwellings containing six or less family units, one of which is owner occupied;

14. Any waste or water treatment equipment which may emit air contaminants including, but not limited to, air stripping equipment, aeration basins, surface impoundments, lagoons, sludge tanks, dewatering equipment, soil cleaning equipment, conveying equipment, digesters, thickeners, flocculators, driers, fixation equipment, composting equipment, pelletizing equipment and grit classifying equipment. For water treatment equipment, the concentration in the water of any TXS must equal or exceed 100 parts per billion by weight or the total concentration in the water of VOC must equal or exceed 3,500 parts per billion by weight;

15. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility, directly or indirectly into the outdoor atmosphere including, but not limited to, any transfer station, recycling facility, or municipal solid waste composting facility;

16. Any source operation which has the potential to emit any TXS at a rate greater than 0.1 pounds per hour (45.4 grams per hour);

17. Any equipment required to have air pollution control apparatus pursuant to any applicable provision of N.J.A.C. 7:27-16;

18. Newspaper printing equipment from which direct or indirect emissions of air contaminants occur and in which the quantity of coating material used in any source operation is equal to or greater than one half gallon in any one hour.

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

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

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

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

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

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

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

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

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

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

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

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

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

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

chlorodifluoromethane (HCFC-22)

trifluoromethane (HFC-23)

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

chloropentafluoroethane (CFC-115)

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

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

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

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

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

pentafluoroethane (HFC-125)

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC-32)

ethylfluoride (HFC-161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC-31)

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

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

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

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

Administrative correction

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

Amended by R.1995 d.492, effective September 5, 1995 (operative October 8, 1995).

See: 27 N.J.R. 22(b), 27 N.J.R. 3472(a).

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

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

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

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

In "Federally enforceable", inserted a reference to certificates in 4; in "Modify" or "modification", inserted "of actual emissions" following "amount" in the first sentence; and in "Reconstruct" or "reconstruction", inserted "part(s) of" preceding "control" in the introductory paragraph, and rewrote 1.

Administrative change.

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

7:27-22.2 Applicability

(a) This subchapter applies to any facility which is one of the following:

1. A facility which emits or has the potential to emit a Hazardous Air Pollutant (HAP) in an amount which equals or exceeds the amounts listed in (a)1i through iv below. For the purposes of this paragraph, the calculation of potential to emit shall include fugitive emissions, as defined at N.J.A.C. 7:27-22.1.

- i. Ten tons per year of any HAP;
- ii. Twenty-five tons per year of any combination of HAPs;
- iii. Such lesser quantity of any HAP as the EPA may establish by rule, pursuant to 42 USC 7412(a)(1), as the threshold amount for a major HAP facility.
- iv. Such quantity of any radionuclides as the EPA may establish by rule.

2. A facility which emits or has the potential to emit any of the air contaminants listed below in Table 1, in an amount which equals or exceeds the threshold amount for that contaminant.

Table 1

Air contaminant	Threshold Level
Carbon Monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur Dioxide	100 tons per year
Oxides of Nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any other Air Contaminant	100 tons per year

For the purposes of this paragraph, the calculation of potential to emit shall include fugitive emissions only if the facility falls into one or more of the following categories:

- i. Coal cleaning plants (with thermal dryers);
- ii. Kraft pulp mills;
- iii. Portland cement plants;

- iv. Primary zinc smelters;
- v. Iron and steel mills;
- vi. Primary aluminum ore reduction plants;
- vii. Primary copper smelters;
- viii. Municipal incinerators capable of charging more than 250 tons of refuse per day;
- ix. Hydrofluoric, sulfuric, or nitric acid plants;
- x. Petroleum refineries;
- xi. Lime plants;
- xii. Phosphate rock processing plants;
- xiii. Coke oven batteries;
- xiv. Sulfur recovery plants;
- xv. Carbon black plants (furnace process);
- xvi. Primary lead smelters;
- xvii. Fuel conversion plant;
- xviii. Sintering plants;
- xix. Secondary metal production plants;
- xx. Chemical process plants;
- xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- xxiii. Taconite ore processing plants;
- xxiv. Glass fiber processing plants;
- xxv. Charcoal production plants;
- xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

xxvii. All other stationary source categories regulated by a standard promulgated under 42 U.S.C. 7411, Standards of Performance for New Stationary Sources. However, for a facility in this category, fugitive emissions need only be included when calculating the potential to emit those air contaminants which EPA has regulated for that stationary source category.

3. An affected Title IV facility, as defined at N.J.A.C. 7:27-22.1;

4. A facility with any source operation in a source category designated by EPA. EPA is authorized to designate source categories as subject to operating permit requirements pursuant to 40 CFR 70.3(a)(5);

5. A facility with a solid waste incineration unit which combusts municipal waste and which has a combustion capacity greater than 250 tons of municipal waste per day; or

6. A facility for which an owner or operator elects to obtain an operating permit pursuant to (e) below.

(b) A non-major facility not included in (a) above shall become subject to this subchapter if EPA completes rule-making requiring an operating permit for that category of non-major facilities pursuant to 40 CFR 70.3(b)1 or 2.

(c) Notwithstanding (a) above, a facility is not subject to this subchapter if the only applicable requirement which applies to the facility is:

1. A requirement pursuant to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

2. A requirement pursuant to 40 CFR 61, Subpart M—National Emission Standard for HAPs for Asbestos, Section 61.145, Standard for Demolition and Renovation; or

3. A regulation or requirement under 42 U.S.C. 7412(r), Prevention of Accidental Releases.

(d) For the purposes of determining applicability pursuant to (a) above, an owner or operator may elect to treat a research and development operation as a separate facility. For source operations whose primary function changes on an ongoing basis between manufacturing products for commercial use and research and development operations, the source operations may be considered part of a separate research and development facility only during the period of time when those source operations are being used for research and development purposes. Appropriate documentation shall be maintained at the facility to delineate when source operations are used for research and development purposes. If any research and development operation is treated separately for applicability purposes, the emissions or the potential to emit of the operation may be considered separately from the emissions or potential to emit of the remainder of the facility. If any research and development

equipment is also used for other operations, the emissions from the equipment shall be calculated separately for each use of the equipment, such that only the emissions generated during research and development are included in the calculation of research and development emissions.

(e) If a facility is not subject to this subchapter, but has equipment or control apparatus subject to the operating certificate requirements at N.J.A.C. 7:27-8, the owner or operator may voluntarily elect to obtain an operating permit for the facility in lieu of obtaining operating certificate(s) for the equipment or control apparatus.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.3 General provisions

(a) The owner or operator of a facility subject to this subchapter shall obtain and maintain an operating permit for the facility pursuant to this subchapter.

(b) The owner or operator of a facility subject to this subchapter shall ensure that no person shall use or operate any significant source operation at the facility without a valid operating permit for the facility, which covers the source operation.

(c) The owner or operator of a facility subject to this subchapter shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, incorporated herein by reference, unless emission of the air contaminant is authorized by the operating permit.

(d) A permittee shall ensure that any source operation and any other activity covered by the operating permit, and all components connected to, attached to, or serving the source operation are operated and maintained properly and according to the requirements of the operating permit.

(e) A permittee shall ensure that all requirements of the operating permit are met.

(f) Each owner and each operator of any facility, source operation, or activity to which this subchapter applies is responsible for ensuring compliance with all requirements of this subchapter. If the owner and operator are separate persons, or if there is more than one owner or operator, each owner and each operator is jointly and severally liable for any fees due under this subchapter, and for any penalties for violation of this subchapter.

(g) Any provision of any other rule, statute or other document, incorporated into this subchapter, includes all future supplements and amendments to the incorporated document, unless the context of this subchapter clearly indicates otherwise.

(h) The provisions of (b), (c), (d), and (e) above shall not apply at a facility:

1. Prior to the applicable deadline for applying for an initial operating permit, set forth at N.J.A.C. 7:27-22.5; or

2. If a timely and administratively complete application has been filed and an application shield is in effect for the facility pursuant to N.J.A.C. 7:27-22.7.

(i) The term of an operating permit will be established in the operating permit. The Department will not issue an operating permit with a term of greater than five years.

(j) The expiration of an operating permit terminates the facility's right to operate any significant source operation at the facility, unless an application shield is in effect pursuant to N.J.A.C. 7:27-22.7.

(k) The Department may, pursuant to N.J.A.C. 7:27-22.15, issue a single operating permit to an owner or operator of a temporary facility which will be operated in more than one location during the term of the operating permit. This single operating permit may authorize operation of the temporary facility at each of the locations approved by the Department in the operating permit.

(l) The Department may issue an operating permit which allows a facility to operate under one or more operating scenarios, pursuant to N.J.A.C. 7:27-22.27. No change to an operating permit is required for any change in operation that is specifically authorized by the operating permit through an approved operating scenario or emissions trading program incorporated into the operating permit.

(m) If the SIP allows a determination of an alternative emission limit to be made to a significant source operation subject to this subchapter, the Department may issue an operating permit that includes an alternative emission limit, determined by the Department to be equivalent to, or more stringent than, that contained in an applicable requirement, provided that the alternative emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. An example of such an alternative emission limit would be an alternative nitrogen oxides emission limit developed in accordance with the emission averaging provisions of N.J.A.C. 7:27-19.6.

(n) An operating permit does not convey any property right, or any exclusive privilege.

(o) Any transfer of ownership or operational control of a facility covered by an operating permit, which would change the name or identity of the permittee for the facility, requires the transfer of the operating permit. An administrative amendment for such a transfer shall be submitted to the Department by the permittee prior to the transfer being made, in accordance with N.J.A.C. 7:27-22.20. No person to whom ownership or operational control is transferred shall commence operation at the facility until the application for the administrative amendment for the transfer has been received by the Department.

(p) Any approval for a change made at a facility subject to this subchapter, which constitutes a minor modification pursuant to N.J.A.C. 7:27-22.23 or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall incorporate all applicable preconstruction requirements.

(q) Any person submitting an application, notice or report to the Department pursuant to this subchapter, or any permit, approval, authorization, order or other legal document issued pursuant thereto, shall include, as an integral part of the application or report, certification in accordance with N.J.A.C. 7:27-1.39.

(r) All information submitted to the Department pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30, and the Department determines that the information is entitled to confidential treatment in accordance with N.J.A.C. 7:27-1.8 through 1.30. All information submitted to EPA pursuant to this subchapter shall be public information, unless the person submitting the information claims it as confidential in accordance with 40 CFR Part 2, and EPA determines that the information is entitled to confidential treatment in accordance with 40 CFR Part 2.

(s) Except as otherwise provided in this subchapter, the submittal of any information or application by a permittee including, but not limited to, an application or notice for any change to the operating permit, including any administrative amendment, any minor or significant modification, renewal, a notice of a seven-day notice change, a notice of past or anticipated noncompliance, does not stay any operating permit condition, nor relieve a permittee from the obligation to obtain other necessary permits and to comply with all applicable Federal, State, and local requirements.

(t) Application forms for operating permits, modifications to operating permits, and information pertaining to operating permits and the requirements of this subchapter are available at the following address:

Department of Environmental Protection
Air Quality Regulation Program
CN 027
Trenton, New Jersey 08625-0027
Attention: Operating permits
Telephone: (609) 633-8248

(u) If an additional applicable requirement becomes applicable to the facility, or an applicable requirement which was previously applicable to the facility changes, the permittee shall act to have the new applicable requirement or the change incorporated into the operating permit, in accordance with the procedures set forth in N.J.A.C. 7:27-22.25.

Rewrote the table in (c)3.

7:27-22.6 Operating permit application contents

(a) To be administratively complete, an application for an initial operating permit shall include all information required by this section and all application fees required pursuant to N.J.A.C. 7:27-22.31. The required information shall be provided on and with forms obtained from the Department, which will direct the applicant to set the information forth in a format such that the Department can incorporate the information readily into the draft operating permit.

(b) The required contents of an application for authorization to operate under a general operating permit, an administrative amendment, a minor modification, a significant modification, or a renewal of an operating permit are not set forth in this section, but rather are set forth at N.J.A.C. 7:27-22.14, 22.20, 22.23, 22.24, and 22.30, respectively. Requirements for submitting a notice of a seven-day-notice change are set forth at N.J.A.C. 7:27-22.22.

(c) Any source operation at a facility subject to this subchapter shall be included in the facility's application for an operating permit, except for exempt activities as defined at N.J.A.C. 7:27-22.1.

(d) All source operations which are not exempt as defined at N.J.A.C. 7:27-22.1 and are significant or insignifi-

cant source operations shall be included in a facility's application for an operating permit. Source operations shall be classified as either significant or insignificant, as defined at N.J.A.C. 7:27-22.1. Different types and amounts of information are required for significant and insignificant source operations in the application for an operating permit.

(e) In an application, an owner or operator may claim a source operation to be an insignificant source operation as defined at N.J.A.C. 7:27-22.1.

(f) An application for an initial operating permit shall include all information required by the application form, the instructions accompanying the application form, and the applicable completeness checklist(s) for the application. This shall include, but is not limited to, the following:

1. Information pertaining to the identification of the applicant, including:
 - i. The company name and mailing address, division name and the plant name and address (if different);
 - ii. The name and address of each owner, each owner's agent (if any), and each operator of the facility;
 - iii. The name and telephone number of the on-site facility manager and of any additional on-site contact person; and

- iv. The name and address of any responsible official, as defined at N.J.A.C. 7:27-1.4;
2. For the source operations proposed to be classified as insignificant source operations pursuant to (d) or (e) above, the following information:
 - i. A list of the types of insignificant source operations found at the facility; and
 - ii. An estimate of the total emissions from all insignificant source operations, listed separately for each criteria pollutant; and
 - iii. A listing of applicable requirements which generally apply to insignificant source operations at the facility;
 3. For each significant source operation at the facility which will be subject to the operating permit, information including but not limited to the following:
 - i. A brief description of the source operation;
 - ii. The identification number of any preconstruction permit issued by the Department for the source operation;
 - iii. Identification of any stack or chimney which serves the source operation and specification of:
 - (1) Any stack designation assigned by the Department for the stack or chimney; and
 - (2) Any stack designation assigned by the facility for the stack or chimney; and
 - iv. Identification of the production process in which the source operation is used;
 4. A general description of each of the facility's production processes and products, identified by SIC Code, in sufficient detail to determine which applicable requirements apply to the facility. This description shall set forth for each production process:
 - i. The significant source operations associated with the production process pursuant to (f)3iv above;
 - ii. The product(s) or intermediate product(s), together with any associated co-products, produced by the production process; and
 - iii. A general description of the operating scenario used to produce the product(s) or intermediate product(s), and a description of any operating scenarios which may be used to produce the same product(s) or intermediate product(s). Such description of an operating scenario shall be prepared pursuant to N.J.A.C. 7:27-22.27;
 5. The following information pertaining to emissions at the facility:
 - i. For each significant source operation, each air contaminant that it may emit and its potential to emit

that air contaminant, including any non-captured emissions, in tons per year, and any other units, for example pounds per hour, required to verify compliance with any applicable requirement. If the source operation's potential to emit a given air contaminant does not exceed the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, the air contaminant need not be included;

- ii. For the facility, each air contaminant, if any, emitted as fugitive emissions and not associated with any source operation; the cause of that air contaminant being emitted as fugitive emissions; and a reasonable estimate of the facility's fugitive emissions of that air contaminant, in tons per year, and any other units required to verify compliance with any applicable requirement. However, if the facility's potential to emit a given air contaminant as fugitive emissions does not exceed the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter, the information required by this paragraph need not be given in respect to that air contaminant;

- iii. For the facility as a whole, the facility's aggregate potential to emit, in tons per year, each air contaminant that may be emitted within the facility, including the emissions determined pursuant to (a)5i and ii above;

- iv. Identification of each stack or chimney at the facility and, for each stack or chimney, designation of which significant source operations are vented through the stack and chimney;

- v. For each source operation, a listing of any fuels used and the maximum quantity of each commercial fuel or non-commercial fuel to be used annually;

- vi. For each production process, the raw materials to be used, and either the maximum rate of production and the maximum annual hours of operation, or the maximum batch size and the maximum number of batches per year;

- vii. For each source operation, a description of the control apparatus, if any, serving the source operation; if the control apparatus is not used for all operating scenarios, a description of the circumstances under which it is not used;

- viii. For the facility, identification and description of all monitoring devices or activities proposed to verify compliance with applicable requirements;

- ix. Any additional emissions information or emissions-related information needed to verify whether any potentially applicable requirement applies to the facility or to any source operation at the facility;

- x. Any other information required by an applicable requirement;

- xi. Any calculations upon which information in (f)5i through x is based; and
- xii. For each criteria pollutant, any emission reductions which have been banked, pursuant to N.J.A.C. 7:27-18.8, and an indication as to whether they are held by the owner or operator of the facility or by another person;
6. For each significant source operation at the facility or, if applicable, for each group of source operations or for the facility as a whole, information pertaining to air pollution control requirements as follows:
- i. Description of each applicable requirement;
 - ii. Citation to the State or Federal rule, regulation, permit or other authority, which establishes each applicable requirement upon which the proposed permit conditions are based;
 - iii. For each applicable requirement, each provision of the applicable requirement which sets forth a maximum allowable emissions limitation, a limitation on operation affecting emissions, or a work practice standard affecting emissions applicable to the facility;
 - iv. The proposed permit conditions which incorporate and reflect each provision provided pursuant to (f)6ii above;
 - v. Identification of any difference in form between a proposed permit condition and the applicable requirement upon which the proposed permit condition is based; and
 - vi. If the owner or operator seeks to have, pursuant to N.J.A.C. 7:27-22.3(m), the operating permit include an alternative emission limit for any significant source operation or any group of significant source operations, a demonstration that:
 - (1) The proposed alternative emissions limit is allowed in the SIP;
 - (2) The proposed alternative emissions limit is equivalent to, or more stringent than, that contained in an applicable requirement; and
 - (3) The proposed alternative emissions limit is quantifiable, accountable, enforceable, and based on replicable procedures;
7. An explanation of any proposed exemption from an otherwise applicable provision of an applicable requirement, including a citation of the legal authority authorizing the exemption;
8. A proposed compliance plan meeting the requirements of N.J.A.C. 7:27-22.9;
9. A listing of any preconstruction permits issued by the Department pursuant to N.J.A.C. 7:27-8 prior to the date of application and any applications for preconstruction permits not yet finally acted upon;
10. A statement that a copy of the application, or a summary of the application with any relevant portion of the permit application as determined by EPA under 40 CFR 70.8, has been sent to EPA; and
11. Certification of the application pursuant to N.J.A.C. 7:27-1.39; and
12. Any other information that is reasonably necessary to enable the Department to determine whether the applicant has satisfied the requirements of this subchapter for the issuance of a permit.
- (g) Any applicant who seeks an operating permit authorizing the operation of a production process in one or more alternative modes shall propose these modes as operating scenarios, in the application for an operating permit or significant modification, pursuant to N.J.A.C. 7:27-22.27. If the Department approves one or more operating scenarios as part of an operating permit, the production process may be operated in any of the modes specified in the approved operating permit, and may be changed between those modes, without modification of the operating permit or notification to the Department.
- (h) Any applicant who seeks an operating permit authorizing implementation of an emissions trading program requiring prior Department approval pursuant to N.J.A.C. 7:27-22.28A(b) shall propose the emissions trading in an application for an initial operating permit, minor modification, significant modification, or in a seven-day-notice, as appropriate. An applicant may propose emissions trading for more than one group of source operations at the facility.
- (i) Any applicant who seeks an operating permit including different emissions limits that apply to a source operation during startup, shutdown, or necessary equipment maintenance, shall propose such emissions limits in the application for the operating permit or significant modification. An applicant may propose such startup, shutdown, or maintenance emissions limits for more than one source operation in the application provided that these limits do not conflict with the SIP or any state or Federal regulation.
- (j) An applicant may elect to propose, in the application for an initial operating permit, the methods to be used to determine the actual emissions of each significant source operation at the facility, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27-21.
- (k) (Reserved)
- (l) Any applicant who, pursuant to N.J.A.C. 7:27-22.14, seeks to include as a component of the operating permit for the facility, one or more general operating permits shall specify the general operating permit(s) proposed to be included, identify each source operation to which the general operating permit would apply, and meet all other general operating permit application requirements set forth at N.J.A.C. 7:27-22.14. The conditions of such general operating permit, if applicable, will be incorporated into the operating permit for the facility.

(m) If an applicant seeks acknowledgement in the operating permit that any specific provision of a potentially applicable requirement does not in fact apply to the facility, the applicant may cite such a specific provision, explain why it does not apply, and request that the provision be specifically identified in the operating permit as being inapplicable to the facility.

(n) If an applicant for an initial operating permit seeks to have a compliance extension for a MACT or GACT standard incorporated into the operating permit, the applicant shall demonstrate in the application, pursuant to N.J.A.C. 7:27-22.34, that sufficient early reductions of HAP emissions have been achieved.

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

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

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

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

Amended (h).

7:27-22.7 Application shield

(a) An application shield provides that the owner or operator of a facility subject to this subchapter will not be subject to penalties for operating the facility without an operating permit during the time the application shield is in effect.

(b) An application shield is in effect for a facility if:

1. The owner or operator of the facility has submitted to the Department an application for an initial operating permit or for a renewal, in accordance with N.J.A.C. 7:27-22.5 or 22.30, whichever applies; and

2. The application is administratively complete by the applicable deadline for submittal of the application, as set forth at N.J.A.C. 7:27-22.5 or 22.30, whichever applies.

(c) The protection afforded by the application shield begins the date the application is due to the Department.

(d) An application which is administratively incomplete at the time of the application deadline applicable to the facility, but which is later completed, is ineligible for coverage by an application shield. Similarly, an administratively complete application which is submitted after the applicable deadline for its submittal is ineligible for an application shield. As set forth at N.J.A.C. 7:27-22.4(e), applicants are advised to submit the application 90 days prior to the application deadline to ensure that any deficiencies may be corrected by the deadline.

(e) An application shield does not relieve an applicant of the responsibility for compliance with all other requirements of this chapter, or any permit, order, or other legal document issued pursuant thereto.

(f) An application shield terminates automatically upon either of the following:

1. The Department's final action on the application for the initial operating permit or for the renewal; or

2. Failure of the applicant to submit additional information requested by the Department within the deadline established by the Department pursuant to N.J.A.C. 7:27-22.10, Completeness review.

7:27-22.8 Air quality simulation modeling and risk assessment

(a) An applicant for an initial operating permit for a new major facility, or for a minor modification or significant modification to an existing operating permit, shall conduct air quality simulation modeling in accordance with (c) below if:

1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR 52;

2. The application is subject to the air quality impact analysis requirements set forth at N.J.A.C. 7:27-18.4;

3. The application includes relocation of a temporary facility to a site not specifically authorized in the operating permit, and air quality simulation modeling or risk assessment was required for the location(s) authorized in the operating permit; or

4. The application includes source operations which, based on screening procedures published in technical manuals by the Department, have the potential to cause any of the adverse air quality effects listed in (b)1 through 4 below.

(b) The air quality simulation modeling shall be used to determine whether the potential to emit proposed in the permit application may cause:

1. A violation of any New Jersey Ambient Air Quality Standard (NJAAQS) or National Ambient Air Quality Standard (NAAQS);

2. An exceedance of a Prevention of Significant Deterioration (PSD) increment as defined in 40 CFR 52;

3. An increase in the ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or

4. Air pollution as defined in P.L. 1954 c.212 (N.J.S.A. 26:2C-1 et seq.).

(c) The air quality simulation modeling shall be conducted using procedures published in technical manuals by the Department and in accordance with a protocol approved in advance by the Department. The protocol shall document how the air quality simulation modeling is to be conducted and how the results of the analysis are to be presented to the Department. The protocol shall be prepared in accor-

dance with the Department's technical manuals on Air Quality Modeling (technical manual 1002) and Risk Assessment (technical manual 1003), available at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
CN 417
Trenton, New Jersey 08625-0417
Telephone: (609) 777-1039

(d) An applicant not subject to (a) above may voluntarily perform air quality simulation modeling and risk assessment for existing source operations and submit these to the Department, to be made available as part of the public review process for applications for initial operating permits or renewals.

1. Performance of voluntary modeling and risk assessment should be considered by the applicant if the facility's potential to emit any hazardous air pollutant exceeds the thresholds contained in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

2. Guidance on conducting air quality simulation modeling and risk assessment is available in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

3. An applicant for an initial operating permit or the renewal of an operating permit may voluntarily prepare a risk assessment based on ambient air quality monitoring of actual levels of hazardous air pollutants, in lieu of an assessment based on air quality simulation modeling. Guidance on conducting air monitoring is available at the following address:

New Jersey Department of Environmental Protection
Office of Air Quality Management
CN 418
Trenton, New Jersey 08625-0418
Attention: Air Monitoring
Telephone: (609) 292-0138

(e) Any new or revised technical manuals referenced in this section will be subject to public input prior to finalization.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.9 Compliance plans

(a) Pursuant to N.J.A.C. 7:27-22.6(f)8, an applicant for an initial operating permit shall submit a proposed compliance plan, drafted in accordance with this section and certified in accordance with N.J.A.C. 7:27-1.39, as part of an application for the initial operating permit.

(b) An applicant for a renewal, significant modification, or minor modification shall draft proposed revisions to any portion of the facility's compliance plan affected by any change to the facility made since the operating permit was issued. The proposed revisions shall be drafted in accordance with this section and submitted as part of the application for the renewal, significant modification, or minor modification.

(c) A proposed compliance plan shall include the following:

1. A description of the current compliance status of the facility with respect to all applicable requirements;

2. For each applicable requirement, a statement setting forth the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, reporting or test methods, and any other information necessary to verify compliance with or enforce any proposed permit condition or any applicable requirement. This statement shall include, but is not limited to:

i. All monitoring, analysis procedures, recordkeeping, reporting, or test methods required by any applicable requirement, including any applicable monitoring procedures or methods required under the Federal "enhanced monitoring program" set forth at 40 CFR Part 64;

ii. Where the applicable requirement does not require monitoring, recordkeeping, reporting, or test methods sufficient to demonstrate the facility's compliance with the operating permit, proposed monitoring, recordkeeping, reporting, or test methods which:

(1) Are sufficient to demonstrate compliance;

(2) Use terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(3) Can be used for enforcement of the applicable requirement;

iii. Proposed requirements concerning the use, maintenance, and installation of monitoring equipment and concerning monitoring, recordkeeping, reporting, or test methods. This shall include, but is not limited to, schedules for monitoring, recordkeeping, reporting, and source emissions testing; specification of parameters to be measured, recorded, and reported; and formats for recording and reporting; and

iv. Where the permittee proposes to use monitoring of operating parameters to demonstrate compliance (as opposed to direct emissions testing or monitoring), a proposed enforceable limit or range of operation for the parameter monitored, and how this parameter correlates to the emission limit.

2. For each applicable requirement, a statement of the methods used to determine the facility's compliance status, including a description of any monitoring, record-keeping, and reporting requirements and test methods; and

3. Certification in accordance with the certification procedures at N.J.A.C. 7:27-1.39.

(g) Any deviation from operating permit requirements which results in a release of air contaminants shall be reported to the Department as follows:

1. If the air contaminants are released in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints, the permittee shall report the release to the Department:

i. Immediately on the Department hotline at (609) 292-7172, pursuant to N.J.S.A. 26:2C-19(e); and

ii. As part of the compliance certification required in (f) above. However, if the deviation is identified through source emissions testing, it shall be reported through the source emissions testing and monitoring procedures at N.J.A.C. 7:27-22.18(e)3; or

2. If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, the permittee shall report the release to the Department as part of the compliance certification required in (f) above, except for deviations identified by source emissions testing reports, which shall be reported through the procedures at N.J.A.C. 7:27-22.18(e)3; or

3. If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, and the permittee intends to assert the affirmative defense afforded by N.J.A.C. 7:27-22.16(l), the violation shall be reported by 5:00 P.M. of the second full calendar day following the occurrence or of becoming aware of the occurrence, consistent with the N.J.A.C. 7:27-22.16(l).

(h) A permittee shall, upon the Department's request, submit any record relevant to the operating permit or to the emission of any air contaminant from the facility. Such record shall be submitted to the Department within 30 days of the request by the Department, or within a longer time period if approved in writing by the Department, and shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(i) A permittee shall make all information in (a) through (d) above, as well as following, readily available for inspection at the facility. If the facility is not regularly staffed, the information shall be available at the New Jersey office of

the permittee which is closest to the permitted facility. The information shall be available at all times, pursuant to the Department's right to inspect the facility set forth at N.J.A.C. 7:27-1:

1. The operating permit together with any revisions thereto, including any administrative amendments, changes to insignificant source operations, seven-day-notice changes, minor modifications, and significant modifications;

2. Up-to-date diagrams of the facility indicating:

i. The location of all source operations, including all equipment and control apparatus; and

ii. All stacks or chimneys, together with any stack designation included in the operating permit;

3. Records required by the operating permit, and records relevant to the use of any source operation including, but not limited to, manufacturer's instructions for operation and maintenance, the kind and amount of air contaminants emitted, rates of production, and hours of operation;

4. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus during the term of the operating permit;

5. The date of commencement of operation of any equipment or control apparatus, if operation commenced during the term of the operating permit; and

6. Any preconstruction permit issued for the equipment or control apparatus.

(j) Requirements for recordkeeping and reporting shall be consistent with the Federal rules for enhanced monitoring of stationary sources set forth at 40 CFR Part 64.

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

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

Case Notes

Penalty; failure to immediately inform department of air pollution leak. *DEPE v. Occidental Chemical Corporation*, 94, N.J.A.R.2d (EPE) 25.

7:27-22.20 Administrative amendments

(a) A permittee may make any of the changes to an operating permit listed at (b) below through the procedures for an administrative amendment set forth in this section. If the requirements of this section are met, the permittee may, at its own risk, make the change at the facility upon submittal of the amendment, but no sooner. For those changes specified at (b)1 and (b)3 below, the change can be made up to 30 days prior to submittal of the amendment. The Department will act on an application for an administrative amendment within 60 days of receipt of an administratively complete application, pursuant to (g) below.

(b) A change may be made as an administrative amendment if the proposed change does not increase actual emissions, does not cause the emission of a new air contaminant or class of air contaminants, does not violate an applicable requirement, does not result in the source being subject to an applicable requirement to which it was not previously subject, and does not constitute a seven-day-notice change, minor modification, or significant modification, and the change is:

1. A change in company name or mailing address; division name; plant name or address; name or address of each owner's agent; or name or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27-1.4);

2. Correction of any typographical error, including a mistake in the spelling, punctuation, or formatting of text, but excluding a change to any word, term, number or usage which would allow an emission increase or would constitute a seven-day-notice change, minor modification, or significant modification;

3. A transfer of ownership or operational control of the facility;

4. A change in any company stack designation;

5. Any of the following decreases, provided that the decrease is measurable and verifiable, and that a method by which the Department can verify and enforce the decrease is already included in the operating permit in effect, and a permittee requests such decrease to be incorporated into its operating permit:

i. A decrease in the maximum allowable rate of emission of any air contaminant or category of air contaminants;

ii. A decrease in maximum allowable hours of operation per time period; or

iii. A decrease in maximum allowable rate of production;

6. An increase in the frequency of any monitoring, recordkeeping or reporting required by the operating permit in effect, and a permittee requests such increase to be incorporated into its operating permit;

7. A change that incorporates into the operating permit provisions of a preconstruction permit, provided that the preconstruction permit:

i. Was issued through public participation requirements substantially equivalent to those for operating permits pursuant to N.J.A.C. 7:27-22.11 and 22.12; and

ii. Includes compliance requirements substantially equivalent to those for operating permits pursuant to N.J.A.C. 7:27-1.31, 22.9, 22.18, and 22.19;

8. A change in the contents of a storage tank, bin, silo, or other storage container, if such change in contents is not already covered by the operating permit in effect, provided such change does not:

i. Involve the use or storage of any new HAP; or

ii. Cause the storage tank to become, pursuant to N.J.A.C. 7:27-16.2(b), subject to any control requirement to which the storage tank was not previously subject;

9. Any of the following changes to a stack or chimney, or the use thereof, provided the change complies with EPA's stack height regulations at 40 CFR 51 (governing stacks over 65 meters high):

i. A change in the number of stacks or chimneys serving the significant source operation, provided that the change does not result in any effective stack height lower than that of the tallest stack or chimney existing prior to the change;

ii. A decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

iii. The replacement of an existing stack or chimney with a taller stack or chimney, provided that this results in an effective stack height which is no less than that existing before the change; or

iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney if the temperature or volume is limited in the operating permit;

10. A change in the relative use of any raw material in a process outside of the range authorized in the operating permit, provided there is no increase in actual emissions from the process unit;

11. The introduction of a raw material, not authorized in the operating permit in effect, provided there is no increase in actual emissions from the process unit, and provided such change does not involve the use of any new HAP;

12. Reconstruction of a process unit or control apparatus if the date of installation of the reconstructed process unit or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the original process unit or control apparatus, provided the reconstruction causes no increases in actual emissions from the process unit or control apparatus; or

13. Notification that the facility is in compliance with a new applicable requirement which was not previously applicable to the facility, provided that:

i. The facility is operating in compliance with the applicable requirement as of the date it becomes applicable to the facility;

ii. No change to any source operation or to any production process is made at the facility to comply with the applicable requirement; and

iii. The new applicable requirement was not promulgated under Title III of the CAA, unless USEPA specifically indicates that the requirement may be incorporated into the operating permit with an administrative amendment.

(c) A permittee shall, pursuant to (d) and (e) below, submit a timely and administratively complete application for any change being made pursuant to this section as an administrative amendment.

(d) To be deemed timely, an application for an administrative amendment shall be submitted to the Department and EPA prior to the change being made, except for applications submitted pursuant to (b)1 or 3 above. For applications submitted pursuant to (b)1 or 3 above, that application shall be submitted to the Department and EPA within 30 days of the change being made.

(e) To be deemed administratively complete, an administrative amendment shall include the Department assigned operating permit number, a copy of the portion of the operating permit which will be affected by the administrative amendment, a description of the change, and a copy of the revised portions of the operating permit reflecting the administrative amendment. For a transfer of ownership or operational control of the facility, the administrative amendment shall also include the information required in (f) below.

(f) To process a transfer in ownership or operational control pursuant to (b)2 above, a permittee shall attach to the application for an administrative amendment a written agreement between the current and new permittees, specifying the date for the transfer of ownership or operational control, permit responsibility, coverage and liability.

(g) Within 60 days of the Department's receipt of an application for an administrative amendment, the Department shall:

1. Approve the administrative amendment, thereby making the administrative amendment part of the operating permit; or

2. Notify the permittee that the change was not eligible for processing as an administrative amendment. In this event, a permittee must submit the appropriate application to modify the operating permit. The permittee may be subject to penalties for noncompliance with the operating permit during the time the change was in effect, pursuant to N.J.A.C. 7:27A.

(h) A change made through an administrative amendment shall not be covered by any permit shield contained in the operating permit, except for administrative amendments

made pursuant to (b)7 above. The permit shield shall become effective upon approval of the administrative amendment by the Department.

(i) A permittee may elect to make as a minor modification any change authorized to be made as an administrative amendment.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.21 Changes to insignificant source operations

(a) A permittee may, pursuant to this section, make certain changes to an insignificant source operation, or to the use thereof, without notifying the Department or EPA until the renewal of the operating permit. In the application for the renewal of the operating permit, the permittee shall identify any such changes which affect information in the operating permit. Such changes could include the addition or deletion of insignificant source operations that have occurred during the term of the operating permit.

(b) Any change made to an insignificant source operation during the term of an operating permit, including the construction or installation of a new insignificant source operation, may be made pursuant to the procedures set forth in (a) above, provided that the change:

1. Is not prohibited in the operating permit;
2. Is not subject to any requirements under the acid deposition control provisions at Title IV of the CAA;
3. Is not a modification under any provision of Title I of the CAA;
4. Does not cause the source operation to become subject to an applicable requirement, to which it was not previously subject and which is not already included as a requirement of the operating permit; and
5. Meets all applicable requirements and does not violate any existing permit term or condition.

(c) A change which is made pursuant to this section shall not be covered by any permit shield.

(d) If the Department determines that the change was not eligible for processing as a change to an insignificant source operation, the permittee may be subject to penalties for noncompliance with the permit, pursuant to N.J.A.C. 7:27A-3.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.22 Seven-day-notice changes

(a) A permittee may make any of the changes listed at (c) or (d) below through the procedures for a seven-day-notice change set forth in this section. The Department shall

attach the notice of the seven-day-notice change to the operating permit, but shall not revise the operating permit until the next application for a renewal. If the requirements of this section are met, a permittee may make a seven-day-notice change seven days after the Department's receipt of the notice of the change.

(b) Any other provision of this section notwithstanding, no change listed in (c) below may be made pursuant to this section if the change would:

1. Require an increase in any allowable emissions limit established in the operating permit, including any maximum allowable emissions rate (whether expressed as pounds per hour, tons per year, total pounds, total tons, or other units expressed as a rate of emissions or total emissions) or concentration limit or any emissions cap;
2. Cause the emission of a new air contaminant or class of air contaminants;
3. Constitute a minor modification or significant modification, as defined at N.J.A.C. 7:27-22.23 or 22.24, respectively;
4. Change a monitoring, recordkeeping, or reporting requirement set forth in the operating permit, if the changed requirement would be less stringent than, the existing requirement;
5. Constitute a modification under any provision of Title I of the CAA; or
6. Subject the facility to the requirements of the acid deposition control provisions in Title IV of the CAA, or would violate such requirements.

(c) Except as provided at (b) above, any of the following changes may be made as seven-day-notice changes, pursuant to the procedures of this section:

1. Any reconfiguration to an operating scenario, including an alternative configuration or a change in the production process, not authorized in the operating permit in effect, provided that the notice to the Department of the change contains the information required at N.J.A.C. 7:27-22.27 (Operating scenarios) and that the operating scenario conforms with the requirements of that section;
2. The attachment of an emissions trading program to an operating permit pursuant to N.J.A.C. 7:27-22.28A(d) (Emissions trading);
3. A change in operation to an emissions trading program attached to an operating permit pursuant to N.J.A.C. 7:27-22.28A(g);
4. Use of DERs for compliance pursuant to the open market emission trading rule at N.J.A.C. 7:27-30;

5. Relocation of a temporary facility to a site not specifically authorized in the operating permit, unless air quality simulation modeling or risk assessment is required pursuant to N.J.A.C. 7:27-22.8(a)3; or

6. Any change to a significant source operation which:
 - i. Is not already authorized by the operating permit;
 - ii. Does not cause actual emissions to exceed allowable emissions in the operating permit; and
 - iii. Does not cause the emission of a new air contaminant not specified in the operating permit.

(d) In addition to the items listed at (c) above, any change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, may be made as a seven-day-notice change, pursuant to the procedures of this section, provided that:

1. The production process containing the significant source operation is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;
2. The proposed change, construction, or installation is either:
 - i. Allowed under the facility-wide permit; or
 - ii. Documented in a modification to a Pollution Prevention Plan which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-1.5; and
3. The proposed change, construction, or installation does not cause any of the following:
 - i. An increase in the generation of nonproduct output per unit of production manufactured by the significant source operation or production process;
 - ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;
 - iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or
 - iv. The addition of a new production process.

(e) A permittee shall, pursuant to (f), (g), (h), or (i), (as applicable) below, submit a timely and administratively complete notice for any change being made, pursuant to this section as a seven-day-notice change.

(f) To be deemed timely, a notice must be received by the Department and EPA at least seven days prior to the change being made at the facility.

9. Any incorporation into the operating permit of a new authorization of emissions trading, if such an incorporation does not qualify as a seven-day-notice change pursuant to N.J.A.C. 7:27-22, or a minor modification pursuant to N.J.A.C. 7:27-22.23.

(c) Any change that is a significant modification and that constitutes construction, reconstruction or modification of a source operation, shall incorporate advances in the art of air pollution control pursuant to N.J.A.C. 7:27-22.35, Advances in the art of air pollution control.

(d) Compliance with N.J.A.C. 7:27-18 shall be demonstrated for any significant modification that includes an emission increase.

(e) A permittee shall, pursuant to (f) below, submit an administratively complete application for the significant modification of the operating permit for any change at a facility which, pursuant to (b) above, constitutes a significant modification.

(f) To be deemed administratively complete, an application for a significant modification of the operating permit shall meet all application contents requirements for an initial operating permit set forth at N.J.A.C. 7:27-22.6, except that an application for a significant modification of the operating permit shall include only such information as is relevant to the proposed modification.

(g) The permit shield described at N.J.A.C. 7:27-22.17 shall apply to any change approved under this section.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.24A Reconstruction

(a) Reconstruction of a process unit or control apparatus shall be made as an administrative amendment to the operating permit pursuant to N.J.A.C. 7:27-22.20 if:

1. The date of installation of the reconstructed process unit or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the original process unit or control apparatus;
2. The reconstruction causes no increases in actual emissions from the process unit or control apparatus; and
3. The reconstruction is not a significant modification.

(b) Reconstruction of a process unit or control apparatus shall be made as a significant modification to the operating permit pursuant to N.J.A.C. 7:27-22.24 if the reconstruction would trigger any of the criteria for significant modifications listed at N.J.A.C. 7:27-22.24(b).

(c) Reconstruction of a process unit or control apparatus shall be made as a minor modification to the operating permit pursuant to N.J.A.C. 7:27-22.23 if the reconstruction

cannot be processed as an administrative amendment or significant modification, as set forth at (a) and (b) above.

(d) In the case of an emergency, as defined at N.J.A.C. 7:27-22.1, the Department may authorize a permittee to reconstruct and to operate a process unit or control apparatus for 90 days at risk, in order to allow time for the permittee to apply for Department approval of a minor or significant modification authorizing the reconstruction. An example of such an emergency would be a fire which destroys a process unit which the person wishes to replace and operate immediately. The emergency approval shall not be granted if prohibited by federal law or regulations, and shall be conditioned on the permittee submitting an application for the reconstruction pursuant to (a), (b), or (c) above within 30 days of the Department's emergency authorization, cooperating fully with the Department during the application and review process, and complying with all applicable requirements.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.25 Department initiated operating permit modifications

(a) An operating permit may be revoked, or reopened and modified, for cause by the Department pursuant to this section. Any Department initiated permit revocation or reopening and modification shall affect only those parts of the operating permit for which cause to reopen exists.

(b) Upon a written request from the Department, a permittee shall furnish to the Department, within 30 days or within a longer time period established by the Department in the request, any information that the Department may request to determine whether cause exists for revoking, or reopening and modifying the permit.

(c) At least 30 days prior to reopening an operating permit, the Department will notify the permittee that action is necessary to modify the operating permit and that the Department will revoke, or reopen and modify, the operating permit unless the permittee acts to apply for the necessary modification(s). A shorter time period may be provided if the Department determines that continued operation of the facility under its current operating permit may adversely affect human health or welfare, or the environment.

(d) The notice of a reopening made pursuant to (c) above will contain a requirement that the permittee act to resolve the issue which caused the need for the reopening, and a reasonable deadline for action. Such action shall be processed as a significant modification if the permittee does not act to apply for the necessary modification(s).

(e) The Department shall reopen and modify an operating permit if any of the following occur:

1. The permittee fails to act within the time specified in the notice in (d) above to incorporate any of the following into the operating permit:

i. An additional applicable requirement which has become applicable to the facility and the remaining term of the existing permit is three years or more; or

ii. A change to an applicable requirement which was previously applicable to the facility and the remaining term of the existing permit is three years or more;

2. The permittee fails to act within the time specified in the notice in (d) above to incorporate any of the following into the operating permit:

i. An additional applicable requirement which has become applicable to an affected Title IV facility; or

ii. A change to an applicable requirement which was previously applicable to an affected Title IV facility;

3. The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations or other provisions or conditions of the permit;

4. EPA requires the reopening of an operating permit for cause pursuant to 40 CFR 70.7(g); or

5. The Department or EPA determines that the operating permit must be revised to assure compliance with applicable requirements.

(f) No reopening is required to incorporate an applicable requirement pursuant to (e) above, if the date the requirement will become applicable to the facility is later than the date on which the operating permit is due to expire, unless the original permit or any of its provisions and conditions has been extended pursuant to a permit shield in accordance with N.J.A.C. 7:27-22.17.

(g) If a reopening is required pursuant to (e)1 or 2 above, the permittee shall submit an administratively complete application, within the time specified by the Department, for an operating permit modification pursuant to N.J.A.C. 7:27-22.24, significant modifications. The Department shall ensure that final action to incorporate the additional applicable requirement into the operating permit is completed within 18 months of the promulgation of the applicable requirement.

(h) During the period that the reopening is pending, the permittee shall comply with the compliance schedule provided in any additional applicable requirement which applies to the facility and: until the final compliance deadline for any applicable requirement, the current operating permit; or after the final compliance deadline for any applicable requirement, the new applicable requirement and any provisions of the current operating permit which are not affected by the new applicable requirements.

(i) The Department may revoke an operating permit, or a portion of the operating permit, if the Department determines that continued use of the facility, or a portion of the facility, pursuant to the current operating permit, poses a potential threat to public health, welfare, or the environment, or that emissions from the facility would unreasonably interfere with the enjoyment of life or property.

(j) If EPA notifies the Department that cause exists to revoke or reopen and modify an operating permit, the Department shall, within 90 days of its receipt of the notice, forward to the EPA a proposed determination of revocation, or of reopening and modification, as appropriate. EPA may extend the 90-day deadline (for the Department to provide a proposed determination) an additional 90 days, if the EPA determines that additional information from the permittee, is needed. The Department will transmit a copy of EPA's notification and DEP's determination to the permittee.

(k) As required by 40 CFR Part 70.7(g), if EPA approves the determination proposed by the Department pursuant to (j) above, or fails to act on it within 90 days of EPA's receipt of the proposed determination, the Department shall proceed with a permit reopening. At least 30 days prior to reopening the operating permit, the Department will notify the permittee that action is necessary to modify the operating permit and that the Department will revoke, or reopen and modify, the operating permit unless the permittee acts to apply for the necessary modification(s). A shorter time period may be provided if the Department determines that continued operation of the facility under its current operating permit may adversely affect public health or welfare, or the environment.

(l) As required by 40 CFR Part 70.7(g)(4), if EPA objects to the Department's proposed determination within 90 days, the Department has 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to re-open, modify and reissue, or to revoke, the operating permit in accordance with the EPA's objection.

(m) Notwithstanding (j), (k) and (l) above, if the permittee, at any time during the reopening process, submits an administratively complete application for the necessary modification which will, if issued, obviate the necessity for the reopening, the Department will process the modification application if this is the most expeditious procedure to resolve the issue. If the modification procedure does not resolve the issue which caused the reopening, the Department will then proceed with the reopening.

(n) This section shall not be construed to allow the extension of the compliance deadline in any applicable requirement. Implementation of applicable requirements shall proceed in accordance with any deadlines established in the applicable requirement.

(o) This section shall not limit the Department's authority to pursue any form of relief or remedy provided by law or regulation, including injunctive relief, pursuant to N.J.S.A. 26:2C-19(a), civil administrative penalties pursuant to N.J.S.A. 26:2C-19(b), civil penalties pursuant to N.J.S.A. 26:2C-19(d) and criminal sanctions pursuant to N.J.S.A. 26:2C-19(f).

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.26 MACT and GACT standards

(a) This section shall take effect upon EPA's interim approval of the Department's operating permit program except for (f)1, 2 and 3 below, which shall take effect upon EPA's interim approval of the Department's operating permit program or EPA promulgation of rules implementing 42 U.S.C. 7412(g), whichever is later.

(b) Except as provided at (c) and (d) below, an owner or operator of a facility subject to an EPA-promulgated MACT or GACT standard, or a case-by-case MACT standard, shall submit an application to the Department to have the MACT or GACT standard incorporated into the facility's operating permit pursuant to the relevant provisions of N.J.A.C. 7:27-22.5 for initial operating permits, N.J.A.C. 7:27-22.20 for administrative amendments, N.J.A.C. 7:27-22.23 for minor modifications, or N.J.A.C. 7:27-22.24 for significant modifications.

(c) An owner or operator of an area source subject to an EPA-promulgated MACT or GACT standard is not required to obtain an operating permit if the MACT or GACT standard as promulgated by EPA explicitly states that state agencies are given the option of excluding affected area sources from the requirement to obtain operating permits, provided that the only reason for needing an operating permit is the MACT or GACT standard.

(d) An owner or operator of an area source subject to an EPA-promulgated MACT or GACT standard may postpone applying for an operating permit for five years from the promulgation of the MACT or GACT standard, if the MACT or GACT standard as promulgated by EPA explicitly states that state agencies may defer the requirement to obtain operating permits for affected area sources, provided that the only reason for needing an operating permit is the MACT or GACT standard.

(e) A facility or source operation shall be subject to a MACT or GACT standard promulgated by EPA if:

1. The facility or source operation is in operation at the time the MACT or GACT standard is promulgated, and the facility or source operation meets the applicability criteria set forth in the MACT or GACT standard;
2. The facility or source operation is subsequently modified such that the facility or source operation would

meet the applicability criteria set forth in the MACT or GACT standard; or

3. A new facility or source operation is constructed such that the new facility or source operation meets the applicability criteria set forth in the MACT or GACT standard.

(f) A case-by-case MACT standard shall be established for a facility or any source operation(s) which constitutes a major HAP facility if any of the following occur:

1. The construction of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the new source operation(s);

2. The reconstruction of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the reconstructed source operation(s);

3. The modification of a major HAP facility, if EPA has not promulgated a specific MACT standard applicable to the new or modified source operation(s), provided that:

i. Any physical change in, or change in the method of operation of, the major HAP facility increases the facility's actual emissions of any HAP by an amount that exceeds the de minimis emission rates set forth in the EPA document "Documentation of De minimis Rates for Proposed 40 CFR 63 Subpart B" (EPA 453/R-93-035); or

ii. Any physical change in, or change in the method of operation of, the major HAP facility results in the emission of any HAP not previously emitted in an amount that exceeds the de minimis emission rates set forth in the EPA document "Documentation of De minimis Rates for Proposed 40 CFR 63 Subpart B" (EPA 453/R-93-035); or

4. The failure of EPA to promulgate the specific MACT standard applicable to an existing major HAP facility by 18 months after the deadline set by EPA for such promulgation at 58 FR 63941.

(g) Case-by-case MACT standards established for major HAP facilities, or source operations which constitute a major HAP facility, shall be established in accordance with the provisions of 40 C.F.R. 63.

(h) The Department may allow a six year extension of time for complying with a MACT or GACT standard promulgated by EPA for one or more source operations at a facility, if the source operation achieves sufficient early reductions of HAP emissions as described in N.J.A.C. 7:27-22.34.

(i) A source operation for which construction or reconstruction is commenced after EPA proposes an applicable MACT or GACT standard, but before the MACT or GACT standard is promulgated, shall not be required to comply

with the standard as promulgated until three years after the date construction or reconstruction is commenced, provided that the source operation, as authorized in the preconstruction permit, complies with the MACT or GACT standard as proposed. However, the source operation will still be subject to the operating permit application requirements described in (b) above.

(j) A facility which has installed BACT, pursuant to a permit required under 40 CFR 52.21, or LAER, pursuant to N.J.A.C. 7:27-18, prior to EPA's promulgation of a MACT or GACT standard applicable to that facility, shall not be required to comply with the MACT or GACT standard until five years after the date of that installation of BACT or LAER, if the BACT or LAER controls the same pollutant(s) as that identified in the MACT or GACT standard. However, the facility will still be subject to the operating permit application requirements described in (b) above.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).

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

7:27-22.27 Operating scenarios

(a) The Department will include operating scenarios in an operating permit, if the operating scenarios meet all applicable requirements, including, but not limited to, all applicable emission standards.

1. Operating scenarios may, as appropriate, be incorporated into a permit through an application for an initial operating permit, a significant modification, or a minor modification pursuant to N.J.A.C. 7:27-22.5, 22.24 or 22.23, respectively.

2. New operating scenarios may be authorized through a notice of a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22, provided the emission limit for a source operation included in operating scenarios which are being added by a seven-day-notice to an existing operating permit shall not exceed the maximum allowable emission limits in the existing operating permit for the source operation.

(b) At a facility authorized to operate under one or more operating scenarios, the permittee shall maintain contemporaneous information on the change from one operating scenario to another. This can be any means of recording information associated with the scenario in question, either manually or electronically, including but not limited to: batch sheets, production sheets, fuel records, and process records.

(c) The permittee shall ensure that operation under an operating scenario meets all permit conditions, applicable requirements, and the requirements of this chapter.

(d) An applicant or permittee seeking authorization for operating scenarios shall provide to the Department, in the application for an initial operating permit, significant modification, or minor modification, or in a seven-day-notice, at least the following information:

1. A description of each proposed operating scenarios, including, but not limited to, information on any emission changes from existing approved operating scenarios;
2. The specific source operations that are to be included in the proposed operating scenarios;
3. If the equipment combusts fuel, the fuels that will be used under the proposed operating scenarios, and the maximum quantity of fuel proposed to be used annually;
4. The product(s) that will be produced under the proposed operating scenarios; and
5. For any operating parameter addressed or limited in the existing operating permit that may be changed under the proposed operating scenario, proposed ranges or limits for that parameter relevant to air contaminant emissions. This shall include, but not be limited to, parameters such as the quantity or type of raw material used. Operating parameters which do not affect emissions need not be included in the operating scenario. As long as the facility operates within the range or limit of each specified parameter in an approved operating scenario, such operation shall be considered consistent with that operating scenario.

(e) In addition to the information required at (d) above, the following information shall be provided to the Department if the operating scenario is proposed to be added to an existing operating permit as a seven-day-notice:

1. For each source operation included in the operating scenario:
 - i. The maximum allowable emissions limits established in the operating permit for each air contaminant;
 - ii. A demonstration that each of the emissions limits listed pursuant to (e)i above will not be exceeded under the proposed operating scenario; and
 - iii. A demonstration that, under the proposed operating scenario, any new air contaminant not authorized by the existing operating permit would be emitted at a rate less than the applicable threshold for reporting emissions set forth in Table A or B in the Appendix to this subchapter.

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

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

7:27-22.28 (Reserved)

Repealed and recodified to 7:27-22.28A and 7:27-22.28B by R.1995 d.493, effective September 5, 1995.

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

Section was "intra-facility emissions trading".

7:27-22.28A Emissions trading

(a) Pursuant to this section a permittee may implement an emissions trading program at a facility subject to this subchapter.

(b) A permittee may implement an open market emissions trading program pursuant to N.J.A.C. 7:27-30 without prior approval. A permittee may also implement any of the following emissions trading programs, if the Department has approved the program and incorporated it into the operating permit:

1. A facility-specific emissions averaging program with a federally enforceable emissions cap, pursuant to N.J.A.C. 7:27-22.28B;
2. An emissions trading program approved by the Department and approved by EPA as a case-by-case revision to New Jersey's SIP; or
3. An emissions trading program approved by the Department and not required to be approved by EPA as a case-by-case revision to New Jersey's SIP. For example, if emissions trading were performed pursuant to a rule which is approved as part of New Jersey's SIP, a case-by-case SIP revision would not be required (unless the rule specifically called for such a revision).

(c) Except as provided in (d) below, the emissions trading program shall be:

1. Incorporated in the initial operating permit approved by the Department; or
2. Incorporated in the operating permit through a renewal or a significant modification of the operating permit.

(d) In lieu of the procedures in (c) above, an emissions trading program may be attached to the operating permit through a seven-day-notice change pursuant to the seven-day-notice change procedures set forth in N.J.A.C. 7:27-22.22, provided that:

1. The emissions trading program is one which:
 - i. Pursuant to (b)2 above is approved by the Department and approved by EPA as a case-by-case revision to New Jersey's SIP; or
 - ii. Pursuant to (b)3 or 4 above is promulgated in provisions of this Chapter and which has been approved by EPA as a revision to New Jersey's SIP; and
2. The attachment is eligible to be made by a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22 and pursuant to the provisions and conditions of the SIP revision or the provisions of this chapter on which the emissions trading program is based.

(e) The emissions trading program shall conform with the applicable provisions of:

1. The Federal emissions trading policy published on December 4, 1986, in the Federal Register, Volume 51, No. 233;

2. The economic incentive program rules published on April 7, 1994, in the Federal Register, Volume 59, No. 67;

3. Any other applicable emissions trading regulations or guidance issued by EPA; and

4. Any applicable requirements in a rule, order, or permit issued by the Department.

(f) An emissions trading program incorporated into the operating permit shall be implemented pursuant to the applicable provisions and conditions of the operating permit. An emissions trading program attached to the operating permit in accordance with (d) above shall be implemented:

1. If the program is one which is pursuant to (b)2 above approved in advance by the Department, in accordance with the provisions and conditions of the SIP revision; or
2. If the program is one which is pursuant to (b)3 above promulgated in provisions of this chapter, in accordance with the applicable provisions of this chapter.

(g) A permittee may seek authorization, through a significant modification or a renewal, to modify an emissions trading program which has been incorporated into an operating permit to accommodate a change to the emissions trading program. Also, if the emissions trading program is one allowed pursuant to (d) to be attached to an operating permit, a permittee may change the program through a seven-day-notice change, provided that the change is eligible to be made by a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22 and pursuant to the provisions and conditions of the Department's approval or the provisions of this chapter on which the emissions trading program is based.

(h) A permit shield pursuant to N.J.A.C. 7:27-17 shall apply to an emissions trading program only if the program is incorporated into the operating permit through an initial operating permit, an operating permit renewal, or a significant modification. A permit shield shall not apply to any emissions trading program, or any modification to a program, which is attached to an operating permit through a seven-day-notice.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).

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

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

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

Administrative Correction.

See: 28 N.J.R. 3550(a).

7:27-22.28B Facility-specific emissions averaging programs

(a) A permittee may obtain approval for and implement a facility-specific emissions averaging program at a facility subject to this subchapter pursuant to this section, provided that no averaging program set forth in a promulgated rule would apply. Such a program shall be on a case-by-case basis, developed and approved for implementation at a specific facility.

(b) Such a facility-specific emissions averaging program shall be limited to the group of source operations and to the air contaminants authorized for the facility-specific emissions averaging program incorporated in the operating permit. The source operations included shall be a specific group of source operations proposed by the applicant and approved by the Department. The facility-specific emissions averaging program shall subject these source operations collectively to a federally enforceable emissions cap.

(c) An application submitted to obtain authorization to implement a facility-specific emissions averaging program shall provide information to the Department including, but not limited to, the following:

1. A description of the planned emissions averaging program;
2. A statement of the purpose for seeking authorization for the emissions averaging program at the facility. Such a statement shall indicate, for example, if the purpose of the authorization is to establish an emissions cap so as to avoid being classified as a major facility or avoid becoming subject to requirements, such as:
 - i. Emission offset requirements pursuant to N.J.A.C. 7:27-18.2; or
 - ii. PSD regulations at 40 CFR 52;
3. Specification of any permit condition or applicable requirement that would be:
 - i. Complied with through the emissions averaging program; or
 - ii. No longer applicable as a result of the emissions averaging program;
4. The specific source operations that would be included in the emissions averaging program;
5. For each source operation subject to the emissions averaging program, each air contaminant for which the quantity or rate of actual emissions may be increased or decreased as a result of the emissions averaging program;
6. For each air contaminant identified pursuant to (c)5 above, the proposed federally enforceable emissions cap for the group of source operations that are to be included in the emissions averaging program;

7. A description of the types of circumstances under which decreases in emissions from one or more source operations will be used to offset increases in emissions from one or more other source operations;

8. Proposed permit conditions which will enable the Department to readily verify whether emissions from the source operations have exceeded the emissions cap; such permit conditions shall set forth replicable procedures sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable. Such replicable procedures shall include monitoring or source emissions testing, or both, and recordkeeping and reporting procedures;

9. A statement affirming that each included source operation shall operate in compliance with the applicable provisions of this chapter and with all other applicable requirements; and

10. Certification in accordance with N.J.A.C. 7:27-1.39.

(d) If the Department approves the incorporation of a facility-specific emissions averaging program in an operating permit, the Department shall establish in the operating permit:

1. A Federally enforceable cap on the aggregate emissions for the group of source operations included in the emissions averaging program authorized by the operating permit; and
2. Permit conditions which will enable the Department to readily verify whether emissions from the source operations have exceeded the emissions cap. Such permit conditions shall set forth replicable procedures, including monitoring, source emissions testing, recordkeeping, and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions cap is enforceable.

(e) The Department shall not approve any facility-specific emissions averaging program proposed for an operating permit, or any proposed modification thereto, if:

1. Any State rule or Federal regulation, which is an applicable requirement, requires for any source operation included in the proposed emissions averaging program, or for the modification thereto, case-by-case approval of any increase in emissions from that source operation, unless such case-by-case approval has already been issued by the Department and EPA pursuant to the procedures in the applicable requirement; or
2. The emissions averaging program, or the proposed modification thereto, could result in an increase in the aggregate maximum allowable emissions from the source operations included in the emissions averaging program.

(f) A permittee authorized to implement one or more facility-specific emissions averaging programs shall maintain an emissions log at the facility for all source operations subject to the averaging program(s). The permittee shall maintain this record on a daily basis. Specifically, the log shall reflect for each day:

1. Whether the facility complied with the operating permit by operating within one or more emissions caps established for one or more groups of source operations; and

2. For each group of source operations and for each air contaminant subject to an emissions cap, the following information:

i. The actual emissions of each source operation per unit of time. The unit of time used for this record shall be the same as that in which the emissions cap is given, if the unit of time on which the cap is based is one day or less. For example, if the emissions cap is given in pounds per hour, the record shall contain for that day the pounds of actual emissions for each hour of the day for each source operation. If the unit of time on which the emissions cap is based is greater than one day (for example, tons per year), the actual emissions per day shall be recorded; and

ii. The total emissions, collectively, from all source operations in the group subject to the emissions cap. The unit of time used for this record shall be the same unit of time as is used for (i)2i above.

(g) The permittee shall ensure that operation pursuant to the authorized facility-specific emissions averaging program meets all applicable permit conditions and applicable requirements, including the requirements of this chapter.

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.29 Facilities subject to acid deposition control

(a) The Department hereby adopts and incorporates by reference the provisions of 40 CFR part 72, and any subsequent amendments thereto, for purposes of implementing an acid rain program that meets the requirements of title IV of the CAA. The term "permitting authority" shall mean the Department, and the term "Administrator" shall mean the administrator of the United States EPA. If provisions or requirements of 40 CFR part 72 conflict with or are not included in this subchapter, the part 72 provision and requirements shall apply and take precedence.

(b) An administratively complete application to incorporate Phase II Title IV requirements into the operating permit shall be submitted:

1. By January 1, 1996, for facilities with source operations subject to the requirements for SO₂ pursuant to 42 U.S.C. § 7651d; and

2. By January 1, 1998, for facilities with source operations subject to the requirements for NO_x pursuant to 42 U.S.C. § 7651f;

3. Facilities subject to both SO₂ and NO_x requirements must meet both deadlines. The 1996 application shall address all SO₂ applicable requirements, and any applicable requirements relating to NO_x applicable to each source operating at the time of application. The 1998 application shall include the NO_x applicable requirements at that time.

(c) For any application for an operating permit, or for any portion of an application for an operating permit, being submitted pursuant to the acid deposition control provisions of 40 CFR 72, including those portions of the compliance plan pertaining to acid deposition control requirements, an applicant shall use nationally standardized application forms, which the Department will make available upon EPA's finalization of the forms.

(d) An administratively complete application for an initial operating permit for a facility, or for any portion thereof, subject to the acid deposition control requirements of Title IV of the CAA shall include all information required by the application form, including the name and address of any designated Title IV representative, as defined at N.J.A.C. 7:27-22.1.

(e) The compliance plan for an affected Title IV facility shall meet the requirements of N.J.A.C. 7:27-22.9, except to the extent that these requirements are superseded by the acid deposition control requirements set forth at 42 U.S.C. § 7651a through 7651o or by applicable provisions of 40 CFR 72.

(f) The Department will take final action on an application for an operating permit, operating permit renewal, permit revision as defined in 40 CFR 72.2, or reopening to implement Phase II Title IV requirements within the deadlines set forth in the acid deposition control requirements at 42 U.S.C. § 7651a through 7651o.

(g) Affected Title IV units subject to the acid deposition control requirements of the CAA are not eligible for authorization to operate under a general operating permit.

(h) The Department is not authorized to issue an operating permit to an owner or operator of a temporary facility which authorizes operation in more than one location during the term of the operating permit, if that temporary facility is an affected Title IV facility, as defined at N.J.A.C. 7:27-22.1.

(i) An operating permit for an affected Title IV facility shall contain a condition prohibiting emissions exceeding the allowances that the facility lawfully holds under Title IV of the CAA or the regulations promulgated thereunder.

(j) Neither a permit shield nor any provision in an operating permit shall, consistent with 42 U.S.C. § 7651g(a), alter or affect the applicable requirements of the acid deposition control program.

(k) The Department shall reopen and modify an operating permit for an affected Title IV facility pursuant to the procedures at N.J.A.C. 7:27-22.25, if additional requirements (including excess emissions requirements) become applicable to the facility under the acid deposition control program at Title IV of the CAA. However, the Department shall not reopen an operating permit for the following:

1. Excess emissions offset plans which shall be deemed to be incorporated into the operating permit upon approval by the EPA; and
2. Increases in emissions that are authorized by allowances acquired pursuant to the acid deposition control program, provided that such increases do not require an operating permit revision under any other applicable requirement.

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).

7:27-22.30 Renewals

(a) A permittee shall renew the operating permit through the procedures set forth in this section. At the time of submittal of an application for renewal, an applicant who proposes to make change(s) at the facility may include the proposed change(s) with the renewal application, identifying which are administrative amendments, seven-day-notice changes, minor modifications, or significant modifications. The Department may, upon its renewal of the permit, incorporate the change(s) into the operating permit, rather than process each separately.

1. The permittee shall not make any significant modification proposed in the application for renewal until the Department approves the renewal.
2. Construction or operation of source operations pursuant to any administrative amendment, seven-day-notice change, or minor modification proposed in the application for renewal, shall be done consistent with the requirements of N.J.A.C. 7:27-22.20, 22.22, and 22.23, respectively.

(b) The permittee shall submit, pursuant to (c) and (d) below, a timely and administratively complete application for the renewal of the operating permit.

(c) To be considered timely, an application for renewal shall be received by the Department at least 12 months prior to expiration of the operating permit. However, consistent with N.J.A.C. 7:27-22.4(e), the applicant is encouraged to submit the renewal application at least 15 months prior to expiration of the operating permit, so that the Department can notify the applicant of any deficiencies in the application. This will allow the applicant to correct any deficiencies, and to better ensure that the application is administratively complete by the renewal deadline. Only applications which are administratively complete by the renewal deadline will be eligible for coverage by an application shield.

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal and the following:

1. A summary of all the changes that have been incorporated into the operating permit through administrative amendments, minor modifications, or significant modifications during the past five-year term of the initial operating permit or the most recent renewal thereof;
2. Any additional changes to the operating permit which the permittee seeks to have included in the operating permit. For these changes the permittee shall submit all information required pursuant to the procedures for an administrative amendment, seven-day-notice change, minor modification, or significant modification, pursuant to N.J.A.C. 7:27-22.20, 22.22, 22.23 or 22.24, as applicable;

3. Any changes which the permittee has submitted as a seven-day-notice change since the date of issuance of the most recent operating permit, and which the permittee seeks to have incorporated into the operating permit;

4. Changes made to information required in the operating permit for insignificant source operations at the facility;

5. A summary of the results of any source emissions testing or monitoring required by the operating permit that has been performed since the date of issuance of the most recent operating permit for the source operations included in the operating permit;

6. Proposed draft operating permit conditions that:

- i. Reflect any change to the facility or its operations made through a seven-day-notice change since the last operating permit issuance; and
- ii. Reflect any change to the facility or its operations proposed for inclusion in the renewed operating permit; and

7. A summary of all DER generation and use since the date of issuance of the most recent operating permit.

(e) In addition to the information required at (d) above, an applicant may submit proposed methods to be used to determine the actual emissions of each significant source operation, for the purpose of preparing emission statements required for the facility pursuant to N.J.A.C. 7:27-21. This is useful where a different method is more accurate than the general methods provided for in the guidelines for emission statement preparation.

(f) An application for the renewal of an operating permit may, at the applicant's option, include air quality simulation modeling and risk assessment for the facility or a portion thereof, pursuant to N.J.A.C. 7:27-22.8. Where a modification of the operating permit requires air quality simulation modeling, pursuant to N.J.A.C. 7:27-22.8, such modeling shall be submitted with the application.

(m) For any opt-in source which is subsequently repowered or replaced, the amount by which the New Jersey emission budget is increased in any given year to accommodate the source shall continue to be the final amount originally approved for the opt-in source pursuant to (f) and (g) above. The source which is repowering or replacing the opt-in source shall continue to be allocated the full amount, provided that the productivity of the repowered or replaced source is at least as great as that of the original opt-in source and no new law or rule establishes a lower allowable emissions limit applicable to the original opt-in source. Otherwise the amount shall be adjusted pursuant to (k) or (l) above, as applicable.

(n) Each year, prior to December 31, the Department shall provide the following information to the Administrator of the NATS and to USEPA, Region II:

1. A list of all sources that are opt-in sources, including any new opt-in sources approved that year; and
2. The number of allowances by which the current year New Jersey emission budget has been increased, for each opt-in source, to accommodate that source.

(o) An owner or operator who elects to opt a source into the NO_x Budget Program shall not opt the source out of the program. The source shall remain in the program and remain subject to the requirements of this subchapter until:

1. The source has ceased to operate and:
 - i. Any permits and certificates issued for the source pursuant to N.J.A.C. 7:27-8 have been canceled; and
 - ii. The provisions of any operating permit issued pursuant to N.J.A.C. 7:27-22 pertaining to the source have been removed; or
2. The source has been replaced, in which case the replacement source shall become a budget source.

7:27-31.5 Interface with the emission offset program

(a) Any owner or operator of a new or modified budget source which is subject to the emission offset requirements at N.J.A.C. 7:27-18 shall meet the applicable emission offset requirements of that subchapter as well as the requirements of this subchapter. Obtaining and holding sufficient allowances for a source under this subchapter does not relieve an owner or operator from the obligation also to obtain any required emission offsets.

(b) Allowances shall be allocated from New Jersey's emissions budget to a new or modified budget source in accordance with N.J.A.C. 7:27-31.7. New Jersey's base emission budget is established at N.J.A.C. 7:27-31.3(b), and shall not be increased to accommodate the new or modified source.

(c) If a budget source's emission reductions, which are creditable emission reductions under N.J.A.C. 7:27-18.5, are

secured for use, by the owner or operator of the budget source or by another person, as NO_x emission offsets for a source which is not a budget source, the owner or operator of the budget source shall report this to the Department. The NATS administrator shall deduct allowances from the budget source's compliance account commensurate in value, in terms of control period emissions, to the emission offsets secured for use by the source which is not a budget source, unless the owner or operator of the source using the emission offsets opts the source for which the emission offsets are being secured into the NO_x Budget Program prior to the date the Department approves a permit for that source. However, if creditable emission reductions generated by a budget source are secured for use as NO_x emission offsets by another budget source, no such deduction will be made.

7:27-31.6 Interface with the open market emissions trading program

(a) NO_x emission reductions made by a budget source during any control period may not be used as the basis for a DER credit under N.J.A.C. 7:27-30.

(b) Except as provided in the provisions for early reductions at N.J.A.C. 7:27-31.12, Early reductions, DER credits shall not be converted to allowances and used to satisfy the requirements of this subchapter.

(c) Allowances shall not be converted to DER credits and used pursuant to the Open Market Trading Program rules at N.J.A.C. 7:27-30, except as provided at N.J.A.C. 7:27-31.8, which allows electric consumers who earn allowances by saving electricity through energy efficiency projects to elect to receive DER credits, instead of allowances. In such case the NATS Administrator shall permanently retire the allowances that would otherwise have been provided to the electric consumer.

7:27-31.7 Annual allowance allocation

(a) Beginning in 1999, the Department shall allocate allowances each year in accordance with this section. For the years 1999, 2000, 2001 and 2002, the Department shall allocate the New Jersey emission budget in accordance with (b) and (c) below; for the year 2003 and each year thereafter, the Department shall allocate the New Jersey emission budget in accordance with (d) and (e) below. In addition, in each of these years, the Department shall allocate additional allowances to opt-in sources in accordance with (f) below. Also, in the year 1999, the Department shall allocate allowances in accordance with (g) below to sources which have been approved to receive early reduction allowances pursuant to N.J.A.C. 7:27-31.12.

(b) By April 1 in each of the years 1999, 2000, 2001, and 2002, the Department shall allocate 17,340 allowances of the New Jersey emission budget, minus any allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27-31.17(h). This subsection does not apply to opt-in sources; opt-in sources are addressed

separately in (f) below. The Department shall allocate allowances in accordance with the following steps:

1. Step 1: This step determines the number of allowances which are to be allocated to the New Source Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to new budget sources which have not operated for two full May 1 through September 30 periods. The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey NO_x emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2,000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NO_x emission rate. If the allowable emission rate for a given fuel is greater than 0.15 lb/MMBtu, then 0.15 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and
2,000 = The factor converting pounds into tons;

2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

i. Calculate the average NO_x emission rate (ER_{NO_x}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$ER_{NO_x} = \frac{E1 + E2}{H1 + H2}$$

Where:

- E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;
- H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and
- H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

ii. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is greater than 0.15 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to the source.

iii. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with the following procedure:

(1) Calculate 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input in accordance with the following equation:

$$H_{150\%} = 1.5 \times \left(\frac{H1 + H2}{2} \right)$$

Where:

- H_{150%} = 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input;
- H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and
- H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

(2) If H_{150%}, as determined in (b)2iii(1) above, is not greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NO_x} \times 0.5 \times \frac{(H1 + H2)}{2} \times \frac{1}{2,000}$$

Where:

ER_{NO_x} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
 H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
 2,000 = The factor for converting pounds into tons;

(3) If the result of (b)2iii(1) above is greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NO_x} \times H_{\text{Allowable}} \left(\frac{(H1 + H2)}{2} \right) \times \frac{1}{2,000}$$

Where:

ER_{NO_x} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;
 $H_{\text{Allowable}}$ = The maximum allowable heat input of the source for the control period which is based on the lesser of the maximum heat input capacity and any limit on the heat input during the control period as established by any law, rule or permit;
 H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
 H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
 2,000 = The factor for converting pounds into tons;

3. (Reserved)

4. Step 3: This step is a preliminary determination of the number of allowances which are to be allocated in (b)5 (Step 4) below to each budget source that is not a new budget source. For this step, the Department shall use the following procedure:

i. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is greater than 0.15 pounds of NO_x per MMBtu, then the number of allowances determined in this step is calculated in accordance with the following equation:

$$\text{Allowances} = \frac{0.20}{2,000} \times \left(\frac{H1 + H2}{2} \right)$$

$$\text{Allowances} = \frac{(ER_{NO_x} + ER_{\text{Allowable}})}{2} \times \frac{(H1 + H2)}{2} \times \frac{1}{2,000}$$

Where:

0.15 = The allocation rate, expressed in pounds per MMBtu, which is the maximum rate to be used for the allocation of allowances in this step;
 H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
 H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
 2,000 = The factor for converting pounds into tons;

ii. If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (b)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the following procedure:

(1) If the weighted allowable emission rate as calculated in Equation 1 below is less than 0.15 pounds of NO_x per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the Equation 2 below:

$$ER_{\text{Allowable}} = \frac{\sum_{i=1}^n (AER_i \times (H1_i + H2_i))}{\sum_{i=1}^n (H1_i + H2_i)} \quad \text{Equation 1}$$

Where:

n = The number of types of fuel burned during the two control periods out of the last three which had the greatest heat input;
 AER_i = The lowest allowable emission rate, expressed in pounds per MMBtu, for the source for each type of fuel burned during the two control periods out of the last three which had the greatest heat input;
 $H1_i$ = The heat input, expressed in MMBtu, for each type of fuel burned during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and
 $H2_i$ = The heat input, expressed in MMBtu, for each type of fuel burned during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

Equation 2

Where:

- ER_{NO_x} = The average NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;
- ER_{Allowable} = The weighted allowable emission rate, expressed in pounds per MMBtu, as calculated in Equation 1 above;
- H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons;

(2) If the weighted allowable emission rate as calculated in Equation 1 of (b)4ii(1) above is not less than 0.15 pounds per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the following equation:

$$\text{Allowances} = \frac{(ER_{NO_x} + 0.15)}{2} \times \frac{(H1 + H2)}{2} \times \frac{1}{2,000}$$

Where:

- ER_{NO_x} = The average NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;
- 0.15 = 0.15 pounds per MMBtu, which is the maximum rate at which allowances are allocated in this step;
- H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons; and

5. Step 4: The Department shall allocate the remainder of the allowances as follows:

i. The sum of the following shall be determined:

- (1) The number of allowances allocated to the New Source Reserve in (b)1 (Step 1) above;
- (2) The number of allowances allocated to the Growth Reserve in (b)2 (Step 2) above;
- (3) The number of allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27-31.17(h); and
- (4) The number of allowances preliminarily determined in (b)4 (Step 3) above to be allocated to each budget source that is not a new budget source;

ii. If the sum in (b)5i above is less than or equal to 17,340, then the Department shall allocate allowances as follows:

(1) Allowances shall be allocated to each budget source that is not a new budget source, as preliminarily determined in (b)4 (Step 3) above; and

(2) The remaining allowances shall be allocated to companies which operated budget sources in 1990. These companies are listed in Table 1 below. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C\%}{100} \times A_R$$

Where:

- C% = The percent that activity of a given company contributes to the 17,054 allowances of the emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1 below; and
- A_R = The remaining number of allowances, which have not been allocated in (b)1 through 3 (Steps 1 through 3) and (b)5ii(1) above.

TABLE 1

Company	Percent of Total
Atlantic Electric	15.93175%
Chevron Products Company	0.12314%
CIBA GEIGY	0.13487%
Coastal Corporation	2.36895%
Cogen Technologies Energy Group	0.39287%
General Public Utilities Corporation	5.55881%
Milford Power, Limited Partnership	0.32250%
Mobil Oil Corporation	1.97021%
Prime Energy	1.33107%
Public Service Electric and Gas Company	67.46804%
Roche Vitamins Incorporated	2.33376%
Tosco Refinery	1.74153%
City of Vineland Electric Utility	0.32250%
Total	100.00000%

iii. If the sum determined in (b)5i above is greater than 17,340, then the Department shall allocate the remaining allowances to budget sources in proportion to the amount of preliminarily determined in (b)4 (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

$$\text{Allowances} = \frac{17,340 - A_0 - A_1 - A_2}{PA_{\text{Total}}} \times PA$$

Where:

- A₀ = The total number of allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27-31.17(h);
- A₁ = The total number of allowances allocated to the New Source Reserve in (b)1 (Step 1) above;
- A₂ = The total number of allowances allocated to the Growth Reserve in (b)2 (Step 2) above;

PA = The number of allowances preliminarily determined for allocation to the source as determined in (b)4 (Step 3) above; and
 PA_{Total} = The sum of all allowances preliminarily determined for allocation to all budget sources in (b)4 (Step 3) above.

$$ER_{Actual} = \frac{EA}{HA}$$

Where:
 EA = Actual emissions during the control period, expressed in pounds of NO_x; and
 HA = Actual heat input during the control period, expressed in MMBtu;

(c) For the years 1999, 2000, 2001, and 2002, after each control period, the Department shall allocate allowances from the New Source Reserve, the Growth Reserve, and Incentive Allowances as follows:

1. The Department shall allocate the allowances in the New Source Reserve by November 30 of the current year as follows:

i. For any new budget source, the Department shall allocate allowances equal to the number of tons of NO_x emitted by the source during the control period, unless the emissions exceed the lesser of 0.15 lb/MMBtu or the lowest allowable emissions limit during the control period, in which case the allowances allocated to the source will be reduced by difference between the actual NO_x emission and the emissions at the lesser of the allowable emission rate or 0.15 lb/MMBtu during the period in which the source exceeded this condition within the control period; and

ii. If there are allowances remaining in the New Source Reserve after the allocation of allowances in accordance with (c)1i above, the Department shall allocate these allowances to companies which operated budget sources in 1990. These companies are listed in Table 1 above. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C\%}{100} \times A_R$$

Where:
 C% = The percent that activity of a given company contributes to the 17,054 allowances of the base emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1; above and
 A_R = The remaining number of allowances in the New Source Reserve, which have not been allocated in (c)1i above;

2. The Department shall allocate allowances in the Growth Reserve by November 30 of the current year as follows:

i. For each budget source that is not a new budget source and that operated at an average actual emission rate of 0.15 pounds of NO_x per MMBtu or less during the control period, the Department shall allocate allowances according to the following procedure:

(1) Calculate the average actual emission rate for the control period of the current year (ER_{Actual}) in accordance with the following equation:

(2) If the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (c)2i(1) above is greater than 0.15 pounds per MMBtu or if the actual emissions during the control period is less than the number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above, then the Department shall allocate no allowances from the Growth Reserve to the budget source;

(3) Except as provided in (c)2iii below, if the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (c)2i(1) above is not greater than 0.15 pounds per MMBtu and if the actual emissions during the control period is greater than the number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above, then the Department shall allocate allowances from the Growth Reserve to the budget source in accordance with the following equation:

$$\text{Allowances} = E_{Actual} - A$$

Where:
 E_{Actual} = The total NO_x emissions, expressed in tons, of the source during the control period, minus any emissions due to the exceedance of an applicable maximum allowable emissions limit; and
 A = The number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above;

ii. If there are allowances remaining in the Growth Reserve after the allocation of allowances in accordance with (c)2i above, the Department shall allocate these allowances to companies which operated budget sources in 1990. These companies are listed in Table 1 above. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C\%}{100} \times A_R$$

Where:
 C% = The percent that activity of a given company contributes to the 17,054 allowances of the base emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1 above; and
 A_R = The remaining number of allowances in the Growth Reserve which have not been allocated in (c)2i above;

iii. If there are not enough allowances in the Growth Reserve to allocate allowances to all of the eligible sources accordance with (c)2i above, then the Department shall prorate the allocations to each source according to the amount of allowances each source would

have otherwise received in accordance with the following equation:

$$\text{Allowances} = \frac{A_{\text{Source}}}{A_{\text{Total}}} \times A_{\text{Reserve}}$$

Where:

- A_{Source} = The number of allowances as determined in (c)2i above for each source;
 A_{Total} = The total number of allowances as determined in (c)2i above for all of the eligible sources; and
 A_{Reserve} = The number of allowances in the Growth Reserve;

3. The Department shall allocate allowances for the implementation of environmentally beneficial techniques which save or generate energy as follows:

i. The Department shall allocate allowances to meet claims which were submitted to the Department by October 15 of the current year and which have been approved by the Department pursuant to N.J.A.C. 7:27-31.8 in accordance with the following equation:

$$\text{Allowances} = \frac{1.50}{2,000} \times E$$

Where:

- 1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;
 E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim pursuant to N.J.A.C. 7:27-31.8; and
 2,000 = The factor for converting pounds into tons;

ii. The Department shall allocate allowances from the next year's base emission budget for New Jersey until all claims are met.

(d) Prior to the control period in the year 2003 and in each year thereafter, the Department shall transfer 4,822 allowances from the base emission budget for New Jersey into the attainment reserve account held by the Department, leaving 8,200 of 13,022 allowances of the base budget for New Jersey to be allocated. The Department shall allocate 8,200 allowances minus any allowances that have been previously allocated pursuant to (c)3ii above, (e)3ii below, (i) below or pursuant to N.J.A.C. 7:27-31.17(h). This subsection does not apply to opt-in sources; opt-in sources are addressed separately in (f) below. The Department shall allocate allowances in accordance with the following steps:

1. Step 1: This step determines the number of allowances which are to be allocated to the New Source Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to new budget sources which have not operated for two full May 1 through September 30 periods. The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2,000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NO_x emission rate. If the allowable emission rate for a given fuel is greater than 0.15 lb/MMBtu, then 0.15 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation. If the allowable emission rate for a given fuel for an industrial boiler or process heater is greater than 0.20 lb/MMBtu, then 0.20 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and
 2,000 = The factor converting pounds into tons;

2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

i. Calculate the average NO_x emission rate (ER_{NO_x}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$\text{ER}_{\text{NO}_x} = \frac{E1 + E2}{H1 + H2}$$

Where:

- $E1$ = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
 $E2$ = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;
 $H1$ = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and
 $H2$ = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

ii. If the source is an industrial boiler or a process heater, the number of allowances to be allocated to the Growth Reserve is determined in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is greater than 0.20 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to that source; and

(2) If the NO_x emission rate as calculated in (d)2i above is not greater than 0.20 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with (d)2iv below;

iii. If the source is utilized for the purpose of electric or steam generation or both and is not an industrial boiler nor a process heater, the number of allowances to be allocated to the Growth Reserve is determined in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is greater than 0.15 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to that source;

(2) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with (d)2iv below;

iv. The number of allowances to be allocated to the Growth Reserve pursuant to (d)2ii(2) and iii(2) above shall be calculated in accordance with the following procedure:

(1) Calculate 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input in accordance with the following equation:

$$\text{Allowances} = \text{ER}_{\text{NO}_x} \times H_{\text{Allowable}} - \left(\frac{H1 + H2}{2} \right) \times \frac{1}{2,000}$$

Where:

H_{150%} = 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

(2) If H_{150%}, as determined in (d)2iv(1) above, is not greater than the maximum allowable heat input

of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = \text{ER}_{\text{NO}_x} \times 0.5 \times \frac{(H1 + H2)}{2} \times \frac{1}{2,000}$$

Where:

ER_{NO_x} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (d)2i above;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons; and

(3) If the result of (d)2iv(1) above is greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowance} = \frac{0.15}{2,000} \times \left(\frac{H1 + H2}{2} \right)$$

Where:

ER_{NO_x} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (d)1i above;

H_{Allowable} = The maximum allowable heat input of the source for the control period which is based on the lesser of the maximum heat input capacity and any limit on the heat input during the control period as established by any law, rule or permit;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

3. (Reserved)

4. Step 3: This step is a preliminary determination of the number of allowances which are to be allocated in (d)5 (Step 4) below to each budget source that is not a new budget source. In this step, the Department shall preliminarily determine the number of allowances to be allocated to each budget source that is not a new budget source, in accordance with the following procedure:

i. If the source is an industrial boiler or a process heater, the number of allowances to be allocated to the source is preliminarily determined in this step in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is greater than

0.20 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equation:

$$H_{150\%} = 1.5 \times \left(\frac{H1 + H2}{2} \right)$$

Where:

- 0.20 = The allocation rate, expressed in pounds per MMBtu;
- H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons;

(2) If the average NO_x emission rate as calculated in (d)2i above is not greater than 0.20 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equations:

$$\text{Preliminary Allowances} = \frac{E_{\text{Allowable}} + E_{\text{Actual}}}{2} \quad \text{Equation 1}$$

Where:

- $E_{\text{Allowable}}$ = The average allowable emissions for the source, as determined in Equation 2 below; and
- E_{Actual} = The average actual emissions for the source, as determined in Equation 3 below;

$$E_{\text{Allowable}} = \frac{\sum_{i=1}^n (AER_i \times (H1_i + H2_i))}{2} \times \frac{1}{2,000} \quad \text{Equation 2}$$

Where:

- n = The number of type of fuel burned during the two greatest heat input control periods during the last three years;
- AER_i = The lesser of 0.20 pounds per MMBtu or the lowest allowable emission rate expressed in pounds per MMBtu for the source for each type of fuel burned during the two greatest heat input control periods;
- $H1_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- $H2_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons;

$$E_{\text{Actual}} = \frac{E_1 + E_2}{2} \times \frac{1}{2,000} \quad \text{Equation 3}$$

Where:

- E_1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- E_2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons; and

ii. If the source is utilized for the purpose of electric generation alone or for the purpose of generation of a combination electricity and useful heat, the number of allowances to be allocated to the source is preliminarily determined in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is greater than 0.15 pounds of NO_x per MMBtu, then the number of allowances for the source is preliminarily determined in accordance with the following equation:

$$\text{Allowances} = \frac{1.50 \times \left(\frac{OE1 + OE2}{2} \right) + 0.44 \times \left(\frac{OS1 + OS2}{2} \right)}{2,000}$$

Where:

- 1.50 = The allocation rate, expressed in pounds per MW-hr;
- OE1 = The net electric output, expressed in MW-hr, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual net electric output;
- OE2 = The net electric output, expressed in MW-hr, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual net electric output;
- 0.44 = The allocation rate, expressed in pounds per MMBtu output, which is approximately equivalent to the allocation rate of 1.50 pounds per MW-hr;
- OS1 = The net useful heat output, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual net electric output;
- OS2 = The net useful heat output, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual net electric output; and
- 2,000 = The factor for converting pounds into tons; and

(2) If the average NO_x emission rate (ER_{NO_x}) of the source as calculated in (d)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equations:

$$\text{Allowances} = \frac{E_{\text{Allowable}} + E_{\text{Actual}}}{2} \quad \text{Equation 1}$$

Where:

- E_{Allowable} = The average allowable emissions for the source, as determined in Equation 2 below if the allowable emission rate is expressed on a heat input basis or in a similar manner if the allowable emission rate is expressed on an output basis; and
- E_{Actual} = The average actual emissions for the source, as determined in Equation 3 below; and

$$E_{\text{Allowable}} = \frac{\sum_{i=1}^n (AER_i \times (H1_i + H2_i))}{2} \times \frac{1}{2,000} \quad \text{Equation 2}$$

Where:

- n = The number of type of fuel burned during the two greatest heat input control periods during the last three years;
- AER_i = The lesser of 0.15 pounds per MMBtu or the lowest allowable emission rate expressed in pounds per MMBtu for the source for each type of fuel burned during the two greatest heat input control periods;
- H1_i = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- H2_i = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons;

$$E_{\text{Actual}} = \frac{E_1 + E_2}{2} \times \frac{1}{2,000} \quad \text{Equation 3}$$

Where:

- E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;
- E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and
- 2,000 = The factor for converting pounds into tons; and

5. Step 4: The Department shall allocate the remainder of the allowances as follows:

- i. The sum of the following shall be determined:
 - (1) The number of allowances allocated to the New Source Reserve in (d)1 (Step 1) above;
 - (2) The number of allowances allocated to the Growth Reserve in (d)2 (Step 2) above;
 - (3) The number of allowances that have been previously allocated pursuant to (c)3ii above, (e)3ii below, (i) below, or pursuant to N.J.A.C. 7:27-31.17(h); and
 - (4) The number of allowances preliminarily determined in (d)4 (Step 3) above to be allocated to each budget source that is not a new budget source;

ii. If the sum in (d)5i above is less than or equal to 8,200, then the Department shall allocate allowances as follows:

(1) Allowances shall be allocated to each budget source that is not a new budget source, as preliminarily determined in (d)4 (Step 3) above; and

(2) Any remaining allowances that were not allocated in (d)1 (Step 1), (d)2 (Step 2), or (d)5ii(1) above shall be allocated to the Department's attainment reserve account; or

iii. If the sum determined in (d)5i above is greater than 8,200, then the Department shall allocate the remaining allowances to budget sources in proportion to the amount of preliminarily determined in (d)4 (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

$$\text{Allowances} = \frac{8,200 - A0 - A1 - A2}{PA_{\text{Total}}} \times PA$$

Where:

- A0 = The total number of allowances that have been previously allocated pursuant to (c)3ii above, (e)3ii below, (i) below or pursuant to N.J.A.C. 7:27-31.17(h)
- A1 = The total number of allowances allocated to the New Source Reserve in (d)1 (Step 1) above;
- A2 = The total number of allowances allocated to the Growth Reserve in (d)2 (Step 2) above;
- PA = The number of allowances preliminarily determined for allocation to the source as determined in (d)4 (Step 3) above; and
- PA_{Total} = The sum of all allowances preliminarily determined for allocation to all budget sources in (d)4 (Step 3) above.

(e) After the control period of the year 2003 and of each year thereafter, the Department shall allocate allowances from the New Source Reserve, the Growth Reserve, and Incentive Allowances as follows:

1. The Department shall allocate the allowances in the New Source Reserve by November 30 of the current year as follows:

i. For any new budget source, the Department shall allocate allowances equal to the number of tons of NO_x emitted during the control period, unless the emissions exceed:

(1) For an industrial boiler or process heater, the lesser of 0.20 lb/MMBtu or the lowest allowable emissions limit during the control period, in which case the allowances allocated to the source will be reduced by difference between the actual NO_x emission and the emissions at the lesser of the allowable emission rate or 0.020 lb/MMBtu during the period in which the source exceeded this condition within the control period; or

(2) For a source that is not an industrial boiler nor a process heater, the lesser of 0.15 lb/MMBtu or the lowest allowable emissions limit during the control period, in which case the allowances allocated to the source will be reduced by difference between the actual NO_x emission and the emissions at the lesser of the allowable emission rate or 0.15 lb/MMBtu during the period in which the source exceeded this condition within the control period; and

ii. If there are allowances left in the New Source Reserve after distributing the allowances in accordance with (e)1i above, then the Department shall allocate such allowances in accordance with (e)4 below;

2. The Department shall allocate the allowances in the Growth Reserve by November 30 of the current year as follows:

i. The only sources that are eligible to be allocated allowances from the Growth Reserve in this subparagraph are industrial boilers or process heaters that emitted NO_x at a rate less than or equal to 0.20 pounds per MMBtu heat input and other budget sources that emitted NO_x at a rate less than or equal to 0.15 pounds per MMBtu heat input. For each budget source that is not a new budget source, the Department shall allocate allowances in accordance with the following procedure:

(1) Calculate the average actual emission rate of the source for the control period of the current year (ER_{Actual}) in accordance with the following equation:

$$ER_{\text{Actual}} = \frac{EA}{HA}$$

Where:

- EA = Actual emissions during the control period, expressed in pounds of NO_x; and
- HA = Actual heat input during the control period, expressed in MMBtu;

(2) If the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (e)2i(1) above is greater than 0.20 pounds per MMBtu for industrial boilers or process heaters or 0.15 pounds per MMBtu for any other budget source, then the Department shall allocate no allowances from the Growth Reserve to the budget source;

(3) Except as provided in (e)2iii below, if the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (e)2i(1) above is not greater than 0.20 lb/MMBtu for industrial boilers or process heaters or 0.15 pounds per MMBtu for any other budget source, and if the actual emissions during the control period is greater than the number of allowances allocated to the source pursuant to (d)5ii(1) or (d)5iii above, then the Department shall allocate allowances from the Growth Reserve to the budget source in accordance with the following equation:

$$\text{Allowances} = E_{\text{Actual}} - A$$

Where:

E_{Actual} = The total NO_x emissions, expressed in tons, of the source during the control period, minus any emissions due to the exceedance of an applicable maximum allowable emissions limit; and
 A = The number of allowances allocated to the source pursuant to (d)5ii(1) or (d)5iii above;

ii. If there are allowances left in the Growth Reserve after distributing the allowances in accordance with (e)2i above, then the Department shall allocate such allowances in accordance with (e)4 below;

iii. If there are not enough allowances in the Growth Reserve to allocate allowances to all of the eligible sources accordance with (e)2i above, then the Department shall prorate the allocations to each source according to the amount of allowances each source would have otherwise received in accordance with the following equation:

$$\text{Allowances} = \frac{A_{\text{Source}}}{A_{\text{Total}}} \times A_{\text{Reserve}}$$

Where:

A_{Source} = The number of allowances as determined in (e)2i above for each source;
 A_{Total} = The total number of allowances as determined in (e)2i above for all of the eligible sources; and
 A_{Reserve} = The number of allowances in the Growth Reserve;

3. The Department shall allocate allowances for the implementation of environmentally beneficial techniques which save or generate energy as follows:

i. The Department shall allocate allowances to meet claims which were submitted to the Department by October 15 of the current year and which have been approved by the Department pursuant to N.J.A.C. 7:27-31.8 in accordance with the following equation:

$$\text{Allowances} = \frac{1.50}{2,000} \times E$$

Where:

1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;
 E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim pursuant to N.J.A.C. 7:27-31.8; and
 2,000 = The factor for converting pounds into tons;

ii. The Department shall allocate allowances from the next year's base emission budget for New Jersey until all claims are met.

4. If there are any allowances remaining in the New Source Reserve or Growth Reserve, after allowances are allocated in accordance with (e)1i and 2i above, the Department shall allocate the remaining allowances in accordance with the following procedure:

i. The Department shall first compare the number of allowances that remain in the two reserves, with the difference between the following:

(1) The number of allowances preliminarily determined to be allocated in (d)4 above; and

(2) The number of allowances actually allocated to budget sources in (d)5 above;

ii. If, pursuant to (e)4i above, the number of allowances that remain in the two reserves is less than the difference, then the Department shall allocate all of the allowances remaining in the two reserves to each budget source in accordance with the following equation:

$$\text{Allowances} = \frac{A_R}{PA_{\text{Total}}} \times PA$$

Where:

A_R = The total number of allowances remaining in the two reserves;
 PA = The number of allowances preliminarily determined for allocation to the source in (d)4 above; and
 PA_{Total} = The total number of allowances preliminary determined for allocation to all budget sources in (d)4 above; and

iii. If, pursuant to (e)4i above, the number of allowances that remain in the two reserves is equal to or greater than the difference, then the Department shall allocate the remaining allowances according to the following procedure:

(1) The Department shall allocate allowances to each budget source in accordance with the following equation:

$$\text{Allowances} = \frac{PA_{\text{Total}} - A_5}{PA_{\text{Total}}} \times PA$$

Where:

A_5 = The total number of allowances allocated to budget sources in (d)5 above;
 PA = The number of allowances preliminarily determined for allocation to each source as determined in (d)4 above; and
 PA_{Total} = The total number of allowances preliminarily determined for allocation to all sources in (d)4 above; and

(2) The Department shall transfer any allowances that still remain unallocated to the Department's attainment reserve account.

(f) Each year, beginning in the year 1999, the Department shall allocate a number of allowances prior to the control period into the compliance account of each opt-in source equal to the amount of allowances added to the New Jersey emission budget to accommodate the opt-in source pursuant to N.J.A.C. 7:27-31.4, Opt-in provisions. However, if the productivity of the source is curtailed during the control period, then a number of allowances shall be deducted accordingly from the source's compliance account

during the end-of-season reconciliation process and be permanently retired, pursuant to N.J.A.C. 7:27-31.17(g)3.

(g) Before the control period of 1999, the Department shall allocate a quantity of allowances to the compliance account of each source equal to the amount of early reductions for which the Department has approved the creation of early reduction allowances pursuant to N.J.A.C. 7:31.12, Early reductions.

(h) In the computations at (b)5ii(2), (b)5iii, (c)1ii, (c)2ii, (c)2iii, (d)5iii, (e)2iii, (e)4ii and (e)4iii(1) above to determine the number of whole allowances to be allocated or distributed, individual quantities of allowances with the highest decimals shall be rounded up and the remaining quantities of allowances with lower decimals shall be rounded down, such that the total amount of allowances allocated or distributed under the provision equals the total number of allowances available.

(i) The Department reserves the right, in any year, prior to carrying out the allocation process in (b) or (d) above, to allocate to another jurisdiction a limited number of current year allowances, not to exceed two percent of the base emission budget for the year. The Department shall exercise this right only if implementation of the OTC MOU result has the anomalous outcome of the other jurisdiction having insufficient allowances to meet the needs of even its low-emitting budget sources. In the year 2003 and thereafter, the Department shall take these allowances from its attainment reserve account.

7:27-31.8 Claims for Incentive allowances

(a) In order to provide an incentive for the saving or generation of electricity through the implementation of certain environmentally beneficial techniques, pursuant to N.J.A.C. 7:27-31.7(c)3 or (e)3, the Department shall distribute allowances each year to persons who have demonstrated, in accordance with the procedures of this section, that they have saved or generated electricity through the implementation of such techniques.

(b) Distribution of allowances pursuant to N.J.A.C. 7:27-31.7(c)3 or (e)3 shall be based on claims submitted by the persons who have saved or generated the electricity. No such incentive allowances shall be allocated for any claim that is not received by the Department by October 30 of the year in which the electricity savings or generation occurred during the control period.

(c) The following persons are eligible to submit a claim for incentive allowances:

1. A New Jersey electric consumer who:
 - i. Purchases its electricity from a company which owns a NO_x Budget source located in New Jersey; and

ii. Reduces its electricity consumption at a facility located in New Jersey through implementation of an energy efficiency measure, initiated in 1992 or thereafter, which:

- (1) Belongs to a class to which the following quantification guidance document applies: "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's board of Regulatory Commissioners on April 28, 1993;

- (2) Does not result in the construction, installation, or operation of a new emission source or increase the emissions of any existing emission source at the facility;

- (3) Does not cause an increase in emissions of any HAP; and

- (4) Does not cause an increase, which is greater than five tons per year, in the emission of any regulated air contaminant other than NO_x;

2. The owner or operator of equipment that is not a budget source, which commenced operation in 1992 or thereafter and which generates electricity through one of the following environmentally beneficial techniques:

- i. Generation through the burning of landfill gas or digester gas;

- ii. Generation by a fuel cell; or

- iii. Generation using solar energy or wind power; and

3. The owner or operator of equipment that generates electricity by another environmentally beneficial technique approved by the Department.

(d) A person eligible to receive an incentive allocation may, pursuant to the Open Market Emissions Trading (OMET) Program rules at N.J.A.C. 7:27-30, elect to receive DER credits instead. In such case, the person shall also file a Notice of DER Credit Generation as required by the OMET Program rules, and the Department shall request that the NATS Administrator transfer any allowance that would otherwise have been allocated to the claimant into a retirement account.

(e) Prior to filing a claim under this section, a person shall establish a general account in the NATS pursuant to the procedures at N.J.A.C. 7:27-31.13.

(f) A claim for incentive allowances shall include:

1. Documentation that the person submitting the claim is eligible to submit a claim for incentive allowances pursuant to (c) above;

2. Specification of the amount of electric generation or savings during the control period that is being claimed, expressed in MW-hr as calculated pursuant to (g) below;

3. The calculations made to determine the amount of electricity generation or savings being claimed and a

report of the data and the methods on which the calculations are based;