

CHAPTER 27A
AIR ADMINISTRATIVE PROCEDURES
AND PENALTIES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 27A, Air Administrative Procedures and Penalties, was extended by gubernatorial directive from April 21, 2010 to April 21, 2011. See: 42 N.J.R. 468(a).

Chapter Historical Note

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

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

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

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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTERS 1 THROUGH 2. (RESERVED)

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES
 AND REQUESTS FOR ADJUDICATORY HEARINGS

- 7:27A-3.1 Scope and purpose
- 7:27A-3.2 Definitions
- 7:27A-3.3 Procedures for assessment and payment of civil administrative penalties
- 7:27A-3.4 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings
- 7:27A-3.5 Civil administrative penalty determination—general
- 7:27A-3.6 Civil administrative penalty for submitting inaccurate or false information
- 7:27A-3.7 Civil administrative penalty for failure to allow lawful entry and inspection
- 7:27A-3.8 Civil administrative penalty for failure to pay a fee
- 7:27A-3.9 Civil administrative penalty for failure to provide information or test data or to maintain a permanent record of information or test data
- 7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

- 7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)
- 7:27A-3.12 Economic benefit component of a civil administrative penalty

SUBCHAPTERS 1 THROUGH 2. (RESERVED)

SUBCHAPTER 3. CIVIL ADMINISTRATIVE
 PENALTIES AND REQUESTS FOR
 ADJUDICATORY HEARINGS

7:27A-3.1 Scope and purpose

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

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

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

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

7:27A-3.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Source operation” means any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus. This term includes the term “emissions unit” as defined at 40 CFR 70.2.

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

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

“Volatile organic compound” or “VOC” means a volatile organic compound as that term is defined by the EPA at 40 CFR 51.100(s), as supplemented or amended, which is incorporated by reference herein.

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

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

Replaced “TVOS” with “TXS” and “VOS” with definition of “volatile organic compound (VOC)”; added “partial pressure”. Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

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

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

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

Administrative Correction.

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

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

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