CHAPTER 27

AIR POLLUTION CONTROL

Authority

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

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APPENDIX B CHEMICALS DEFINING SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

SUBCHAPTER 1. GENERAL PROVISIONS

7:27–1.1 Scope

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Air Pollution Control and shall govern the emitting of and such activities as result in the introducing of contaminants into the ambient atmosphere.

7:27–1.2 Construction

(a) These rules shall be construed so as to permit the Department, the Bureau of Air Pollution Control and its various agencies to discharge its statutory functions.

(b) The Commissioner and the Director of the Division of Environmental Quality may amend, expand or repeal these rules after public hearing. Such actions shall be filed with the Secretary of State as required by law.

7:27–1.3 Practice where rules do not govern

The Commissioner, the Director of the Division of Environmental Quality or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

7:27–1.4 Definitions

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

"Air pollution" means the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

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

"CFR" means the Code of Federal Regulations.

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

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

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

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines, in accordance to the procedures at N.J.A.C. 7:27–1.6 et seq., to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:27–1.6 through 1.8, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation (including, without limitation, N.J.A.C. 7:27–1.18 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of N.J.A.C. 7:27–1.6 et seq., that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

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

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

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification
Plant name and related point identifiers
Address
City
County
AQCR (Air Quality Control Region)
MSA, PMSA, CMSA (Metropolitan Statistical Areas)
State
Zip Code
Ownership and point of contact information
Locational Identifiers:
Latitude & Longitude or UTM Coordinates
SIC Code (Standard Industrial Classification)
Emission point, device or operation description, information
SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

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Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example, the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP–42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

"EPA" means the United States Environmental Protection Agency.

"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 contaminant emitted is caused by a manufacturing process.

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Garbage" means animal and vegetable matter originating in houses, kitchens, restaurants and hotels, produce markets and similar places.

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint companies as well as individuals, unless restricted by the context to an individual as distinguished from a corporate entity or specifically restricted to one or some of the above enumerated synonyms and, when used to designate the owner of property which may be the subject of an offense includes this State, the United States, any other state of the United States and any foreign country or government; lawfully owning or possessing property within this State.

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C–9.2.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Refuse" means garbage, rubbish and trade waste.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Responsible official" means one of the following:

1. For a corporation:

i. A president, secretary, treasurer, or vice-president of the corporation, who is in charge of a principal business function;

ii. Any other person who performs similar policy or decision-making functions for the corporation; or

iii. A duly authorized representative of the person in 1i or ii above, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a preconstruction permit or certificate, or an operating permit, and either:

(1) The facilities for which the representative is responsible employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(2) The delegation of authority to the representative is approved in writing in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this subchapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, a Regional Administrator of EPA); or

4. For affected facilities under Title IV of the Clean Air Act:

i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

ii. The designated Title IV representative for any other purposes under 40 CFR Part 70.

"Rubbish" means solids not considered to be highly flammable or explosive including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

"Salvage operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metals, chemicals, shipping containers or drums.

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack or chimney" means a flue, conduit or opening permitting particulate or gaseous emissions into the open air, or constructed or arranged for such purpose.

"State" means the State of New Jersey.

"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:27–1.11.

"Trade waste" means solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste material.

"USC" means United States Code.

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 definition for "CFR", "Department", "State" and "USC".
Amended by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Added definitions "assertedly confidential information", "claimant", "class confidentiality determination", "confidential copy", "confidential information", "confidentiality claim", "confidentiality determination", "contract", "contractor", "control apparatus", "equipment", "final public copy", "preliminary public copy", "requester", "source operation" and "substantial damage".
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).

7:27–1.5 Municipal ordinances or regulations

No ordinance or regulation of any governing body of a municipality or county or board of health not inconsistent with this Chapter shall be superseded by this Chapter and nothing in this Chapter shall preclude the right of any governing body of a municipality or county or board of health to adopt ordinances or regulations not inconsistent with this Chapter.

7:27–1.6 Procedure for making a confidentiality claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:27–1.8) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The

Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:27–1.7.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

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

7:27–1.7 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:27–1.6 through 1.30. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:27–1.8(a), be directed to the designee.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.8 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:27–1.7, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:27–1.10(a)1ii;

2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:27–1.13(a)1;

3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:27–1.21(a);

4. Notices of disclosure under N.J.A.C. 7:27–1.22; and

5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:27–1.25.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following addresses:

1. With respect to permits and certificates:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
401 East State Street, Second Floor
CN 027
Trenton, New Jersey 08625–0027

2. With respect to emission statement submittals:

Bureau of Air Quality Planning
Department of Environmental Protection
401 East State Street, Seventh Floor
CN 418
Trenton, New Jersey 08625–0418

3. With respect to compliance reports or enforcement actions:

Assistant Director, Air & Environmental Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625–0422

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.9 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:27–1.26 through 1.30, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

7:27–1.26 Hearing before disclosure of information for which a confidentiality claim has been made

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:27A–3.4(a), and shall be delivered to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
401 East State Street
CN 402
Trenton, New Jersey 08625–0402

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:27A–3.4(a);

2. The Department receives the request after disclosure of the assertedly confidential information occurs;

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:27–1.21.

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

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:27.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.27 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:27–1.20 through 1.26.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.28 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.29 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.30 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1–5, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or

2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

New Rule, R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

7:27–1.31 Right to enter

(a) The Department and its representatives shall have the right to enter and inspect at any time, any facility or building, or portion thereof, including all documents and equipment on the premises, in order to ascertain compliance or noncompliance with this chapter or with any preconstruction permit, certificate, operating permit, order, authorization or other legal document issued pursuant thereto, or to verify any information submitted to the Department. This right is absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested, and compliance with appropriate safety standards. This right includes, but is not limited to, the right to:

1. Enter upon the premises of the facility;

2. Sketch or photograph any portion of the facility;

3. Enter upon the premises of a facility where records are maintained under the conditions of the preconstruction permit, certificate or operating permit;

4. Review any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

5. Copy or photograph any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;

6. Inspect any part of the facility, including any equipment (including any equipment used for monitoring and any air pollution control apparatus), practices, or operations, regulated or required under the preconstruction permit, certificate or operating permit;

7. Interview any employee or representative of the owner or operator; and

8. Test or sample any substance or material.

(b) No person shall obstruct, hinder or delay the Department or its representatives in its exercise of its rights under (a) above.

(c) An owner or operator of a facility, and any appropriate employee or representative of any owner or operator, shall, upon request, assist the Department and its representatives in the performance of any inspection. Such assistance shall include, but shall not be limited to, making available sampling equipment and facilities necessary to conduct sampling to determine the nature and quantity of any air contaminant emitted by the facility.

(d) During any sampling or testing conducted by the Department, any equipment, and all components connected to, attached to, or serving the equipment, shall be operated under normal operating conditions, or under conditions set forth in any preconstruction permit, certificate, operating permit, order or other State or Federal authorization covering the equipment.

New Rule, 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).
Formerly "Inspections", at 7:27–8.25.

7:27–1.32 through 7:27–1.35 (Reserved)

7:27–1.36 Applicability

Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable provisions of this chapter.

New Rule, 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).

7:27–1.37 Severability

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

"Control apparatus" means any device which prevents or controls the emission of any air contaminant.

"Department" means the Department of Environmental Protection.

"Direct heat exchanger" means equipment in which heat from the combustion of fuel is transferred to a substance being heated so that the latter is contacted by the products of combustion and may contribute to the total effluent.

"Equipment" means any device capable of causing the emission of an air contaminant into the open air and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This shall include equipment in which the preponderance of the air contaminants emitted is caused by the manufacturing process.

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

"Heat input rate" means the rate at which the aggregate heat content based on the higher heating value of the fuel is introduced into the fuel burning equipment.

"Isokinetic" means a method for sampling air contaminants from the gas stream in a stack or chimney in such a manner that the gas stream enters a sampling probe in the same direction and at the same velocity as the gas stream in a stack or chimney.

"Liquid particles" means particles which have volume but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

"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.

"Marine installation" means equipment for propulsion, power or heating on all types of marine craft and floating equipment.

"Maximum allowable emission rate" means the maximum amount of air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

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

"Performance test principle" means a concept of measurement as required for determining compliance with a specific standard for the emission of air contaminants.

"Sampling train" means a combination of entrapment devices, instruments, and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

"Solid particles" means particles of rigid shape and definite volume.

"Stack or chimney" means a flue, conduit or opening designed, constructed, and/or utilized for the purpose of emitting air contaminants into the outdoor air.

"Standard conditions" means or shall be 70 degrees Fahrenheit and one atmosphere pressure (14.7 psia or 760 mm Hg).

7:27–4.2 Standards for the emission of particles

(a) No person shall cause, suffer, allow or permit particles arising from the combustion of fuel to be emitted from any stack or chimney into the outdoor air in excess of the maximum allowable emission rate set forth in the following table. For a heat input rate between any two consecutive rates shown, the maximum allowable emission rate shall be determined by interpolation:

Heat Input Rate (Millions of British Thermal Units per Hour)	Maximum Allowable Emission Rate (Pounds per Hour)
1	00.6
10	06
20	08
30	09
40	10
50	11
60	12
70	13
80	14
90	14.5
100	15
120	16.5
140	17.5
160	18.5
180	19.3
200	20
400	40
600	60
800	80
1,000	100
2,000	200
3,000	300
4,000	400
5,000	500
6,000	600
7,000	700
8,000	800
10,000	1,000

Note: Heat input rate shall be the sum of the heat input rates of all fuel burning equipment discharging through a single stack or chimney.

7:27–4.3 Performance test principle

(a) For purposes of measuring emissions in accordance with the provisions of this subchapter, particles shall be drawn by isokinetic procedures from the stack or chimney and the weight of the particles determined gravimetrically after removal of uncombined water.

(b) The measured emission weight shall be the combined weight of all particles collected and analyzed in accordance with the sampling and analytical procedures set forth in N.J.A.C. 7:27B–1.1 et seq.

7:27–4.4 Emission tests

(a) Any person responsible for the emission of particles, arising from the combustion of fuel shall, when requested by the department, provide such sampling facilities exclusive of instrumentation and sensing devices as may be necessary for the department to determine the rate at which the particles are or may be discharged from the fuel burning operation.

(b) During such testing by the department, the fuel burning operation shall be operated under normal, routine operating conditions or under such other conditions within the capacity of the equipment as may be requested by the department.

(c) The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

7:27–4.5 Permit to construct, install or alter and certificate to operate

(a) No person shall construct or install any new fuel burning equipment, or any new control apparatus, or alter any existing fuel burning equipment, or any control apparatus without first having obtained a "permit to construct, install or alter control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(b) No person shall use or cause to be used any new or altered fuel burning equipment, or any new or altered control apparatus without first having obtained a "certificate to operate control apparatus or equipment" from the department, in accordance with subchapter 8 of this chapter.

(c) No person shall use or cause to be used any fuel burning equipment unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use, in accordance with the permit to construct and the certificate to operate.

7:27–4.6 Exceptions

(a) The provisions of this subchapter shall not apply:

1. When the heat input rate to the fuel burning equipment is less than 1,000,000 British Thermal Units per hour;

2. To marine installations, vehicles or other movable or portable equipment;

3. To direct heat exchangers.

SUBCHAPTER 5. PROHIBITION OF AIR POLLUTION

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed and became effective prior to September 1, 1969. Revisions to this subchapter were filed on August 5, 1977, as R.1977 d.284 to become effective on October 12, 1977. See: 8 N.J.R. 375(a), 9 N.J.R. 420(a). Petition for Rulemaking: Petition to amend provisions regarding public entity odor violations; petition denied. See: 24 N.J.R. 1642(c), 24 N.J.R. 1907(c), 24 N.J.R. 3764(b).

7:27–5.1 Definitions

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

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend 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 throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

"Economic poisons" means those chemicals used as insecticides, rodenticides, fungicides, herbicides, nematocides or defoliants.

Law Review and Journal Commentaries

Defending Odor Lawsuits Takes a Nose for Nuisance. Albert I. Telsey, 134 N.J.L.J. No. 9, S14 (1993).

7:27–5.2 General provisions

(a) Notwithstanding compliance with other subchapters of this chapter, no person shall cause, suffer, allow or permit to be emitted into the outdoor atmosphere substances in quantities which shall result in air pollution as defined herein.

(b) The provisions of subsection (a) of this section shall not apply to the use of economic poisons.

Public Notice: Air Pollution Investigation Guidelines.
See: 28 N.J.R. 198(a).

Law Review and Journal Commentaries

Defending Odor Lawsuits Takes a Nose for Nuisance. Albert I. Telsey, 134 N.J.L.J. No. 9, S14 (1993).

Case Notes

Release of air pollutants into outdoor atmosphere during course of fire of unknown origin rendered manufacturer strictly liable. Department of Environmental Protection v. Leeds, 95 N.J.A.R.2d (EPE) 137.

Peach orchard owner was not entitled to air pollution exemption under New Jersey Right to Farm Act. Department of Environmental Protection v. Smith Brokers, Inc. 93 N.J.A.R.2d (EPE) 149.

Wind-blown sand was air contaminant; activities of sand company resulted in air pollution. Division of Environmental Quality v. McCormack Aggregates, 93 N.J.A.R.2d (EPE) 37.

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

Record established that auto body painting business violated both permit and air pollution regulations when paint fumes escaped from certified spray paint booths; $17,500 penalty assessed. Division of Environmental Quality v. Prestige Auto Body, 92 N.J.A.R.2d (EPE) 178.

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

Odor emanating from municipal leaf compost pile constituted "air pollution". Borough of Ridgefield v. New Jersey Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 127.

Odor constituted "air pollution"; penalty assessed. A.O. Polymer Corporation v. Department of Environmental Protection. 92 N.J.A.R.2d (EPE) 115.

Evidence failed to establish that claimed air pollution blew on complainant's property; no violation and no penalty. New Jersey Department of Environmental Protection v. Coastal Eagle Point Oil Company, Inc. 92 N.J.A.R.2d (EPE) 85.

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

Single complaint about truck filled with asphalt was insufficient to establish violation of air pollution regulation. Division of Environmental Quality v. Marconi Roofing Company, 92 N.J.A.R.2d (EPE) 34.

SUBCHAPTER 6. CONTROL AND PROHIBITION OF PARTICLES FROM MANUFACTURING PROCESSES

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 26:2C–1 et seq. and were filed on January 27, 1972, as R.1972 d.16 to become effective on March 27, 1972. See: 3 N.J.R. 248(a), 4 N.J.R. 23(b). Revisions were filed on March 21, 1977, as R.1977 d.95 to become effective on May 23, 1977. See: 8 N.J.R. 375(a), 9 N.J.R. 170(c).

7:27–6.1 Definitions

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant.

"Cullett" means broken, waste or recycled glass.

"Department" means the Department of Environmental Protection.

"Dilution gas" means air or as from any source whatsoever added to the source gas emitted from a source operation.

"Equipment" means any device capable of causing the emission of an air contaminant into the open air, and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This shall include equipment in which the preponderance of the air contaminants emitted is caused by the manufacturing process.

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

"Glass" means a hard amorphous inorganic substance made by fusing silicates and sometimes borates and phosphates with certain basic oxides.

"Glass manufacturing furnace" means equipment using energy in the form of intense heat for the production of glass.

"Incinerator" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance, including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap or a facility for cremating human or animal remains.

"Indirect heat exchanger" means equipment in which heat from the combustion of fuel is transferred by conduction through a heat-conducting material to a substance being heated, so that the latter is not contacted by, and adds nothing to, the products of combustion.

"Isokinetic" means a method for sampling air contaminants from the gas stream in a stack or chimney in such a manner that the gas stream enters a sampling probe in the same direction and at the same velocity as the gas stream in a stack or chimney.

"Lead glass" means a glass produced from the fusion of silica, alkali and lead oxide, and characterized by a high

index of refraction, high light dispersion, high electrical resistance and high density.

"Liquid particles" means particles which have volume but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

"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.

"Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

"Opacity" means the property of a substance which renders it partially or wholly obstructive to the transmission of visible light, expressed as the percentage to which the light is obstructed.

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

"Performance test principle" means a concept of measurement as required for determining compliance with a specific standard for the emission of air contaminants.

"Potential emission rate" means the mass rate of air contaminants emitted or to be emitted through a stack or chimney into the outdoor air, exclusive of any type of control apparatus.

"Process weight" means the total weight of all materials introduced into a source operation, excluding liquid or gaseous fuel, uncombined water and air.

"Refuse" means rubbish, garbage, trade waste and plant life.

"Sampling train" means a combination of entrapment devices, instruments and auxiliary apparatus arranged in a prescribed sequence to selectively separate and collect samples of specified air contaminants.

"Solid particles" means particles of rigid shape and definite volume.

"Source gas" means air or gases passed through or generated by a source operation and discharged from the source operation.

"Source operation" means any manufacturing process or any identifiable part thereof emitting an air contaminant into the outdoor atmosphere through one or more stacks or chimneys.

"Stack or chimney" means a flue, conduit or opening designed and constructed for the purpose of emitting air contaminants into the outdoor air.

"Standard conditions" means or shall be 70 degrees Fahrenheit and one atmosphere pressure (14.7 psia or 760 mm Hg).

7:27–6.2 Standards for the emission of particles

(a) No person shall cause, suffer, allow or permit particles as measured by the performance test principles set forth in section 3 of this subchapter to be emitted from any source operation, except as provided in subsection (b) of this section, through any stack or chimney into the outdoor air in excess of the maximum allowable emission rate as determined below:

MAXIMUM ALLOWABLE EMISSION RATE FOR PARTICLES

1	2	3	4
Potential Emission Rate from Source Operation (lbs. per hr.)	**Allowable Emission Rate (lbs. per hr.) Based on 99% efficiency of Collection.**	**Source Gas Emitted from Source Operation (Standard cu. ft. per min.)**	**Allowable Emission Rate (lbs. per hr.) Based on 0.02 grains per SCF.**
50 or less	0.5	3,000 or less	0.5
100	1.0	6,000	1.0
1000	10.0	35,000	6.0
2000	20.0	70,000	12.0
3000 or greater	30.0	140,000	24.0
		175,000 or greater	30.0

Instructions:

1. From columns 1 and 2 above, determine the allowable emission rate based upon the potential emission rate of particles from the source operation as measured by the performance test principles set forth in subsections 3(a) and 3(b) of this subchapter;

2. From columns 3 and 4 above, determine the allowable emission rate based upon the source gas emitted from the source operation. Whenever dilution gas is, for any purpose, added to the source gas from a source operation, the source gas emitted shall be considered to be the gas discharge rate prior to such dilution;

3. The greater of the two emission rates as determined from 1 and 2 above shall be the maximum allowable emission rate. For rates between any two consecutive values stated in columns 1 and 3, the corresponding allowable emission rates shall be as determined by interpolation.

(b) The provisions of subsection (a) of this section shall not apply to any glass manufacturing furnace. Such furnace(s) shall be subject to the following:

1. No person shall cause, suffer, allow or permit particles as measured by the performance test principles set forth in section 3(a) and (b) of this subchapter to be emitted from any glass manufacturing furnace through any stack or chimney into the outdoor air in excess of the maximum allowable emission rate, as determined from the equation below:

i. $A = 5 + (.48 \times W)$;
ii. A = maximum allowable emission rate (lbs. per hr.);
iii. W = process weight per hour (tons per hr.).

(c) The provisions of subsection (b) of this section and section 5(b) of this subchapter shall not apply to any glass manufacturing furnace used for the production of lead glass.

(d) No person shall cause, suffer, allow or permit particles to be emitted from any stack or chimney into the outdoor air the shade or appearance of which is greater than 20 per cent opacity, exclusive of visible condensed water vapor.

(e) The provisions of subsection (d) of this section shall not apply to particles the shade or appearance of which is greater than 20 per cent opacity, exclusive of visible condensed water vapor, for a period of not longer than three minutes in any consecutive 30–minute period.

Petition for Rulemaking: Exxon Company petitioned for change to the allowable particle emission rate limit.
See: 25 N.J.R. 1577(c).
Petition for Rulemaking: Petitioners Exxon Corp. and Tosco Corp. sought to lift cap of 30 pounds of particulates per hour; petition granted and amendment to rule to be completed.
See: 24 N.J.R. 1577(c), 25 N.J.R. 1893(b).

Case Notes

Orders for violations of particle emission standards held invalid as testing procedures required to be published by the Department under former N.J.A.C. 7:27–6.3 were not published as of issuance date of orders. 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).

7:27–6.3 Performance test principles

(a) For purposes of measuring emissions in accordance with the provisions of section 2(a) and (b) of this subchapter, particles shall be drawn by isokinetic procedures from the stack or chimney and the weight of the particles determined gravimetrically after removal of uncombined water.

(b) The measured emission weight shall be the combined weight of all particles collected and analyzed in accordance with the sampling and analytical procedures set forth in N.J.A.C. 7:27B–1.

(c) Opacity measurements shall be carried out in accordance with the procedures set forth in N.J.A.C. 7:27B–2.

Case Notes

Orders for violations of particle emission standards held invalid as testing procedures required to be published by the Department under former regulation were not published as of issuance date of orders. 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 70 N.J. 152, 358 A.2d 199 (1976).

7:27–6.4 Emission tests

(a) Any person responsible for the emission of particles from a source operation shall, when requested by the department, provide the facilities and necessary equipment for determining the opacity of emissions being discharged through a stack or chimney and shall conduct such opacity tests using methods approved by the department. Opacity test data shall be recorded in a permanent log at such time intervals as specified by the department and shall be maintained for a period of not less than one year and shall be available for review by the department.

(b) Any person responsible for the emission of particles from a source operation shall, upon request of the department, provide such sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the department to determine the nature and quantity of particles being emitted from the source operation. During such testing by the department, the source operation shall be operated under normal, routine operating conditions or under such other conditions within the capacity of the source operation as may be requested by the department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

7:27–6.5 Variances

(a) Whenever a person responsible for the emission of particles from a source operation believes that advances in the art of control for the kind and amount of particles emitted has not developed to a degree which would enable the requirements of section 2 of this subchapter to be attained, he may apply to the department for a variance, setting forth his reasons and justifications. The department may issue a variance from section 2(a), (b) and/or (d) of this subchapter and such variance shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for its continuation. Variances issued under the provisions of this section shall be conditional on the compliance with any requirements which the department deems to be necessary.

(b) The department may grant a variance from section 2(b) of this subchapter, if the person responsible for the operation of a glass furnace demonstrates, to the satisfaction of the department, that the process weight for the furnace continually consists of greater than 25 per cent by weight cullet. Such variance:

1. Shall not be granted unless the applicant demonstrates compliance with all other requirements of this chapter, including but not limited to compliance with subchapter 13 (Ambient air quality standards) of this chapter, as well as any other requirements the department deems necessary;

2. Shall specify conditions, including but not limited to a maximum allowable emission rate not to exceed the maximum allowable emission rate, as determined from the following table:

CULLET USAGE (Per cent by weight)	MAXIMUM ALLOWABLE EMISSION RATE (lbs. per hr.)
25–35%	6 + (.48 × W)
35–45%	7 + (.48 × W)
45% or more	8 + (.48 × W)

W = process weight per hour (tons per hr.)

3. Shall be valid for a period not to exceed two years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for such renewal.

(c) The department may grant a variance from section 2(d) of this subchapter if the person responsible for the operation of a glass furnace demonstrates, to the satisfaction of the department, that the glass furnace is capable of conforming with the provisions of sections 2(b) or 5(b) of this subchapter, but not capable of simultaneously conforming with the provisions of section 2(d) of this subchapter. Such variance:

1. Shall not be granted unless the applicant demonstrates compliance with all other requirements of this chapter, as well as any other requirements the department deems necessary;

2. Shall specify conditions, including but not limited to a requirement that the shade or appearance of the emissions from the glass furnace not exceed a per cent opacity specified by the department;

3. Shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the department, setting forth reasons and justifications for such renewal.

(d) Any person seeking a variance under the provisions of subsection (b) and (c) of this section shall file with the department an application on a form provided by the department and shall furnish any other information subsequently requested by the department.

(e) Any person aggrieved by the denial or the prescribed conditions by the department of a variance authorized by this section may, upon application made within 15 days after notice thereof, be entitled to a hearing before the department upon at least 15 days written notice. Within 30 days after such hearing, the department shall issue a notice amending, affirming or rescinding its previous action.

7:27–6.6 Permit to construct and certificate to operate

(a) No person shall construct or install any new equipment or any new control apparatus, or alter any existing equipment or control apparatus from which particles are emitted through any stack or chimney into the outdoor air without first having obtained a "Permit to construct, install or alter control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which particles are emitted through any stack or chimney into the outdoor air without first having obtained a "Certificate to operate control apparatus or equipment" from the department, in accordance with the provisions of subchapter 8 of this chapter.

(c) No person shall use or cause to be used any equipment from which particles are emitted through any stack or chimney into the outdoor air, unless all components connected or attached to, or serving the equipment and/or control apparatus are functioning properly and are in use in accordance with the permit to construct, install or alter, and the certificate to operate.

7:27–6.7 Exceptions

(a) The provisions of this subchapter shall not apply:

1. To indirect heat exchangers;

2. To incinerators.

SUBCHAPTER 7. SULFUR

7:27–7.1 Definitions

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

"Adjusted stack height" means the stack height modified by either a stack height adjustment factor or a stack height adjustment in feet.

"Allowable emission" means the emission in any 60–minute period expressed in pounds, computed as set forth in N.J.A.C. 7:27–7.2(r).

"Commercial fuel" means solid, liquid or gaseous fuels normally produced, manufactured, used or sold for the purpose of creating useful heat.

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

"Gases" means formless fluids which, under standard conditions, occupy the space of enclosure and which can be changed to the liquid or solid state only by the combined effect of increased pressure and decreased temperature.

"Liquid particles" means particles which have volume, but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

SUBCHAPTER 8. PERMITS AND CERTIFICATES

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, have the following meanings, unless the context clearly indicates otherwise.

"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 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.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" means any change made to equipment or control apparatus or the use thereof, except for change reported to the Department pursuant to N.J.A.C. 7:27–8.3(c) as an amendment of the permit in effect and repair or maintenance. Alteration includes, but is not limited to:

1. Change in the location of the point of discharge of any air contaminant from equipment or control apparatus into the outdoor atmosphere, unless the change is authorized in the permit or certificate in effect;

2. Replacement of equipment or control apparatus or of any substantial component thereof if:

i. The replacement equipment or control apparatus is not the same kind as that which is being replaced;

ii. The replacement equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The data of approval of the permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus; or

iv. No permit is in effect for the equipment or control apparatus;

3. The introduction of any new raw material to equipment or control apparatus for which no certificate is in effect, including the change of contents of a storage tank for which no certificate is in effect;

4. Any reconfiguration to an alternate configuration not authorized in the permit in effect;

5. Any of the following changes to equipment or control apparatus, or to the use thereof, if the change may increase the concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

ii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material not authorized in the permit or certificate in effect; or

iii. Change in the process in which the equipment or control apparatus is used;

6. Increase in the concentration or rate of emission of any air contaminant above that authorized by the permit and certificate in effect;

7. Emission of any air contaminant not authorized by the permit and certificate in effect;

8. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with the stack height regulations promulgated at 40 CFR 51;

ii. The change may result in an increase in the ambient concentration of any air contaminant; or

iii. No permit is in effect for the equipment or control apparatus;

9. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the permit or certificate;

10. Any increase in the total hours of operation per time period or the rate of production above that authorized in the permit or certificate; and

11. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any permit or certificate in effect.

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

"Amendment" means any revision of information in a permit or operating certificate in effect which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term does not include the modification of information in a permit or certificate to reflect alteration of equipment or control apparatus.

"AP–42" means the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA.

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

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

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

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

"Category I" means the class of applications for preconstruction permits or certificates for the following types of equipment:

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 metalworking 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 apparatus 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 laboratory hoods, ducts, vents, or similar devices as specified in N.J.A.C. 7:27–8.2(a) used as conduits for exhausting fumes from laboratory operations;

11. Any enclosed sandblasting equipment as specified in N.J.A.C. 7:27–8.2(a) that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;

12. Any plastics grinding equipment as specified in N.J.A.C. 7:27–8.2(a); and

13. Any open top surface cleaner as specified in N.J.A.C. 7:27–8.2(a) 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 application for a preconstruction permit or certificate for any type of new or altered equipment, except those types which are defined above as belonging to Category I.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

"Clean Air Act" or "CAA" means the Federal Clean Air Act (42 U.S.C. 7401 et seq.) which consists of Public Law 159 (July 14, 1955; Stat. 322) and all subsequent amendments thereto.

"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 equipment or control apparatus is constructed, installed and used in conformance with all applicable permit and certificate provisions and conditions of approval, and all applicable laws, regulations, and rules.

"Construct" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used. This term does not include dismantling of existing equipment or control apparatus, site preparation, or placement of the footings or foundation upon which the structural elements of the equipment or control apparatus will rest. This term does not include ordering, receiving, or temporary storage of equipment or control apparatus, but does include placing such a device in the location where it is intended to be used. This term also does not include install.

"Consumer Price Index" or "CPI" means, for any calendar year, the annual average Consumer Price Index for all-urban consumers published by the United States Department of Labor.

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

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

"Co-product" means one or more incidental result(s) 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.

"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 (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide(CO_2).

"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.

"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.

"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 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.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"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 all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP; or

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"Freeboard chiller" means a set of condensing coils which are located peripherally along the free board and which condense the solvent vapor before they escape from the surface cleaner.

"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.

"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.

"Hazardous air pollutant" or "HAP" means an air contaminant listed by EPA as a HAP, pursuant to 42 U.S.C. 7412(b). That list is incorporated by reference herein, together with all amendments and supplements. A copy of the list is available from the Department at the address set forth at N.J.A.C. 7:27–8.4(a).

"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.

"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.

"Install" 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, ductwork and conveyor systems. This term does not include the term "construct," as defined above, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the preconstruction or operating permit application and approved by the Department.

"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.

"Lead" or "Pb" means elemental lead or any compound containing lead.

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

"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:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM–10	100 tons per year
TSP	100 tons per year
Sulfur dioxides	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 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.

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

"1989 dollars" means current dollars adjusted by the fraction, if any, by which the most recent Consumer Price Index differs from the Consumer Price Index for the calendar year 1989, using the following equation:

1989 dollars = (Current dollars) (1989 CPI)/(Most recent CPI)

Where

"1989 dollars" is the total fixed capital cost calculated in 1989 dollars;

"Current dollars" is the total fixed capital cost expressed in dollars as currently valued;

"1989 CPI" is the Consumer Price Index for the calendar year 1989; the CPI for 1989 is 124.0; and

"Most recent CPI" is the Consumer Price Index for the most recent calendar year for which a Consumer Price Index has been published.

"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.

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

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Operating permit" means a permit issued pursuant to N.J.A.C. 7:27–22 by the Department to authorize the use of one or more source operations from which air contaminants may be emitted.

"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 all oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

"Ozone" or "O_3" means a gas having a molecular composition of three oxygen atoms.

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

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to Section 13 of the Air Pollution Control Act of 1954, as amended, of P.L. 1967, c. 106 (N.J.S.A. 26:2C–9.2).

"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 included 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 "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Plastics grinding equipment" means any type of machinery which is used to chop, grind or cut any plastic material for reintroduction of the material into the manufacturing process. This includes any conveying and product collection equipment associated with the grinding machinery.

"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.

"Potable water" means any water used or intended to be used for drinking or culinary purposes.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed. This term shall include fugitive emissions, but shall not include secondary emissions.

"Preconstruction permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the New Jersey Air Pollution Control Act and in particular N.J.S.A. 26:2C–9.2.

"Prevention of significant deterioration" or "PSD" means a permitting process as defined in 40 CFR 52 which is applicable to new or modified major emitting sources locating in areas attaining the national ambient air quality standards for at least one air contaminant.

"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.

"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.

"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 definition 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.

"Repair or maintenance" means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the replacement of equipment or control apparatus or of any substantial component thereof.

"Replacement of equipment or control apparatus or of any substantial component thereof" means the installation of replacement equipment or control apparatus, or any substantial component thereof, at the same location as that occupied by the equipment or control apparatus being replaced.

"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.

"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.

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"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" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or 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).

"Stationary storage tank" means any immobile storage tank. This term also includes any delivery vessel, excluding a railroad tank car, used for storing VOC remaining on site at a facility for more than one month.

"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.

"Substantial component" means, in respect to replacement, the entire piece of equipment or control apparatus, or any component of equipment or control apparatus, if:

1. The total fixed capital cost of the replacement exceeds:

i. For Category I sources, $20,000 as calculated in 1989 dollars; or

ii. For Category II sources, 50 percent of the total fixed capital cost of replacement or $20,000 as calculated in 1989 dollars, whichever is greater; or

2. The equipment or control apparatus, or the component is designated in the conditions of approval of the

preconstruction permit or operating permit in effect as a substantial component.

"Sulfur dioxide" or "SO_2" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

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

"Surface cleaning" means removing unwanted foreign matter from the surfaces of materials.

"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.

"Telemetry" means the automatic transmission of measurement data by phone line, radio waves, or other means to a receiver and recorder.

"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 a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2, which is valid for a period not to exceed 90 days.

"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.

"Toxic substance" or "TXS" means a substance listed in N.J.A.C. 7:27–17.

"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 precipitates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B–3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the 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. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

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

chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1–trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluoroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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 O_3", "PM_{-10}", "potential to emit", "significant net emission increase", "State implementation plan (SIP)", "sulfur dioxide or SO_2", 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).

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) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27–8.3, include:

1. Any equipment used in a commercial or industrial paint spray operation, except for equipment used in architectural coating operations;

2. 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;

3. All unheated open top surface cleaners having a top opening of greater than six square feet (0.56 square meters);

4. All heated oven top surface cleaners;

5. All conveyorized surface cleaners;

6. Equipment, in addition to that set forth in (a)3, 4, and 5 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;

7. Equipment, used in a process, other than as set forth in (a)2, 3, 4, 5 and 6 above, from which direct or indirect emissions of any air contaminant occur and in which the combined weight of all materials, excluding air and water, introduced into any one source operation is in excess of 50 pounds in any one hour;

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 VOC having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1 millimeter 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 direct or indirect emissions of air contaminants occur;

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

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

14. 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.

15. 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, if the concentration in the water of each TXS equals or exceeds 100 parts per billion by weight or the total concentration in the water of VOC equals or exceeds 3,500 parts per billion by weight;

16. 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;

17. 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);

18. Any equipment required to have air pollution control apparatus pursuant to any applicable provisions of N.J.A.C. 7:27–16;

19. Any control apparatus serving equipment for which a permit is required pursuant to this section; or

20. Newspaper printing equipment subject to N.J.A.C. 7:27–8.2(a)2. For newspaper printing equipment in operation on or before October 31, 1994, applications must be filed in accordance with this subchapter by September 1, 1995.

(b) New or altered equipment and control apparatus for which a preconstruction permit and an operating certificate are not required, notwithstanding the provisions of (a) above, include:

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. Potable water treatment equipment, except air stripping equipment with a capacity greater than 100,000 gallons per day;

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

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

(c) This subchapter shall not preclude 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).

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 shall construct, install, or alter any equipment or control apparatus without first having obtained a preconstruction permit, except as provided at N.J.A.C. 7:27–8.2 and 8.17.

(b) No person shall use or cause to be used:

1. Any new or altered equipment or control apparatus without first having obtained an operating certificate, a temporary operating certificate, except as provided at N.J.A.C. 7:27–8.2 and 8.17; or

2. Any equipment or control apparatus if its certificate has expired or been revoked.

(c) Any person holding a permit or certificate shall keep the information in the permit or certificate up to date. Such person shall report any of the following changes to the Department within 120 days after the occurrence of the change, as an amendment of the permit or certificate, provided that the change does not constitute an alteration as defined in N.J.A.C. 7:27–8.1;

1. Change in business name, division name, or plant name; mailing address; company stack designation; telephone number; or name of plant contact;

2. Transfer of ownership of the equipment or control apparatus for which a permit or certificate is in effect;

3. Change in the contents of a storage tank for which a permit is in effect, provided such change does not involve the use or storage of any TXS;

4. The introduction of a raw material not authorized in the permit or certificate in effect;

5. Replacement of equipment or control apparatus or of any substantial component thereof, provided that the date of installation of the replacement equipment or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the replaced equipment or control apparatus; or

6. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with the stack height regulations promulgated at 40 CFR 51:

i. Change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

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

iii. 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. Increase in the exit temperatures or volume of gas emitted from a stack or chimney.

(d) Any person holding a preconstruction permit or certificate shall make said preconstruction permit or certificate, together with any amendments thereto, readily available for 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 or from any one piece of control apparatus or equipment to another.

(g) (Reserved.)

(h) Preconstruction permits and certificates issued under this subchapter are based on the potential for emission of air contaminants only and 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) The provisions of (a) and (b) above shall not apply to repair or maintenance of control apparatus or equipment.

(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.

(k) Any person holding a permit or certificate may decrease any of the following as an amendment of the permit or certificate, provided that the decrease does not entail any change made to equipment or control apparatus or the use thereof, or otherwise constitute an alteration as defined in N.J.A.C. 7:27–8.1:

1. Any maximum allowable rate of emission of any air contaminant or category of air contaminant limit;

2. Any maximum allowable hours of operation per time period; or

3. Any maximum allowable rate of production.

(*l*) For a person seeking approval for an environmental improvement pilot test, as defined at N.J.A.C. 7:27–8.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for the preconstruction permit or certificate within 30 days of its receipt of an administratively complete application. The approval will be effective for 90 days, and may be renewed by application to the Department. The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27–8.11.

(m) Notwithstanding (b) above, no certificate is required for equipment or control apparatus at a facility for which:

1. An operating permit issued by the Department is in effect; or

2. A facility-wide permit issued by the Department pursuant to N.J.S.A. 13:1D–35 et seq. is in effect.

(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).

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.

Attaching control apparatus to ovens and kilns without appropriate permit constituted air pollution violation; penalty imposed. Certech, Inc. v. Division of Environmental Quality, 92 N.J.A.R.2d (EPE) 21.

7:27–8.4 Applications for permits and certificates

(a) Applications for a preconstruction permit or a certificate, or for a renewal thereof shall be submitted to the Department on forms obtained from the Department. Application forms and information pertinent to applications may be requested from:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
401 East State Street, Second Floor
P.O. Box 027
Trenton, New Jersey 08625–0027

(b) The Department may require the applicant to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information may include description of processes, raw materials used, operating procedures, physical and chemical nature of any air contaminant, volume of gas discharged, and such other information as the Department considers necessary. All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C–9.2 and in compliance with N.J.A.C. 7:27–1.

(c) Before an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the preconstruction permit and certificate and that only the air contaminants approved in the preconstruction permit are being emitted. If such testing is required, the applicant shall:

1. Submit a source-specific testing protocol to the Department at least 60 days prior to the anticipated date of the testing, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

2. Obtain approval of any required source-specific testing protocol from the Department in advance of conducting the testing;

3. Conduct the testing in accordance with a standard testing procedure acceptable to the Department or the approved source-specific testing protocol approved in advance by the Department;

4. Give the Department at least seven days advance notice of the date and time of the start of any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has specified in the conditions of approval of the preconstruction permit or certificate other time requirements for notice;

5. Submit the test report to the Department within 30 days after the completion of the sampling, unless a longer period for submission is approved in writing by the Department; and

6. Have the test report from any source emission testing reviewed and certified by a licensed professional engineer, or by an industrial hygienist who has been certified by the American Board of Industrial Hygiene, prior to their submission to the Department.

(d) A single application for a preconstruction permit or certificate may pertain to all equipment and control apparatus from which all of the air contaminants are vented through a single stack or chimney or through a single stack equivalent.

(e) Any person who is applying for a preconstruction permit shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a preconstruction permit shall demonstrate, utilizing an air quality impact analysis conducted in accordance with (k) below and, as deemed necessary by the Department, ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the preconstruction permit application may cause:

1. A violation of any State or Federal ambient air quality standard;

2. Any exceedance of a PSD increment as defined in 40 CFR 52;

3. An increase in 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. A contravention of any other criterion established by the Department to protect human health and welfare and the environment.

(g) In order to ensure timely renewal of an operating certificate, an application for renewal of an operating certificate shall be made to the Department on forms obtained from the Department not less than 90 days prior to the expiration date of the operating certificate.

(h) Any person submitting any application to the Department pursuant to this subchapter shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27–1.39.

(i) Any information an applicant wants the Department to take into consideration in making a decision on an application shall be submitted to the Department in writing for incorporation into the application prior to the Department's making a decision on the application.

(j) An applicant for a preconstruction permit shall conduct an air quality impact analysis in accordance with (k) below if:

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

2. The proposed maximum allowable emissions of air contaminant would result in a significant net emission increase, as calculated in accordance with N.J.A.C. 7:27–18.7, and:

i. The facility for which the application is submitted is a major facility; or

ii. The emission increase, proposed in the application for any air contaminant, by itself equals or exceeds the major facility threshold level which determines if a facility is a major facility for that air contaminant, as set forth in the definition of the term "major facility" at N.J.A.C. 7:27–8.1.

(k) An air quality impact analysis shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors

into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and how the results of the analysis would be presented to the Department. Technical guidance on the preparation of a protocol and procedures for obtaining approval of a protocol may be requested from:

New Jersey Department of Environmental Protection
Air Quality Regulation Program
401 East State Street
Trenton, NJ 08625–0027
Attention: Air Quality Evaluation

(*l*) (Reserved)

(m) An applicant for a preconstruction permit or a certificate shall list in the application all air contaminants which may be emitted from the source operation which meet the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable de minimis emission threshold set forth in Table C or Table D in Appendix I; or

2. The source operation may emit the given air contaminant in an amount which could reasonably be expected to be detectable by the sense of smell outside of the facility's property boundary.

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).
In (a), added application and information request address. In (b), stylistic change and reference to new subsections 8.14 through 8.23 added. Replaced (c) and (d). Added (e), (f), (g), (h), (i).
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 subsections (j) and (k) added pertaining to air quality impact analysis protocol approval.
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: Processing delays for temporary Certificates and renewals of five year Certificates.
See: 29 N.J.R. 3087(b).

Case Notes

Evidence supported air pollution control permit for resource recovery facility. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al, 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

Pollution control equipment. Campbell Foundry Co. v. Sullivan, 119 N.J.Super. 51, 289 A.2d 801 (App.Div.1972).

7:27–8.5 Public comment

(a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:

1. Are subject to the PSD requirements published at 40 CFR 52; or

2. Must be submitted to the EPA for approval as revisions to any state implementation plan.

(b) The Department may seek comments from the public whenever it finds a significant degree of public interest in a preconstruction permit application or whenever the Department determines such comments might clarify one or more issues involved in the decision on the preconstruction permit application.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Old section recodified to 8.6.
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).

7:27–8.6 Denials

(a) The Department shall deny an application for a preconstruction permit or certificate, or a renewal thereof, if construction, alteration, or use of control apparatus or equipment pursuant to the application would result in:

1. A violation of any provision of N.J.A.C. 7:27;

2. An exceedance of any State or Federal ambient air quality standard;

3. An exceedance of any applicable PSD increment as defined in 40 CFR 52;

4. A violation of any applicable NSPS;

5. A violation of any applicable NESHAP;

6. A violation of any Federal stack height or emission dispersion requirement as stated in 40 CFR 51; or

7. A contravention of other criteria established by the Department to protect human health and welfare and the environment.

(b) The Department shall deny an application for a preconstruction permit unless the applicant shows, to the satisfaction of the Department, that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.

(c) The Department may deny an application for a preconstruction permit or certificate if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:

1. Pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27–8.11, within 60 days of receipt of a fee invoice; or

2. Reimburse the Department within 60 days of receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a preconstruction permit or certificate.

(e) The Department shall deny an application for a preconstruction permit for a paint spray operation, unless at a minimum the operation is served by particulate control apparatus.

New Rule, R.1985 d.98, effective March 4, 1985 (operative April 5, 1985).
See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).
Old 8.5 recodified to 8.6.
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).
Section 8.6 Service fees was repealed and section 8.5 was recodified here. Annotations under 8.6 Service fees are as follows:
Amended by R.1985 d.98, 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.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).

7:27–8.7 Approvals

(a) No person may construct, install, or alter equipment or control apparatus for which a preconstruction permit is required pursuant to this subchapter other than as described and authorized in an approved preconstruction permit. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the preconstruction permit.

(b) No person may operate equipment or control apparatus for which a certificate is required pursuant to this subchapter other than as prescribed and authorized in an approved certificate. Full responsibility for use in accordance with the provisions of the certificate shall be with the person to whom the Department has issued the certificate.

(c) No air contaminant, or category of air contaminant where accepted by the Department, shall be emitted other than those approved in the preconstruction permit. Any information contained in an approved application and any condition of approval thereof are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:

1. Rates of emission of each air contaminant and each category of air contaminant listed;

2. Total hours of operation per time period; and

3. Any rate of production.

(d) The Department may establish conditions of approval of any preconstruction permit or certificate application. In the event that a discrepancy exists between the information in an application for a preconstruction permit or certificate and the conditions of its approval, the conditions of approval shall prevail.

(e) The Department may withdraw its approval of a preconstruction permit if the person to whom the Department has issued the preconstruction permit:

1. Does not begin construction, installation, or alteration within one year after the date of approval of the preconstruction permit; or

2. Discontinues construction, installation, or alteration for a period of more than one year.

(f) The Department may modify the conditions of approval of a certificate:

1. At the time of renewal of a temporary operating certificate;

2. At the time of approval or renewal of a five-year operating certificate; or

3. At any time during the period a certificate is in force, if the Department determines that such modification is necessary to protect human health or welfare or the environment.

(g) Any person to whom the Department has issued a preconstruction permit or certificate shall comply with all terms and conditions of any order related to the preconstruction permit or certificate.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(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).

7:27–8.8 Conditions of approval

(a) Upon request of the Department, any person to whom the Department has issued a preconstruction permit or certificate shall submit to the Department information relevant to the operation of equipment and control apparatus including, but not limited to:

1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable preconstruction permit and certificate number, any stack designation assigned by the Department, and any stack designation assigned by the person;

2. Records documenting any use of any equipment, control apparatus, or other source operation including, but not limited to, rate of production and hours of operation; and

3. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus.

(b) The Department may include, as a condition of approval, the requirement that a person to whom the Department has issued a certificate provide verification that the equipment or control apparatus is being used in compliance with the provisions and conditions of its preconstruction permit and certificate. Such verification may include:

1. Periodic testing of any process materials or source emissions, or measurement of the ambient concentration of any air contaminant. The testing or measurement shall be conducted in accordance with a standard testing procedure acceptable to the Department or a source-specific testing protocol approved in advance by the Department, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate;

2. Installation, operation, and maintenance of instrumentation and sensing devices to measure, either at specified intervals or continuously:

i. The kind and amount of any air contaminant emitted;

ii. Operating parameters relevant to determination of potential for air contaminant emissions, such as opacity, pH, flow rate, pressure drop, and temperature at specified process points; and

iii. Ambient concentrations of air contaminants;

3. Recordkeeping including, but not limited to, information pertaining to air contaminant emissions, process operations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department or its representatives; and

4. Reporting to the Department such information as analysis and monitoring results, data derived from measurement of air contaminant emissions and operating parameters, and other information relevant to verifying that the operation of the equipment and control apparatus is in compliance with the provisions of the operating certificate and its conditions. Such information shall, pursuant to the conditions of the preconstruction permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.

(c) The Department may establish, as a condition of approval of any certificate, or any renewal thereof, a schedule of periodic compliance inspections to which the equipment or control apparatus is subject.

(d) No person to whom the Department has issued a preconstruction permit or certificate shall carry out, or allow to be carried out, any alteration of equipment or control apparatus unless the altered equipment or control apparatus incorporates current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

(e) If the conditions of a preconstruction permit or certificate require the Department to incur any of the following charges, the person to whom the Department has issued the preconstruction permit or certificate shall reimburse the Department for the full amount of these charges:

1. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

2. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a permit or certificate.

(f) No person shall use equipment or control apparatus in a manner which will cause 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.

(g) Any person to whom the Department has issued a preconstruction permit or certificate, or a renewal thereof, shall, when requested by the Department, provide such testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(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).

7:27–8.9 Reporting requirements

(a) Upon the request of the Department, any person holding a preconstruction permit or certificate shall submit to the Department any record relevant to any permit or certificate. 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.

(b) Any person to whom the Department has issued a preconstruction permit or certificate shall submit any required report in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(c) Any person submitting any report to the Department, including, but not limited to, a report submitted as an amendment of a preconstruction permit or certificate pursuant to N.J.A.C. 7:27–8.3(c) shall include, as an integral part of the report, certifications complying with N.J.A.C. 7:27–1.39.

(d) Upon the request of the Department, any person to whom the Department has issued a certificate shall report on forms obtained from the Department the air contaminant actual emissions, and information relevant thereto, of any air contaminant or category of air contaminants emitted by the equipment, control apparatus, or source operation.

(e) Any person to whom the Department has issued a preconstruction permit or certificate shall provide, in each report of an amendment of permit and certificate information, specification of the date and nature of each change that has occurred. The report shall be submitted on forms obtained from the Department. Changes to be reported to the Department as an amendment of the preconstruction permit or certificate are specified in N.J.A.C. 7:27–8.3(c).

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(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).

7:27–8.10 Revocation

(a) The Department may revoke its approval of a certificate or a renewal thereof, if the person to whom the Department has issued the certificate:

1. Uses, or allows to be used, equipment or control apparatus not in compliance with any provision or condition of approval of the certificate, or any renewal thereof, or with any applicable Federal, State, or local law, regulation, or rule;

2. Constructs or alters, or allows to be constructed or altered, equipment or control apparatus without applying for and obtaining from the Department approval of a preconstruction permit for such alteration of the equipment or control apparatus;

3. Fails to allow lawful entry by authorized representatives of the Department, pursuant to N.J.A.C. 7:27–1.31;

4. Fails to inform the Department of a change in the preconstruction permit or certificate information, as required pursuant to N.J.A.C. 7:27–8.3(c) and 8.9(e), as an amendment of the preconstruction permit or certificate, within 120 days of the occurrence of the change;

5. Fails to pay any penalty assessed pursuant to a final order issued by the Department;

6. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27–8.11, within 60 days of receipt of a fee invoice or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed;

7. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a preconstruction permit or certificate; or

8. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

(b) The Department may revoke any approval of any application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.

(c) Any notice of revocation issued by the Department shall be in writing.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(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).

7:27–8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a preconstruction permit, an operating certificate or a renewal thereof, or with a request for an amendment, environmental improvement pilot test, or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a preconstruction permit, an operating certificate or a renewal thereof, or on any request for an amendment, seven-day notice change, alteration, environmental improvement pilot test or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule below. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.

(c) The Base Fee Schedule and the Supplementary Fee Schedule are applicable to all applications on which the Department makes its decision on or after the date on which this section is operative.

(d) An additional service fee will not be assessed solely for the failure by the applicant to submit a complete application, pursuant to this subchapter, provided that the applicant, within 30 days of receipt of the written request from the Department, or within a longer time period if so specified in writing by the Department, submits in writing the requested supplementary information to the Department.

(e) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(f) A complete application fee for a preconstruction permit and certificate shall include both the preconstruction permit application fee set forth below at item 1 and the operating certificate fee set forth below at item 2.

A. BASE FEE SCHEDULE

Activity	Basis	Amount
1. Preconstruction Permit Application [1]		
a. Category I	Per Application	$100.00
b. Category II	Per First New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27–8.2(a) per Application, plus	500.00
	Per Each Additional New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27–8.2(a) in an Application, provided that identical equipment to be used in identical processes and using identical materials shall be treated as one piece of equipment for fee calculations	350.00
2. Certificate Application		
a. Category I	Per Operating Certificate	150.00
b. Category II	Per Operating Certificate	500.00
3. Amendment		
a. Change in business name, division name, plant name; mailing address or telephone number; company stack designation; plant contact, responsible official, authorized representative or agent	Per Preconstruction Permit	0.00
b. Correction of a typographical error		0.00
c. Transfer of Ownership or operating permit	Per Preconstruction Permit	50.00
d. Any decrease in maximum allowable rate of production or hours of operation per time period	Per Preconstruction Permit	50.00
e. Any change listed in N.J.A.C. 7:27–8.3(c), 3, 4, 5 or 6	Per change	200.00
4. Certificate Renewal		
a. Category I	Per Operating Certificate	250.00
b. Category II	Per Operating Certificate	500.00
5. Banking		

Activity	Basis	Amount
a. Base Application Review	Per Source Operation	200.00
b. Verification	Per Source Operation	200.00
c. Transfer of Facility Ownership	Per Source Operation	50.00
d. Withdrawal of Credits	Per Source Operation	200.00
e. Donation of Credits to the State of New Jersey	Per Donation	0.00
6. Application for environmental improvement pilot test	Per Application or Per Extension	250.00

[1] Should both Category I and Category II equipment and control apparatus be included in a single application, the new or altered Category I equipment and control apparatus will be subject to the Category I fee; and the new or altered Category II equipment control apparatus will be subject to the Category II fee.

B. SUPPLEMENTARY FEE SCHEDULE

Activity	Basis	Amount
1. Prevention of Significant Deterioration		
a. Engineering Review	Per Applicable Air Contaminant	$500.00
b. Implement Public Comment Requirement	Per Comment Period	500.00
2. Ambient Air Monitoring		
a. Review Protocol	Per Protocol	500.00
b. Inspect Monitoring Locations and Equipment Installation	Per Inspection	500.00
c. Review Quality Assurance Plan	Per Plan	500.00
d. Review Data	Per Required Report	500.00
3. Air Quality Impact Analysis		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Screening Modeling	Per Review	500.00
c. Review Refined Modeling	Per Review	500.00
4. Risk Assessment		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Risk Assessment	Per Review	500.00
5. Testing		
a. Evaluate Source–Specific Testing Protocol		
i. Process Materials Testing	Per Protocol	450.00
ii. Source Emission Testing	Per Protocol	500.00
b. On-site Monitoring of Sample Collection Pursuant to an Approved Source–Specific Testing Protocol		
i. Process Materials Testing	Per Collection Event	200.00
ii. Source Emissions Testing	Per Performance Test	500.00
c. Review Testing Report		
i. Process Materials Testing	Per Report	200.00
ii. Source Emissions Testing	Per Report	500.00
6. Audit Performance of Continuous Emission Monitors		
a. Evaluate Protocol	Per Protocol Per Permit	500.00
b. Observe Testing	Per Protocol Per Permit	500.00
c. Review Testing Report	Per Report	500.00
7. Periodic Compliance Inspection	Per Inspection Per Certificate	200.00

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Deleted references and fee schedule regarding mathematical combinations.
Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

7:27–8.12 Request for an adjudicatory hearing

(a) An applicant who believes himself or herself to be aggrieved with respect to any decision made by the Department regarding any permit and certificate, amendment, certificate renewal, variance, or registration, may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:

1. Denies an application, or any part thereof;

2. Has, in the judgment of the applicant, imposed an unreasonable condition on its approval of an application;

3. Revokes or withdraws a previously issued approval; or

4. Denies the request for a stay under N.J.A.C. 7:27–8.13.

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625–0402

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Administrative change in (b).
See: 23 N.J.R. 3325(b).

7:27–8.13 Request for a stay of the effective date of a departmental decision

(a) The Department may grant a stay of the effective date of a decision to revoke any previous approval. The applicant for a stay shall submit documents which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

1. The granting of the stay is required as a constitutional or statutory right; or

2. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

(c) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(d) Written requests for a stay of the effective date of the Department's decision shall be made to the Department within 20 days of the date upon which the notice of decision was received.

(e) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

(f) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).

7:27–8.14 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Cross reference added regarding recordkeeping requirements.
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section was titled "Confidentiality claims".

7:27–8.15 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).

See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Access to information; nondisclosure".

7:27–8.16 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Confidentiality determination".

7:27–8.17 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Substantive criteria for use in confidentiality determination".

7:27–8.18 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Disclosure of confidential information".

7:27–8.19 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Disclosure of confidential information to contractors".

7:27–8.20 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Disclosure by consent".

7:27–8.21 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Disclosure based on imminent and substantial danger".

7:27–8.22 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Security procedures".

7:27–8.23 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Section titled "Wrongful access or disclosure; penalties".

7:27–8.24 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
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).
Corrected internal cite at (b)1.
Amended by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Added reference to emission statements.
Repealed by R.1994 d.502, effective October 3, 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).
"Certification of information" recodified at 7:27–1.39.

7:27–8.25 (Reserved)

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).
Repealed by R.1994 d.502, effective October 3, 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).
Formerly "Inspections". See 7:27–1.31, Right to enter.

7:27–8.26 Civil or criminal penalties for failure to comply

Any person who is subject to the provisions of this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A–3 or criminal penalties pursuant to N.J.S.A. 2C–28.3 or both.

New Rule, R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 23 N.J.R. 723(a).

Case Notes

Failure of manufacturer to give notice of release of vinyl chloride monomer until 28 minutes after occurrence was not immediate enough to avoid penalty. Department of Environmental Protection and Energy v. Occidental Chemical, 95 N.J.A.R.2d (EPE) 119.

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.

Dispute over enforcement of penalties for exceedances of air contaminant allowables was not within agency jurisdiction. Department of Environmental Protection v. Trenton District Energy Company, 95 N.J.A.R.2d (EPE) 3.

Reduction of penalty; good compliance history and efforts at mitigation. Harrison Delivery Services v. DEPE, 94 N.J.A.R.2d (EPE) 30.

7:27–8.27 Exemption for pollution prevention alterations at facilities subject to N.J.S.A. 13:1D–35 et seq.

(a) A person is not required to obtain a permit or a certificate for an alteration of equipment or control apparatus, or installation of new equipment or control apparatus, if:

1. The production process using the equipment or control apparatus, is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq.;

2. The alteration 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–5; and

3. The alteration 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 equipment 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.

(b) Any person who is exempted pursuant to (a) above from obtaining a permit and certificate shall report the alteration or change and the Pollution Prevention Plan Modification or Pollution Prevention Assessment to the Department within 120 days after the occurrence of the alteration or change, as an amendment of the facility-wide permit pursuant to the procedures for amendment at N.J.A.C. 7:27–8.3(c).

(c) For equipment or control apparatus subject to (a) above, the facility-wide permit shall constitute the operating certificate required by this chapter.

New Rule, 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).
New Rule, 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).

APPENDIX I

TABLE A

Hazardous Air Pollutants

Air Contaminant	CAS Number
Acrolein	107028
Acrylamide	79061
Asbestos	1332214
Beryllium compounds	—
1,3–Butadiene	106990
Cadmium compounds	—
Chlordane	57745
2–Chloroacetophenone	532274
1,2–Dibromo–3–chloropropane	96128
Dichloroethyl ether (Bis(2–chloroethyl)ether)	111444
1,2–Diphenylhydrazine	122667
Heptachlor	76448
Hexachlorobenzene	118741
Hexamethylene–1.6–diisocyanate	822060
Lead compounds	—
Lindane (all isomers)	58899
Mercury compounds	—
Nickel compounds	—
Polychlorinated biphenyls (Arochlors)	1336363
1,1,2,2–Tetrachloroethane	79345
Toxaphene (chlorinated camphene)	8001352

TABLE B

Hazardous Air Pollutants

Air Contaminant	CAS Number
Acrylic acid	79107
Acrylonitrile	107131
Benzene	71432
Benzyl chloride	100447
Carbon tetrachloride	56235
Chloroform	67663
1.4–Dioxane (1.4–Diethyleneoxide)	123911
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1.2–Dichloroethane)	107062
Ethylene oxide	75218
Formaldehyde	50000
Hexachlorobutadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721
Methylene diphenyl diisocyanate (MDI)	101688
Tetrachloroethylene (Perchloroethylene)	127184
1,1,2–Trichloroethane	79005
Trichloroethylene	79016
2,4,6–Trichlorophenol	88062
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1–Dichloroethylene)	75354

TABLE C

Thresholds for De Minimis Emissions of Hazardous Air Pollutants

CAS Number	Air Contaminant	Annual emissions pounds per year
——	Total dioxin and furans [3]	0.0001
92875	Benzidine	0.06
542881	Bis (chloromethyl) ether	0.06
62759	n-Nitrosodimethylamine	0.2

CAS Number	Air Contaminant	Annual emissions pounds per year
——	Hexavalent chromium compounds	0.4
302012	Hydrazine	0.8
——	Arsenic and arsenic compounds	1.0
79469	2–Nitropropane	1.0
——	Any Table A HAP (1)	2.0
——	Any Table B HAP (2)	20.0
——	Any other HAP	400.0

(1) This air contaminant category shall apply to any HAP listed in Table A at N.J.A.C. 7:27–8, Appendix I.
(2) This air contaminant category shall apply to any HAP listed in Table B at N.J.A.C. 7:27–8, Appendix I.
(3) As defined in EPA/625/3–87/012, Interim Procedures for Estimating Risks associated with exposures to mixtures of chlorinated-p-Dioxins and Dibenzofurans.

TABLE D

Thresholds for De Minimis Emissions of Other Air Contaminants

Air Contaminant	Hourly emissions (pounds per hour)
VOC	0.05
TSP	0.05
PM–10	0.05
NO_x	0.05
CO	0.05
SO_2	0.05
Any other air contaminant (1)	0.05

(1) This air contaminant category shall apply to any other air contaminant that the facility has the potential to emit in a quantity greater than or equal to 100 tons per year.

New Rule, 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).

SUBCHAPTER 9. SULFUR IN FUELS

Subchapter Historical Note

Amendments to this subchapter which replaced the earlier numbering and text were adopted pursuant to authority of N.J.S.A. 13:1D–1 et seq. and were filed on August 10, 1978, as R.1978 d.276 to become effective on October 12, 1978. See: 10 N.J.R. 234(a), 10 N.J.R. 383(c). Amendments which changed the effective date of these rules to December 31, 1978, or such earlier date as formal federal approval is granted was filed on October 10, 1978 as R.1978 d.361. See: 10 N.J.R. 479(c). Further amendments which changed the effective date to July 12, 1979, were filed and became effective on January 10, 1979, as R.1979 d.10. See: 11 N.J.R. 63(c).

This subchapter was previously amended by R.1976 d.81, effective March 12, 1976 (See: 8 N.J.R. 181(a)) and R.1976 d.100, effective March 31, 1976 (See: 8 N.J.R. 222(a)). Formal federal approval for these amended rules was obtained on June 4, 1979.

7:27–9.1 Definitions

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

"Aerodynamic downwash" means the rapid descent of a plume to ground level with little dilution and dispersion as a result of alteration of background air flow characteristics caused by the presence of buildings or other obstacles in the vicinity of the emission point.

"Air quality simulation model" means a mathematical procedure for predicting the ambient air concentration of pollutants resulting from the dispersive properties of the atmosphere.

"Ambient air quality standard" means a limit on the concentration of a contaminant in the general outdoor atmosphere, which cannot be exceeded without causing or tending to cause injury to human health, welfare, animal or plant life, or property, or unreasonably interfering with the enjoyment of life and property, excluding all aspects of employer-employee relationship as to health and safety hazards.

"Carbon dioxide (CO_2)" means a colorless, odorless gas at standard conditions, having a molecular composition of one carbon atom and two oxygen atoms.

"Fuel" means gaseous, liquid, or liquefiable petroleum product (excluding coal) which is produced, manufactured, used or sold for the purpose of creating useful heat.

"Fuel oil" means a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil.

"Mathematical combination" means the summation of the emissions from two or more stacks or chimneys and the regulation of those emissions as if they came from the same sources venting through a single stack.

"Motor vehicle" means any vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks.

"Municipal solid waste (MSW)" means residential, commercial, and institutional non-hazardous solid waste.

"Solid fuel" means solid material or any substance derived from solid material used or to be used for the purpose of creating useful heat and includes, but is not limited to, coal, gasified coal, liquified coal, solid solvent-refined coal, municipal solid waste, refuse-derived fuel, and wood.

"SSU viscosity" means the number of seconds it takes 60 cubic centimeters of an oil to flow through the standard orifice of a Saybolt Universal viscometer at 100 degrees Fahrenheit.

"Stack or chimney" means a flue, conduit or opening designed, constructed, and/or utilized for the purpose of emitting air contaminants into the outdoor air.

"Sulfur dioxide (SO_2)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms.

"Viscosity" means the measure of a fluid's resistance to flow.

"Zone 1" means Atlantic, Cape May, Cumberland, and Ocean Counties.

"Zone 2" means Hunterdon, Sussex, and Warren Counties.

"Zone 3" means Burlington, Camden, Gloucester, and Mercer Counties except those municipalities included in Zone 6.

"Zone 4" means Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties.

"Zone 5" means Salem County.

"Zone 6" means in Burlington County, the municipalities of Bass River Township, Shamong Township, Southampton Township, Tabernacle Township, Washington Township, Woodland Township, and in Camden County, Waterford Township.

As amended, R.1982 d.456, effective December 6, 1982 (operative February 4, 1983).
See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).
"Air quality simulation model", "Mathematical combination", "Municipal solid waste", and "solid fuel" defined.
Administrative correction to delete definition "Oxygen".
See: 23 N.J.R. 1166(b).

7:27–9.2 Sulfur content standards

(a) No person shall store, offer for sale, sell, deliver or exchange in trade for use in New Jersey fuel which contains sulfur in excess of a percentage by weight set forth in Table 1 of this section, except as provided in (c), (d) and (e) below, and N.J.A.C. 7:27–9.5.

(b) No person shall use fuel which contains sulfur in excess of a percentage by weight set forth in Table 1 of this section, except as provided in (c), (d), and (e) below, and N.J.A.C. 7:27–9.5.

TABLE 1

MAXIMUM ALLOWABLE SULFUR IN FUEL

Typical Grades of Fuel Oil	Classification by SSU Viscosity at 100°F	Percent Sulfur by Weight Zone 1	Zone 2 & Zone 5	Zone 3	Zone 4 & Zone 6
No. 2 & lighter	Less than or equal to 45, including gases	0.3%	0.3%	0.2%	0.2%
No. 4	Greater than 45 but less than 145	2.0%	0.7%	0.3%	0.3%
No. 5, No. 6 & heavier	Equal to or greater than 145	2.0%	1.0%	0.5%	0.3%

(c) The provisions of (a) and (b) above shall not apply to fuels whose combustion causes sulfur dioxide emissions from any stack or chimney into the outdoor atmosphere which are demonstrated to the Department as not exceeding, at any time, those quantities of sulfur dioxide expressed in pounds per 1,000,000 British Thermal Units (BTU) gross heat input, set forth in Table 2 of this section.

TABLE 2

MAXIMUM ALLOWABLE SULFUR DIOXIDE EMISSIONS

Typical Grades of Fuel Oil	Classification by SSU Viscosity at 100°F	SO_2 Emissions (lbs./10^6 BTU) Zone 1	Zone 2 & Zone 5	Zone 3	Zone 4 & Zone 6
No. 2	Less than or equal to 45	0.32	0.32	0.21	0.21
No. 4	Greater than 45 but less than 145	2.10	0.74	0.32	0.32
No. 5, No. 6 & heavier	Equal to or greater than 145	2.10	1.05	0.53	0.32

(d) The provisions of (a) and (b) above shall not apply to fuels included in an alternative emission control plan based on a mathematical combination approved by the Department. Application for such approval shall be made to the Department in writing and must include:

1. Certification that all source operations to be included in the mathematical combination are under the control of, or operated by, one person; and

2. Certification that the total sulfur dioxide emissions from the mathematical combination during each 24–hour period will not exceed the quantity of sulfur dioxide expressed in pounds per million BTU gross heat input set forth in Table 2 of this section; and

3. Certification that the total sulfur dioxide emissions from the mathematical combination during each 24–hour period will not exceed the maximum total weight of sulfur dioxide that all the sources in the mathematical combination were allowed to emit at the time of applying; and

4. Identification of each fuel burning unit and stack to be included in the mathematical combination; and

5. Identification of the grades of fuel to be burned in each unit, the maximum sulfur content of each fuel to be burned in each unit, the maximum gross heat input rate for each unit, the higher heating value of each fuel, and the annual fuel use and operating hours per year for each unit; and

6. Applications for Permits to Construct and Certificates to Operate, pursuant to the requirements of N.J.A.C. 7:27–8, for any fuel burning unit which must be altered or for any fuel burning unit in which fuel is to be burned having a sulfur content in excess of the applicable limits specified in Table 1 of this section; and

7. A demonstration by air quality simulation modelling acceptable to the Department, including aerodynamic downwash modelling, unless waived in accordance with the provisions of N.J.A.C. 7:27–9.4, that increases in air contaminants resulting from use of the alternative emission control plan will not cause any ambient air quality standard to be exceeded, or cause any allowable prevention of significant deterioration ambient air increment as established by the United States Environmental Protection Agency to be exceeded; and in areas where an ambient air quality standard is already exceeded, will not cause an increase in ambient air concentrations greater than the threshold increases set forth in Table 1 of N.J.A.C. 7:27–18.3; and

8. Sufficient information to evaluate aerodynamic downwash effects including a site plan, heights of all structures within 1,000 feet (305 meters) of the stacks in the mathematical combination, and the topography of the area within 1,000 feet (305 meters) of the stacks in the mathematical combination; and

9. A guarantee that fuel analyses will be submitted at intervals specified by the Department.

(e) The provisions of (a), (b), (c), and (d) above shall not apply whenever a person responsible for the sulfur dioxide emissions from a facility into the outdoor air resulting from the combustion of facility by-products alone, or from the combustion of facility by-products combined with fuels conforming with this section, can demonstrate to the Department that the facility's emissions are predictable and will in no case exceed 310 ppm by volume adjusted to 12 percent carbon dioxide by volume. In such cases, the Department may establish conditions as it deems appropriate including, but not limited to, requiring sampling and analysis of emissions of sulfur dioxide, periodic fuel analysis and the periodic submission of data.

(f) If the identified grade of fuel oil does not agree with the classification by viscosity set forth in Table 1 and Table 2, then the allowable percent sulfur by weight shall be determined by the viscosity classification.

Amended by R.1982 d.456, effective December 6, 1982 (operative February 4, 1983).
See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).
"No. 2" fuel oil added under Table 2; new (d) added, old (d) and (e) redesignated as (e) and (f); old (f) deleted.
Administrative correction to (c) and (e).
See: 23 N.J.R. 1166(b).

Case Notes

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.

7:27–9.3 Exemptions

(a) The provisions of this subchapter shall not apply to fuel used by ocean-going vessels or in motor vehicles.
where:

(b) The Department will set such standards for the sulfur contents of fuel as may be necessary to prevent violation of air quality standards where it is determined that an aerodynamic downwash problem exists as the result of emissions from a source or sources of air pollution.

As amended, R.1982 d.456, effective December 6, 1982 (operative February 4, 1983).
See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).
Old (b) deleted, (c) redesignated as (b).

7:27–9.4 Waiver of air quality modelling

(a) The Department may waive the air quality simulation modelling requirements of N.J.A.C. 7:27–9.2(d) if the applicant demonstrates that:

1. The effective heights, as determined in accordance with the provisions of (b) below, of the stacks to be included in the mathematical combination are equal, or that the emissions from the fuel having the greatest sulfur content will be discharged to the atmosphere from the stack having the greatest effective height;

2. The total maximum SO_2 emission rate for all source gases to be included in the mathematical combination is no greater than 800 pounds per hour (363 Kg/hr);

3. No stack in the mathematical combination is separated from any other stack by a distance measured from the stack center lines, greater than three times the least effective stack height of any stack included in the mathematical combination; and

4. No stack in the mathematical combination is separated from any other stack by a distance greater than the allowable separation as determined from Figure 1 of this section.

(b) Procedure for using Figure 1.

1. Determine the effective stack heights in accordance with the provisions of (c) below.

2. Locate the least effective stack height on the left side of Figure 1 of this section.

3. Find the intersection of the least effective stack height and maximum total SO_2 emission rate. Interpolation is permitted.

4. Draw a vertical line from this point to the bottom of the chart to find the maximum allowable separation of the stacks.

(c) The effective stack height of a given stack for the purposes of this subchapter is the lesser of the following values:

1. 650 feet; or

2. The sum of the physical stack height and the plume rise. Plume rise is calculated from the formula:

$$h = \frac{9.5}{u}\left(\frac{Vd^2\,(T-68)}{T+460}\right)^{0.75}$$

h is the plume rise in feet;

u is 12 if the physical stack height is less than 65 feet; u is 5 for physical stack heights of 65 feet or greater;

V is the actual exit velocity of the stack gas in feet per second;

d is the inside diameter of the stack exit in feet; and

T is the temperature of the stack gas at the stack exit, in degrees Fahrenheit.

R.1982 d.456, effective December 6, 1982 (operative February 4, 1983).
See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).
Administrative correction to (a)3 and to (c)2.
See: 23 N.J.R. 1166(b).

7:27–9.5 Incentive for conversion to coal or other solid fuel

(a) The Department may authorize a person to store, offer for sale, sell, deliver, exchange in trade or use fuel oils having a sulfur content in excess of the maximum allowable amounts set forth in Table 1 of N.J.A.C. 7:27–9.2 provided that:

1. The fuel burning unit in which the high-sulfur oil is used, or a unit of comparable capacity at the same facility, will burn coal or other solid fuel in accordance with a schedule approved by the Department; and

2. The high-sulfur oil will be burned for no longer than a period of two years if an existing fuel burning unit is converted from burning oil or gas, or three years if the conversion is accomplished by the installation of a new fuel burning unit; and

3. The applicant demonstrates by air quality simulation modelling or other methods acceptable to the Department that increases in the emissions of air contaminants resulting from the use of the high-sulfur oil will not cause any ambient air quality standard to be exceeded and in areas where an ambient air quality standard is already exceeded, will not cause an increase in ambient air concentrations greater than the threshold increases set forth in Table 1 of N.J.A.C. 7:27–18.3; and

4. The sulfur dioxide emissions from the burning of coal or other solid fuel will not exceed 0.3 pounds of sulfur dioxide per million BTU gross heat input; and

5. The applicant obtains an approved Permit to Construct and Certificate to Operate, in accordance with the provisions of N.J.A.C. 7:27–8, for the conversion to coal or other solid fuel; and

6. The applicant agrees that if the conversion does not take place pursuant to (a)1 above, he will pay to the Department a sum of money no less than the difference between the cost of the high-sulfur oil used pursuant to the provisions of this section and the cost of the same grade oil which would otherwise be required under the provisions of N.J.A.C. 7:27–9.2. Such payment shall be in addition to, and not in lieu of, any penalty which may be required pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq.; and

7. The applicant will furnish to the Department a written monthly report stating the quantity of high-sulfur oil used, the cost of such oil, and the cost of an equivalent quantity of the same grade oil which conforms to the provisions of N.J.A.C. 7:27–9.2; and

8. The applicant attests to his commitment to honor and comply with all of the provisions of this section and any other provisions the Department deems appropriate, by entering into a Consent Order, which shall so state, with the Department; and

9. Such Consent Order shall be subject to modification or revocation by the Department if the Department determines that the emissions from the burning of high-sulfur oil contribute to a contravention of any applicable ambient air quality standard, or significantly degrade ambient air quality, or that the applicant has failed to honor or comply with its provisions in part or in whole.

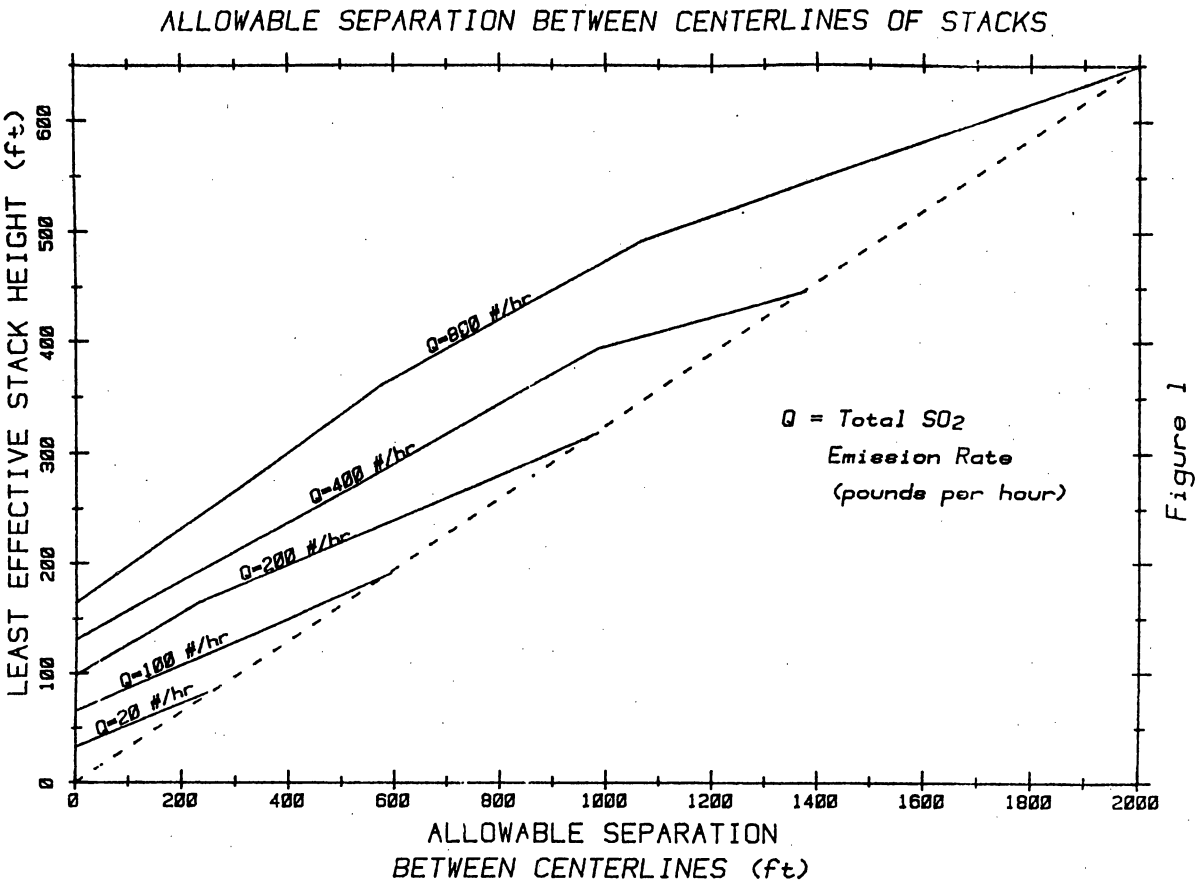

Figure 1

R.1982 d.456, effective December 6, 1982 (operative February 4, 1983). See: 13 N.J.R. 870(a), 14 N.J.R. 1452(a).

SUBCHAPTER 10. SULFUR IN SOLID FUELS

Authority

N.J.S.A. 13:1D–1 et seq.

Subchapter Historical Note

Rules concerning sulfur in coal were originally codified in this subchapter and were filed and became effective prior to September 1, 1969. Amendments to this subchapter were accepted on July 6, 1978 as R.1978 d.220, to become effective on September 15, 1978. See: 10 N.J.R. 98(a), 10 N.J.R. 328(b). Further amendments were adopted as R.1981 d.185, effective June 4, 1981. See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).

7:27–10.1 Definitions

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

"Anthracite coal" means coal that is classified as anthracite according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Approved stack-gas cleaning process" means a process which removes sulfur dioxide from the products of combustion of solid fuel and which has been approved by the Department.

"Bituminous coal" means coal that is classified as bituminous according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and subbituminous coal.

"Coke" means a fused, cellular, porous structure that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by the application of heat in the absence of air or in the presence of a limited supply of air.

"Control apparatus" means any device which prevents or controls the emissions of any air contaminant.

"Lignite" means coal that is classified as lignite A or B according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Nonbanded coal" means coal that is classified as nonbanded according to the American Society for Testing and

Materials Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coal, ASTM D 2796–77.

"Potential combustion emission rate" means the theoretical emission rate that would result from the combustion of a fuel in an uncleaned state without control apparatus.

"Reconstruction" means the replacement of components of an existing 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 construct an entirely new comparable facility.

"Resource recovery facility" means a facility that combusts more than 75 percent non-fossil fuel based on the moving average of heat input during 3–month periods.

"Solid fuel" means solid material or any substance derived from solid material used or to be used for the purpose of creating useful heat and includes, but is not limited to, coal, gasified coal, liquified coal, solid solvent-refined coal, municipal solid waste, refuse-derived fuel, and wood.

"Stack or chimney" means a flue, conduit or opening designed, constructed, and/or utilized for the purpose of emitting air contaminants into the outdoor air.

"Steam generating unit" means any furnace, boiler, or other device used for combustion fuel for the purpose of producing steam.

"Subbituminous coal" means coal that is classified as subbituminous according to the American Society for Testing and Materials Standard Specification for Classification of Coals by Rank, ASTM D 388–77.

"Sulfur dioxide (SO_2)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms.

"Zone One" means Atlantic, Cape May, Cumberland, and Ocean Counties.

"Zone Two" means Hunterdon, Sussex, and Warren Counties.

"Zone Three" means Burlington, Camden, Gloucester, Mercer, and Salem Counties.

"Zone Four" means Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties.

As amended, R.1981 d.185, eff. June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.

7:27–10.2 Sulfur contents standards

(a) No person shall store, offer for sale, sell, deliver or exchange in trade, for use in New Jersey, solid fuel which contains sulfur in excess of the percentages by weight set forth in Table 1, except as provided otherwise in this Subchapter.

(b) No person shall use in New Jersey, solid fuel which contains sulfur in excess of the percentages by weight set forth in Table 1.

TABLE 1
EXISTING SOLID FUEL BURNING UNITS

Type Fuel	Maximum Allowable Percent Sulfur by Weight (Dry Basis)			
	Zone One	Zone Two	Zone Three	Zone Four
Anthracite Coal or Coke	0.8	0.8	0.8	0.8
All other solid fuels	1.0	1.0	0.2	0.2

(c) The provisions of (a) and (b) above shall not apply to solid fuel whose combustion causes sulfur dioxide (SO_2) emissions from any stack or chimney into the outdoor atmosphere which are demonstrated to the Department as not exceeding, at any time, those quantities of sulfur dioxide expressed in pounds per 1,000,000 British Thermal Units (BTU) gross heat input, set forth in Table 2.

TABLE 2
EXISTING SOLID FUEL BURNING UNITS

Type Fuel	Maximum Allowable SO_2 Emissions (pounds/million BTU)			
	Zone One	Zone Two	Zone Three	Zone Four
Anthracite Coal and Coke	1.2	1.2	1.2	1.2
All other solid fuels	1.5	1.5	0.3	0.3

(d) Any solid fuel-fired steam generating unit which is located in Zone Three or Zone Four, having a rated hourly capacity of greater than 200,000,000 British Thermal Units (BTU) gross heat input and any group of units at one facility which is located in Zone Three or Zone Four, having a combined rated hourly capacity of greater than 450,000,000 British Thermal Units (BTU) gross heat input, and which were in operation prior to May 6, 1968, shall be subject to the standards specified in Table 1 for Zone One.

(e) Any person responsible for the use of bituminous coal who believes that bituminous coal containing a maximum allowable percent sulfur by weight as set forth in Table 1 cannot be used in a specific steam generating unit may submit data to the Department setting forth justification for a less restrictive percent of sulfur content by weight in bituminous coal. The Department may authorize the use of a less restrictive percent of sulfur by weight in bituminous coal. Any less restrictive percent of sulfur content by weight in bituminous coal authorized by the Department shall not exceed 1.5 percent, except as provided in (f) below.

(f) The Department may authorize the use of bituminous coal not exceeding a maximum sulfur content of 3.5 percent by weight (dry basis) at existing facilities in Zone One if:

1. The person responsible for the use of bituminous coal demonstrates that bituminous coal, containing one percent sulfur or less by weight and suitable for use in the specific steam generating unit, is not reasonably available in sufficient quantities; and

2. Sulfur dioxide levels in the ambient atmosphere will at no time exceed or jeopardize the ambient air quality standards set forth in N.J.A.C. 7:27–13; and

3. The sulfur content of the bituminous coal burned at the facility represents the minimum sulfur content coal which can be used by the facility and is reasonably available in sufficient quantity; and

4. The person responsible for the use of bituminous coal agrees to such monitoring and reporting requirements as the Department may deem appropriate to ensure compliance with the conditions set forth in this subsection; and

5. The person responsible for the use of bituminous coal submits to the Department for such authorization an application which considers and addresses as a minimum, in addition to the above, the following criteria:

i. Physical surroundings of the coal-fired steam generating unit;

ii. Population density of the surrounding area;

iii. Dispersion characteristics of the source;

iv. Topography of the immediate vicinity; and

v. Aesthetic and nuisance effects.

(g) Authorizations granted pursuant to (f) above shall be valid for a period not to exceed five years from the date of issuance and may be renewed upon application to the Department, setting forth reasons and justifications for such renewal, including a demonstration of continued conformance with the provisions of (f) above.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.
Administrative correction to (c), Table 2.
See: 21 N.J.R. 2991(a).

7:27–10.3 Expansion, reconstruction or construction of solid fuel burning units

(a) No person shall expand or reconstruct an existing solid fuel-fired steam generating unit or construct a new solid fuel-fired steam generating unit having a rated hourly capacity that exceeds, or would exceed, as a result of expansion, construction, and/or reconstruction, 250,000,000 British Thermal Units (BTU) gross heat input unless it is demonstrated to the Department that:

1. The sulfur dioxide emissions caused by the combustion of solid fuel from any stack or chimney into the outdoor atmosphere, except as provided under (a)2 or (a)3 below, do not exceed 0.60 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input and 30 percent of the potential combustion emission rate of sulfur dioxide determined as a 30–day rolling average; or

2. The sulfur dioxide emissions from a unit which combusts anthracite coal exclusively do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average; or

3. The sulfur dioxide emissions, if the unit is a resource recovery facility, do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average.

(b) Compliance with the standards of (a) above shall be determined in accordance with the provisions of 40 CFR Part 60 Subpart Da.

(c) No person shall expand or reconstruct an existing solid fuel-fired steam generating unit or construct a new solid fuel-fired steam generating unit, not subject to the provisions of (a) above, having a rated hourly capacity that equals or exceeds, or would equal or exceed as a result of expansion, construction, and/or reconstruction, 1,000,000 British Thermal Units (BTU) gross heat input unless it is demonstrated to the Department that:

1. The sulfur dioxide emissions, caused by the combustion of solid fuel, excluding coke and anthracite coal, from any stack or chimney into the outdoor atmosphere can be controlled to levels that do not exceed at any time 0.30 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input; or

2. The solid fuel, excluding coke and anthracite coal, used to fire such a facility will at no time contain more than 0.20 percent sulfur by weight; or

3. Anthracite coal or coke used to fire such a facility will at no time contain more than 0.8 percent sulfur by weight; or

4. The sulfur dioxide emissions, if the unit is a resource recovery facility, do not exceed 1.20 pounds of sulfur dioxide per 1,000,000 British Thermal Units (BTU) gross heat input determined as a 30–day rolling average.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
Substantially amended.

7:27–10.4 Exemptions

(a) The provisions of this subchapter shall not apply to coal used by ocean-going vessels.

(b) In any case in which it is demonstrated to the department that a bona fide pilot installation of an approved stack-gas cleaning process is to be made, the use of nonconforming solid fuel to the extent necessary, in the judgment of the Department, to evaluate the effectiveness of the process will not be prohibited by this subchapter.

(c) Nonbanded coal containing not more than 1.0 percent sulfur by weight may be burned solely for heating purposes in one or two family residences only in combustion equipment in use for such purposes prior to October 1, 1971.

As amended, R.1981 d.185, effective June 4, 1981.
See: 12 N.J.R. 571(a), 13 N.J.R. 341(a).
(b): "solid fuel" was "coal".
(c): Anthracite exemption deleted.

SUBCHAPTER 11. INCINERATORS

7:27–11.1 Definitions

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

"Auxiliary fuel" means fuel other than waste materials used to attain temperatures sufficiently high to dry and ignite waste materials, to maintain ignition, or to effect complete combustion of combustible solids, vapors and gases.

"Common incinerator" means an incinerator designed and used to burn waste materials of Types 0, 1, 2 and 3 only, in all capacities not exceeding 2,000 pounds per hour of waste material input.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant.

"Department" means the State Department of Environmental Protection.

"Existing incinerator" means an incinerator purchased, acquired or used before the effective date of this subchapter.

"Incinerator" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap or a facility for cremating human or animal remains.

"Liquid particles" means particles which have volume but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

"Multiple chamber incinerator" means an incinerator with two or more refractory-lined combustion chambers in series physically separated by refractory walls, interconnected by gas passages, and employing adequate design parameters necessary for maximum combustion of the waste materials.

"Municipal incinerator" means an incinerator owned or operated by government or by a person who provides incinerator service to government or others, and designed and used to burn waste materials of any and all types, 0 to 6 inclusive.

"New incinerator" means an incinerator purchased or constructed after the effective date of this Subchapter.

"Particles" means any material, except uncombined water, which exists in a finely divided form as liquid particles or solid particles at standard conditions.

"Pathological waste incinerator" means an incinerator designed and used to burn Type 4 waste materials, primarily human and animal remains, in all burning capacities. Crematoriums are included in this category.

"Ringelmann smoke chart" means the "Ringelmann Scale for Grading the Density of Smoke" published by the United States Bureau of Mines or any chart, recorder, indicator or device for the measurement of smoke density which is approved by the Department as the equivalent of the Ringelmann Scale.

"Single flue-fed incinerator" means an incinerator provided with a single flue which serves as both the charging chute and the flue to transport products of combustion to the atmosphere.

"Smoke" means and includes small gas-borne and airborne particles arising from a process of combustion in sufficient number to be observable.

"Solid particles" means particles of rigid shape and definite volume.

"Special incinerator" means a municipal, pathological waste, or trade waste incinerator of any burning capacity, or any incinerator with a burning capacity in excess of 2,000 pounds per hour.

"Standard conditions" means 70 degrees Fahrenheit and one atmosphere pressure (14.7 psia or 760 mm Hg).

"Trade waste incinerator" means an incinerator designed and used to burn waste material primarily of Types 5 and 6, either separately or together with waste materials of Types 0, 1, and 3.

"Type 0 waste" means trash, a mixture of highly combustible waste such as paper, cardboard, cartons, wood boxes and combustible floor sweepings, containing approximately ten per cent moisture and five per cent incombustible solids, and having a heating value of approximately 8,500 British Thermal Units per pound as fired, and deriving from commercial and industrial activities. The mixtures contain up to ten per cent by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps.

"Type 1 waste" means rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scraps, foliage and combustible floor sweepings, containing approximately 25 per cent moisture and ten per cent incombustible solids and having a heating value of approximately 6500 British Thermal Units per pound as fired, and deriving from domestic, commercial and industrial activities. The mixture contains up to 20 per cent by weight of restaurant or cafeteria waste, but contains little or no treated paper, plastic or rubber wastes.

"Type 2 waste" means refuse, consisting of an approximately even mixture of rubbish and garbage by weight, containing up to 50 per cent moisture and approximately seven per cent incombustible solids, and having a heating value of approximately 4300 British Thermal Units per pound as fired, and commonly deriving from apartment and residential occupancy.

"Type 3 waste" means garbage, consisting of animal and vegetable wastes containing up to 70 per cent moisture and up to five per cent incombustible solids and having a heating value of approximately 2500 British Thermal Units per pound as fired and deriving from restaurants, cafeterias, hotels, hospitals, markets, and like installations.

"Type 4 waste" means human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources, consisting of up to 85 per cent moisture and approximately five per cent incombustible solids and having a heating value of approximately 1,000 British Thermal Units per pound as fired.

"Type 5 waste" means by-product waste, gaseous, liquid or semi-liquid, such as tar, paints, solvents, sludge, fumes, and so forth, from industrial operations.

"Type 6 waste" means solid by-product waste, such as rubber, plastics, wood waste and so forth, from industrial operations.

7:27–11.2 Construction standards

(a) No person shall construct, install, use or cause to be used any existing or new incinerator unless such incinerator is of the multiple chamber type or of a type approved by the Department as being equally effective for the purpose of air pollution control.

(b) Two years from the effective date of this Subchapter, no person shall use or cause to be used an existing incinerator unless such incinerator is of multiple chamber type or type approved by the Department as being equally effective for the purpose of air pollution control.

(c) No person shall construct, install, use or cause to be used any new single flue-fed incinerator.

7:27–11.3 Emission standards

(a) Particles emission standards shall be as follows:

1. No person shall construct, install, use or cause to be used any new common incinerator or alter or relocate and use or cause to be used any existing common incinerator which will emit more than 0.2 grains of particles including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

2. No person shall construct, install, use, or cause to be used any new special incinerator or alter or relocate and use or cause to be used any existing special incinerator which will emit more than 0.1 grains of particles including ash per cubic foot of dry flue gas at standard conditions corrected to 12 percent carbon dioxide by volume excluding the contribution of auxiliary fuel.

3. Two years from the effective date of this Subchapter no person shall use or cause to be used any existing common incinerator which will emit more than 0.2 grains of particles, including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

4. Two years from the effective date of this Subchapter no person shall use or cause to be used any existing special incinerator which will emit more than 0.1 grains of particles, including ash per cubic foot of dry flue gas at standard conditions corrected to 12 per cent carbon dioxide by volume excluding the contribution of auxiliary fuel.

(b) Smoke emission standards shall be as follows:

1. The provisions of Subchapter 3 (Control and Prohibition of Smoke From Combustion of Fuel) of this Chapter insofar as they relate to smoke from incinerators are superseded by this subsection.

2. No person shall cause, suffer, allow or permit smoke from any incinerator the shade or appearance of which is darker than Number 1 of the Ringelmann smoke chart:

i. To be emitted into the open air; or

ii. To be emitted of such opacity within a stack or chimney, or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree greater than the emission designated as Number 1 of the Ringelmann smoke chart.

3. The provisions of paragraph 2 of this subsection shall not apply to:

i. Smoke emitted during the building of a new fire, the shade or appearance of which is not greater than Number 2 of the Ringelmann smoke chart for a period of three consecutive minutes; or

ii. Emissions of such opacity within a stack or chimney, or exclusive of water vapor, of such opacity leaving a stack or chimney to a degree greater than the emission designated as Number 2 of the Ringelmann smoke chart for a period not greater than three consecutive minutes.

(c) No person shall cause, suffer, allow or permit the emission of particles of unburned waste or ash from any common incinerator or from any special incinerator which are individually large enough to be visible while suspended in the atmosphere.

(d) No person shall construct, install, use or cause to be used any common incinerator or any special incinerator which will result in odors being detectable by sense of smell in any area of human use or occupancy.

(e) Stack test emission standards shall be as follows:

1. Any person responsible for the construction, installation, alteration or use of an incinerator shall, when ordered by the Department, provide the facilities and necessary equipment for determining the density of smoke being discharged from a stack or chimney and shall conduct such smoke tests using methods approved by the Department. All smoke test data shall be recorded in a permanent log at such time intervals as specified by the Department. The data shall be maintained for a period of not less than one year and shall be available for review by the Department.

2. Any person responsible for the use of a new or existing incinerator shall upon request of the Department provide such sampling facilities and testing facilities exclusive of instruments and sensing devices as may be necessary for the Department to determine the nature and quantity of emissions from such incinerators and shall during such testing, operate the incinerator at a charging rate of waste no less than the designed capacity of the incinerator using materials representative of the types of wastes normally burned. Such facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

7:27–11.4 Permit to construct; certificate to operate

(a) No person shall construct or install any new incinerator, or any new control apparatus, or alter any existing incinerator, or any existing control apparatus without first having obtained a permit to construct, install or alter control apparatus or equipment from the Department, in accordance with the provisions of Subchapter 8 (Permits and Certificates) of this Chapter.

(b) No person shall use or cause to be used any new or altered incinerator, or any new or altered control apparatus without first having obtained a certificate to operate control apparatus or equipment from the Department, in accordance with the provisions of Subchapter 8 (Permits and Certificates) of this Chapter.

7:27–11.5 Operation

(a) Written procedures to be followed for proper operation and maintenance for a new incinerator, or an altered existing incinerator, shall be submitted to the Department for review and approval together with the application for a certificate to operate.

(b) Any person in possession of a certificate to operate an incinerator shall maintain said certificate readily available on the operating premises. Operating procedures and rated burning capacity of the incinerator shall be posted at a convenient place as near as practical to the point of operation.

(c) No person shall use or cause to be used any incinerator unless all components connected, or attached to, or serving the incinerator, including control apparatus are functioning properly and are in use, in accordance with the permit to construct, and the certificate to operate.

7:27–11.6 Exceptions

The provisions of this Subchapter shall not apply to incinerators 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.

SUBCHAPTER 12. PREVENTION AND CONTROL OF AIR POLLUTION EMERGENCIES

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this Subchapter 12 were filed January 27, 1972, and became effective March 27, 1972 as R.1972 d.15. See: 3 N.J.R. 250(a).

7:27–12.1 Definitions

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

"Air contaminant" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

"Chemical and allied products industries" means establishments engaged in the manufacture of:

1. Basic chemicals such as acids, alkalies, salts, industrial gases and organic chemicals;

2. Chemical products to be used in further manufacturing such as synthetic fibers, plastics, dry colors and pigments;

3. Finished chemical products to be used for ultimate consumption such as drugs, cosmetics, soap, paints, fertilizers and explosives.

"Glass, clay and concrete products industries" means establishments engaged in the manufacture of glass, glassware, textile fibers, glass insulation wool, structural clay products, concrete products, gypsum and plaster products, lime, abrasives and asbestos.

"Paper and allied products industries" means establishments engaged in manufacturing wood pulp from wood or other materials and the manufacture of paper, paperboard and building papers.

"Petroleum refining and related industries" means establishments engaged in petroleum refining, the manufacture of paving and roofing materials from petroleum products and compounding paving and building materials from petroleum products.

"Primary metals industries" means establishments engaged in the smelting, refining, sintering and alloying of ferrous and nonferrous metals from ore, pig or scrap, and the manufacture of castings, forgings, powdered metals and other basic products of ferrous or nonferrous metals, including the production of coke.

7:27–12.2 Emergency criteria

(a) A condition justifying proclamation by the Governor of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Commissioner determines that the accumulation of air contaminants in any place, locality, county or other area in the State is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public.

(b) Such determinations shall be in accordance with criteria published in the New Jersey Register and on file with the Department.

7:27–12.3 Criteria for emergency termination

In making a determination that the threat resulting from the accumulation of air contaminants no longer exists, the Commissioner shall be guided by measurements of air quality and advisories provided by the United States Weather Service.

7:27–12.4 Standby plans

(a) Any person responsible for the operation of a source of air contamination as set forth in Table 1 of this Section shall prepare standby plans, consistent with good industrial practice and safe operating procedures, for reducing the emission of air contaminants into the outdoor atmosphere during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with the objectives set forth in Tables I–III which are made a part of this Section.

(b) Any person responsible for the operation of a source of air contamination not set forth in Table 1 of this Section, shall, when requested by the Department in writing, prepare standby plans, consistent with good industrial practice and safe operating procedures, for reducing the emission of air contaminants into the outdoor atmosphere during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with the objectives set forth in Tables I–III.

(c) Standby plans as required under subsections (a) and (b) of this Section shall be in writing and show the source of air contamination, the approximate amount of reduction of contaminants and a brief description of the manner in which the reduction will be achieved during an air pollution alert, air pollution warning, and air pollution emergency.

TABLE I – EMISSION REDUCTION OBJECTIVES

Source of Air Contamination	Air Pollution Alert
1. Coal or oil-fired electric power generating facilities.	a. Substantial reduction by utilization of fuels having lowest available ash and sulfur content. b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing c. Substantial reduction by diverting electric power generation to facilities outside of Alert Area.
2. Coal or oil-fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour	a. Substantial reduction by utilization of fuels having lowest available ash and sulfur content. b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Reduction of steam load demands consistent with continuing plant operations
3. A. Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location: Primary Metals Industries Petroleum Refining and Related Industries Chemical and Allied Products Industries Paper and Allied Products Industries Glass, Clay and Concrete Products Industries AND B. Other persons required by the Department to prepare standby plans.	a. Substantial reduction of air contaminants from manufacturing operations by curtailing, postponing, or deferring production and allied operations. b. Maximum reduction by deferring trade waste disposal operations which emit particles, gases, vapors or malodorous substances. c. Reduction of heat load demands for processing consistent with continuing plant operations. d. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.
4. Municipal and commercial refuse disposal operations.	a. Maximum reduction by prevention of open burning on all refuse disposal areas. b. Substantial reduction by limiting burning of refuse in incinerators to the hours between 12:00 Noon and 4:00 p.m.

TABLE II
EMISSION REDUCTION OBJECTIVES

Source of Air Contamination	Air Pollution Warning
1. Coal or oil-fired electric power generating facilities	a. Maximum reduction by utilization of fuels having lowest available ash and sulfur content. b. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing and soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of Warning Area.
2 Coal or oil-fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour.	a. Maximum reduction by utilization of fuels having the lowest available ash and sulfur content. b. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing and soot blowing. c. Reduction of steam load demands consistent with continuing plant operations. d. Making ready for use a plan of action to be taken if an emergency develops.
3. A – Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location: Primary Metals Industries Petroleum Refining and Related Industries Chemical and Allied Products Industries Paper and Allied Products Industries Glass, Clay and Concrete Products Industries AND B – Other persons required by the Department to prepare standby plans.	a. Maximum reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic hardship by postponing production and allied operations. b. Maximum reduction by deferring trade waste disposal operations which emit particles, gases, vapors or malodorous substances. c. Reduction of heat load demands for processing consistent with continuing plant operations. d. Maximum utilization of mid-day (12:00 Noon to 4:00 p. m.) atmospheric turbulence for boiler lancing or soot blowing.
4. Municipal and commercial refuse disposal operations	a. Maximum reduction by prevention of open burning on all refuse disposal areas. b. Complete elimination of the use of incinerators.

TABLE III -- EMISSION REDUCTION OBJECTIVES

Source of Air Contamination	Air Pollution Emergency
1. Coal or oil-fired electric power generating facilities.	a. Maximum reduction by utilization of fuels having lowest available ash and sulfur content. b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of Emergency Area.
2. Coal or oil -fired process steam generating facilities having a capacity to burn in excess of four tons of coal per hour or 600 gallons of fuel oil per hour	a. Maximum reduction by reducing heat and steam demands to absolute necessities consistent with preventing equipment damage b. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Taking the action called for in the emergency plan.
3 A. Manufacturing industries of the following classifications which employ more than twenty (20) employees at any one location: Primary Metals Industries Petroleum Refining & Related Industries Chemical and Allied Products Industries Paper and Allied Products Industries Glass, Clay and Concrete Products Industries AND B Other persons required by the Department to prepare standby plans	a Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment. b Elimination of air contaminants from trade waste disposal processes which emit particles, gases, vapors or malodorous substances. c. Maximum reduction of heat load demands for processing. d. Maximum utilization of mid-day (12:00 Noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.
4 Municipal and commercial refuse disposal operations.	a. Maximum reduction by prevention of open burning on all refuse disposal areas. b. Complete elimination of the use of incinerators.

(d) During a condition of air pollution alert, air pollution warning and air pollution emergency, standby plans as required by this Section shall be made available on the premises to any person authorized to enforce the provisions of the Air Pollution Emergency Control Act.

(e) Standby plans as required by this Section shall be submitted to the Department upon request within 30 days of the receipt of such request; such standby plans shall be subject to review and approval by the Department. If, in the opinion of the Department, such standby plans do not effectively carry out the objectives as set forth in Tables I–III, the Department may disapprove said standby plans, state its reason for disapproval and order the preparation of amended standby plans within the time period specified in the order. Any person aggrieved by the order requiring the preparation of a revised plan is entitled to a hearing in accordance with C.26:2C–14.1 of the Air Pollution Control Act. If the person responsible fails within the time period specified in the order to submit an amended standby plan which in the opinion of the Department meets the said objectives, the Department may revise the standby plan to cause it to meet these objectives. Such revised plan will thereafter be the standby plan which the person responsible will put into effect upon the issuance of an appropriate order by the Governor.

7:27–12.5 Standby orders

(a) The following are standby orders which might be appropriate for use by the Governor upon his declaration that an air pollution emergency exists:

1. Air pollution alert:

i. Any person responsible for the operation of a source of air contamination as set forth in Table I of Section 4 (Standby plans) of this Subchapter shall take all air pollution alert actions as required for such source of air contamination; and shall particularly put into effect the standby plans for an air pollution alert;

ii. There shall be no open burning by any persons of tree waste, vegetation, refuse or debris in any form;

iii. The use of incinerators for the disposal of any form of solid or liquid waste shall be limited to hours between 12:00 Noon and 4:00 P.M.;

iv. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 Noon and 4:00 P.M.

2. Air pollution warning:

i. Any person responsible for the operation of a source of air contamination as set forth in Table II of Section 4 (Standby plans) of this Subchapter shall take all air pollution warning actions as required for such source of air contamination; and shall particularly put into effect the standby plans for an air warning;

(c) A gasoline-fueled motor vehicle which is subject to inspection pursuant to N.J.A.C. 7:27–15.5(a) shall, as a condition of compliance with said inspection, have properly functioning and properly maintained emission control apparatus as determined according to the inspection test procedures established at N.J.A.C. 7:27B–4.9, 4.10, 4.11, 4.12 and 4.13.

(d) Except as provided in (e) and (f) below, the applicability of the standards set forth in this subchapter and of the test procedures set forth at N.J.A.C. 7:27B–4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13 to a motor vehicle with an engine other than the engine originally installed by the manufacturer shall be based on the chassis type and model year of the motor vehicle, not on the engine model year.

(e) A motor vehicle that is modified to operate solely on a fuel other than that for which the motor vehicle was originally equipped shall be subject to the test procedures and standards applicable to a motor vehicle of the current fuel type. If the motor vehicle's fuel type after modification is one to which this subchapter does not apply (for example, a gasoline engine replaced with a diesel engine), the motor vehicle shall be exempt from this subchapter. If the motor vehicle's fuel type after modification is a fuel type to which this subchapter applies, but is other than gasoline (for example, a gasoline engine modified to operate solely on natural gas), the standards applicable to that motor vehicle shall be those prescribed in the Tables 1, 2, 3 and 4 above for motor vehicles powered by a fuel other than gasoline. Until such time that applicable exhaust emission standards are promulgated for motor vehicles powered by fuels other than gasoline, such vehicles shall be exempt from exhaust emission testing when operating on a fuel other than gasoline.

(f) A motor vehicle that is modified or manufactured to operate on more than one fuel type shall be subject to exhaust emission standards that apply to the motor vehicle for each fuel type for which the motor vehicle is equipped. Such motor vehicle shall be subject to an exhaust emission test for each fuel type on which it operates and shall comply with all applicable standards for each fuel type. Such motor vehicle shall also be subject to an evaporative pressure test and an evaporative purge test when operating on gasoline. If the motor vehicle is capable of simultaneous operation on more than one fuel type (for example, flexible fuel, gasoline-methanol vehicle), the motor vehicle shall be subject to an exhaust emission test using the fuel mixture in the vehicle at the time of inspection and subject to the exhaust emission standards applicable to vehicles powered by gasoline. When operating on a fuel other than gasoline, the exhaust emission standards applied to a motor vehicle shall be those prescribed in the Tables 1, 2, 3 and 4 above for motor vehicles powered by a fuel other than gasoline. Until such time that applicable exhaust emission standards are promulgated for motor vehicles powered by fuels other than gasoline, such vehicles shall be exempt from exhaust emission testing when operating on a fuel other than gasoline.

(g) The provisions of (d), (e), and (f) above shall not be construed to allow any of the following acts, if such act is prohibited by N.J.A.C. 7:27–15.7:

1. The installation of an engine into a motor vehicle other than the engine originally installed by the manufacturer;

2. The operation of a motor vehicle on a fuel other than that for which the motor vehicle was originally equipped; and

3. The modification of a motor vehicle to operate on more than one fuel type.

As amended, R.1975 d.22, eff. January 31, 1975.
See: 7 N.J.R. 102(b).
As amended, R.1975 d.91, eff. October 1, 1975.
See: 6 N.J.R. 173(a), 7 N.J.R. 206(c).
As amended, R.1975 d.92, eff. April 1, 1975.
See: 7 N.J.R. 206(c).
As amended, R.1976 d.12, eff. January 14, 1976.
See: 8 N.J.R. 62(c).
As amended, R.1977 d.1, eff. January 3, 1977.
See: 9 N.J.R. 77(c).
Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Section substantially amended.
Amended by R.1985 d.331, effective July 1, 1985 (operative December 2, 1985).
See: 17 N.J.R. 781(a), 17 N.J.R. 1649(a).
"past–1984 model year" substituted for "light duty." Added text "weighing less than 8501 pounds."
Emergency recodification from 7:27–15.4 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995, except changes upon adoption effective October 2, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).
Amended by R.1997 d.56, effective February 3, 1997 (operative March 8, 1997).
See: 28 N.J.R. 2298(b), 29 N.J.R. 498(a).
In (b), inserted tables, with amended effective dates, under Table 3, amended effective dates for tables under Table 4, and added Table 5; and in (c) and (d), amended N.J.A.C. references.

7:27–15.7 Prohibition of tampering with emission control apparatus

(a) No owner or operator of a gasoline-fueled motor vehicle shall cause, suffer, allow or permit any of the following, unless it is performed in accordance with EPA Memorandum 1A or it is exempt from prohibition by CARB executive order (information on devices or modifications approved by CARB executive order may be obtained from Air Resources Board, Haagen–Smit Laboratory, 9528 Telstar Avenue, El Monte, CA 91731–2990):

1. The disconnection, detachment, deactivation, or any other alteration or modification from the design of the original vehicle manufacturer of an element of design installed on any motor vehicle with a certified configuration, except temporarily for the purpose of diagnosis, maintenance, repair or replacement;

2. The operation on the public roads, streets or highways of the State or any public or quasi-public property in the State of any motor vehicle with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer;

3. The sale, lease, or offer for sale or lease, of any motor vehicle with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer; or

4. The sale, or offer for sale, of any device or component as an element of design intended for use with, or as part of, any motor vehicle or motor vehicle engine with a certified configuration, which is not designed to duplicate the function and performance of any element of design installed by the original vehicle manufacturer.

New Rule, R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
New rule. Old rule recodified to 15.7.
Emergency recodification from 7:27–15.5 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

7:27–15.8 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a gasoline-fueled motor vehicle to idle for more than three consecutive minutes if the vehicle is not in motion.

(b) The provisions of (a) above shall not apply to:

1. Autobuses while discharging or picking up passengers;

2. Motor vehicles stopped in a line of traffic;

3. Motor vehicles whose primary and/or secondary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or air conditioning;

4. Motor vehicles being or waiting to be examined by State or Federal motor vehicle inspectors;

5. Emergency motor vehicles in an emergency situation;

6. Motor vehicles while being repaired;

7. Motor vehicles while engaged in the process of connection, detachment or exchange of trailers; or

8. Motor vehicles manufactured with a sleeper berth while being used, in a non-residentially zoned area, by the vehicle's operator for sleeping or resting.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Rule recodified and substantially amended, to 15.8.
New Rule, R.1985 d.610, effective December 2, 1985 (operative May 5, 1986).
See: 16 N.J.R. 2886(a), 17 N.J.R. 2887(a).
Emergency recodification from 7:27–15.6 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted concurrent proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

7:27–15.9 Non-interference with the motor vehicle codes

Nothing in this subchapter is intended to limit or deny the inspection of motor vehicles in accordance with regulations established pursuant to N.J.S.A. 39:8–2, 39:3–70, 39:3–76, and 39:10–26.

Amended by R.1985 d.1, effective January 21, 1985 (operative July 1, 1985).
See: 16 N.J.R. 2889, 17 N.J.R. 189(b).
Recodified from 15.5; Old (a) deleted and (b)-(c) now (a)-(b).
Emergency recodification from 7:27–15.7 and amendment R.1995 d.409, effective June 29, 1995 (expires August 28, 1995).
See: 27 N.J.R. 2752(a).
Adopted Concurrent Proposal, R.1995 d.527, effective August 28, 1995 (operative October 27, 1995).
See: 27 N.J.R. 2752(a), 27 N.J.R. 3806(a).

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

Subchapter Historical Note

Subchapter 16 was adopted as R.1975 d.377, effective March 1, 1976. See: 7 N.J.R. 47(c), 8 N.J.R. 15(b). The subchapter was amended by R.1979 d.414, effective December 17, 1979. See: 10 N.J.R. 477(b), 11 N.J.R. 544(b). Further amendments were filed as R.1982 d.3, effective February 1, 1982 (operative, March 1, 1982). See: 13 N.J.R. 127(a), 14 N.J.R. 145(b). See section annotations for further rulemaking activity.

7:27–16.1 Definitions

The following words and terms, when used in this subchapter, 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 in this subchapter.

"Agitator" means an apparatus with an external seal used to shake, stir, or mix material in an enclosed vessel.

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

"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.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

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

"Background concentration" means, with respect to the measurement of the emission of VOC from a component, the concentration of VOC in the ambient air as determined within the facility and at least one meter upwind of the component being tested.

"Ballasting" means the loading of water or other liquid into a marine tank vessel's cargo tank to obtain proper propeller, rudder, and hull immersion.

"Batch" means the material retained in a batch operation, measured at any instant prior to, during, or at the completion of the conversion.

"Batch cycle emission rate" means the total emissions of air contaminants per batch divided by the batch cycle time in hours.

"Batch cycle time" means the total elapsed time per batch in any single manufacturing process vessel, including all phases of the operation during which the vessel contains process materials, excluding time waiting for removal from the vessel.

"Batch operation" means a type of manufacturing process in which fixed amounts of one or more process materials are introduced into a manufacturing process vessel where they are retained for a prescribed amount of time during which they are converted. Starting materials for a batch are not introduced into the vessel until the previous batch has been removed.

"Batch mix asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Blowdown event" means the non-emergency release of natural gas from a pipeline for the purposes of inspection, maintenance, or repair and where, in the absence of control, more than 2,000 pounds of VOC could be released to the atmosphere.

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

"Calendar day" means the 24 hour period from 12 o'clock midnight to 12 o'clock midnight the following day.

"Capture efficiency" means the amount of VOC entering a capture system and delivered to a control device expressed as a ratio of the total VOC generated by a source of VOC.

"Carbon monoxide" or "CO" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Cartridge filtration system" means a system in which perforated canisters containing filtration paper and/or activated carbon are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent.

"Catalytic oxidizer" means a type of control apparatus which reduces the emission of air contaminants by causing the air contaminant molecules to decompose by oxidation, accomplished by preheating the gases being emitted to a predetermined temperature, which is less than required for thermal oxidation, and contacting the preheated gases with catalysts to promote decomposition.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

"Chemical plant" means any facility, or any part thereof, classified within the Standard Industrial Code (SIC) Major Group 28, "Chemical and Allied Products."

"Clear coating" means a coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color and any coating used as an interior protective lining on any cylindrical metal shipping container of greater than one gallon capacity.

"Clear topcoat" means the final coating, which contains binders by not opaque pigments and which is specifically formulated to form a transparent or translucent solid protective film on wood furniture.

"CO" means carbon monoxide.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for commencing technical review of the application. Designating an application complete for purposes of commencing technical review does not preclude the Department from requesting or accepting any additional information.

"Component" means, with respect to leak detection and repair, any part of a source operation, including any equipment and control apparatus, from which emissions of air contaminants may be released into the ambient air. This term includes, but is not limited to, any agitator, valve, flange, fitting, gasket, seal, joint, pump, compressor, pressure relief device, diaphragm, manhole, hatch, sight-glass, instrument connection or other connection, meter, or associate equipment. This term does not include a designed emission point of a stack or chimney.

"Compressor" means a device used to compress gases or vapors by the addition of energy, and includes all associated components used to make connections or seals.

"Conductive ink" means an ink used in screen printing which contains material that permits electric current to flow through printed lines or patterns.

"Conservation vent" means any valve designed and used to reduce evaporation losses of any VOC by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

"Construction ballast" means the filling of an underground storage tank with any VOC, including gasoline, to provide stability during construction.

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

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

"Custom topcoating of automobiles and light duty trucks" means the application of surface coating formulations, except during original equipment manufacturing, to the main body or other exterior areas of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans, to achieve a finish that meets individual specifications, including, but not limited to, custom color, design, or gloss. It shall not include the use of adhesion promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.

"Cutback asphalt" means any paving asphalt which has been liquefied by blending with petroleum solvents, or produced directly from the distillation of petroleum having vaporization properties similar to the blended and liquefied asphalt.

"Day" means calendar day.

"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.

"Destruction efficiency" means the amount of VOC destroyed or removed by a control device expressed as a ratio of the total VOC entering the device.

"Development" means investigations in a laboratory or pilot plant directed toward the structuring or establishment of methods of manufacture or of specific designs of salable substances, devices or procedures, based upon previously discovered facts, scientific principles or substances. Development shall not include production for sale of established products through established processes; nor shall it include production in plant, works or semi-works equipment for distribution through market-testing channels.

"Difficult to monitor component" means any component located over 15 feet above ground when access is required from the ground, or any component located 9.6 feet away from a platform when access is required from a platform.

"Dilution gas" means air or gas from any source whatsoever added to the source gas emitted from a source operation.

"Distillates of air" means helium (He), nitrogen (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO_2).

"DOT" means the United States Department of Transportation.

"Double seal floating roof" means a floating roof with two complete and separate seal-envelope combinations, one above the other, containing an enclosed space between them. At least one of the seals must be supported by a mechanism which maintains constant seal contact with the inner surface of the vessel walls, despite surface and altitude irregularities.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Emission statement" means a report of the actual annual emissions of a facility submitted by the owner or operator to the Department pursuant to the requirements of N.J.A.C. 7:27–21.

"Emulsified asphalt" means asphalt which has been liquefied by mixing with water and an emulsifying agent.

"EPA" means the United States Environmental Protection Agency.

"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.

"Exclusion rate" means that rate at or below which the emission of an air contaminant into the outdoor atmosphere is not required to be controlled.

"Exempt organic substance" means an organic substance which is one of the chemical compounds specifically not included in the term "volatile organic compound" or "VOC" as defined in this section.

"External floating roof" means a movable roof in an otherwise open top storage vessel consisting of a floating deck resting on the surface of the liquid contents, a continuous seal supported against the inner surface of the tank shell, and an envelope closing the gap between the floating deck and the seal, the entire deck-seal-envelope combination free to rise and fall with the surface of the liquid during filling and emptying of the storage vessel.

"Extreme performance coating" means a coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all of the time, or temperatures consistently above 95°C, or temperatures consistently below 0°C, or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Fabric printing operation" means the decorative enhancement of knit or woven cloth including webs, sheets and towels, by applying a pattern or colored design with inks, dyes, or print pastes by techniques including, but not limited to, roller, flat screen, rotary screen, and silk screen printing.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. For the purposes of this definition, each natural gas pipeline compressor or pump station and each section of natural gas pipeline between such compressor or pump station shall constitute a separate natural gas pipeline facility.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions that can be enforced by EPA. The foregoing limitations and conditions that can be enforced by EPA include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq., or this chapter.

"Fill pipe" means a device through which liquid is transferred into a receiving vessel.

"First attempt at repair" means rapid action taken for the purpose of stopping or reducing a leak. First attempts at repair include, but are not limited to, the following practices where practicable: tightening of packing gland nuts, tightening of flanges, and ensuring that the seal flush is operating at design pressure and temperature.

"Fitting" means a component used to attach or connect pipes or piping details including, but not limited to, flanges and threaded connections.

"Flare" means a device used for the destruction of waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere. Thermal oxidizers are not flares.

"Flexographic printing operation" means a system of transferring images onto a substrate through first applying ink to an inking roller which in turn transfers the ink onto the raised image areas of a rubber or elastomeric plate secured to a second roller, which then transfers the ink onto the substrate.

"Floating roof" means an external or internal pontoon type or double-deck type roof resting on the surface of the liquid contents in a storage vessel, and equipped with a mechanism providing one or more tight seals in the space between the floating roof rim and the vessel shell throughout the entire vertical travel distance of the roof, or any other floating type mechanism approved by the Department for the purpose of preventing air contaminants from being discharged into the outdoor atmosphere.

"Fountain solution" means an aqueous solution used in graphic arts operations to dampen the plate and prevent the non-image areas of the plate from accepting the hydrophobic inks used.

"Freeboard chiller" means a heat exchanger mounted on a surface cleaner freeboard to provide a chilled air layer immediately above the VOC vapor space to reduce VOC emissions.

"Freeboard height" means the vertical distance from either the VOC liquid level to the lip of an unheated open top surface cleaner or from the interface of the VOC vapor with the air to the lip of a vapor surface cleaner.

"Freeboard ratio" means a ratio of the freeboard height to the tank width or narrower dimension at the tank lip.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the atmosphere which do not pass through a stack or chimney.

"Gaseous leak" means the emission of applicable VOC directly or indirectly to the atmosphere as a gas or vapor from a hole, crevice, or other opening in a component, other than an emission that is in accordance with the component's design during normal operations.

"Gaseous service" means contact with applicable VOC that is in the gaseous state at operating conditions.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenated blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, and commonly or commercially known or sold as gasoline.

"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.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, in which blades are driven by combustion gases, and which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Graphic arts operation" means the application of one or more surface coating formulations across portions of a surface using one or more rotogravure or flexographic printers used to produce published material and packaging for commercial or industrial purposes, or any rotogravure or flexographic printers used to produce vinyl or urethane coated fabric or sheets, or any sheet-fed gravure, screen printing, or fabric printing operations 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.

"Gravure printing operation (sheet-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed in single sheets, onto the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Hatch" means a system, including a cover which may be opened or closed, that provides access to the interior of a tank or other enclosed container.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis to oxidize, reduce or salvage any material or substance. "Incinerator" does not include thermal or catalytic oxidizers used as control apparatus on equipment, but it does include (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26–1.4.

"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.

"Industrial wastewater treatment system" means any structure or structures by means of which industrial liquid waste or sludges are subjected to any treatment process requiring the issuance of an individual NJPDES permit regulated by the Department pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A–1 et seq.

"Ink transfer" means a decal, printed using screen printing onto a special release carrier, that will be transferred from the carrier to a substrate. Final transfer of the decal to the substrate may or may not occur at the screen printing facility.

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

"Leak" means a gaseous leak or a liquid leak of applicable VOC.

"Light liquid" means a fluid with vapor pressure greater than 0.044 pounds per square inch absolute (2.27 millimeters of mercury) at 68°F.

"Light liquid service" means contact with a fluid that is 10 percent or greater by weight light liquid.

"Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27–16, other than a release of liquid VOC in accordance with the component's design during normal operations. The presence of a drop, drip, accumulation, pool, or other visible evidence of a liquid, applicable VOC demonstrates that a liquid leak has occurred.

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

"Liquid service" means contact with applicable VOC that is in the liquid state at operating conditions.

"Lithographic printing operation" means printing by a planographic method in which the image and nonimage areas are on the same geometric plane.

"Local exhaust ventilation" means a system for capturing air contaminants within 36 inches (91.4 centimeters) of the points at which they emerge from a source operation.

"Major VOC facility" means any facility which has the potential to emit 25 or more tons of VOC 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.

"Manufacturing process vessel" means any container wherein a manufacturing process, or any part thereof, takes place.

"Marine tank vessel" means any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to be capable of carrying liquid cargo in tanks.

"Marine terminal" means any facility, or part thereof, at which liquid cargo is loaded into or unloaded out of marine tank vessels.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the combustion source. This term is expressed in BTUs per hour, based on the highest BTU value of the fuels combusted.

"Natural gas/gasoline processing plants" means facilities engaged in the separation of natural gas liquids from field gas and/or fractionation of the liquids into natural gas products such as ethane, propane, butane, and natural gasoline. Excluded from the definition are compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems unless these facilities are located as a gas plant.

"New Jersey's coastal waters" means the Atlantic Ocean area and all areas under tidal influence within three nautical miles (5,566 meters) of the mean high water line as measured from the New Jersey coast, except that, if at any point along the line of measurement, within or beyond three nautical miles (5,566 meters), there is a meeting of waters under the exclusive jurisdiction of any other State or the United States of America, New Jersey's jurisdiction shall end at that point. Any point of measurement shall be taken from a point of New Jersey land, permanent or nonpermanent, and extended azimuthally to a distance of three nautical miles (5,566 meters) or to the point where another State or the United States of America has jurisdiction.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"Offset lithography" means a planographic method of printing in which the image and nonimage areas are on the same plane and where the ink is transferred from an image plate on one cylinder to an image blanket on a different cylinder. The ink is finally transferred from the image blanket to the surface to be printed.

"Opaque stain" means all stains that contain pigments but are not classified as semitransparent stains, and includes stains, glazes, and other opaque material applied to wood surfaces.

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

"Open top tank" means any vessel in which a manufacturing process, or any part thereof, takes place during which there is an opening to the atmosphere greater than 25 percent of the surface area of any liquid substance contained therein.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

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

"Other wastewater treatment system" means any structure or structures by means of which liquid waste or sludges (other than industrial liquid waste or sludges) are subjected to any treatment process requiring the issuance of an individual NJPDES permit pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C.

7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A–1 et seq.

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

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

"Penetrating prime coat" means a low-viscosity liquid asphalt applied to a surface in order to prepare it for paving with an asphalt concrete.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of VOC produced by condensing vapors of petroleum during distillation, including, but not limited to, naphthas, aviation gasoline, motor gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum solvents.

"Petroleum solvent dry cleaning" means a process in which textile and fabric articles are washed in a solution of organic material, and then dried by exposure to a heated air stream. The organic material is produced by petroleum distillation and is comprised of a hydrocarbon range of 8 to 12 carbon atoms per organic molecule.

"Pigmented coat" means opaque coatings that contain binders and colored pigments and are formulated to conceal the wood surface either as an undercoat or topcoat.

"Planography" means any method of printing from a flat surface.

"Plastic part" means a piece made from a substance that has been formed from a natural or synthetic resin through the application of pressure or heat or both.

"Plastisol" means a surface coating formulation that is a dispersion of finely divided polymeric resin in a high boiling solvent or softening agent that is added to increase flexibility or toughness and includes plastisols to which volatile solvent has been added.

"Platform" means any elevated horizontal surface, either temporary or permanent, used for the purpose of gaining access to a component.

"Positive pressure ventilation" means any ventilation system in which pressurized air from a compressed air manifold, fan, or similar device is blown into a work area.

"Potential to emit" means the maximum capacity of a source operation or a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is Federally enforceable. If there is no Federally enforceable limitation on the hours of operation of a source operation, then any determination of the maximum design capacity shall be based on a presumption of operation at 8760 hours per year. This term includes the fugitive emissions emitted by the source operation or facility as calculated in a manner consistent with the provisions of N.J.A.C. 7:27–21 and current guidance issued by the Department pursuant thereto.

"Ppm" means parts per million.

"Ppmvd" means parts per million by volume, dry basis. This is the number of parts in a mixture, by volume, which are of the specified substance, not including the number of parts contributed by water.

"Pressure relief device" means a type of component which is installed for safety to relieve elevated pressure within equipment, or within a conduit or duct serving equipment. Such a component is designed to release material contained within the system when the pressure within the system exceeds a set level.

"Pressure relief valve" means a type of pressure relief device which consists of a valve that automatically opens when the pressure within the system exceeds a set level and closes when the pressure drops below that level.

"Process emission rate" means the mass rate of air contaminants emitted from the final source operation of a process, exclusive of any type of control apparatus or product recovery device.

"Process unit shutdown" means a regularly scheduled work practice or operational procedure that stops production from a process unit or part of a process unit for 24 hours or such other longer time as the owner or operator of the unit establishes to be necessary for the removal of the process material so that repairs to the unit can be carried out in a safe manner. The use of spare equipment without stopping production is not a process unit shutdown.

"Pump" means a device used to transport fluids by the addition of energy, and includes all associate components used to make connections or seals.

"Receiving vessel" means any vessel into which an applicable VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

"Refinishing of automobiles and light duty trucks" means the recoating of the main body or other exterior areas of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. It shall not include the use of adhesion promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Regulated leak" means any gaseous leak of applicable VOC at a concentration or level above any applicable limit established in Tables 18A and 18B and any liquid leak of an applicable VOC.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measurement Method" or "Method 2—Herzog Semi–Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

"Repair" means, with respect to a VOC leak, a corrective action taken to eliminate the leak or reduce the leak to below regulated levels.

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

"Rotogravure printing operation (web-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming an image or a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed from a continuous roll, over the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Rupture disc" means a type of pressure relief device which is designed to fracture, rupture, or burst under pressure when the pressure within the system exceeds a set level. Such a device is commonly a diaphragm held between flanges, which under conditions of normal operation remains intact and prevents gases from being released from the system.

"Screen printing operation" means a system of transferring images onto a substance in which the printing ink passes through a fabric to which a stencil has been applied. The openings in the stencil determine the form and dimensions of the imprint.

"Seal-envelope combination" means a barrier to the passage of VOC vapors between a floating roof and the inner surface of a storage vessel wall, consisting of a seal which maintains constant contact with the wall as the floating roof rises and descends with the level of the stored VOC, and a membrane, diaphragm, fabric, or blanket, known as an envelope, which spans the gap between the floating roof and the seal and which is vapor-tight.

"Sealer" means coatings containing binders that seal a wood surface prior to application of subsequent coatings.

"Semitransparent stain" means stains that contain dyes and/or semitransparent pigments and are formulated to enhance wood grain and to change the color of the surface, but not to conceal the surface; including sap stain, toner, nongrain raising stains, pad stain, spatter stain, and other semitransparent stains.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Small appliances" means devices used primarily in households and offices including, but not limited to, fans, mixers, blenders, dehumidifiers, toasters, toaster-ovens, slow pot cookers, food processors, portable heaters, lamps, typewriters, staplers, and paper punches.

"Solid particles" means particles of rigid shape and definite volume.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to liquefy and recover solvent vapors evaporated in a closed-loop, recirculating stream of heated air.

"Source gas" means air or gases passed through, or generated by, a source operation and discharged from the source operation.

"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.

"Special purpose screen printing inks and coatings" means inks and coatings used in screen printing which are used to print ink transfers, or are designed to resist or

withstand any of the following: more than two years of outdoor exposure, exposure to chemicals, solvents, acids, detergents, oil products or cosmetics, temperatures in excess of 170 degrees Fahrenheit, vacuum forming, embossing or molding.

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

"Standard conditions" means 70 degrees Fahrenheit (°F) (21.1 degrees Celsius (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Standard Industrial Classification Code" or "SIC Code" means the system devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

"State implementation plan" or "SIP" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 U.S.C., 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine, or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts fuel for the purpose of producing steam.

"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.

"Submerged fill pipe" means a fill pipe whose point of discharge into the receiving vessel is entirely submerged when the liquid level is no more than 6 inches (15.2 centimeters) above the vessel bottom or, in the case of a top or side-entering fill pipe, when the liquid level is no more than three times the inside radius of the fill pipe plus 5 inches (12.7 centimeters), but no more than 42 inches (106.7 centimeters), above the vessel bottom.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of non-porous or non-absorbent materials by using VOC solvents in liquid or vapor state.

"Surface coating for insulation of magnet wire" means the application of electrically insulating varnish or enamel to aluminum or copper wire.

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, paint, varnish, ink, or adhesive, applied to or impregnated into a substrate. This term includes such material whether used in a surface coating or graphic arts operation.

"Surface coating formulation as applied" or "coating as applied" means the volume, in gallons or liters, of any surface coating formulation used in a surface coating operation, including any diluents or thinners added.

"Surface coating of automobiles and light-duty trucks" means the application, flash-off, and curing of prime, topcoat, and repair coat on main body and other exterior sheetmetal of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. This term means an entire coating application system, including all spray booths, flash-off areas, and ovens in which surface coating formulations within the same spray prime, topcoat, or repair operation category are applied, dried and cured.

"Surface coating of cans" means exterior coating and interior spray coating in two-piece can lines; interior and exterior coating in sheet coating lines for three-piece cans; side seam spray coating and interior spray coating in can fabricating lines for three-piece cans; and sealing compound application and sheet coating in end coating lines.

"Surface coating of coils" means the coating of any flat metal sheet or strip available in rolls or coils.

"Surface coating of fabrics" means the application of any surface coating formulation, except ink and plastisol, applied to a textile substrate in a fabric coating line.

"Surface coating of flat wood paneling" means the coating of hardwood, plywood, particle board, and hardboard paneling, excluding the coating of exterior siding, tile board, or particle board used in furniture manufacturing.

"Surface coating of glass" means the application of any surface coating formulation to glass lamps or bulbs.

"Surface coating of large appliances" means the application of any coating to the component parts including, but not limited to, doors, cases, lids, panels, and interior supports of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other associated products.

"Surface coating of leather" means the application of any surface coating formulation to a leather substrate in a leather coating line.

"Surface coating of metal furniture" means the coating in a metal furniture coating line of any metal part which will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece.

"Surface coating of miscellaneous metal parts and products" means the application of any coating, excluding an adhesive, to any metal part or product not elsewhere classified including, but not limited to, large and small farm machinery, small appliances, office machinery, vending machines, industrial machinery, metal-covered doors, door frames, and electrical machinery.

"Surface coating of paper" means the application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of substrate (including paper, fabric, or plastic film); related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film, and magnetic tape; and decorative coating on metal foil including, but not limited to, gift wrap and packaging. This term does not include any graphic arts operation.

"Surface coating of pipe" means the application of any coating to a pipe of any composition, except plastic.

"Surface coating of wood furniture" means the application of any surface coating formulation to any furnishing made of wood or a composite of wood including, but not limited to, kitchen cabinets, equipment cabinets, household furniture and office furniture.

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

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

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

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

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2, which is valid for a period not to exceed 90 days.

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

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

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

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

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

"Utility boiler" has the meaning defined in N.J.A.C. 7:27–19.

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

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

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

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

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

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

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

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

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

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B–3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the 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. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1–trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC–11)
dichlorodifluoromethane (CFC–12)
trifluoromethane (HFC–23)
1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)
1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)
chloropentafluoroethane (CFC–115)
chlorodifluoromethane (HCFC–22)
2,2–dichloro–1,1,1- trifluoroethane (HCFC–123)
2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)
1,1–dichloro–1–fluoroethane (HCFC–141b)
1–chloro–1,1–difluoroethane (HCFC–142b)
pentafluoroethane (HFC–125)
1,1,2,2–tetrafluoroethane (HFC–134)
1,1,1,2–tetrafluoroethane (HFC–134a)
1,1,1–trifluoroethane (HFC–143a)
1,1–difluoroethane (HFC–152a)
parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

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

"Worst case operating conditions" means the conditions of operation which result in the maximum VOC emission rate for any hour period for a continuous operation or the maximum VOC batch cycle emission rate for a batch operation, considering any enforceable limitations on the operation including those set forth in any applicable rule or regulation, permit, or operating certificate.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1988 d.44, effective January 19, 1988 (operative February 21, 1988).
See: 19 N.J.R. 1938(a), 20 N.J.R. 186(b).
Added definition "Gasoline dispensing facility".
Amended by R.1989 d.62, effective February 6, 1989.
See: 20 N.J.R. 1866(a), 21 N.J.R. 321(a).
Added "barges as tankers" to "Delivery vessel" and added definition "marine delivery vessel".
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
Added definition for "custom topcoating of automobiles and light duty trucks", amended "refinishing of automobiles and light duty trucks" by referencing those coatings and finishes to be excluded and change number of passenger seating from 12 to 15 in "surface coating of automobiles and light-duty trucks".
Public Notice: Petition for rulemaking concerning a Volatile Organic Substance.
See: 22 N.J.R. 1632(c).
Public Notice: Action on Petition for rulemaking concerning a Volatile Organic Substance.
See: 22 N.J.R. 2041(a).
Public Notice: Amend definition of volatile organic compounds to exclude four halogenated chlorofluorocarbons.
See: 22 N.J.R. 3165(c).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

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

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

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

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

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

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

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

Administrative Correction.

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

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

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

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

Explaining the facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, S4 (1994).

Case Notes

Regulations prescribing implementation schedule for stage II vapor recovery system were valid. American Petroleum Institute v. New Jersey Dept. of Environmental Protection, 230 N.J.Super. 563, 554 A.2d 3 (A.D.1989).

7:27–16.1A Purpose, scope, applicability, and severability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds. The purpose of this subchapter is to require any stationary source operation or group of source operations, located within a contiguous area and under common control to implement reasonably available control technology (RACT) to control VOC emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility. Specific applicability thresholds are provided throughout the subchapter. Carbon monoxide limits are included for combustion sources, in order to control VOC emissions, which are also products of incomplete combustion.

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

(c) Whenever persons, equipment, control apparatus or any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(d) Whenever a VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of the chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

(e) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(f) The owner or operator of a source operation subject to a VOC emissions limit under this subchapter may comply with the limit through the use of discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27–30.

(g) If any provision of this subchapter or the application thereof to any person or circumstance is adjudicated to be invalid or unenforceable to any extent, the remainder of this subchapter or its application to any person or circumstance other than those that are the subject of the adjudication shall continue to be unaffected by the adjudication.

Recodified from 7:27–16.11 and 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.1996 d.303, effective July 1, 1996 (operative August 2, 1996).

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

Added (f) and designated former (f) as (g).

7:27–16.2 Storage of volatile organic compounds

(a) General provisions are:

1. No person shall cause, suffer, allow, or permit the storage of any applicable VOC in any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white or an equivalent method of emission control approved by the Department is used.

2. The provisions of (a)1 above shall not apply to words and logograms applied to the external surface of a storage tank for purposes of identification provided such symbols do not cover more than 20 percent of the exter-

nal surface area of the tank's sides and top or more than 200 square feet (18.6 square meters), whichever is less.

(b) No person shall cause, suffer, allow, or permit the storage of any applicable VOC in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedures for using Table 2A or as approved by the Department as being equally or more effective in preventing the emission of a VOC into the outdoor atmosphere.

Procedure for Using Table 2A

Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC to be stored.
Step 2: Select the appropriate line in Table 2A for the vapor pressure determined in Step 1.
Step 3: Determine the maximum tank capacity in thousands of gallons.
Step 4: Find the tank capacity range classification for the vapor pressure determined under Step 1.
Step 5: Determine the control requirements in accordance with the following:
Range I: No control apparatus required under this subsection.
Range II: Conservation vent required.
Range III: Floating roof required.

TABLE 2A
DETERMINANTS OF TYPE CONTROL APPARATUS REQUIRED FOR STORAGE OF VOLATILE ORGANIC COMPOUNDS

Vapor Pressure in PSIA @ 70°F		Tank Capacity in Thousands of Gallons			
		Range I	Range II		Range III
Greater than	But not Greater than	Not Greater than	Greater than	But not Greater than	Greater than
*0.02	0.03	4,500	4,500	14,000	14,000
0.03	0.04	4,500	4,500	11,000	11,000
0.04	0.06	3,500	3,500	8,000	8,000
0.06	0.08	2,500	2,500	6,000	6,000
0.08	0.10	2,000	2,000	4,500	4,500
0.10	0.15	1,600	1,600	3,500	3,500
0.15	0.2	1,050	1,050	2,500	2,500
0.2	0.3	750	750	1,600	1,600
0.3	0.4	550	550	1,250	1,250
0.4	0.5	475	475	1,075	1,075
0.5	0.6	400	400	900	900
0.6	0.7	350	350	750	750
0.7	0.8	300	300	650	650
0.8	1.0	260	260	550	550
1.0	1.2	210	210	475	475
1.2	1.4	190	190	400	400
1.4	1.6	170	170	350	350
1.6	1.8	150	150	300	300
1.8	2.1	125	125	260	260
2.1	2.4	110	110	225	225
2.4	2.7	100	100	200	200
2.7	3.0	90	90	180	180
3.0	3.5	80	80	160	160
3.5	4.0	70	70	145	145
4.0	4.5	60	60	130	130
4.5	5.0	50	50	115	115
5.0	5.5	50	50	105	105
5.5	6.0	50	50	95	95
6.0	6.5	40	40	85	85
6.5	7.0	40	40	75	75
7.0	7.5	40	40	70	70
7.5	8.0	35	35	65	65
8.0	8.5	35	35	60	60
8.5	9.5	30	30	55	55
9.5	10.5	25	25	50	50
10.5	11.5	20	20	45	45
11.5	13.0	10	10	40	40

* Any VOC which has a vapor pressure of 0.02 pounds per square inch absolute at standard conditions is included in this line.

(c) No person shall cause, suffer, allow, or permit the storage of any VOC having a vapor pressure of greater than 13.0 pounds per square inch absolute (672 millimeters of mercury) at the actual temperature existing at or near the liquid surface in any stationary storage tank having a maximum capacity of 1,000 gallons (3,785 liters) or greater unless such tank is equipped with a vapor control system to reduce the rate of VOC emissions to the outdoor atmosphere by at least 90 percent by weight of the uncontrolled VOC emissions from the tank.

(d) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank subject to the provisions of either (b) above in Ranges II and III or (c) above and equipped with gauging and/or sampling systems unless such systems are vapor-tight except when gauging or sampling is taking place.

(e) The provisions of (b) and (c) above shall not apply to a stationary storage tank in Range II located underground at a depth of no less than eight inches (20.3 centimeters) below the surface measured to the highest point of the tank shell, or installed in other manner approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(f) The provisions of (a) above shall not apply to any storage tank:

1. Maintained under a controlled elevated temperature; or

2. Equipped with a vapor control system reducing by at least 98 percent the weight of VOC emissions to the outdoor atmosphere.

(g) Any stationary storage tank in Range III as determined from Table 2A, constructed or installed on or after December 17, 1979, shall be provided with a double seal floating roof or other control apparatus approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(h) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof, unless any such storage tank containing a VOC having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere. For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter. Any secondary seal shall be intact, with no visible holes, tears or other openings.

(i) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof unless all openings in such roof, excluding emergency roof drains, are covered when not in active use.

(j) Any delivery vessel that contains any applicable VOC and is located at a facility and is vented to the atmosphere for more than 30 consecutive days shall be considered a stationary storage tank for the purposes of this section.

(k) Any person responsible for the emission of any applicable VOC from any storage tank pursuant to this section shall maintain, for each tank, records specifying each VOC stores and the vapor pressure of each VOC at standard conditions.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
(h) repealed and replaced, establishing separate provisions prior to and after June 15, 1990 and at (i) adding "prior to June 15, 1990".
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (n) (operative October 1, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
EPA identified deficiencies addressed by adding recordkeeping requirements.
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.3 Gasoline transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of gasoline into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. Such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which gasoline is transferred.

(b) The provisions of (a) above shall not apply to manufacturing process vessels installed before December 17, 1979.

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such storage tank is equipped with and operating one of the following controls:

1. A vapor balance system with all atmospheric vents positively closed during transfer;

2. A vapor balance system with a conservation vent adjusted to remain closed during transfer;

3. A vapor balance system with a hole of ¼ inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent;

4. A vapor control system which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of gasoline. Upon the request of the Department, any owner or operator utilizing a vapor control system shall demonstrate to the satisfaction of the Department achievement of this control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)) or greater; or

5. A floating roof.

(d) No person shall cause, suffer, allow, or permit the transfer of any substance into any gasoline vapor laden delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such delivery vessel is connected to control apparatus installed and operated in accordance with the provisions of (e) below.

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any other substance into any gasoline vapor laden delivery vessel except at a facility that is equipped with and operating a control apparatus in accordance with the following provisions:

1. Facilities loading 15,000 gallons (56,775 liters) of gasoline or less per day shall be equipped with and operating a vapor balance system or other control apparatus of equal or higher efficiency. Such vapor balance system shall have no open vent to the atmosphere during transfer and shall not return the vapors to any tank equipped with a floating roof.

2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:

i. Prevents VOC emissions to the outdoor atmosphere from exceeding the maximum allowable emissions as determined from Table 3A; or

ii. Reduces the total VOC emissions to the outdoor atmosphere by no less than 90 percent by weight.

TABLE 3A
EMISSION STANDARDS FOR GASOLINE LOADING FACILITIES LOADING MORE THAN 15,000 GALLONS (56,775 LITERS) PER DAY

Concentration of VOC in Gas Displaced from Delivery Vessel, Volume Percent		Maximum Allowable Emissions per Volume Unit Loaded	
Greater Than	But Not Greater Than	Pounds per Ten Thousand Gallons	Milligrams per Liter
50	—	6.7	80
40	50	5.8	70
30	40	5.0	60
20	30	4.2	50
15	20	3.8	45
0	15	3.3	40

3. The daily loading rate shall be calculated on the basis of the daily average rate during the month with the highest throughput in the last 12 months of operation.

(f) Except as provided in (g) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless such person complies with (h) and (r) below, and unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent the release into the outdoor atmosphere of no less than 95 percent by weight of the VOC generated by dispensing gasoline at the facility; and

2. To prevent overfilling and spillage.

(g) The provisions of (f) above shall not apply to a gasoline dispensing facility with an average monthly throughput of 10,000 gallons (37,850 liters) or less or to any gasoline dispensing devices at a marina used exclusively for refueling of marine vehicles.

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1986, and August 31, 1987, or during the most recent twelve months of operation, whichever is greater; and

2. Documentation of the monthly throughput shall be made available upon request by the Department.

(i) No person shall cause, suffer, allow, or permit any delivery vessel except railroad tank cars or marine tank vessels, having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1. Sustains a pressure change of less than three inches of water (6 millimeters of mercury) in five minutes when pressurized to 18 inches of water (34 millimeters of mercury) and evacuated to six inches of water (11 millimeters of mercury), as tested at least once in every 12–month period for leaks in accordance with test procedures specified by the Department, and

2. Has a certification affixed to the vessel in a prominent location which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests; and

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results.

(j) No person shall cause, suffer, allow, or permit a transfer of gasoline subject to the provisions of (c), (d), and (e) above if the delivery vessel being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the delivery vessel being unloaded is under a vacuum in excess of 6 inches of water (11 millimeters of mercury) gauge.

(k) No person shall cause, suffer, allow, or permit any transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, if:

1. The delivery being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) or less from the location of the leak; or

ii. Is a liquid leak;

2. Any component of the delivery vessel designed for preventing the release of gasoline vapors is not installed and operating as designed; or

3. The continued transfer results in a liquid gasoline spill.

(*l*) The provisions of (d) above shall not apply to delivery vessels used for less than one month for the purpose of holding gasoline from a storage tank during a period in which the storage tank is undergoing repair or maintenance.

(m) No person shall cause, suffer, allow, or permit the transport or transfer of gasoline in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC except during:

1. Emergency conditions;

2. Gauging; or

3. Venting through a vapor control system approved by the Department.

(n) The provisions of (c) above shall not apply to a storage tank during construction ballast.

(*o*) Any delivery vessel subject to the provisions of (i) above found in violation of (k) or (m) above shall be repaired within 15 days and shall be recertified.

(p) The provisions of this section shall not apply to the loading of gasoline as cargo into any marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey coastal waters are subject to the provisions of N.J.A.C. 7:27–16.5.

(q) Any new gasoline dispensing facility shall install equipment meeting the requirements of (f) above prior to the use of that facility for dispensing gasoline.

(r) Any person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, March 28, 1992 shall comply with the following schedule:

1. Within three months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to the provisions of N.J.A.C. 7:27–8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. Within nine months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. Within 18 months of exceeding the average monthly throughput of 10,000 gallons, compliance with (f) above shall be achieved.

(s) Any person responsible for any gasoline loading facility subject to (e)1, 2, or 3 above shall maintain the following records:

1. On a daily basis, record the total quantity, in gallons or liters, loaded into delivery vessels at the facility;

2. On a continuous basis or at a frequency approved by the Department in writing:

i. For any thermal oxidizer used to control the emission of VOC, record the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; or

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or, provided that the owner or operator confirms daily that the automatic switching between carbon beds is functioning in accordance with permit conditions, record the date of carbon bed replacement; and

3. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the facility.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1988 d.44, effective January 19, 1988 (operative February 22, 1988).
See: 19 N.J.R. 1938(a), 20 N.J.R. 186(b).
Substantially amended.
Amended by R.1989 d.62, effective February 6, 1989.
See: 20 N.J.R. 1866(a), 21 N.J.R. 321(a).
Added (e)4; repealed (n); renumbered (*o*)-(q) as (n)-(p); added new (q).
Amended by R.1989 d.595, effective December 4, 1989 (operative January 7, 1990).
See: 21 N.J.R. 1960(a), 21 N.J.R. 3748(c).
Compliance date of February 28, 1991 established.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (w)1., (operative October 1, 1992); (w)2–3, (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; added recordkeeping requirement; strengthened verification of conformance with CTG requirements for the transfer of gasoline into storage tanks.
Administrative correction to (i).
See: 24 N.J.R. 1889(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).

Case Notes

Regulations prescribing implementation schedule for stage II vapor recovery system were valid. American Petroleum Institute v. New Jersey Dept. of Environmental Protection, 230 N.J.Super. 563, 554 A.2d 3 (A.D.1989).

7:27–16.4 VOC transfer operations, other than gasoline

(a) On and after July 26, 1994, the provisions of this section shall apply to any transfer of an applicable VOC, except:

1. The transfer of gasoline. Gasoline transfer operations are subject to the provisions of N.J.A.C. 7:27–16.3; and

2. The loading of applicable VOC as cargo into a marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey's coastal waters are subject to the provisions of N.J.A.C. 7:27–16.5.

(b) No person shall cause, suffer, allow or permit the transfer of any applicable VOC into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. Such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which the VOC is transferred. This subsection shall not apply to a transfer to a manufacturing process vessel installed before December 17, 1979.

(c) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 1,000 pounds of applicable VOC as determined pursuant to (d) below unless the storage tank is equipped with and operating one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of applicable VOC;

2. A floating roof; or

3. A vapor balance system with:

i. All atmospheric vents positively closed during transfer;

ii. A conservation vent adjusted to remain closed during transfer; or

iii. A hole of ¼ inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent.

(d) For the purposes of (c) above, the total calculated annual emission rate for each tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC as follows:

$$EF = 0.000024 \times VP \times MW$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

0.000024 = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (d)1 above, by the annual quantity, in gallons, of each applicable VOC transferred from delivery vessels into the tank. Sum the calculated annual emission rates for each applicable VOC transferred. For a storage tank for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a storage tank for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual emission rate to 1,000 pounds. If the total calculated annual emission rate for the tank is less than 1,000 pounds, this section does not require the use of any control apparatus, except as specified in (b) above. Otherwise, one of the control apparatus described in (c) above must be used.

(e) The provisions of (c) above shall not apply to a storage tank during construction ballast if an applicable VOC is used.

(f) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC into any delivery vessel, except railroad tank cars, from a tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 2,000 pounds of applicable VOC from transfer operations, as determined pursuant to (g) below, unless the transfer is directly from a tank equipped with a floating roof or unless any such delivery vessel is connected to one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent by weight the total VOC emissions to the outdoor atmosphere; or

2. A vapor balance system with all atmospheric vents positively closed during transfer. Such vapor balance system shall not return the vapors to any tank equipped with a floating roof.

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessels from each tank shall be determined in accordance with the following procedure:

ii. No more than three times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any 24–hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27–16.6(c), (h), (i), and (j) and 16.16(c) and (e). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 16A, Column 3;

4. Until March 28, 1994, the provisions of 3 above may apply to source gases which are mathematically combined, providing approval for such a mathematical combination of sources has been obtained from the Department prior to March 28, 1992;

5. As of March 28, 1992, the Department shall not approve any mathematical combining of source gases; and

6. Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources shall expire as of March 28, 1994. Any person who, as a result of this expiration, must alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall do so in accordance with the following schedule:

i. By September 24, 1992, apply to the Department for a permit to carry out the alteration; and

ii. By March 28, 1994, comply with the requirements of this chapter and with any provisions or conditions set forth in any alteration permit issued which authorizes the alteration of the equipment or control apparatus.

(g) Any person responsible for a source operation subject to (c) above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table 16A in (c) above: the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. Conduct an analysis of the source operation, which demonstrates that, under operating conditions that maximize the VOC emissions after any control, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the VOC emission rate under operating conditions;

2. For any source operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the thermal oxidizer;

3. For any source operation that has a control apparatus using carbon or other adsorptive material used to control the emission of VOC:

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the control apparatus and any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are also to be readily available on the operating premises, and the person responsible for the source operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the source operation or control apparatus.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
Established separate provisions for prior to and as of June 15, 1990 and added Column 4 to table 4.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (m)1. (operative October 1, 1992); (m)2–4 (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; eliminated "bubble" provisions.

Administrative correction to (a); (m)1, i and 3.
See: 24 N.J.R. 1889(a).
Recodified from 7:27–16.6 and amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.17 Facility–specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:

1. Is located at a major VOC facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. Is not regulated elsewhere in this subchapter; and

ii. Is not specifically exempted elsewhere in this subchapter because the source operation is within a category that is exempted or because the source operation operates below exclusion rates or threshold levels for control; or

2. If the owner or operator of a source operation regulated under N.J.A.C. 7:27–16.2 through 16.16 or 16.18 through 16.21 seeks approval of an alternative VOC control plan, which would apply to the equipment or source operation notwithstanding any control requirement or emission limit which would otherwise apply under this subchapter.

(b) Except as provided at (t) below, the owner or operator of any facility that contains a source operation subject to (a)1 above shall:

1. By October 24, 1994, submit a demonstration for all source operations to the Department at the address listed in (s) below. This demonstration shall include one of the following for each source operation subject to (a)1 above:

i. Information, pursuant to (e) below, that demonstrates the source operation is currently served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator has implemented pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions;

ii. Information, pursuant to (e) below, that demonstrates by May 31, 1995 the source operation will be served by control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator will implement pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions; or

iii. A proposed alternative VOC control plan prepared in accordance with (d) below.

2. Beginning on May 31, 1995, comply with either (b)2i or ii below:

i. Use control apparatus that the Department has determined (pursuant to (1) below) will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected; or

ii. Operate the facility in accordance with an alternative VOC control plan approved by the Department pursuant to (j) below.

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in (s) below a proposed alternative VOC control plan prepared in accordance with (d) below. Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment or source operation facility from complying by May 31, 1995 for source operations first regulated under this subchapter as amended operative July 26, 1994 or compliance dates in other sections of this subchapter. If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii or (c) above shall include the following information in the plan:

1. A list of each source operation at the facility to be included in the plan:

i. For a submission pursuant to (b)1iii above, the list shall include each source operation that is not regulated under N.J.A.C. 7:27–16.2 through 16.16, 16.20 or 16.21, and has the potential to emit at least three pounds of VOC per hour; or

ii. For a submission pursuant to (c) above, the list shall include each source operation for which the owner or operator seeks an alternative to compliance under N.J.A.C. 7:27–16.2 through 16.16, 16.20 or 16.21;

2. The following information for each source operation listed pursuant to (d)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A list of all VOC control technologies available for use with the source operation;

v. A list of all alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions;

vi. An analysis of the technological feasibility of installing and operating each control technology and process alternative identified in (d)2iv and v above;

vii. For each control technology and process alternative which is technologically feasible to install and operate, an estimate of the cost of installation and annual operation;

viii. An estimate of the remaining useful life of the existing source operation;

ix. An estimate of the reduction in VOC emissions attainable through the use of each control technology and process alternative identified in (d)2iv and v above;

x. The VOC control technology or technologies or process alternatives which the owner or operator proposes to employ;

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for all permits required under N.J.A.C. 7:27–8;

xii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

xiii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (j) below; and

4. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27–1.39.

(e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:

1. A list of each source operation at the facility within the scope of (a)1 above;

2. The following information for each source operation listed pursuant to (e)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A description of the control apparatus that serves the source operation (for demonstrations pursuant to (b)1i above) or that the owner or operator states will serve the source operation (for demonstrations pursuant to (b)1ii above);

v. An analysis of how the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected;

vi. A description of any pollution prevention measures that the owner or operator has implemented (for demonstrations pursuant to (b)1i above) or will implement (for demonstrations pursuant to (b)1ii above), and analysis of how such measures will control VOC emissions to the extent required under (b)1i and ii above;

vii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

viii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. A complete application for each permit required under N.J.A.C. 7:27–8 for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;

4. Any other information which the Department may request which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (1) below; and

5. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27–1.39.

(f) Notwithstanding the provisions of (b) above, the owner or operator of a facility that had actual annual emissions of VOC in 1990 and each year thereafter of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to (f)1 below, obtain the Department's approval of the plan pursuant to (k) below, and implement the plan pursuant to (f)2 below.

1. The owner or operator shall submit to the Department a proposed compliance plan that includes the following information, and is certified by the owner or operator pursuant to N.J.A.C. 7:27–1.39;

i. Documentation establishing that the actual annual emissions of VOC from the facility in 1990 and each year thereafter were less than 25 tons. If the facility did not commence operations until after 1990, the documentation shall address each year beginning with the year that operations commenced. The documentation shall include records maintained at the facility and any report of actual emissions, including any emission statement, submitted for the facility to the Department for the relevant years;

ii. A statement of the owner or operator's intent to reduce the facility's potential to emit VOC to less than 25 tons per year;

iii. A description of how the reduction of the facility's potential to emit is to be achieved;

iv. Complete applications for amendments to any existing permit or for any new permit required to achieve the reduction of the facility's potential to emit VOC to less than 25 tons per year; and

v. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan.

2. By May 31, 1995, the owner or operator of the facility shall reduce the facility's potential to emit VOC to less than 25 tons per year and achieve compliance with all new or amended permits.

(g) Within 30 days after receiving a demonstration submitted pursuant to (b)1 above, a proposed alternative VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to (f) above, the Department shall notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the Department.

(h) Failure by an owner or operator to submit the additional information requested by the Department pursuant to (g) above within the time stated in the Department's notification shall constitute a violation of this subchapter. In such case, the Department may deny the request for approval of the submission and pursue its other remedies.

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA for approval as a revision to New Jersey's State Implementation Plan.

(j) Within six months after receiving a complete proposed alternative VOC control plan, the Department shall approve, approve and modify, or disapprove the proposed plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above;

2. The proposed plan considers all control technologies available for the control of VOC emissions from the type of equipment or source operation in question;

3. For any control technologies described in (j)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan demonstrates that the control technology:

i. Would be less effective in controlling VOC emissions from the equipment or source operation than the proposed measures;

ii. Is unsuitable for use with the source operation, or duplicative of control technology or pollution prevention measure which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the VOC emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in VOC emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of VOC emissions from the same type of source operations used by all other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation is the lowest rate which can practicably be achieved at a cost within the limits described in (j)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. For any pollution prevention or other emission reduction measures proposed by the owner or operator, the proposed plan demonstrates that the measures:

i. Result in actual reductions in VOC emissions;

ii. Result in VOC emission reductions which are quantifiable; and

iii. Result in VOC emission reductions which are Federally enforceable.

(k) Within six months after receiving a complete compliance plan submitted pursuant to (f) above, the Department shall approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required under (f) above;

2. The compliance plan demonstrates to the Department's satisfaction that actual emissions of VOC, including fugitive VOC emissions, in 1990 (or the first year of the facility's operations, if operations commenced after 1990) and each year thereafter are less than 25 tons;

3. The proposed recordkeeping requirements are sufficient to enable the Department to verify that the owner or operator is complying with the plan; and

4. The compliance plan demonstrates that the potential to emit VOC will be less than 25 tons if the plan is approved and implemented.

(*l*) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:

1. The demonstration includes all of the information required under (e) above;

2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained all permits and certificates required for the control apparatus under N.J.A.C. 7:27–8, and has agreed to install and use all such control apparatus in accordance with the permits and certificates;

3. To the extent that the demonstration depends upon the implementation of pollution prevention measures that have not been implemented before the time at which the demonstration was submitted, the owner or operator has agreed to implement such measures; and

4. The demonstration establishes to the satisfaction of the Department that the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the pollution prevention measures will achieve at least the same level of emission reductions.

(m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any alternative VOC control plan issued, extended or renewed under this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27–30 to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under this subchapter.

(n) Before altering any source operation which is included in an approved alternative VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A–3.10) modify the VOC control plan, compliance plan or demonstration to reflect the alteration, in a manner satisfying the criteria set forth in (j), (k) or (*l*) above, respectively; and

2. Apply for and obtain such permits and certificates for the alteration, as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation. Any permit application must be submitted with the application to amend the VOC control plan.

(*o*) The Department will revoke an approval of an alternative VOC control plan by written notice to the holder of the approval if EPA denies approval of the proposed VOC plan as a revision to the State Implementation Plan. The Department may revoke an approval of an alternative VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation; or

3. The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

4. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan.

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, if:

1. The Department has denied the person's application for approval under this section for any other reason than an EPA rejection of the SIP revision;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (m) above; or

3. The Department has revoked the person's approval pursuant to (*o*)1 through 3 above.

(q) After receipt of a written request from an owner or operator, the Department may authorize a 60 day extension of the deadline set forth in (b)1 above, provided that such a request shall include a statement, certified in accordance with N.J.A.C. 7:27–1.39, that notwithstanding the request for extension, the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request for renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27–1.39, that notwithstanding the request for an extension, that the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Written requests for the extension of a deadline submitted shall be submitted to the address listed below:

Assistant Director, Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
401 East State Street, 4th floor
Trenton, New Jersey 08625–0422

(r) Notwithstanding the requirement at (b)2 above, demonstration that a source operation is currently served by control apparatus that meets the criteria set forth in (b)1i above does not relieve a facility from complying with all existing emission limits and conditions set forth in this chapter.

(s) The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625–0027

(t) If a source operation is covered by a preconstruction permit and operating certificate or an operating permit, either of which requires the source operation to utilize a control apparatus which attains at least 90 percent capture and 90 percent control, the owner or operator need only be in compliance with that permit or certificate to be deemed in compliance with this section; the owner or operator need not submit the demonstration required by (b) above.

New Rule, R.1993 d.666, effective December 20, 1993 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 25 N.J.R. 4551(a), 25 N.J.R. 6002(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Public Notice: Submittal date for categories exempted from compliance until November 15, 1994.
See: 26 N.J.R. 4217(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).
Amended by R.1995 d.255, effective May 15, 1995 (operative June 19, 1995).
See: 26 N.J.R. 4478(a), 27 N.J.R. 1979(b).
Administrative Correction.
See: 27 N.J.R. 2740(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).
In (m) provided for approval of alternative VOC control plans.

Law Review and Journal Commentaries

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

7:27–16.18 Leak detection and repair

(a) The provisions of this section shall apply to any owner or operator of the following:

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

3. Any synthetic organic chemical or polymer manufacturing facility; or

4. Any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, which is a major VOC facility.

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

1. At any petroleum refinery, is 10 percent by weight or greater applicable VOC;

2. At any natural gas/gasoline processing plant, is one percent by weight or greater applicable VOC; or

3. At any synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater gaseous applicable VOC or light liquid VOC and the equipment is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of synthetic organic chemicals or polymers, or any combination thereof; or

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is 10 percent by weight or greater applicable VOC, and the total quantity of applicable VOC processed in the equipment is greater than 550 tons per year. The total quantity processed shall include the total annual quantity of applicable VOC charged to all operations for which the equipment is used and does not include any in-process recycled and in-process refluxed applicable VOC and any applicable VOC which is generated during the process.

Addressed EPA-identified deficiencies; "VOS" changed to "VOC" throughout.
Recodified from 7:27–16.7 and amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.20 Petroleum solvent dry cleaning operations

(a) No person shall cause, suffer, allow, or permit VOC emissions to the outdoor atmosphere from a petroleum solvent dry cleaning dryer unless such dryer is:

1. Equipped with a vapor control system which prevents VOC emissions from exceeding 7.7 pounds (3.5 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned; or

2. A solvent recovery dryer operated in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of 0.013 gallons (50 milliliters) per minute is attained.

(b) No person shall cause, suffer, allow, or permit any VOC emissions to the outdoor atmosphere from a petroleum solvent filtration system unless:

1. The VOC content in all filtration wastes is reduced to no more than 2.2 pounds (1.0 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere; or

2. The system is a cartridge filtration system operated such that the filter cartridges are drained in their sealed housings for eight hours or longer before their removal.

(c) No owner or operator of a petroleum solvent dry cleaning facility shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from:

1. Visibly leaking equipment including, but not limited to, washers, dryers, solvent filters, settling tanks, and vacuum stills; and

2. Containers of VOC or VOC-laden waste standing open to the outdoor atmosphere.

(d) The provisions of (a) above shall not apply to petroleum solvent dry cleaning facilities that consume less than 15,000 gallons (56,775 liters) of petroleum solvent annually.

(e) Any person subject to the provisions of (a) above shall comply with the following schedule:

1. By February 2, 1987, a plan shall be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificate to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27–8.

2. By May 1, 1987, construction or installation of equipment and control apparatus in accordance with the approved plan shall commence; and

3. By October 31, 1987, compliance with this section shall be achieved.

(f) The total amount of any VOC consumed by a petroleum solvent dry cleaning operation in each calendar year shall not exceed 9.9 pounds per 220 pounds of dry weight of articles cleaned.

(g) Any person responsible for the emission of any VOC from a petroleum solvent dry cleaning operation subject to this section shall maintain a monthly record setting forth the chemical name of the VOC used in the operation, the volume of VOC consumed in the operation, and the dry weight of articles cleaned.

New Rule, R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (g) (operative October 1, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
New (f) and (g) addresses EPA-identified deficiencies.
Recodified from 7:27–16.8 by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.21 Natural gas pipelines

(a) The owner or operator of any natural gas pipeline shall by October 26, 1994 prepare a Control Measure Plan that shall:

1. Identify each control technology or procedure available to the owner or operator for achieving reductions in VOC emissions from a blowdown event. Such control technology or procedures may include, without limitation, pipeline pressure reductions, the use of mobile compressors for recompressing, and the use of control apparatus; and

2. Identify in detail the criteria that the owner or operator will use to select the control technology or procedure, or combination thereof, that will achieve the greatest reductions in VOC reasonably achievable for each blowdown event.

(b) The owner or operator of any natural gas pipeline shall by May 31, 1995 achieve some reduction in VOC emissions from each blowdown event and shall implement the control technologies or procedures that the Control Measure Plan indicates would be appropriate for each blowdown event.

(c) On or before March 1 of each year beginning in 1996, the owner or operator of each natural gas pipeline shall submit a report to the Chief, Bureau Field Operations setting forth the location, date and duration of each blowdown event, a description of the emissions reduction procedures and technology used, and a quantification of the

amount of VOC emission reductions achieved for each event.

(d) The owner or operator of any natural gas pipeline subject to (a) above shall retain the Control Measure Plan at the office having operating responsibility for the section of pipeline for which the blowdown event will occur and shall provide a copy of such plan to the Department within three days of receipt of a written request from the Department.

(e) If after reviewing a Control Measure Plan, the Department determines that it fails to satisfy the requirements set forth in (a) above, the Department shall notify the owner or operator that it has 30 days to submit to the Department appropriate amendments to its plan. Failure to do so shall constitute a violation of this section. However, an owner or operator may request an adjudicatory hearing regarding the Department's determination in accordance with the procedure at N.J.A.C. 7:27–8.12.

(f) The Department may require amendments to a Control Measure Plan if:

1. The Plan does not contain all of the information required under (a) above;

2. The Plan does not consider all control technology and procedures used or considered for use by other persons in the owner or operator's industry, taking into account the potential for the creation of a safety hazard or the potential for unreasonable interference with enjoyment of life and property;

3. The Plan would be ineffective in controlling VOC emissions during blowdown events;

4. The emission reductions being achieved are not the greatest reductions which can be practicably achieved at reasonable costs; or

5. Implementation of the plan results or would result in any violation of law or regulation; or

6. EPA denies approval of the proposed Control Measure Plan as a revision to the State Implementation Plan.

(g) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (a) above, the Department may authorize a 60–day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:

Assistant Director, Air & Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625–0422

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.22 Emission information, record keeping and testing

(a) Any person subject to any record keeping provision of this subchapter shall maintain the required records for a period of no less than five years and shall make those records available upon the request of the Department or the EPA, or any duly authorized representative of the Department or the EPA.

(b) Any person who owns or operates a source operation subject to any recordkeeping requirement set forth in this subchapter may submit a request in writing to the Department for approval to maintain records other than those specified at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.4(*o*), 16.5(j), 16.6(*l*), 16.7(m) and (n), 16.13(c), 16.16(g), 16.18(j), 16.20(g) or 16.21(c). The Department and EPA may approve any such request if the person demonstrates to the satisfaction of the Department and EPA that the alternate records to be maintained are at least as effective in documenting that the source operation is operating in compliance with the applicable requirements.

(c) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

(d) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide facilities and necessary equipment for determining the quantity and identity of any VOC emitted into the outdoor atmosphere and shall conduct such testing using N.J.A.C. 7:27B–3 or another method approved by the Department and the EPA. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department, the EPA, or any duly authorized representative of the Department or the EPA.

(e) Any person responsible for the emission of VOC shall, upon request of the Department, provide sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of the VOC being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(f) All testing and monitoring pursuant to the provisions of this subchapter shall be conducted using N.J.A.C. 7:27B–3 or other method approved in advance by the Department and acceptable to EPA.

(g) Hourly emissions limits apply to any consecutive 60 minute period, and testing performed to verify compliance shall be based on a 60 minute period during which the equipment or control apparatus is used and operated under conditions acceptable to the Department and consistent with the operational parameters and limits set forth in any permit or certificate in effect. If circumstances require that test periods be less than, or more than 60 minutes (such as when an operational duration is less than 60 minutes or when detectability limits are approached for low concentration gas streams), the Department may require different test periods in its review and approval of test protocols.

(h) Any record keeping requirement set forth at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.7(m), 16.7(n), 16.16(g), or 16.20(g), shall become effective on October 1, 1992, except for record keeping based on continuous emission monitoring. Any record keeping requirement based on continuous emission monitoring shall become effective on April 1, 1993.

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27–16.2(k), 16.3(s), 16.7(m) and (n), 16.16(g), or 16.20(g) may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27–1.6 through 1.30.

Recodification: Recodified from 16.8.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Require EPA approval of variances and access to records.
Amended by R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).
Corrected internal cite.
Recodified from 7:27–16.9 and amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 27 N.J.R. 2740(a).

7:27–16.23 Procedures for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to N.J.A.C. 7:27–16.8, 16.9, 16.10, 16.11 or 16.13 that is subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the equipment or source operation for the air contaminant in question, or pursuant to (a)2 below if no such system has been installed for the air contaminant.

1. With respect to an emission limit for any air contaminant monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of emissions over one calendar day, not including periods of equipment downtime.

2. With respect to an emission limit for any air contaminant that is not monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60–minute period specified by the Department and performed in compliance with N.J.A.C. 7:27–16.22.

(b) For any equipment or source operation subject to (a) above which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit or certificate for such equipment or source operation.

(c) For any equipment or source operation subject to (a) above which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a) or (b) above within 180 days from the date on which the source operation commences operation, and thereafter at the frequency set forth in the permit or certificate for such equipment or source operation.

(d) An exceedance of any applicable VOC or CO emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a) or (b) above or otherwise, is a violation of this subchapter.

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.24 Adjusting combustion processes

When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall do so in accordance with the terms and conditions of N.J.A.C. 7:27–19.16.

New Rule, R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.25 (Reserved)

7:27–16.26 Variances

(a) Whenever a person responsible for the emission of any VOC believes that advances in the art of control for the kind and amount of VOC emitted have not developed to a degree which would enable the requirements of this subchapter to be attained, such person may apply to the Department in writing for a variance, setting forth any reason and justification therefor.

(b) Any person submitting an application for a variance to the Department is subject to the certification requirements set forth at N.J.A.C. 7:27–1.39.

(c) The Department may issue a variance which shall be valid for a period not to exceed three consecutive years from the date of issuance and may be renewed upon application to the Department setting forth reasons and justifications for its continuation.

(d) Variances issued under the provisions of this section shall be conditional upon:

1. Compliance with any requirements which the Department sets forth as conditions of approval; and

2. Approval by the EPA as a revision to the State Implementation Plan.

(e) Variances may be revoked at any time at the discretion of the Department.

(f) Any applicant aggrieved by the denial or revocation by the Department of a variance allowed under the provisions of this section may request an adjudicatory hearing pursuant to N.J.A.C. 7:27–8.12.

Recodification: From 16.9.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies.
Recodified from 7:27–16.10 by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Administrative Correction.
See: 27 N.J.R. 2740(a).

7:27–16.27 Exceptions

(a) The provisions of this subchapter shall not apply to any stationary vessel or delivery vessel maintained under a pressure greater than one atmosphere provided that any vent serving such vessel has the sole function of relieving pressure under abnormal emergency conditions.

(b) The provisions of this subchapter shall not apply to the emissions of VOC from the following source operations:

1. Offset lithography printing operations until November 15, 1994;

2. Surface coating of plastic parts until November 15, 1994;

3. Natural gas pipelines that are not major VOC facilities, with the exception of blowdown events as set forth in N.J.A.C. 7:27–16.21;

4. Industrial wastewater treatment systems until November 15, 1994;

5. All other wastewater treatment facilities until November 15, 1994; and

6. Open burning.

Recodification: From 16.12.
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Recodified from 16.13 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).
Recodified from 7:27–16.12 and 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).

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

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 13:1D–1 et seq. and 26:2C–1 et seq. and were filed and became effective on June 14, 1977, as R.1977 d.207. See: 9 N.J.R. 69(a), 9 N.J.R. 321(b). Amendments were filed on October 17, 1979, as R.1979 d.414 to become effective on December 17, 1979. See: 10 N.J.R. 477(b), 11 N.J.R. 544(b).

7:27–17.1 Definitions

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

"Aerodynamic downwash" means the rapid descent of a plume to ground level with little dilution and dispersion due to alteration of background air flow characteristics caused by the presence of buildings or other obstacles in the vicinity of the emission point.

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

"Asbestos" means actinolite, amosite, anthophyllite, chrysotile, crocidolite, tremolite.

"CFR" means the Code of Federal Regulations.

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

Cross References

Child care center physical plant requirements, see N.J.A.C. 10:122–5.2.

Children's group home physical facility requirements, see N.J.A.C. 10:128–4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124–5.1 et seq.

Residential child care facility maintenance and sanitation requirements, see N.J.A.C. 10:127–4.4.

7:27–17.3 Storage, transfer, and use of toxic substances

(a) No person shall cause, suffer, allow or permit any TXS listed in Table 1 to be emitted from any source operation, storage tank, or transfer operation into the outdoor atmosphere unless such equipment and operation is registered with the Department within six months of the effective date of this subchapter. Such registration shall include information relating to vessel sizes, transfer rates, emission rates, operating procedures and other information required by the Department and shall be made on forms provided by the Department.

(b) In cases where the Department determines that the equipment or operating procedures as described in the registration do not represent advances in the art of control for the types and kinds of TXS emitted, the Department will so notify the registrant.

(c) Within three months of such notification, the registrant must advise the Department of measures to be taken for reducing the TXS emissions to a rate or concentration equivalent to advances in the art of control and the schedule for completing such measures.

(d) Upon notification by the Department that the measures and schedule submitted pursuant to subsection (c) of this section are acceptable, the registrant shall implement such measures in accordance with the schedule.

(e) If, in the opinion of the Department, the measures or schedule submitted pursuant to subsection (c) of this section are not acceptable, the Department shall state its reasons and may order the registrant to resubmit, within the time specified in the order, measures to be taken and the schedule for same. If the registrant fails within the time specified to make an acceptable resubmittal, the Department may order the registrant to implement such measures as it deems appropriate within a specified time.

(f) Permit applications submitted to the Department pursuant to N.J.A.C. 7:27–8 satisfy the registration requirements of this section.

TABLE 1
TOXIC SUBSTANCES
GROUP I

Name	CAS Number
Benzene (Benzol)	71–43–2
Carbon tetrachloride (Tetrachloromethane)	56–23–5
Chloroform (Trichloromethane)	67–66–3
Dioxane (1,4–Diethylene dioxide)	123–91–1
Ethylenimine (Aziridine)	151–56–4
Ethylene dibromide (1,2–Dibromoethane)	106–93–4
Ethylene dichloride (1,2–Dichloroethane)	107–06–2
1,1,2,2–Tetrachloroethane (sym Tetrachloroethane)	79–34–5
Tetrachloroethylene (Perchloroethylene)	127–18–4
1,1,2–Trichloroethane (Vinyl trichloride)	79–00–5
Trichloroethylene (Trichloroethene)	79–01–6

GROUP II

Name	CAS Number
Methylene chloride (Dichloromethane)	75–09–2
1,1,1–Trichloroethane (Methyl chloroform)	71–55–6

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).
"TVOS" replaced by "TXS".
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–17.4 Discharge of toxic substances

(a) No person shall cause, suffer, allow or permit any GROUP I TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1. At any effective stack height of no less than 40 feet (12.2 meters) above grade;

2. No less than 20 feet (6.1 meters) higher than any area of human use or occupancy including, but not limited to, the roof of a building, which is within 50 feet (15.2 meters), measured horizontally from the point of discharge; and

3. Directed vertically upward.

(b) No person shall cause, suffer, allow or permit the emission of a GROUP I TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

(c) The Department has determined that GROUP II TXS should be subject to at least reasonably available control technology requirements. Accordingly, requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, set forth at N.J.A.C. 7:27–16 and 23, shall apply with full force to GROUP II TXS until the Department amends this rule in response to anticipated EPA rule-making or otherwise. For example, pursuant to this subsection and N.J.A.C. 7:27–16.4(b), certain transfers of methylene chloride may be conducted only with either a vapor control apparatus which reduces by no less than 90 percent the concentration of methylene chloride in the air-vapor mixture displaced during the transfer, a floating roof, or certain types of vapor balance systems. For another example, pursuant to this subsection and N.J.A.C. 7:27–23.3, a lacquer may not contain more than 5.7 pounds per gallon of methylene chloride, nor may it contain more than 4.7

pounds of VOC together with one pound of methylene chloride.

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).
"TVOS" replaced by "TXS".
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–17.5 Operating instructions

(a) No person shall cause, suffer, allow or permit the use of TXS in any open top tank or surface cleaner unless such use is in conformity with written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

(b) Any person subject to the provisions of subsection (a) of this section shall maintain a training program to ensure that all personnel associated with the use or operation of the open top tank or surface cleaner understand and follow the specified procedure.

(c) Copies of operating instructions and maintenance instructions must be located at the open top tank or surface cleaner. Copies shall be supplied to the Department when requested and must be accompanied by similar documents supplied by the equipment manufacturer, with explanations for differences between the two.

(d) The written procedures required by this section shall be submitted to the Department upon request within 10 days of the receipt of such request; such procedure shall be subject to review and approval by the Department. If, in the opinion of the Department, such procedure does not fulfill the requirements of this section, the Department may state its reason for disapproval and order the preparation of an amended procedure within the time period specified in the order. If the person responsible fails within the time period specified in the order to submit an amended procedure which, in the opinion of the Department, fulfills the said requirements, the Department may revise the procedure accordingly. Such revised procedure will thereafter be that to which the person responsible must conform.

(e) Any person subject to the provisions of this section shall notify the Department in writing within five days of any revision or alteration of a procedure approved pursuant to the provisions of subsection (d) of this section. Such written notification shall include a detailed description of the changes in the procedure and the reasons therefor. Such amended procedure shall be subject to review and approval by the Department.

(f) The provisions of this section shall become effective on January 1, 1981.

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).
"TVOS" replaced by "TXS".

7:27–17.6 Emission information and tests

(a) Any person responsible for the manufacture, application or use of any coating, applied on or after August 15, 1977, which the Department, or any agent thereof, has reason to believe contains asbestos shall, when requested by the Department, conduct such tests as are necessary in the opinion of the Department to determine the presence and the amount and/or kinds of asbestos in the coating. Such tests shall be conducted in a manner approved by the Department and shall be made at the expense of the person responsible.

(b) The Department may waive the testing requirements of subsection (a) of this section upon receipt of a materials specification report from the material manufacturer certifying that the asbestos content of the surface coating for which testing is required complies with the provisions of section 2 of this subchapter.

(c) Any person responsible for the emission of TXS shall, upon request of the Department, provide:

1. Information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

2. Facilities and necessary equipment for determining the quantity and identity of TXS emitted into the outdoor atmosphere and shall conduct such tests using methods approved by the Department. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department.

3. Sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of TXS being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

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).
"TVOS" replaced by "TXS".

7:27–17.7 Permit to construct and certificate to operate

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Certificate to Operate Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(c) No person shall use or cause to be used any equipment or control apparatus from which TXS are emitted into the outdoor atmosphere unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use in accordance with any relevant "Permit to Construct, Install or Alter Control Apparatus or Equipment" and any relevant "Certificate to Operate Control Apparatus or Equipment".

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).
"TVOS" replaced by "TXS".

7:27–17.8 Applicability

(a) Operations and equipment covered by this subchapter shall include, but not be limited to, storage tanks, transfer operations, open top tanks, surface cleaning, surface coating, organic chemical manufacture, pharmaceutical manufacture, petroleum refining, and miscellaneous organic solvent uses in which one or more of the toxic substances in Table 1 are stored, used, or manufactured.

(b) Whenever persons, equipment, control apparatus or TXS subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(c) Whenever a TXS subject to the provisions of this subchapter is also subject to the provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

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).
"TVOS" replaced by "TXS".

7:27–17.9 Exceptions

(a) The provisions of sections 3, 4 and 6(c) of this subchapter shall not apply to the benzene constituent of gasoline which is discharged to the atmosphere from storage tanks or transfer operations.

(b) The provisions of this subchapter shall not apply to any TXS which:

1. Was not added to or deliberately formed in a raw material or a finished product; and

2. Does not exceed 0.25 percent by weight of any raw material or finished product; and

3. Is not emitted from any source operation, storage tank, or transfer operation at a rate in excess of 0.1 pounds (45.4 grams) per hour.

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).
"TVOS" replaced by "TXS".

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

Authority

N.J.S.A. 26:2C–1 et seq., unless otherwise stated.

Subchapter Historical Note

R.1979 d.237, filed June 14, 1979 to become effective June 30, 1979. See: 11 N.J.R. 327(a). As amended R.1980 d.307, filed July 8, 1980 to become effective September 8, 1980. See: 11 N.J.R. 327(a), 12 N.J.R. 462(c).

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

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

7:27–18.1 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 actual rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. The actual rate of emissions, as of a particular date, shall equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the particular date provided these are representative of normal source operation. The Department may allow the use of a time period different from this two year period only upon a determination that the different time period is more representative of normal operation. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. Generally, the particular date is the permit application date, but may be another date specified by the Department. For any equipment, source operation, or control apparatus which has not begun normal operations as of the particular date, the Department shall assume that its actual emissions equal its allowable emissions. Actual emissions shall, for the purposes of this subchapter, be expressed in tons per year.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

"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 an air quality simulation model, for determining whether air contaminant emissions will result in an ambient air concentration that exceeds a standard established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a 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.

"Allowable emission" means the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate shall be based on the maximum rated capacity of the equipment, unless the equipment is subject to Federally enforceable limits which restrict the operating rate, hours of operations, or both. In such cases this rate is based on the most stringent of the following:

1. Applicable standards of performance for new stationary sources (NSPS) as set forth in 40 CFR 60;

2. Applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR 61;

3. Applicable emission, equipment, and operating standards as set forth in this chapter, including those with a future compliance date;

4. Applicable emission limitations specified in a Federally enforceable permit, including limitations with a future compliance date; and

5. Any emission limitation in an applicable State Implementation Plan (SIP).

"Alternative fuel" means, with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, this term means any fuel not used in the source operation since December 21, 1976.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27–13 or in 40 CFR 50.

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

"Banking" means the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27–18.8, 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.

"CAA" means the Clean Air Act as amended November 1990 (42 USC 7401 et seq., as amended by Pub. L. 101–549).

"Commence construction" or "commencement of construction" means, with respect to construction, reconstruction, or modification of equipment or control apparatus at a facility, the beginning of initiation of physical on-site construction. For the purpose of this subchapter, this term shall include installation activities on any source operation, equipment, or control apparatus, which are of a permanent nature. Such activities shall include, but are not limited to, establishment of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation at a facility, this term refers to the beginning of those on-site activities which mark the initiation of the change in method of operation.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for commencing technical review of the application. Designating an application complete for purposes of commencing technical review does not preclude the Department from requesting or accepting any additional information.

"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, or temporary storage of equipment or control apparatus. Unless otherwise prohibited by Federal law, "construct" or "construction" shall also not include the pouring of footings or placement of a foundation where equipment or control apparatus is intended to be used. This term shall include installation of equipment or control apparatus.

"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.

"Contemporaneous" means, in respect to newly constructed, reconstructed, or modified equipment, or a change in method of operation, occurring within a time period which includes:

1. The five years prior to the commencement of construction; and

2. The period between the commencement of the construction and the initiation of operation of the newly constructed, reconstructed, or modified equipment.

"Control apparatus" means any device that prevents or controls the emission of any air contaminant

"Creditable emission reduction" means a decrease in actual emissions which meets the conditions listed in 1 through 5 below. A decrease is a creditable emission reduction only to the extent that the pre-decrease level of actual emissions or the pre-decrease level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions. Decreases in allowable emissions attributable to equipment or control apparatus that was permitted, but never operated, shall not be considered a creditable emission reduction. In order to be a creditable emission reduction, the decrease must be:

1. Quantifiable;

2. Federally enforceable;

3. Not required pursuant to any Federal or State law, rule, permit, order, or other legal document;

4. Not relied on by the Department in the SIP or any revision thereto, adopted by the Department, to demonstrate attainment or maintenance of a NAAQS or to demonstrate reasonable further progress toward attainment of a NAAQS; and

5. Verifiable, to the satisfaction of the Department, to have in fact occurred.

"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 in N.J.A.C. 7:27–13.

"Emission offset" means a creditable emission reduction approved by the Department for use to offset an increase in allowable emissions of an air contaminant from a facility.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into 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, equipment in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"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.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP; or

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

"Initiation of operation" means, in respect to the operation of newly constructed, reconstructed, or modified equipment or a change in method of operation, the date on which any air contaminant is first emitted from the newly constructed, reconstructed, or modified equipment, or from the equipment affected by the change in method of operation.

"Install" or "installation" means to carry out final setup activities necessary to provide equipment or control apparatus with a capacity for use or service, and shall include, but need not be limited to, connection of equipment or control apparatus, associated utilities, piping, duct work, or conveyor systems, but shall not include construction or reconfiguration of equipment or control apparatus to an alternative configuration specified in a permit application and approved by the Department.

"Lead" or "Pb" means elemental lead or any compound containing lead.

"Lowest achievable emission rate" or "LAER" means a limitation on the rate of emission from any source operation, equipment, or control apparatus which is consistent with the most stringent of the following:

1. The most stringent emission limitation which is contained in the SIP of any state for such class or category of source operation, equipment, or control apparatus, unless the owner or operator of the proposed new or altered equipment or control apparatus demonstrates to the satisfaction of the Department that such a limitation is not achievable by that equipment or control apparatus;

2. The most stringent emission limitation which is achieved in practice by such class or category of source operation, equipment, or control apparatus; or

3. The most stringent emission limitation established in any NSPS or NESHAP applicable to such class or category of equipment or control apparatus.

"Minimum offset ratio" means the minimum acceptable ratio of emission offsets to increases in the allowable emissions for a facility.

"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 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.

"Motor vehicle" means a vehicle propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

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

"NESHAP" means National Emission Standards for Hazardous Air Pollutants as promulgated under 40 CFR 61.

"Net air quality benefit" means, in the area affected by a proposed emission increase of an air contaminant, a net decrease in the ambient concentration of the respective criteria pollutant for the air contaminant.

"Net emission increase" means, in respect to any air contaminant emitted at a facility, an increase calculated in accordance with the procedures set forth at N.J.A.C. 7:27–18.7(a).

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

"Nitrogen dioxide" or "NO_2" means a gas that has a molecular composition of one nitrogen atom and two oxygen atoms.

"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 an ambient air quality standard; 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.

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

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C–9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

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

"Ozone" or "O_3" means a gas having a molecular composition of three oxygen atoms.

"Permit" means an operating permit issued pursuant to N.J.A.C. 7:27–22, or a permit issued by the Department pursuant to N.J.A.C. 7:27–8.

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

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

"PM–10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 microns.

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

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

"Reasonable further progress" or "RFP" means such annual incremental reductions in emissions to the outdoor atmosphere of an air contaminant as are required by the CAA for the purpose of ensuring attainment of the NAAQS for the respective criteria pollutant by the applicable statutory deadline.

"Reconstruct" or "reconstruction" means the replacement of part(s) of equipment included in a process unit, or the replacement of part(s) of control apparatus, if the fixed capital cost of replacing the parts 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 control apparatus; and

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

"Resource recovery source" means any equipment used for processing solid waste (including refuse derived fuel and sewage sludge) for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. For the purpose of this subchapter energy conversion equipment must use solid waste to provide more than 50 percent of the heat input to be considered a resource recovery source.

"Respective criteria pollutant" means the corresponding criteria pollutant for each air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7. The following are the air contaminants listed in Table 3, and their respective criteria pollutants:

Category of Air Contaminants	Respective Criteria Pollutant
TSP	TSP
PM–10	PM–10
SO_2	SO_2
CO	CO
NO_x	NO_2 and O_3
VOC	O_3
Pb	Pb

"Secondary emissions" means emissions to the outdoor atmosphere which occur as an indirect result of the construction or operation of new or altered source operations, equipment or control apparatus at a facility and which affect the air quality of the same general area as emissions occurring as a direct result of the new or altered source operation, equipment or control apparatus. This term includes, but is not limited to:

1. Emissions from marine vessels or from vehicles running upon rails or tracks where such vessels or vehicles are associated with the construction or operation of the new or altered source operation, equipment or control apparatus. The term does not, however, include emissions resulting from motor vehicle or aircraft traffic; and

2. Emissions from off-site support facilities which would be constructed or whose rate of emissions would otherwise increase as a result of the construction or operation of the new or altered source operation, equipment, or control apparatus.

"Significant air quality impact level" means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27–18.4, in the ambient air concentration of a criteria pollutant.

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

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

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

"State Implementation Plan" or "SIP" means a plan for the attainment of NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Sulfur dioxide" or "SO_2" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

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

"Transportation control measure" or "TCM" means a measure directed toward reducing air contaminant emissions from motor vehicles. Such measures include those identified in Section 108(f)(1)(A), including the removal from use and the marketplace of pre–1980 model year light duty vehicles and pre–1980 model year light duty trucks.

"Volatile organic compound" or "VOC" shall have the meaning defined for this term at N.J.A.C. 7:27–16.1.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Definitions substantially amended.
Petition for Rulemaking: Petitioner's request granted to change definition of "significant emission increase".
See: 22 N.J.R. 66(c).
Amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Added 29 new definitions, amended 19 definitions and deleted 4 definitions.

Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Law Review and Journal Commentaries

Explaining the Facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, 54 (1994).

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

Case Notes

Definition of "complete" in state emission offset regulations gave sufficient standards for determining when air pollution control permit application is complete. Matter of Crown/Vista Energy Project, 279 N.J.Super. 74, 652 A.2d 212 (A.D.1995), certification denied 140 N.J. 277, 658 A.2d 301.

Evidence supported finding that technology for removal of nitrogen oxide emissions satisfied "advances in art" standard. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Evidence supported pollution control permit for particulate matter emission for resource recovery facility. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

7:27–18.2 Facilities subject to this subchapter

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

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

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
Nitrogen oxides	25 tons per year
VOC	25 tons per year
Lead	10 tons per year; or

2. The emission increase of an air contaminant, proposed in the application, by itself equals or exceeds the threshold level for that air contaminant set forth in (a)1 above.

(b) For a facility which meets the criteria at (a)1 or 2 above, an application is subject to this subchapter if any allowable emissions proposed in the application would result in a significant net emission increase of any air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7, and if the facility for which the construction, reconstruction, or modification is proposed is located in an area which is any of the following:

1. Nonattainment for the respective criteria pollutant corresponding to that air contaminant. The respective criteria pollutant for each air contaminant is listed in the definition of the term "respective criteria pollutant" at N.J.A.C. 7:27–18.1;

2. Attainment for the respective criteria pollutant, and both (b)1i and ii below are true:

i. The proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant, as determined by an air quality impact analysis required under N.J.A.C. 7:27–8.4(j); and

ii. The increase in the ambient concentration of the respective criteria pollutant equals or exceeds the significant air quality impact level specified in Table 1 in N.J.A.C. 7:27–18.4, in the nonattainment area for the respective criteria pollutant; or

3. Attainment for the respective criteria pollutant, and the proposed significant net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant that would:

i. Equal or exceed the significant air quality impact level; and

ii. Result in a violation of an applicable NAAQS or NJAAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27–8.4(j).

(c) For a facility which meets the criteria at (a)1 above, an application is subject to N.J.A.C. 7:27–18.3(b)1 (LAER) and 2 (compliance certification), if:

1. Emission offsets for an air contaminant have been previously required at the facility for which the permit is sought;

2. The construction, reconstruction, or modification proposed in the application would, within the contemporaneous period, result in a net emission increase, which is not a significant net emission increase, of the same air contaminant for which offsets were required. A net emission increase shall be calculated pursuant to N.J.A.C. 7:27–18.7; and

3. The nonattainment area in which the facility is located (or, in the case of a facility located in an attainment area, the nonattainment area whose air quality would have been impacted by emissions from the facility had emission offsets not been secured) has not been redesignated as being in attainment for the respective criteria pollutant as of the date the permit application is submitted to the Department.

(d) This subchapter shall not apply to any person applying for a permit, if the allowable emissions proposed in the application would result in no net emission increase, as calculated pursuant to N.J.A.C. 7:27–18.7(a).

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
(d): Deleted "a NAAQS" and substituted "an ambient air quality standard".
(e): Deleted "100 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is most restrictive" and substituted "a significant emission increase".
Repeal and New Rule: 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).
Former rule entitled "General provisions".
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Case Notes

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

7:27–18.2A Use of DERs

Notwithstanding any other provision of this subchapter to the contrary, a person may use discrete emission reductions (DERs) as emission offsets in accordance with N.J.A.C. 7:27–30.13(c).

New Rule, 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).

7:27–18.3 Standards for issuance of permits

(a) The Department shall not authorize the construction, reconstruction, or modification of any equipment or control apparatus which is subject to this subchapter unless the owner or operator of the facility has demonstrated that the facility will be in compliance with all of the applicable requirements of this subchapter at that time of initiation of operation of the newly constructed, reconstructed, or modified equipment.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1, (b)2, or (c), shall:

1. Demonstrate that air contaminant emissions from the equipment proposed to be constructed, reconstructed, or modified will be controlled to the degree which represents the lowest achievable emissions rate (LAER); and

2. Certify, in accordance with N.J.A.C. 7:27–1.39, that all existing facilities in New Jersey, which are owned or operated by the person applying for the permit, or by any entity controlling, controlled by, or under common control with such person, are operating:

i. In compliance with the provisions of this chapter and with all applicable emission limitations and standards promulgated pursuant to the Federal Clean Air Act; or

ii. In conformance with an enforceable compliance schedule approved by the Department.

(c) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1 or 2 shall:

1. Secure emission offsets, in accordance with N.J.A.C. 7:27–18.5, for each air contaminant having a significant net emission increase at the facility; and

2. Submit to the Department an analysis of alternative sites within New Jersey, and of alternative sizes, production processes, including pollution prevention measures, and environmental control techniques, demonstrating that the benefits of the newly constructed, reconstructed, or modified equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction, reconstruction or modification and operation of such equipment.

(d) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)3 shall secure emission offsets, sufficient to eliminate the proposed significant net emission increase that has been predicted to result in a violation of the NAAQS or NJAAQS.

(e) Any applicant required to secure emission offsets pursuant to (c)1 or (d) above shall submit to the Department, as a part of the application, an emission offset demonstration that specifies:

1. The sources of the air contaminant emission reductions to be applied as emission offsets;

2. How the emission reductions shall be effected;

3. How the owner or operator of the facility generating the emissions offsets will make the permanent reduction of the emissions to be used as emission offsets Federally enforceable on or before the date that the Department will issue to the applicant the authorization required under N.J.A.C. 7:27–8 or 22;

4. How the applicant shall ensure that the permanent reduction of emissions shall be in effect on or before the initiation of operation of the newly constructed, reconstructed, or modified equipment or control apparatus; and

5. How the emission offsets to be secured will comply with N.J.A.C. 7:27–18.5.

(f) Emission offsets required pursuant to (c)1 or (d) above shall be secured and the permanent reduction of emissions represented by the emission offsets shall have occurred, prior to initiation of operation of any newly constructed, reconstructed, or modified equipment or control apparatus.

(g) A person who, prior to November 15, 1992, has submitted a complete application to the Department for a permit which is subject to this subchapter may elect, under the conditions given below, to have the provisions of this subchapter which were in effect prior to April 20, 1993, rather than the provisions of the subchapter which are in

effect on or after April 20, 1993, apply to the application. The emission offset postponement provisions, set forth at N.J.A.C. 7:27–18.6, shall apply to all permits issued on or after November 15, 1992, regardless of the date on which the permit application was submitted. To elect to have the provisions which were in effect prior to April 20, 1993 apply, a person shall:

1. Have received from the Department in writing, prior to November 15, 1992, a determination that the application is complete;

2. Commence the new construction, reconstruction, or modification as proposed in the application no later than 18 months from the date the permit is issued by the Department;

3. Not discontinue the new construction, reconstruction, or modification for a period of 18 months or more; and

4. Pursue the new construction, reconstruction, or modification with due diligence and complete the new construction or alteration within a reasonable time.

(h) Notwithstanding the provisions of (c) or (d) above, no person is required to secure emission offsets for temporary emission increases that occur during and result directly from the construction, reconstruction, or modification of the newly constructed, reconstructed, or modified equipment or control apparatus.

New Rule, 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).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Case Notes

Definition of "complete" in state emission offset regulations gave sufficient standards for determining when air pollution control permit application is complete. Matter of Crown/Vista Energy Project, 279 N.J.Super. 74, 652 A.2d 212 (A.D.1995), certification denied 140 N.J. 277, 658 A.2d 301.

7:27–18.4 Air quality impact analysis

(a) Any person, subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and (b), who proposes to cause a significant net emission increase of an air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7, not including VOC, shall conduct an air quality impact analysis to determine whether the proposed net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant, not including ozone, and shall determine whether the increase in ambient concentration would:

1. Equal or exceed the significant air quality impact level for the respective criteria pollutant as set forth in Table 1; or

2. Taken together with the existing concentration of the criteria pollutant in the ambient air, cause a violation of a NAAQS or a NJAAQS.

TABLE 1
SIGNIFICANT AIR QUALITY IMPACT LEVELS FOR INCREASES IN AMBIENT AIR CONCENTRATIONS IN NONATTAINMENT AREAS

	Averaging Time				
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO2	1.0 µg/m3 *	5 µg/m3		25 µg/m3	
TSP	1.0 µg/m3	5 µg/m3			
NO2	1.0 µg/m3				
CO			500 µg/m3		2000 µg/m3
Pb		0.1 µg/m3			
PM–10	1.0 µg/m3	5 µg/m3			

* µg/m3 = micrograms per cubic meter

(b) Any person conducting an air quality impact analysis pursuant to (a) above is subject to the air quality impact analysis service fees set forth in the Supplementary Fee Schedule at N.J.A.C. 7:27–8.11 or 22.31, whichever is applicable.

(c) An air quality impact analysis shall be performed in accordance with a protocol approved by the Department. The protocol shall be prepared in accordance with the Department's technical manuals on Air Quality Modeling (Technical Manual 1002) and Risk Assessment (Technical Manual 1003). These manuals are available through the Department's electronic bulletin board service at (609) 292–2006, or by mail at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
CN 417
Trenton, New Jersey 08625–0027
(609) 777–1039

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Inserted "a significant emission increase" throughout.
Recodified from 18.3 and 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).
Repealed and replaced (a)1. and 2. and (b).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Case Notes

Definition of "complete" in state emission offset regulations gave sufficient standards for determining when air pollution control permit application is complete. Matter of Crown/Vista Energy Project, 279 N.J.Super. 74, 652 A.2d 212 (A.D.1995), certification denied 140 N.J. 277, 658 A.2d 301.

7:27–18.5 Standards for use of emission reductions as emission offsets

(a) Only a creditable emissions reduction, as defined at N.J.A.C. 7:27–18.1, may be used to offset an emission increase. Such emission reductions shall be:

i. Contemporaneous; or

ii. Banked in accordance with N.J.A.C. 7:27–18.8.

(b) Creditable emission reductions may result from:

1. Installing control apparatus to decrease the actual emissions from existing equipment or source operations;

2. Applying fugitive emissions control measures which reduce the rate of actual emissions to less than the allowable emissions;

3. Obtaining emission reductions banked pursuant to N.J.A.C. 7:27–18.8;

4. Permanently curtailing the actual production rate or operating hours of an existing source operation;

5. Implementing one or more transportation control measures (TCM);

6. Shutting down an existing source operation; or

7. Adopting any other measure approved by the Department, including, but not limited to, pollution prevention measures, that reduces the rate of actual emissions or allowable emissions, whichever is lesser.

(c) Any use of emission reductions to offset an emission increase shall result in a net air quality benefit. Except as provided in (e), (f) or (g) below, such net air quality benefit shall be demonstrated by showing that the ratio of emission offsets to the proposed net increase in allowable emissions equals or exceeds the minimum offset ratio, specified in Table 2 below, that is applicable based on the distance between the facility and the location of the emission reductions being proposed as emission offsets.

TABLE 2

MINIMUM OFFSET RATIO

Air Contaminant	Distance (miles)	Minimum Offset Ratio (Reductions: Increase)
VOC	0–100	1.3:1.0
	100–250	2.6:1.0
	250–500	5.2:1.0
NO_x	0–100	1.3:1.0
	100–250	2.6:1.0
	250–500	5.2:1.0
SO_2	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
TSP	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
PM–10	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0
CO	0–0.5	1.0:1.0
	0.5–1.0	1.5:1.0
	1.0–2.0	2.0:1.0

(d) The minimum offset ratio for lead is 1.00:1.00.

(e) If an applicant proposes to use, as emission offsets, emission reductions that do not satisfy the distance and ratio requirements in Table 2 in (c) above, an air quality simulation model shall be used to demonstrate a net air quality benefit. Such emission reductions shall not be used as emission offsets unless the air quality simulation model shows that the combined effects of the proposed emission reductions, and of meeting the LAER requirements at N.J.A.C. 7:27–18.3(b), will result in a net air quality benefit. An air quality simulation model shall be performed in accordance with a protocol approved by the Department. The protocol shall be prepared in accordance with the Department's technical manual on Air Quality Modeling (Technical Manual 1002), available as stated in N.J.A.C. 7:27–18.4(c).

(f) Notwithstanding (e) above, in no case shall the minimum offset ratio be less than:

1. For CO, 1.00:1.00; and

2. For VOC and NO_x, 1.30:1.00.

(g) Creditable emission reductions may be used as emission offsets only if they are emission reductions of the same category of air contaminant, and must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to the proposed increase.

(h) Reductions in emissions of VOC or NO_x between November 1 and March 31 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between April 1 and October 31 inclusive.

(i) Emission reductions used previously as emission offsets, or used in calculating the proposed net emission increase, in accordance with N.J.A.C. 7:27–18.7(a)1, may not be used again as emission offsets.

(j) Except as provided in (k) below, the emission reductions used to offset emission increases shall, unless the facility for which the emissions increase is proposed is located in an attainment area, be secured from the applicant's facility or from another facility located in the same nonattainment area as the applicant's facility. In a case where the facility at which the emissions increase is to occur is located in an attainment area, the emission reductions shall be secured from a facility in the nonattainment area whose air quality could be adversely affected by the proposed construction or alteration. In both cases, if the area has been designated a nonattainment area by EPA pursuant to 40 CFR 81.331, the emission reductions shall be secured from the same Federally-designated nonattainment area.

(k) Any emission offsets for lead shall be obtained from:

1. The facility to which the application for a permit pertains; or

2. Another facility which significantly contributes to the same violation of the NAAQS or NJAAQS for lead in the same nonattainment area as the facility for which an application for a permit has been made.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Section substantially amended.
Recodified from 18.4 and 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).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.6 Emission offset postponement

(a) If the Department has authorized a postponement before April 20, 1993 of these amendments, for complying with N.J.A.C. 7:27–18.3(c)1 or (d), to any person, the postponement will continue in effect until one year after the emission offsets become available, provided that the person complies with (b) below.

(b) Until emission offsets become available, any person who has received a postponement described in (a) above shall demonstrate to the Department annually that emission offsets are unavailable and shall certify that demonstration in accordance with N.J.A.C. 7:27–1.39.

(c) Any person who has received a postponement described in (a) above shall obtain emission offsets within one year after they become available.

(d) A postponement shall terminate if a person fails to comply with (b) or (c) above.

Petition for Rulemaking: Petitioner's request to eliminate emission offset postponement provision denied.
See: 22 N.J.R. 66(c).
Recodified from 18.5 and 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 (a)-(d) added.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.7 Determination of a net emission increase or a significant net emission increase

(a) Any calculation to determine whether the maximum allowable emissions proposed in an application for a permit would result in a net emission increase or significant net emission increase at the facility of any air contaminant listed in Table 3 below shall be conducted in accordance with the following:

1. Determine the net emission increase of each air contaminant listed in Table 3 using the following formula:

$$NI = IP + INP + IF + IA - DO - DC$$

Where:

NI = The net emission increase at a facility

IP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which were authorized by permits issued by the Department;

INP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which came from any equipment or control apparatus for which no permit was in effect at the time of the increase;

IF = Any increase in fugitive emissions of the air contaminant from the facility during the contemporaneous period;

IA = Any proposed increase in allowable emissions of the air contaminant from the newly constructed, reconstructed, or modified equipment or control apparatus which is the subject of the permit application;

DO = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period, if emission offsets were secured for these increases from the facility or from another facility; and

DC = The sum of all creditable emissions reductions at the facility during the contemporaneous period, not including any creditable emissions reductions previously used as emission offsets at the facility or any other facility.

2. Compare the net emission increase of each air contaminant, derived pursuant to (a)1 above, to the significant net emission increase level for that air contaminant set forth in Table 3 below. If the net emission increase is equal to or greater than the applicable significant net emission increase level, it is a significant net emission increase.

TABLE 3

SIGNIFICANT NET EMISSION INCREASES

Air Contaminant	Significant Net Emission Increase Levels (tons per year)
SO_2	40
TSP	25
PM–10	15
NO_x	25
CO	100
Pb	0.6
VOC	25

New Rule, 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).
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.8 Banking of emission reductions

(a) Any person may apply to the Department for the banking of emission reductions to be applied in the future as emission offsets. The applicant shall make the application in writing, submitted on a form obtained from the Department, containing the following information: name and address of person making the application; chemical name of air contaminant; quality of emission reductions with supporting calculations and documentation; reason for the emission reduction; specification of the equipment or source operations related to the emission reductions; and any additional information reasonably necessary to enable the Department to determine that a creditable emission reduction has been achieved. Such a form may be requested from:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
Bureau of New Source Review
CN 027
Trenton, New Jersey 08625–0027

(b) Any application for the banking of emission reductions shall be certified in accordance with N.J.A.C. 7:27–1.39.

(c) An application to bank emission reductions shall be made no later than 12 months after the emission reduction occurs. No emission reductions due to the shutdown of any equipment or source operation shall be eligible for banking, unless the applicant notifies the Department at least 60 days prior to removal of the equipment and provides the Department with the opportunity to inspect the equipment or source operation at least 30 days before it is dismantled.

(d) Any emission reductions submitted to the Department for banking shall, upon their approval by the Department for banking, be an enforceable operating restriction for the facility.

(e) If a State or Federal statute, rule, or regulation decreases an allowable emission limit for an air contaminant, the value of any banked emission reductions of that air contaminant shall be reduced, before discounting pursuant to (f) or (g) below, to equal the allowable emission limits in effect at the time the banked emission reductions are used to offset emission increases. The following example illustrates this reduction:

1. Assume that a CO reduction of 10 tons per year is approved for banking, and that seven years after that approval, the CO limit applicable to the equipment is reduced to four tons per year;

2. If the banked emission reduction is used five years after it was approved for banking, under (f) below its value is discounted by 50 percent, to five tons per year; and

3. If the banked emission reduction is used eight years after it was approved for banking (which is after the date of the change in the applicable CO limit), its value is reduced to two tons per year, as follows: first, from 10 tons per year to four tons per year, to reflect the reduction in the applicable CO limit; and second, from four tons per year to two tons per year, to reflect the 50 percent discount under (f) below.

(f) The value of banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for more than five years after the date the emission reduction is submitted for banking shall be discounted by 50 percent. As of the date five years after the date of submittal for banking, the discounted portion of the banked emission reductions may no longer be used as an emission offset by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant, but shall revert to the State.

(g) Any banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for 10 years after the date they have been submitted for banking, shall revert to the State. As of the date 10 years after the date of submittal for banking, these emission reductions may no longer be used as emission offsets by the applicant or by any person to whom the banked emission reductions may have transferred by the applicant.

(h) Any discount of or reduction in the value of banked emission reductions pursuant to (e), (f) or (g) above shall take effect without further action by the Department.

(i) For the purposes of the discounting provisions set forth in (f) and (g) above, the Department shall treat any emission reductions which have been submitted for banking prior to April 20, 1993, as if they were submitted for banking on April 20, 1993.

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the service fees for banking set forth in the Base Fee Schedule at N.J.A.C. 7:27–8.11.

Amended by R.1985 d.25, effective February 4, 1985.
See: 16 N.J.R. 1679(a), 17 N.J.R. 277(a).
Substantially amended subsection (a) and deleted subsection (b).
Recodified from 18.7 and 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).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

Law Review and Journal Commentaries

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

7:27–18.9 Secondary emissions

(a) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions under the person's control will meet all requirements of N.J.A.C. 7:27–18.3.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27–18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions not under the person's control will meet the requirements of only N.J.A.C. 7:27–18.3(c)1.

(c) The certifications required under (a) and (b) above shall be submitted with the application and shall be made in accordance with N.J.A.C. 7:27–1.39.

Recodified from 18.8 and 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).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.10 Exemptions

(a) If a person demonstrates that a proposed significant net emission increase of an air contaminant which results from the use of alternative fuels in existing fuel burning equipment will not cause an exceedance of the significance level for the respective criteria pollutant in a nonattainment area for that pollutant, and will not prevent reasonable further progress toward attaining any NAAQS, the Department may, in its discretion, exempt the person from compliance with the provisions of this subchapter. No exemption shall be granted unless the person demonstrates, at a minimum, that:

1. The equipment was capable of burning the alternative fuel before December 21, 1976; or

2. The equipment must use such fuel by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792 et seq.) or under any superseding legislation, or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act of 1978 (16 U.S.C. 791a et seq.); or

3. The alternative fuel is derived from municipal solid waste; or

4. The alternative fuel is to be used by reason of an order or rule issued under Section 125 of the Clean Air Act.

(b) N.J.A.C. 7:27–18.3(c)1 does not apply to any person submitting an application for:

1. Portable facilities which will be relocated outside of a nonattainment area within six months of initiation of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of initiation of operation.

(c) The exemption in (b) above may not be applied to the same portable facility or temporary source operation more than once within the lifetime of the portable facility or temporary source operation.

Recodified from 18.9 and 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).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.11 Procedures for interstate and intrastate trading (Reserved)

New Rule, 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).

7:27–18.12 Civil or criminal penalties for failure to comply

The owner or operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C–19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil penalties.

New Rule, 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).

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

Authority

N.J.S.A. 13:1B–3, 13:1D–9, and 26:2C–1 et seq., in particular 26:2C–9(c) and 19.

Source and Effective Date

R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).
See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

Explaining the Facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, 54 (1994).

7:27–19.1 Definitions

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

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

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27–13 or 40 CFR 50.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" shall have the meaning assigned to it at N.J.A.C. 7:27–8.1.

"Alternative maximum allowable emission rate" means a maximum allowable emission rate, set by the Department on a site-specific basis pursuant to N.J.A.C. 7:27–19.13.

"Anthracite coal" means coal that is classified as anthracite according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77, incorporated herein by reference. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

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

"Averaging" means complying with the requirements of this subchapter pursuant to N.J.A.C. 7:27–19.6, Emissions averaging.

"Averaging unit" means an individual source operation or item of equipment which is included in a designated set for the purpose of averaging pursuant to N.J.A.C. 7:27–19.6.

"Base year" means calendar year 1990 or other calendar year determined pursuant to N.J.A.C. 7:27–19.20(d)1, in connection with a plan for seasonal fuel switching.

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Bituminous coal" means coal that is classified as bituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Borosilicate recipe" means a formula for making glass using 60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides.

"British thermal unit (BTU)" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Calendar day" means the 24 hour period from 12:00 o'clock midnight to 12:00 o'clock midnight the following day.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"Cleaner fuel" means a fuel other than a combustion source's primary fuel, the combustion of which results in a rate of NO_x emissions that is less than the rate of NO_x emissions when the primary fuel is combusted, all other circumstances being equal.

"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.

"CFR" means the Code of Federal Regulations.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and/or subbituminous coal.

"Coke" means a fused, cellular, porous substance that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by heating it in the absence of air or with a limited supply of air.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Commercial container glass" means clear or colored glass made of soda-lime recipe, which is formed into bottles, jars, ampoules or other containers, but does not include specialty container glass.

"Commercial fuel" means solid, liquid, or gaseous fuel which is ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Comparable demand day" means, for any day in which an averaging unit is not operating, a day on which demand for electric power was within 10 percent of the demand on the day in question.

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

"Criteria pollutant" means any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a New Jersey Ambient Air Quality Standard has been promulgated in N.J.A.C. 7:27–13.

"Cyclone-fired boiler" means a boiler which combusts fuel in a horizontal water-cooled cylinder before releasing the combustion gases into the boiler.

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks or railroad tank cars. This term does not include marine tank vessels.

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

"Designated set" means the averaging units which an owner or operator is authorized by the Department to include in an averaging plan pursuant to N.J.A.C. 7:27–19.6.

"Distillates of air" means helium (He), nitrogen (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO_2).

"Dry bottom utility boiler" means a utility boiler equipped with an ash disposal hopper bottom with sufficient cooling surface so that ash particles, when removed from the hopper, are in a solid state.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Duct burner" means an item of equipment used with a combined cycle gas turbine or a stationary internal combustion engine to increase the steam generating capacity of heat recovery steam generators. A duct burner consists of pipes and small burners that are placed in the exhaust duct upstream of the heat recovery steam generator; the duct burner allows firing of additional fuel to increase the exhaust heat energy. A duct burner is a type of indirect heat exchanger.

"Electric generating unit" means a combustion source used for generating electricity that delivers all or part of its power to the electric power distribution grid for commercial sale.

"Electric generating utility" means any person who is subject to regulation as a public utility (as defined in N.J.S.A. 48:2–13) for its provision of electric power to another person or any person who would be subject to such regulation were it not for that person's status as a municipality.

"Emergency capacity" means the generation of electricity by an electric generating unit at a rate in excess of the unit's maximum normal power output rating. This maximum normal power output rating shall be that agreed upon by PJM and the owner or operator of the unit, and published by the owner or operator.

"Emergency generator" means a combustion source used to provide mechanical, thermal or electrical energy only when the facility's primary source of that energy has been rendered inoperable by circumstances beyond the control of the owner or operator of the facility. The term does not include equipment used in circumstances other than emergencies, such as during high electric demand days. The term also does not include equipment which continues to be used after the primary energy source either has become operable again or should have become operable had the owner or operator made reasonable efforts to repair it.

"EPA" means the United States Environmental Protection Agency.

"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.

"Face-fired boiler" means a furnace firing design in which the burners are mounted on one or more walls of the furnace.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. This term does not include delivery vessels.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq., and this chapter.

"Fixed capital cost" means the capital needed to provide all the depreciable components of a facility, item of equipment or source operation.

"Fuel" means combustible material burned in boilers, furnaces or other machinery to generate heat or other forms of energy. This term includes commercial fuel and non-commercial fuel.

"Fuel oil" means a liquid or liquefiable petroleum product burned for the generation of light, heat or power and derived directly or indirectly from crude oil.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Glass" means a hard, amorphous inorganic substance made by fusing silicates, and sometimes borates and phosphates, with certain basic oxides.

"Glass manufacturing furnace" means equipment which uses heat for the production of glass.

"Heat input" means heat derived from the combustion of fuel put into any boiler, furnace or other piece of equipment. This term does not include the heat from preheated combustion air, recirculated flue gases or exhaust gases from other sources.

"Higher heating value" means the total heat obtained from the complete combustion of a fuel which is at 60 degrees Fahrenheit when combustion begins, and the combustion products of which are cooled to 60 degrees Fahrenheit before the quantity of heat released is measured.

"Horsepower hour" means a unit of energy or work, equal to the work done by a mechanism with a power output of one horsepower over a period of one hour.

"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. For the purposes of this subchapter, this term includes (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26–1.4.

"Indirect heat exchanger" means equipment in which heat from the combustion of fuel is transferred by conduction through a heat-conducting material to a substance being heated, so that the latter is not contacted by, and adds nothing to, the products of combustion. Examples of indirect heat exchangers include boilers, duct burners and process heaters.

"Innovative control technology" means a NO_x control measure that has a substantial likelihood of achieving lower continuous levels of NO_x emissions than are required under this subchapter, but has not been adequately demonstrated and is not available to be implemented before May 31, 1995. An item of equipment or control apparatus, a change in a process, or a pollution prevention strategy may qualify as an innovative control technology.

"Interim period" means the period of time beginning on May 31, 1995, and ending when phased compliance under N.J.A.C. 7:27–19.21, 19.22 or 19.23 (as applicable) is to be completed.

1. For purposes of phased compliance for repowering pursuant to N.J.A.C. 7:27–19.21, the interim period ends on the date when repowering of a combustion source is to be completed.

2. For purposes of phased compliance for reasons of practicability pursuant to N.J.A.C. 7:27–19.22, the interim period ends on the date when a combustion source is to attain full compliance with this subchapter.

3. For purposes of phased compliance for innovative control technology pursuant to N.J.A.C. 7:27–19.23, the interim period ends on the date when the innovative control technology is to be fully implemented.

"Lean-burn stationary internal combustion engine" means a stationary internal combustion engine which operates at an air-to-fuel ratio fuel-lean of stoichiometric and cannot operate with an exhaust oxygen concentration less than one percent.

"Lb/MMBTU" means pounds per million British Thermal Units.

"Lignite" means coal that is classified as lignite A or B according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

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

"Load dispatcher" means the employee or agent of the electric power distribution network, to which the electric generating unit is connected, who is responsible for determining that an MEG alert is the only feasible means of preventing or mitigating either a voltage reduction or an interruption in electric service or both.

"Major NO_x facility" means any facility which has the potential to emit 25 or more tons of NO_x 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.

"Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the combustion source. This term is expressed in BTUs per hour, based on the higher heating value of the fuel.

"MEG alert" means a period in which one or more electric generating units are operated at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:

1. An alert begins when one or more electric generating units are operated at emergency capacity after receiving notice from the load dispatcher, directing the electric generating unit to do so; and

2. An alert ends when the electric generating unit ceases operating its electric generating units at emergency capacity.

"MMBTU" means million British Thermal Units.

"National Ambient Air Quality Standard (NAAQS)" means an ambient air quality standard promulgated at 40 CFR 50.

"Natural gas reburning" means a control technology where natural gas is injected into a boiler downstream of the main combustion zone in order to reduce the amount of NO_x in the exhaust gas.

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

"Nitrogen dioxide (NO_2)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

"Nitrogen oxide (NO)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

"Nonbanded coal" means coal that is classified as nonbanded according to the ASTM Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coals, ASTM D 2796–77, incorporated herein by reference. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Non-commercial fuel" means solid, liquid or gaseous fuel which is not ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

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

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C–9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Oxides of nitrogen (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 Method 7E.

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

"Peak daily heat input rate," for a combustion source or for a designated set that has no operating history, means the maximum gross heat input rate of the source or of all the sources in the designated set. For a combustion source or for a designated set that has an operating history, "peak daily heat input rate" means the average of the daily heat inputs to a combustion source or to a designated set on the five days on which the heat input was highest, over the following period:

1. For a combustion source or for a designated set that has been operating for at least five years, the five years preceding the date on which the owner or operator applied to the Department for approval of an emissions averaging plan, pursuant to N.J.A.C. 7:27–19.6; and

2. For a combustion source that has been operating for less than five years, the entire period during which the combustion source has been operating.

"Pennsylvania–New Jersey–Maryland Interconnection" or "PJM" means the combination of electric generating utilities, linked physically and through contractual arrangements, for coordinated electricity planning and operation in an area that as of 1994 includes New Jersey, Maryland, Pennsylvania, Virginia, Delaware and the District of Columbia.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A 26:2C–9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

"Ppmv" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, including the number of parts contributed by water.

"Ppmvd" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, not including the number of parts contributed by water.

"Primary fuel" means the fuel that provided the greatest heat input (expressed in BTU) to a combustion source in the base year.

"Process heater" means an item of equipment in which heat from fuel combustion is transferred to fluids contained in tubes without coming into contact with the fluid. A process heater is a type of indirect heat exchanger.

"Rebricking" means the replacement of damaged or worn bricks of a glass manufacturing furnace while the furnace does not contain molten glass.

"Reconstruction" means the replacement of components of an existing facility, item of equipment or source operation 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 construct an entirely new facility, item of equipment or source operation.

"Refinery fuel gas" means gaseous fuel derived from the refining process and used as a fuel at the refinery where it was produced.

"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil (or derivatives of crude oil) in order to produce petroleum products.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Repowering" means the series of actions described in 1 and 2 below by an owner or operator:

1. The permanent ceasing of the operations of the steam generator in a steam generating unit, the gas turbine in a simple-cycle or combined-cycle gas turbine, or any other combustion source; and

2. The installation in the State of a new combustion source or the purchase of heat or power from the owner of a new combustion source that is located in the State that:

i. Has a maximum gross heat output rate that is at least 50 percent of the maximum gross heat output rate of the combustion source that is shut down under 1 above, or has a power output rate that is at least 50 percent of the power output rate of the combustion source that is shut down; and

ii. Incorporates technology capable of controlling multiple combustion emissions simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

"Rich-burn stationary internal combustion engine" means a stationary internal combustion engine in which the concentration of oxygen in the exhaust is no greater than one percent.

"Rotary dryer" means a cylindrical device, which rotates about an axis, through which hot gases are passed for the purpose of removing moisture from any solid.

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

"Selective noncatalytic reduction" or "SNCR" means a noncombustion technology that reduces NO_x emissions without a catalyst by injecting a reducing agent (such as ammonia, urea or cyanuric acid) into the flue gas, downstream of the combustion zone; the injection of the reducing agent converts NO_x to molecular nitrogen, water, and (if the reducing agent is urea or cyanuric acid) carbon dioxide (CO_2).

"Significant air quality impact level" means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27–18.4, in the ambient air concentration of a criteria pollutant.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Soda lime recipe" means a formula for making glass using 60 to 75 percent silicon dioxide and 25 to 40 percent other oxides and no lead oxides.

"Solid particles" means particles of rigid shape and definite volume.

"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" 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.

"Specialty container glass" means clear or colored glass made of soda-lime recipe, which is produced to meet the specifications of any standard set forth by The United States Pharmacopeia or The National Formulary, incorporated herein by reference, and which is used for pharmaceutical, cosmetic or scientific purposes. The referenced specifications can be obtained from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

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

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

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts commercial fuel for the purpose of producing steam.

"Subbituminous coal" means coal that is classified as subbituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Tangential-fired boiler" means a furnace firing design where the burners are mounted at the corners of the furnace chamber.

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

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

"Utility boiler" means a steam generating unit owned by an electric generating utility which is used for generating electricity for commercial use.

"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 does not include the 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. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

Compounds

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

trifluoromethane (FC–23)

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

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

chloropentafluoroethane (CFC–115)

chlorodifluoromethane (HCFC–22)

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

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

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

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

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

1,1-difluoroethane (HFC-152a)

parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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.

"Wet bottom utility boiler" means a utility boiler in which the ash is removed from the boiler in a molten state.

7:27-19.2 Purpose, scope and applicability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by oxides of nitrogen. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons of NO_x per year, to implement reasonably available control technology (RACT) to control NO_x emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility.

(b) The following types of equipment and source operations are subject to the provisions of this subchapter:

1. Any utility boiler;

2. Any non-utility boiler or other indirect heat exchanger which has a maximum gross heat input rate of at least 20 million BTUs per hour;

3. Any stationary gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour;

4. Any stationary internal combustion engine capable of producing an output of more than 500 horsepower;

5. Any rotary dryer having the potential to emit at least 25 tons of NO_x per year, and located at an asphalt plant;

6. Any glass manufacturing furnace producing commercial container glass, and having a maximum potential production rate of at least 14 tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year;

7. Any glass manufacturing furnace producing specialty container glass, and having a maximum potential production rate of at least seven tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year; and

8. Any glass manufacturing furnace producing borosilicate recipe glass, and having a maximum potential production rate of at least five tons of glass removed from the furnace per day and has the potential to emit more than 10 tons of NO_x per year.

(c) Any major NO_x facility containing any equipment or source operation not specifically listed in (b) above, which equipment or source operation has the potential to emit more than 10 tons of NO_x per year, is subject to the provisions of this subchapter.

(d) Notwithstanding the provisions of (b) and (c) above, any emergency generator which is subject to a Federally enforceable limitation or condition restricting its operations to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit at least 25 tons of NO_x during its annual period of operations, is not subject to this subchapter.

(e) Notwithstanding the provisions of (b) and (c) above, this subchapter does not apply to any equipment or source operation for which the EPA determines (when the EPA approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from such equipment or source operation.

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27-19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:

1. The facility's potential to emit NO_x is less than 25 tons per year; and

2. The facility's potential to emit NO_x on any calendar day from May 1 to September 15 is less than 137 pounds per day.

Administrative Correction.
See: 27 N.J.R. 1406(a).
Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).

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

7:27–19.3 General provisions

(a) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner and operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(b) The emission limitations specified in this subchapter become operative on May 31, 1995, except as provided in N.J.A.C. 7:27–19.4(c) and 19.10(d).

(c) For any alteration of equipment or source operations necessary to comply with the NO_x emission limits in this subchapter, which alteration does not involve a reconstruction of the equipment or source operation, the use of control measures which incorporate current advances in the art of air pollution control for those types of control measures shall be deemed to satisfy the requirements of N.J.A.C. 7:27–8.8(d). For example, if a utility boiler achieves compliance with an emission limit under this subchapter by installing a low-NO_x burner, the requirements of N.J.A.C. 7:27–8.8(d) are satisfied if the low-NO_x burner installed incorporates current advances in the art of air pollution control for low-NO_x burners.

(d) By April 23, 1994, the owner or operator of any facility, equipment or source operation which is in operation prior to January 23, 1994 and is subject to this subchapter shall:

1. Apply for permits for all equipment and control apparatus necessary for compliance with this subchapter; and

2. If the owner or operator seeks to comply with this subchapter pursuant to the facility-specific NO_x emission limit provision of N.J.A.C. 7:27–19.13, submit to the Department a facility-specific NO_x control plan pursuant to N.J.A.C. 7:27–19.13.

(e) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (d) above or the deadline set forth at N.J.A.C. 7:27–19.13(b), the Department may authorize a 60–day renewable extension, provided that the request includes a statement, certified in accordance with N.J.A.C. 7:27–8.24, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request of the renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27–8.24, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:

Assistant Director, Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625–0422

(f) In lieu of complying with the applicable emission limits set forth at N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, the owner or operator of a utility boiler, stationary gas turbine, non-utility boiler, indirect-fired heat exchanger, stationary internal combustion engine, asphalt plant or glass manufacturing furnace may comply with one of the following, or with a combination of (f)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

(g) The owner or operator of a source operation subject to a NO_x emissions limit under this subchapter may comply with the limit through the use of discreet emission reductions (DERs) in accordance with N.J.A.C. 7:27–30.

(h) The owner or operator of any facility, equipment or source operation which commences operation on or after January 23, 1994 shall ensure that such facility, equipment of source operation complies with the requirements of this subchapter from the date of commencement of operation.

(i) A person required to provide notice to the Department under this subchapter shall send the notice to the applicable address listed below:

1. If the notice concerns a combustion source located in Burlington County, Mercer County, Middlesex County, Monmouth County or Ocean County, the person shall send the notice to:

Central Regional Office
Horizon Center
CN 407
Robbinsville, NJ 08625–0407

2. If the notice concerns a combustion source located in Bergen County, Essex County, Hudson County or Union County, the person shall send the notice to:

Metro Regional Office
2 Babcock Place
West Orange, NJ 07052–5504

3. If the notice concerns a combustion source located in Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County, the person shall send the notice to:

Northern Regional Office
1259 Route 46 East
Parsippany, NJ 07054–4191

4. If notice concerns a combustion source located in Atlantic County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County, the person shall send the notice to:

Southern Regional Office
20 East Clementon Road
3rd Floor, Suite 302
Gibbsboro, NJ 08026–1175

5. If the notice concerns an averaging plan, the person shall determine the county in which the averaging unit with the biggest potential to emit No_x is located, and send the notice to the address applicable to that county under (i)1 through 4 above.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Added (g) and redesignated former (g) and (h) as (h) and (i).

7:27–19.4 Utility boilers

(a) The owner or operator of a utility boiler shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 1 below, unless the owner or operator of the utility boiler is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the boiler, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the boiler, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the boiler, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

TABLE 1

Maximum Allowable NO_x Emission Rates for Utility Boilers

(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

(b) The owner or operator of any utility boiler subject to this subchapter shall install on the boiler a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27–19.18.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.5 Stationary gas turbines

(a) No stationary simple cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 2 below, unless the owner or operator is complying with one of the following, or with a combination of (a)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

TABLE 2

Maximum Allowable NO_x Emission Rate for Simple Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.4
Gas	0.2

(b) No combined cycle gas turbine or regenerative cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 3 below, unless the owner or operator is complying with one of the following, or with a combination of (b)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the turbine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

TABLE 3

Maximum Allowable NO_x Emission Rate for Combined Cycle or Regenerative Cycle Gas Turbines (Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.35
Gas	0.15

(c) In lieu of complying with the emission limits set forth in (a) and (b) above, the owner or operator of a stationary gas turbine may elect to comply with the requirements of this subsection. The owner or operator of the turbine shall satisfy all of the requirements listed in (c)1 through 6 below:

1. The owner or operator of the stationary gas turbine shall apply for and obtain the Department's written approval, in accordance with N.J.A.C. 7:27–19.14 and based on the standards in N.J.A.C. 7:27–19.14 and (c)2 and 3 below;

2. The owner or operator shall establish that there is an insufficient supply of water to the turbine suitable for NO_x emission control, due to either of the following circumstances beyond the control of the owner or operator:

i. A legally enforceable limit on the amount of water which the owner or operator's facility may use; or

ii. The need to provide for an alternate supply of water, because the existing supply is insufficiently filtered and de-ionized to be suitable for injection;

3. The owner or operator shall establish that there is no commercially available dry low-NO_x combustor suitable for use in the specific stationary gas turbine;

4. The owner or operator shall maintain the Department's approval in effect;

5. The owner or operator shall comply with all conditions of the Department's approval; and

6. The owner or operator annually shall adjust the combustion process of the turbine in accordance with N.J.A.C. 7:27–19.16, before May 1 of each year.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.6 Emissions averaging

(a) The Department may authorize an owner or operator to comply with an averaging plan approved by the Department pursuant to this section and N.J.A.C. 7:27–19.14. An owner or operator in compliance with such an approved averaging plan is not required to have each averaging unit comply with any emission limit set forth in this subchapter which would be applicable in the absence of an approved averaging plan.

(b) An owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department in accordance with N.J.A.C. 7:27–19.14(a), (b) and (c). The owner or operator shall include the following information in the application:

1. Information sufficient to identify each averaging unit, including its location, a brief description of the unit (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the applicant;

2. The maximum gross heat input rate of each averaging unit, expressed in BTUs per hour;

3. The type of fuel or fuels combusted in each averaging unit;

4. The maximum allowable NOx emission rate which the owner or operator proposes to impose upon each averaging unit, expressed in pounds per million BTU;

5. The peak daily heat input rate of each averaging unit or of the designated set, expressed in MMBTU;

6. A demonstration that in operating at the peak daily heat input rate, of all the averaging units together or of the designated set would satisfy the following equation:

$$TPEE \leq TPAE$$

where:

i. TPEE means total peak estimated emissions and is equal to the sum of the peak estimated emissions for each averaging unit or the peak estimated emission of the designated set. The peak estimated emissions for each averaging unit equals the maximum emission rate listed in (b)4 above for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The peak estimated emissions of the designated set equals the sum of the maximum emission rates listed in (b)4 above for each averaging unit multiplied by the daily heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set as listed in (b)5 above; and

ii. TPAE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit or the peak allowable emissions of the designated set. The peak allowable emissions for each averaging unit equals the applicable NO_x emission limit set forth in N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The TPAE of the designated set means the applicable NO_x emission limit for each averaging unit multiplied by the heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27–19.20, the applicable NO_x emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27–19.20(d) or 19.20(g)3 as applicable, and the applicable NO_x emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27–19.20(g)4;

7. The method to be used to measure the actual NO_x emission rate of each averaging unit;

8. The name and phone number of the individual responsible for the recordkeeping required under (g) below; and

9. Any other information which the Department requests, which is reasonably necessary to enable it to determine whether the averaging units designated by the owner or operator will comply with the requirements of this section.

(c) The Department shall approve an averaging plan only if the following requirements are satisfied:

1. Each averaging unit can satisfy the maximum allowable NO_x emission rate which the owner or operator proposed under (b)4 above for that averaging unit;

2. The request for authorization satisfies all requirements of (b) above; and

3. The owner and operator of the averaging units to be included in the designated set enter into a Federally enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits or operating certificates, or both), requiring any averaging unit for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate specified at N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 to continue to emit NO_x at a rate no greater than that specified under (b)4 above.

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. The actual NO_x emissions from each averaging unit in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the maximum allowable NO_x emission rate specified in (b)4 above for that averaging unit; and

2. The sum of the actual NO_x emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO_x emissions for all averaging units in the designated set. The allowable NO_x emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable } NO_x \text{ emissions} = H \times AL$$

where:

i. H means the actual heat input to the averaging unit during the appropriate time interval specified in (f) below. The heat input is expressed in millions of BTUs, based on the higher heating value of the fuel burned; and

ii. AL means the applicable NO_x emission limit set forth in N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, expressed in pounds of NO_x per million BTUs. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27–19.20, the applicable NO_x emission limit from May 1 through September 15 is the limit established under N.J.A.C. 7:27–19.20(g)3, and the applicable NO_x emission limit from September 16 through April 30 is the limit established under N.J.A.C. 7:27–19.20(g)4.

(e) The owner or operator of the designated set shall calculate the actual NO_x emissions of each averaging unit using emissions data from a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27–19.18. The owner or operator may comply with this requirement using emissions data derived in accordance with a monitoring plan for limited installation of continuous emissions monitoring systems approved by the Department under N.J.A.C. 7:27–19.18(e).

(f) The owner or operator shall demonstrate compliance with this section as follows:

1. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for each calendar day during the period beginning May 1 and ending September 15 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation; and

2. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for the 30–day period ending on September 16 of each year, and the 30–day period ending on each subsequent day through April 30 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire 30–day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30–day periods ending in the preceding month.

(g) The owner or operator of a designated set shall maintain the records listed below for five years from the date on which each record was made. The owner or operator shall maintain such records in a permanently bound log book or an electronic method, in a format that enables the Department to readily determine whether the designated set and each averaging unit are in compliance. The owner or operator shall maintain the following records:

1. The unique identifier for each averaging unit included in the designated set as specified in (b)1 above;

2. The time period for which the data is being recorded;

3. The date upon which the data was recorded;

4. The amount, type and higher heating value of the fuel(s) consumed over the subject time period;

5. The amount of NO_x (expressed in pounds or tons) emitted by each averaging unit over the subject time period;

6. Whether the amount exceeds the allowable rate for the averaging unit specified under (b)4 above;

7. The sum of the amounts listed in (g)5 above for all averaging units;

8. The allowable NO_x emissions calculated pursuant to (d)2 above; and

9. Any other information required to be maintained as a condition of approval granted pursuant to (b) above.

(h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (1) below. The owner or operator shall include the following information in the quarterly report:

1. The information listed in (g)2 and 3 above;

2. In the report for the quarter ending March 31, the compliance determination required under (f)2 above for each 30–day period ending on a calendar day within the quarter;

3. In the report for the quarter ending June 30:

i. The compliance determination required under (f)2 above for each 30–day period ending on a calendar day from April 1 through May 14, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from May 15 through June 30, inclusive;

4. In the report for the quarter ending September 30:

i. The compliance determination required under (f)2 above for each 30 day period ending on a calendar day from September 16 through September 30, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from July 1 through September 15; and

5. In the report for the quarter ending December 31, the compliance determination required under (f)2 above for each 30–day period ending on a calendar day within the quarter.

(i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the designated set shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified at N.J.A.C. 7:27–19.3(i) for the county in which the averaging unit with the highest NO_x emission rate is located. The owner or operator shall include the following information in the notification:

1. The name of the owner or operator;

2. The name and telephone number of the person specified in (b)7 above;

3. All information required to be recorded under (h) above;

4. A statement of the reason(s) for the non-compliance, if known; and

5. Certification of the notification, in accordance with N.J.A.C. 7:27–8.24.

(j) An owner or operator of an averaging unit which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the control of the owner or operator, and for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, or 19.10 shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written preliminary notice to the Department. This preliminary notice shall be followed up within 30 calendar days of the occurrence of the incident certifying the information in accordance with N.J.A.C. 7:27–8.24. In the written notice, the owner or operator shall identify the unit which is or was not operating, and state why it is or was not operating;

2. If circumstances beyond the control of the owner or operator make it impracticable either to repair the averaging unit within 15 calendar days after it ceased operating, or to comply with the averaging plan without operating the unit (for example, through reducing the operations of another unit and purchasing electric power from another source), include in the notice described in (j)1 above an explanation of those circumstances and an estimate of the time required to repair the averaging unit; and

3. In determining whether the designated set is in compliance with (d)2 above, assume that the NO_x emissions and heat input for the non-operational averaging unit for each of the first 15 days of non-operation (or such longer period, not to exceed six months, as the Department determines is necessary to repair the averaging unit based on the information submitted under (j)2 above) are equal to the actual emissions and heat input for that unit on the most recent comparable demand day. For each day after the end of the period described above, assume that the NO_x emissions and heat input for the non-operational averaging unit are zero.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
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).

7:27–19.7 Non-utility boilers and other indirect heat exchangers

(a) Beginning in calendar year 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 20 million but less than 50 million BTUs per hour shall:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27–19.16, each calendar year; or

2. Cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, and establish compliance with this requirement by continuous emissions monitoring pursuant to N.J.A.C. 7:27–19.15(a)1.

(b) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million but less than 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, and comply with the applicable requirements of (d) below.

TABLE 4

Maximum Allowable NO_x Emission Rates for
Non-utility Boilers and other Indirect Heat Exchangers
Subject to N.J.A.C. 7:27–19.7(b)
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.55
Coal—Dry Bottom	0.38	0.43	0.55
# 2 Fuel Oil	0.12	0.12	0.12
Other Liquid Fuels	0.3	0.3	0.3
Refinery fuel gas	0.20	0.20	N/A
Natural Gas	0.1	0.1	0.1

(c) Beginning on May 31, 1995, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 100 million BTUs per hour shall cause the boiler or other indirect heat exchanger to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 5 below, and comply with the applicable requirements of (d) below.

TABLE 5

Maximum Allowable NO_x Emission Rates for
Non-utility Boilers and other Indirect Heat Exchangers
Subject to N.J.A.C. 7:26–19.7(c)
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Refinery fuel gas	0.20	0.20	N/A
Gas Only	0.20	0.20	0.43

(d) In addition to complying with (c) above, the owner or operator of any non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27–19.18. In addition to complying with (b) or (c) above, as applicable, the owner or operator of a non-utility boiler or other indirect heat exchanger with a maximum gross heat input rate of at least 50 million BTUs per hour but less than 250 million BTUs per hour shall either:

1. Annually adjust the combustion process in accordance with N.J.A.C. 7:27–19.16, each calendar year; or

2. Establish compliance with the applicable maximum allowable emission rate by continuous emissions monitoring pursuant to N.J.A.C. 7:27–19.15(a)1.

(e) In lieu of complying with a NO_x emission limit under (b) or (c) above, the owner or operator of a non-utility boiler or other indirect heat exchanger may comply with one of the following, or with a combination of (e)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.8 Stationary internal combustion engines

(a) The owner or operator of a rich-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 1.5 grams of NO_x per horsepower hour.

(b) The owner or operator of a lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 2.5 grams of NO_x per horsepower hour.

(c) The owner or operator of any lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by liquid fuel, shall cause it to emit no more than 8.0 grams of NO_x per horsepower hour.

(d) In lieu of complying with a NO_x emission limit under (a), (b) or (c) above, the owner or operator of a stationary internal combustion engine may comply with one of the following, or with a combination of (d)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the engine, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the engine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the engine, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.9 Asphalt plants

(a) The owner or operator of a batch type or drum mix asphalt plant which has the potential to emit at least 25 tons per year of NO_x shall cause it to emit NO_x at a rate no greater than 200 ppmvd at seven percent O_2.

(b) At least annually, the owner or operator of an asphalt plant subject to (a) above shall adjust the combustion process of the aggregate dryer in accordance with N.J.A.C. 7:27–19.16.

(c) In lieu of complying with a NO_x emission limit under (a) above, the owner or operator of an asphalt plant may comply with one of the following, or with a combination of (c)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the unit, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.10 Glass manufacturing furnaces

(a) The owner or operator of any commercial container glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)6 shall cause the furnace to emit no more than 5.5 pounds of NO_x per ton of glass removed from the furnace.

(b) The owner or operator of any specialty container glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)7 shall cause the furnace to emit no more than 11 pounds of NO_x per ton of glass removed from the furnace.

(c) The owner or operator of a borosilicate recipe glass manufacturing furnace listed in N.J.A.C. 7:27–19.2(b)8 shall:

1. By January 1, 1994 determine the baseline NO_x emission rate from the furnace by either:

i. Conducting source emissions testing in accordance with N.J.A.C. 7:27–19.17; or

ii. Using the results of source emissions testing conducted at any time after November 15, 1990, provided that the procedures used for the source emission testing meet the requirements of N.J.A.C. 7:27–19.17;

2. By July 1, 1994, submit one of the following to the Department:

i. A written plan detailing how the NO_x emission rate from the furnace will be reduced by 30 percent from the baseline emission rate measured in (c)1 above; or

ii. A demonstration that the NO_x emissions from the furnace, as measured by the source emissions testing performed under (c)1 above, are at least 30 percent less than the uncontrolled NO_x emissions from the furnace as of a date no earlier than November 15, 1990;

3. Before the date specified in (d) below, implement the plan detailed in (c)2i above (unless the owner or operator has submitted the demonstration described in (c)2ii above); and

4. Beginning on the date specified in (d) below, cause the furnace to emit NO_x at a rate no greater than the reduced rate described in (c)2i above, or to continue to emit NO_x at a rate no greater than the rate demonstrated under (c)2ii above.

(d) A glass manufacturing furnace subject to this subchapter shall comply with the requirements of (a), (b), (c)3 and (c)4 above beginning on the earlier of the following:

1. The first date after January 23, 1994 on which rebricking of the furnace is completed; or

2. May 1, 1997.

(e) Beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to this subchapter shall adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27–19.16 before May 1 of each calendar year.

(f) In lieu of complying with a NO_x emission limit under (a), (b) or (c) above, the owner or operator of a glass manufacturing furnace may comply with one of the following, or with a combination of (f)1 and 3 below:

1. An emissions averaging plan approved by the Department pursuant to N.J.A.C. 7:27–19.6 and 19.14, which includes the combustion source in question as an averaging unit;

2. An alternative maximum allowable emission rate for the furnace, approved by the Department pursuant to N.J.A.C. 7:27–19.13;

3. A seasonal fuel switching plan for the furnace, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and 19.20; or

4. A plan for phased compliance for the furnace, approved by the Department pursuant to N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21, 19.22 or 19.23.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.11 through 7:27–19.12 (Reserved)

7:27–19.13 Facility–specific NO_x emissions limits

(a) This section establishes procedures and standards for the establishment of facility-specific NO_x emissions limits in the following circumstances:

1. If a major NO_x facility contains any source operation or item of equipment of a category not listed in N.J.A.C. 7:27–19.2(b) (that is, any source operation or item of equipment other than a utility boiler, a non-utility boiler, a stationary gas turbine, a stationary internal combustion engine, a rotary dryer located at an asphalt plant, or a glass manufacturing furnace) which has the potential to emit more than 10 tons of NO_x per year, except as provided in (p) below; or

2. If the owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27–19.2(b) seeks approval of an alternative maximum allowable emission rate, which would apply to the equipment or source operation in lieu of the emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of a major NO_x facility described in (a)1 above shall obtain the Department's written approval of a facility-specific NO_x control plan in accordance with this section. For any facility, equipment or source operation which is in operation prior to January 23, 1994, the owner or operator shall submit to the Department in writing a proposed NO_x control plan for the facility by April 23, 1994 or by a later date approved by the Department pursuant to N.J.A.C. 7:27–19.3(e). In the proposed NO_x control plan, the owner or operator shall include:

1. A list of each source operation or item of equipment at the facility which has the potential to emit more than 10 tons of NO_x per year and is not listed in N.J.A.C. 7:27–19.2(b). In the list, the owner or operator shall briefly describe the source operation or item of equipment, and list its permit number and any other identifying numbers; and

2. The information listed in (d) below.

(c) The owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27–19.2(b) may request approval of an alternative maximum allowable emission rate in accordance with this section. In the request, the owner or operator shall include:

1. A brief description of the equipment or source operation which is the subject of the request, and its permit number and any other identifying numbers;

2. A demonstration that the source operation or item of equipment is not reasonably able to comply with this subchapter through any alternative means of compliance established under this subchapter (for example, through seasonal combustion of natural gas pursuant to N.J.A.C. 7:27–19.4(b), or through compliance with an averaging plan under N.J.A.C. 7:27–19.6); and

3. The information listed in (d) below.

(d) In addition to the information required under (b) or (c) above, as applicable, the owner or operator shall include the following information in a proposed NO_x control plan or request for an alternative maximum allowable emission rate:

1. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a list of all NO_x control technologies available for use with the equipment or source operation;

2. An analysis of the technological feasibility of installing and operating each control technology identified in (d)1 above;

3. For each control technology which is technologically feasible to install and operate, an estimate of the cost of installation and operation;

4. An estimate of the remaining useful life of each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable;

5. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate;

6. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, the NO_x control technology or technologies which the owner or operator proposes to employ;

7. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a proposed NO_x emission limit;

8. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (g) below; and

9. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27–8.24.

(e) Within 30 days after receiving a proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall notify the owner or operator in writing whether the submission includes all of the information required under (d) above and under (b) or (c) above, as applicable. If the proposed NO_x control plan or request for an alternative maximum allowable emission rate is incomplete, the following shall apply:

1. The Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the proposed plan or request complete, and a time by which the owner or operator must submit a complete proposed plan or request;

2. The Department may refrain from reviewing the substance of the proposed plan or request (or any part thereof) until it is complete;

3. The owner or operator shall submit a complete proposed plan or request within the time stated in the Department's notification;

4. If the owner or operator fails to submit a complete proposed plan within the time stated in the Department's notification, the failure is a violation of this subchapter; and

5. If the owner or operator fails to submit a complete request for an alternative maximum allowable emission rate within the time stated in the Department's notification, the Department may deny the request.

(f) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed NO_x control plan or request for an alternative maximum allowable emission rate. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which the major NO_x facility is located.

(g) Within six months after receiving a complete proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall approve, approve and modify, or disapprove the proposed plan or request and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above and under (b) or (c) above, as applicable;

2. The proposed plan or request considers all control technologies available for the control of NO_x emissions from the type of equipment or source operation in question;

3. For any control technologies described in (g)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan or request demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the equipment or source operation;

ii. Is unsuitable for use in the equipment or source operation, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of equipment or source operations used by other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation and item of equipment is the lowest rate which can practicably be achieved at a cost within the limits described in (g)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. Any significant net emission of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27–19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard, an exceedance of a Federal Prevention of Significant Deterioration increment if applicable, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27–18.

(h) Any alternate emissions limit pursuant to N.J.A.C. 7:27–19.13(c) or NO_x Control Plan pursuant to 7:27–19.13(b) approved by the Department will be submitted to EPA for approval as a revision to the State Implementation Plan (SIP) for ozone.

(i) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any of the equipment or source operations at the subject facility listed pursuant to (b)1 or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any alternative maximum allowable NO_x emission rate issued, extended or renewed under this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27–30 to compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and under the emission limit which would otherwise apply under this subchapter.

(j) Before altering any equipment or source operation which is included in an approved facility-specific NO_x control plan, the owner or operator shall:

1. If the alteration would change any of the information required in (b) or (d) above, apply for and obtain pursuant to the procedures set forth at (b) and at (d) through (j) above the Department's approval of an amended facility-specific NO_x control plan, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A–3.10) modify the facility-specific NO_x control plan to reflect the alteration, in a manner satisfying the criteria set forth in (g) above; and

2. Apply for and obtain such permits and certificates, or amendments thereto, as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation.

(k) An approval of an alternative maximum allowable emission rate is void upon the alteration of equipment or source operation which is subject to the rate unless:

1. The Department approves continued application of the existing alternative maximum allowable emission rate if the proposed alteration does not materially affect the basis of the Department's original approval; or

2. The owner or operator, before altering any equipment or source operation which is subject to an alternative maximum allowable emission rate, applies for and obtains the Department's approval of:

i. A revised alternative maximum allowable emission rate pursuant to this section, reflecting the proposed alteration; and

ii. Such permits and certificates as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation.

(*l*) The Department will revoke an approval of a NO_x control plan by written notice to the holder of the approval if EPA denies approval of the proposed NO_x plan as a revision to the State Implementation Plan. The Department may revoke an approval of a NO_x control plan by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the proposed plan or any supporting documentation;

3. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

(m) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, if:

1. The Department denied the person's application for approval of a plan or alternative rate under this section;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (i) above; or

3. The Department has revoked the person's approval pursuant to (*l*)1, 2 or 4 above.

(n) The owner or operator of a facility described in (a)1 above shall implement the NO_x control plan (including, without limitation, complying with the emission limits set forth in the plan) approved by the Department by May 31, 1995, and maintain compliance with the plan and all conditions of the Department's approval thereafter. The owner or operator of a source operation or item of equipment for which the Department has approved an alternative maximum allowable emission rate shall cause it to emit NO_x at a rate no greater than the approved alternative rate.

(*o*) The owner or operator submitting a proposed NO_x control plan or request for an alternative maximum allowable emission rate shall send it to the Department at the following address:

Chief, Bureau of Air Quality Engineering
Department of Environmental Protection
401 East State Street
CN 027
Trenton, New Jersey 08625–0027

(p) A major NO_x facility satisfies the requirements of this section if its only equipment or source operations with the potential to emit 10 tons or more of NO_x per year are non-utility boilers or thermal oxidizers. The owner or operator of such a facility is not required to submit a facility-specific NO_x control plan for the facility.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
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).
In (i) provided for approval of alternative emission rates.

7:27–19.14 Procedures for obtaining approvals under this subchapter

(a) This section establishes the procedure for obtaining any of the following from the Department:

1. An exemption from this subchapter, pursuant to N.J.A.C. 7:27–19.2(f);

2. Approval of a fuel switching plan under N.J.A.C. 7:27–19.20, and authorization to operate under the plan;

3. Approval of a plan for phased compliance under N.J.A.C. 7:27–19.21, 19.22 or 19.23, and authorization to operate under the plan;

4. Approval of compliance with the requirements of N.J.A.C. 7:27–19.5(c) for a stationary gas turbine;

5. Approval of an emissions averaging plan under N.J.A.C. 7:27–19.6, and authorization to operate under the plan; or

6. Approval of an alternative monitoring plan pursuant to N.J.A.C. 7:27–19.18(b).

(b) The person seeking an approval listed in (a) above shall submit a written application to the Department at the following address:

Chief, Bureau of Air Quality Engineering
Air Quality Regulation
Department of Environmental Protection
401 East State Street
CN 027
Trenton, NJ 08625–0027

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1. Any information required under N.J.A.C. 7:27–19.2(f), 19.5(c), 19.6(b), 19.18(c), 19.20 or 19.21, as applicable;

2. The name, address and telephone number of the owner and the operator of the equipment or source operation which is the subject of the application;

3. The street address of the facility at which the subject equipment or source operation is located;

4. The type of equipment or source operation which is the subject of the application, and its make, model and serial number;

5. For requests submitted under N.J.A.C. 7:27–19.5(c), a proposed maximum allowable emission rate for the subject stationary gas turbine;

6. A certification of the application, satisfying the requirements of N.J.A.C. 7:27–8.24; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above. If the application is incomplete:

1. The Department shall include in the notice a list of the deficiencies, a statement of the additional information

required to make the application complete, and the time by which the applicant must submit a complete application;

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete;

3. The applicant shall submit a complete application within the time stated in the Department's notification; and

4. The Department may reject the application if the applicant fails to submit a complete application within the time stated in the Department's notification.

(e) Within six months after receiving a complete application, the Department shall grant its approval under this section only if:

1. The applicant satisfies all eligibility requirements set forth in N.J.A.C. 7:27–19.5(c), 19.6(c), 19.20, or 19.21 as applicable; and

2. Any significant net emission of any criteria pollutant (as determined pursuant to N.J.A.C. 7:27–19.17 or 19.18, as applicable) do not cause or significantly contribute to a violation of a National Ambient Air Quality Standard as determined pursuant to N.J.A.C. 7:27–18, an exceedance of a Federal Prevention of Significant Deterioration increment if applicable, or any violation of the Clean Air Act, 42 U.S.C. 7401 et seq. A significant net emission increase of any criteria pollutant, and the determination of when such an increase causes or significantly contributes to an exceedance of a National Ambient Air Quality Standard, shall be determined pursuant to N.J.A.C. 7:27–18.

(f) As a condition of an approval issued under this section (other than an approval of an exemption pursuant to N.J.A.C. 7:27–19.2(f)), the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) An approval issued under this section is void upon the alteration of equipment or source operation which is the subject of the approval unless:

1. The owner or operator applies for and obtains the Department's approval of a revised approval pursuant to this section, reflecting the proposed alteration; and

2. Before altering the equipment or source operation subject to the approval, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation.

(h) The Department may revoke an approval issued under this section, by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date of the approval, the subject equipment or source operations are able to comply with the applicable section of this subchapter. In revoking an approval pursuant to this paragraph, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to comply with the applicable section of this subchapter; or

4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to public health, welfare or the environment.

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, if:

1. The Department has denied the person's application for an approval under this section;

2. The person seeks to contest conditions of the approval imposed under (f) above; or

3. The Department has revoked the person's approval pursuant to (h) above.

(j) If an item of equipment or a source operation has exceeded the maximum allowable emission rate applicable under this subchapter without an approval pursuant to this section, it shall not be a defense to an enforcement action that an application for an approval is pending.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.15 Procedures and deadlines for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit as follows:

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, or if any other provision of this subchapter requires emissions from the equipment or source operation to be monitored by a continuous emissions monitoring system under N.J.A.C. 7:27–19.18, the owner or operator shall calculate the average NO_x emission rate using the data from such a system for the NO_x concentration in the flue gas and either the flue gas flow rate or the fuel flow rate. To calculate the emission rate using the NO_x concentration and fuel flow rate, the owner or operator shall use the conversion procedure set forth in the Acid Rain regulations at 40 CFR part 75, Appendix F, or an alternative procedure that the Department determines will yield the same result. Compliance with the limit shall be based upon the average of emissions:

i. Between May 1 and September 15, over each calendar day; and

ii. From September 16 through April 30 of the following year, over the 30–day period ending on each such day; or

2. If no continuous emissions monitoring system has been or is required to be installed on the equipment or source operation, compliance with the limit shall be based upon the average of three one-hour tests, each performed over a consecutive 60–minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27–19.17.

(b) For any equipment or source operation subject to this subchapter which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(c) For any equipment or source operation subject to this subchapter which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above within 180 days from the date on which the source commences operation, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(d) An exceedance of any applicable NO_x emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a), (b), or (c) above or otherwise, is a violation of this subchapter.

Amended by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.16 Adjusting combustion processes

(a) When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall:

1. Inspect the burner, and clean or replace any components of the burner as necessary to minimize total emissions NO_x and CO;

2. Inspect the flame pattern and make any adjustments to the burner necessary to optimize the flame pattern; and

3. Inspect the system controlling the air-to-fuel ratio, and ensure that it is correctly calibrated and functioning properly. For turbines with fixed air-to-fuel nozzles that cannot be adjusted, the owner or operator shall instead inspect and clean the fuel nozzles annually, recalibrating and repairing as necessary.

(b) An exceedance of an emission limit which occurs during an adjustment of the combustion process under (a)2 or 3 above, as a result of the adjustment, is not a violation of this chapter. Before the combustion adjustment begins, and after it has been completed, the maximum emission rate of any contaminant shall not exceed the maximum allowable emission rate applicable under this chapter or under an applicable certificate issued pursuant to N.J.A.C. 7:27–8.

(c) The owner or operator of the adjusted equipment or source operation shall record each adjustment conducted under (a) above in a permanently bound log book or other format approved in writing by the Department, containing the following information for each adjustment:

1. The date of the adjustment and the times at which it began and ended;

2. The name, title and affiliation of the person who made the adjustment;

3. The NO_x concentration in the effluent stream, in either ppmv or ppmvd, after each adjustment was made;

4. The CO concentration in the effluent stream, in either ppmv or ppmvd, after each adjustment was made;

5. The concentration of O_2 at which the CO and NO_x concentrations pursuant to (c)3 and 4 were measured; and

6. Any other information which the Department or the EPA has required as a condition of approval of any permit or certificate issued for the equipment or source operation.

7:27–19.17 Source emissions testing

(a) Upon request by the Department or EPA, the owner or operator of any equipment or source operation subject to this subchapter shall:

1. Conduct tests to determine the emissions from such equipment or source operation to determine the nature and quantity of VOC, NO_x, or CO being emitted into the outdoor atmosphere;

2. Provide information concerning the location, rate, duration, concentration, and properties of the emissions of NO_x, CO or VOC from such equipment or source operations, and such other information as may be reasonably necessary to assess air emissions;

3. Provide information concerning the rate at which the equipment or source operation is combusting fuel during tests conducted under (a)1 above, and the maximum gross heat input value of the equipment or source operation; and

4. Provide the log prepared under (e) below, or any part thereof requested by EPA or the Department.

(b) Upon the Department's request, the owner or operator of any equipment or source operation subject to this subchapter shall provide the Department with temporary or permanent sampling facilities satisfying the requirements of

N.J.A.C. 7:27B–1.4. The owner or operator shall construct such facilities in accordance with all applicable laws, ordinances and regulations, including those which regulate construction practices.

(c) During any testing conducted pursuant to this section, the equipment or source operation, and all components connected, attached to, or serving the equipment, shall be used and operated under normal routine operating conditions, under maximum capacity operating conditions, or under such other conditions within the capacity of the equipment as the Department or EPA requests.

(d) A person conducting testing pursuant to this section shall use the test method which the Department specifies, based upon the circumstances specific to the facility or to the equipment or source operation being tested. The Department shall specify one of the following methods:

1. The methods set forth at 40 CFR 60, Appendix A, method 7E; or

2. Any other method which EPA and the Department have approved in advance in writing. If EPA approves a method, and the Department determines that the method yields results at least as consistent as the appropriate method listed under (d)1 above, and which has no greater tendency to understate emissions, the Department shall approve the method.

(e) The owner or operator of the tested equipment or source operation shall record any test data collected under this section, and maintain it for at least five years after the date on which the testing was conducted.

7:27–19.18 Continuous emissions monitoring

(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Obtain a system approved in advance by the Department. The Department shall approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, Performance Specification Tests No. 2, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in compliance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the EPA regulations listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in compliance with the manufacturer's specifications; and

5. Continuously monitor and record NO_x emissions from the equipment or source operation subject to the monitoring requirement.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment or source operations of a given type at a facility may satisfy this requirement without installing a continuous emissions monitor on every unit of such equipment or source operations at the facility, by using an alternative monitoring methodology set forth in an alternative monitoring plan, approved in advance in writing by the Department, which is as reliable for demonstrating compliance for that unit as a continuous emissions monitoring system which satisfies the criteria in (a) above would be.

(c) A person seeking approval of an alternative monitoring plan pursuant to (b) above shall submit a written application to the Department. The applicant shall include in the application all of the information required under N.J.A.C. 7:27–19.14(c)2, 3, 4 and 6. The applicant shall include in the application for the alternative monitoring plan the following information for each item of equipment or source operation for which a continuous emissions monitor is required under this subchapter and to which the alternative monitoring plan would apply:

1. The make and model of each unit of equipment or source operation;

2. The facility at which the equipment or source operation is used;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application for each unit of equipment or source operation listed in (c)1 above;

5. A statement that the applicant proposes to install or not install a continuous emissions monitor which satisfies the criteria set forth in (a) above;

6. A demonstration that the monitoring methodology set forth in the alternative monitoring plan is as reliable for demonstrating compliance as a continuous emissions monitor which satisfies the criteria listed in (a)1 above; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above. If the application is incomplete:

1. The Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application;

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete;

3. The applicant shall submit a complete proposed plan or request within the time stated in the Department's notification; and

4. The Department may reject the application if the applicant fails to submit a complete application within the time stated in the Department's notification.

(e) The Department shall approve an alternative monitoring plan only if:

1. The proposed alternative monitoring methodology is equivalent for purposes of reliably determining compliance to a continuous emissions monitor which satisfies the criteria listed in (a)1 above by the following:

i. For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, the owner or operator identifies another item of equipment or source operation at the facility which is:

(1) Of the same make and model;

(2) Is used under substantially the same conditions;

(3) Will have a continuous emissions monitoring system installed on it; and

(4) Has an emissions rate which will not differ significantly from the emission rate from the corresponding equipment or source operation on which the continuous emissions monitoring system is to be installed; or

ii. For each item of equipment or source operation which a continuous emissions monitor is not to be installed, the owner or operator proposes a monitoring protocol for that equipment or source operation that provides quality-assured, representative monitoring data that can be used to determine continuous compliance consistent with EPA's proposed Enhanced Monitoring guidance, 40 CFR 64 (Federal Register Vol. 58, No. 203, p. 54648–54699). The proposed monitoring protocol should take into consideration site specific factors such as:

i. Control system design;

ii. Operating processes at the facility;

iii. Demonstrated margin of compliance;

iv. The potential variability of emissions; and

v. Established monitoring procedures utilized at the facility to meet other regulatory requirements; and

2. Under the plan, a continuous emissions monitoring system will be installed on each utility boiler at the facility if required under 40 CFR 75 or 76.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any equipment or source operation subject to a monitoring plan necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under this section is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed) unless:

1. The owner or operator applies for and obtains the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration; and

2. Before altering the equipment or source operation subject to the plan, the owner or operator applies for and obtains such permits and certificates as are required under N.J.A.C. 7:27–8 and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation; or

3. The Department determines that the alternative monitoring methodology is not equivalent to a continuous emissions monitor which satisfies the criteria of (a)1 above.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions monitor on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–8.12, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(*l*) The owner or operator of an item of equipment or source operation required to have a continuous monitoring

system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of an alternative monitoring plan shall send the application to the Department at the following address:

Chief, Bureau of Technical Services
Air Quality Regulation Program
Department of Environmental Protection
CN–411
Trenton, New Jersey 08625–0411

7:27–19.19 Recordkeeping and reporting

(a) Any person required to record or maintain information or records pursuant to this subchapter shall maintain the required information or records for a period of no less than five years after the record was made. Such person shall make the records available to the Department or to EPA upon request.

(b) Any person required to record or maintain information or records pursuant to this subchapter may submit a request to the Department, in writing, for approval to maintain alternate records. The Department may approve the request if the person demonstrates to the satisfaction of the Department that the alternate records or information are at least as effective as those required by this subchapter in documenting compliance with this subchapter.

(c) The recordkeeping requirements in (d) and (f) below apply to the owner or operator of any combustion source that is:

1. Included in a fuel switching plan approved under N.J.A.C. 7:27–19.14 and 19.20; or

2. Included in a plan for phased compliance approved under N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.21 or 19.23

(d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September 15, for the 30–day period ending on September 16, and for each 30–day period ending on each subsequent day through April 30 of the following year:

1. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

2. The day or 30–day period, as applicable, for which the record is being made;

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September 15, during the 30–day period ending on September 16, and during each 30–day period ending on each subsequent day through April 30 of the following year;

4. The quantity of NO_x emitted during the day or 30–day period, as applicable, determined in accordance with N.J.A.C. 7:27–19.15(a) and expressed in pounds or tons;

5. The allowable quantity of NO_x emissions as expressed in pounds or tons for the day or 30–day period as determined according to N.J.A.C. 7:27–19.20, 19.21 or 19.23; and

6. Any other information required to be maintained as a condition of an approval granted under N.J.A.C. 7:27–19.14 and N.J.A.C. 7:27–19.20, 19.21 or 19.23.

(e) The owner or operator of any combustion source that is temporarily combusting fuel oil or other liquid fuel in place of natural gas pursuant to N.J.A.C. 7:27–19.25 shall keep on site a record of the number of hours such fuel has been combusted.

(f) The owner or operator of a combustion source listed in (c) or (e) above shall keep the records required under (d) and (e) above at the facility in a permanently bound log book or by an electronic method that is easily accessible on site and at the time of inspection, in a format that enables the Department to readily determine whether the combustion source is in compliance.

(g) The reporting requirements below apply to the owner or operator of any combustion source that is listed in (c) or (e) above as follows:

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, an owner or operator shall submit to the Department a quarterly report in accordance with the requirement to report excess emissions contained in the Preconstruction Permit and Operating Certificate or an Operating Permit for the equipment or source operation. For an owner or operators subject to (c) above, the information pursuant to (d) above shall be submitted with the report for each day or 30–day period of a violation. If no violations occurred during the quarter, the owner or operator should provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification should be in accordance with N.J.A.C. 7:27–1.39; or

2. If no such continuous emissions monitoring system has been installed the owner or operator shall submit to the Department on March 1 of each year an annual report for the preceding calendar year. Such annual report shall include any violations which occurred during the previous year. If no violations occurred during the year, the owner or operator shall provide certification that no violations occurred and that the records are maintained at the facility. Certification of the notification shall be in accordance with N.J.A.C. 7:27–1.39.

(d) The Department shall approve an innovative control technology plan only if the following requirements are satisfied:

1. The application satisfies all the requirements of N.J.A.C. 7:27–19.14 and (c) above, including the requirement that the plan consider all control technologies available for the control of NO_x emissions during the interim period from each type of combustion source included in the plan;

2. The innovative control technology proposed for each combustion source in the plan:

i. Has a substantial likelihood of enabling the source to achieve greater continuous NO_x emissions reductions than are required to meet the applicable limit under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10. If the expected extent of NO_x emission reductions is only marginally greater than are required to meet the applicable limit, the proposed innovative control technology will not be deemed to meet this standard;

ii. Is technically sound;

iii. Is sufficiently developed so that it can be implemented by May 1, 1999; and

iv. Cannot practicably be implemented by May 31, 1995.

3. The completion date listed in (c)5v above is no later than May 1, 1999;

4. For any control technologies described in (c)7 above that the owner or operator does not propose to use with the combustion source during the interim period, the proposed plan demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the combustion source;

ii. Is unsuitable for use with the combustion source, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions rate that the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions that the control technology is likely to achieve during the interim period; or

iv. Would carry costs disproportionate to the costs incurred for the control of NO_x emissions from the same type of combustion sources used by other persons in the owner or operator's industry who are also subject to the NO_x RACT requirements of P.L. 101–549, 182(f).

5. For each combustion source included in the plan, the interim emission limit proposed under (c)13 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)4iii and iv above;

6. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)13 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

7. The owner or operator has entered into an agreement with the Department in accordance with the requirements of (h) below.

(e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet the compliance milestones in the approved plan;

3. Implement the innovative control technology for the combustion sources included in the plan by the date specified in the approved plan;

4. Beginning on May 31, 1995, determine the actual NO_x emissions from each combustion source included in the innovative control technology plan in accordance with N.J.A.C. 7:27–19.15(a);

5. If the approved plan provides for the owner or operator to annually adjust the combustion process for a combustion source included in the plan, do so in accordance with the general procedures set forth at N.J.A.C. 7:27–19.16 before May 1 of each calendar year beginning with 1995, until the innovative control technology is implemented;

6. Beginning on May 31, 1995, comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27–19.19;

7. Within 15 days after the date specified in the approved innovative control technology plan for completion of a milestone listed in (c)5 above, notify the Department in writing that the milestone has or has not been completed. If the milestone has not been completed, the owner or operator shall include in the notice the reason for the delay and the expected date on which the milestone will be completed;

8. Incorporate advances in the art of air pollution control into each source included in the plan, as required in the preconstruction permit for the replacement equipment;

9. If the innovative control technology for any combustion source included in the plan is not implemented by May 1, 1999, cease operating the combustion source by May 1, 1999; and

10. Compensate for the amount (if any) by which the source's actual NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in (c)5v above) exceed the emissions which would have resulted if the source had attained the rate of NO_x emissions stated in (c)3 above.

(f) Except as provided in (g) below:

1. The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed innovative control technology plan. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which each combustion source included in the plan is located;

2. The Department shall submit any innovative control technology plan (and agreement under (h) below) approved under this section to EPA, as a proposed revision to New Jersey's State Implementation Plan; and

3. Upon EPA's approval of the revision to New Jersey's State Implementation Plan, the innovative control technology plan and agreement under (h) below shall be federally enforceable. Plans listed under (g) below shall be federally enforceable upon the issuance of the Department's approval.

(g) An innovative control technology plan approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:

1. Fuel switching under N.J.A.C. 7:27–19.20;

2. The use of selective non-catalytic reduction.

(h) Before the Department approves an innovative control technology plan, the owner or operator shall enter into a Federally enforceable agreement containing the following provisions:

1. Information sufficient to identify the owner or operator;

2. Information sufficient to identify the combustion source, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, the company stack designation, and any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the owner or operator;

3. The owner or operator's undertaking of the following duties:

i. Completing the milestones listed in (c)5 above by specified dates;

ii. Implementing interim measures to control NO_x emissions from each combustion source during the interim period;

iii. Causing each combustion source to emit NO_x at a rate no greater than a specified interim NO_x emission limit applicable during the interim period;

iv. Using a specified method to measure the actual NO_x emission rate of the combustion source; and

v. Maintaining the Department's approval in effect;

4. A provision for delay of compliance caused by a "force majeure" event beyond the control of and without the fault of the owner or operator;

5. A provision under which the Department can terminate the agreement and its approval of the innovative control technology plan if the owner or operator materially fails to complete implementation of the innovative control technology or any other milestone by the date specified in the approved plan, or if the innovative control technology program fails to achieve the required reduction levels. By the date specified by the Department in the agreement, in its approval of the plan, or in the notice of termination, the owner or operator shall attain compliance with the NO_x emissions limit under this subchapter that would apply to the combustion source in the absence of an approved plan. Termination of the agreement and the approval of the plan is in addition to any other remedies the Department has under this chapter and N.J.A.C. 7:27A; and

6. Other provisions necessary to make the agreement federally enforceable, to accomplish the purposes of this subchapter, or to allow the agreement to be administered effectively.

New Rule, R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Added (e)10.

7:27–19.24 MEG alerts

(a) During a MEG alert that occurs on or before November 15, 2005, an electric generating unit that is operating at emergency capacity may exceed the NO_x emissions limits applicable under this chapter, including any limits set forth in the unit's permit. This exemption includes up to 12 hours per year of performance testing per boiler or gas turbine, provided this testing is not performed during the ozone season. This exemption is available only if the the owner or operator of an electric generating unit complies with the requirements of this section.

(b) Within two working days after the end of the MEG alert, the electric generating utility shall notify the Department by way of a report confirming the occurrence of the MEG alert. The electric generating utility shall certify the report in accordance with N.J.A.C. 7:27–8.24. In the report, the electric generating utility shall include the following information:

1. Information sufficient to identify each electric generating unit that operated at emergency capacity, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the utility;

2. The date and time at which the electric generating utility received notice from the load dispatcher, directing the utility to operate one or more electric generating units at emergency capacity;

3. For each electric generating unit listed in (b)1 above, the date and time at which the electric generating utility began to operate the electric generating unit at emergency capacity;

4. The date and time at which the electric generating utility received notice from the load dispatcher, advising the utility that it could cease operating its electric generating units at emergency capacity;

5. For each electric generating unit listed in (b)1 above, the date and time at which the electric generating utility ceased operating the electric generating unit at emergency capacity;

6. For each electric generating unit listed in 1 above, the amount by which the unit's NO_x emissions (expressed in pounds) during the MEG alert exceeded the maximum quantity of NO_x emissions allowed under this chapter. The excess NO_x emissions shall be calculated as follows for each day that the MEG alert continued:

$$E = (ER–M) \times H$$

where:

i. E is the excess NO_x emissions from the electric generating unit;

ii. ER is the average rate at which the electric generating unit emitted NO_x during the day of the MEG alert, determined in accordance with N.J.A.C. 7:27–19.15(a) and expressed in lb/MMBTU;

iii. M is the most stringent applicable NO_x emissions limit established under this chapter; and

iv. H the actual daily heat input to the electric generating unit during the MEG alert, expressed in MMBTU;

7. A copy of the calculations performed under (b)6 above; and

8. A description of the method by which the electric generating utility has provided or will provide compensatory reductions in NO_x emissions as required under (c) below.

(c) The electric generating utility shall use NO_x discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27–30 to compensate for the excess NO_x emissions during the MEG alert. The ratio of the amount of the NO_x DERs required to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1.

New Rule, R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).
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 (c).

7:27–19.25 Exemption for emergency use of fuel oil

(a) If a combustion source temporarily combusts fuel oil or other liquid fuel in place of natural gas in accordance with this section, the owner or operator is not required to have the combustion source comply with the applicable NO_x emission limits in N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, or an applicable NO_x emission limit established under N.J.A.C. 7:27–19.13, 19.20, 19.21, 19.22 or 19.23, while the fuel oil or other liquid fuel is burned. On each day that this exemption applies, for purposes of calculating daily or annual NO_x emissions the combustion source will be deemed to have emitted no NO_x and to have derived a heat input of 0.0 BTU.

(b) The exemption under (a) above is available only for a combustion source that uses natural gas as its primary fuel, or is seasonally combusting natural gas pursuant to a plan approved under N.J.A.C. 7:27–19.14 and 19.20. For a combustion source that uses natural gas as its primary fuel, the exemption under (a) above is available at any time during the year. For a combustion source that is seasonally combusting natural gas, the exemption under (a) above is available only from May 1 through September 15. This exemption is also available for those combustion sources which combust refinery gas as a primary fuel.

(c) The owner or operator of the combustion source is eligible for the exemption under (a) above only if the following requirements are met:

1. The owner or operator is not practicably able to obtain a sufficient supply of natural gas;

2. The owner or operator's inability to obtain natural gas is due to circumstances beyond the control of the owner or operator, such as a natural gas curtailment;

3. The combustion source ceases using fuel oil or other liquid fuel in place of natural gas and resumes using natural gas as soon as a sufficient supply of natural gas becomes practicably available;

4. The use of fuel oil or liquid fuel does not exceed 500 hours during any consecutive 12–month period; and

5. The owner or operator satisfies the recordkeeping requirements of N.J.A.C. 7:27–19.19(d) and (e), and the reporting requirements of (d) below.

(d) The owner or operator shall keep records of curtailment periods and incorporate such records into the required quarterly reports submitted to the Department. Such records shall include the following information:

1. Information sufficient to identify each combustion source for which the owner or operator claims an exemption under this section, including a brief description of the source (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the utility;

2. A statement that the owner or operator is not practicably able to obtain a sufficient supply of natural gas;

3. The date and time at which the owner or operator first became practicably unable to obtain natural gas; and

4. A description of the circumstances causing the owner or operator's inability to obtain natural gas.

New Rule, R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

7:27–19.26 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 26:2C–28.3 and N.J.S.A. 26:2C–19(f)1 and 2.

Recodified from 7:27–19.20 by R.1995 d.214, effective April 17, 1995 (operative May 23, 1995).
See: 26 N.J.R. 3298(a), 27 N.J.R. 1581(a).

SUBCHAPTER 20. (RESERVED)

SUBCHAPTER 21. EMISSION STATEMENTS

Source and Effective Date

R.1993 d.128, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 2979(a), 25 N.J.R. 1254(a).

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

New Rules Establish Clean Air Act Standards. Richard M. Hluchan and Terrie-Anne Duda, 132 N.J.L.J. No. 8, S10 (1992).

7:27–21.1 Definitions

The following words and terms, when used in this subchapter, 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 in this subchapter.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

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

"AP–42" means the most recently published edition and any subsequent edition of the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3228.

"Capture efficiency" means the amount of an air contaminant collected by a control apparatus serving the source operation, expressed as a percentage of the total amount of the air contaminant emitted by the source operation.

"Carbon monoxide" or "CO" means an air contaminant which is a colorless, odorless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the United States Code of Federal Regulations. This document may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3228.

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

"Control efficiency" means the amount of an air contaminant prevented from being discharged into the outdoor atmosphere by a control apparatus, expressed as a percentage of the total amount of the air contaminant collected by the control apparatus.

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

"Delivery vessel" means any mobile storage tank including, but not limited to, a marine vessel, tank truck or railroad tank car.

"Distillates of air" means the following chemical species: helium (He), nitrogen (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO_2).

"Emissions information" means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification

Plant name and related point identifiers

Address

City

County

AQCR (Air Quality Control Region)

MSA, PMSA, CMSA (Metropolitan Statistical Areas)

State

Zip Code

Ownership and point of contact information

Locational Identifiers:

Latitude & Longitude or UTM Coordinates

SIC Code (Standard Industrial Classification)

Emission point, device or operation description, information

SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP–42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

"EPA" means the United States Environmental Protection Agency.

"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.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any NSPS promulgated at 40 CFR 60, or promulgated under 42 U.S.C. 7411;

2. Any NESHAP promulgated at 40 CFR 61, 40 CFR 63, or promulgated under 42 U.S.C. 7412;

3. Any standard or other requirement provided for in a State Implementation Plan that has been approved by EPA or promulgated through rulemaking by EPA;

4. Any permit issued pursuant to the requirements established at 40 CFR 52.21; 40 CFR 51, Subpart I; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C–1 et seq., or this chapter, except to the extent that the permit or order includes any prohibition established solely pursuant to N.J.A.C. 7:27–8.8(f) or N.J.A.C. 7:27–5.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the atmosphere which do not pass through a stack or chimney.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, sold for use or used in a motor vehicle or motor vehicle engine, and commonly or commercially known or sold as gasoline.

"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.

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

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

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

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

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

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C–9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Operating permit" means a permit issued by the Department pursuant to N.J.A.C. 7:27–22 to authorize the use of one or more source operations from which air contaminants may be emitted.

"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.

"Pb" see "lead."

"Peak carbon monoxide season" means December 1 through the last day of February, inclusive.

"Peak ozone season" means June 1 through August 31, inclusive.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C–9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"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.

"Potential to emit" means the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is Federally enforceable. Fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include any banked emission reductions that are held by the owner or operator.

"Preconstruction permit" means a "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.

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

"Process level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Product" means the output from a source operation, equipment, or control apparatus. Such outputs may include mixtures, composites, compounds and elemental substances.

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

"Reid vapor pressure" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Celsius (°C)) as measured by "Method 1—Dry RVP Measurement" or "Method 2—Herzog Semi–Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

"Responsible official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

   i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

   ii. The delegation of authority to such representative is approved in advance by the Assistant Director for Air and Environmental Quality Enforcement, Division of Facility Wide Enforcement, Department of Environmental Protection;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unity of the agency (for example, a Regional Administrator of EPA); or

4. For affected sources under Title IV of the Clean Air Act:

   i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

   ii. The designated representative for any other purposes under 40 CFR part 70.

"SCC code" means the eight-position Source Classification Code that provides a detailed analysis of a process. See EPA document "AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants" EPA 450/4–90–003, which may be obtained from the National Technical Information Service (NTIS), 5285

Port Royal Road, Springfield, Virginia, 22161, (703) 487–4650 or the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, (202) 783–3228.

"Seasonal throughput" means the percent of the total yearly operating activity which occurs during each of the following periods:

1. December 1 through February 28/29 (for example, December 1, 1992, through February 28/29, 1993);
2. March 1 through May 31;
3. June 1 through August 31; and
4. September 1 through November 30.

"SIC code" means the Standard Industrial Classification code devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

"Solid particles" means particles of rigid shape and definite volume.

"Source operation" means any process or any identifiable part thereof emitting or having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

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

"Sulfur dioxide," or "SO_2," means an air contaminant which is a colorless gas at standard conditions having a molecular composition of one sulfur atom and two oxygen atoms.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act, and in particular N.J.S.A. 26:2C–9.2, which is valid for a period not to exceed 90 days.

"Ton" means a unit of weight equal to 2,000 pounds (0.907 metric tons or 907.20 kilograms).

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

"USC" means the United States Code.

"UTM coordinates" means Universal Transverse Mercator geographic coordinates, specified by the UTM zone, horizontal coordinate and vertical coordinate.

"Volatile organic compound," or "VOC," means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the 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. The list at 40 CFR 51.100(s)(1) currently includes the compounds and classes of perfluorocarbons set forth below:

Compounds

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

chlorodifluoromethane (HCFC–22)

trifluoromethane (FC–23)

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

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

chloropentafluoroethane (CFC–115)

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1,2–tetrafluoroethane (HFC–134a)

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

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

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

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

Amended by R.1994 d.500, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 4033(a), 26 N.J.R. 4026(a).
Administrative Correction.
See: 27 N.J.R. 1406(a).

7:27–21.2 Applicability

(a) Any owner or operator of a facility is subject to the requirements of this subchapter for any calendar year in which the facility emits or has the potential to emit, directly or indirectly to the outdoor atmosphere, any air contaminant listed at Table 1 at a rate greater than or equal to the applicable threshold. Emission statements are required, starting for the 1992 calendar year, for any air pollutant exceeding the thresholds in Table 1.

TABLE 1

AIR CONTAMINANT REPORTING THRESHOLDS

Air Contaminant	Threshold in Tons per Year
VOC	10
NO_x	25
CO	100
SO_2	100
TSP	100
PM_{10}	100
Pb	5

(b) With respect to the provisions of (a) above, emissions associated with any delivery vessel loading operation shall be included in determining a facility's potential to emit. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27–16.2 pursuant to N.J.A.C. 7:27–16.2(m), also shall be included in a facility's potential to emit. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from a facility's potential to emit.

(c) Notwithstanding (a) above, no facility is required, pursuant to this subchapter, to submit an emission statement for SO_2, TSP, PM_{10}, or Pb with respect to emissions occurring in or before 1992.

(d) Any facility which is solely a retail gasoline dispensing facility is exempt from the requirements of this subchapter.

7:27–21.3 General provisions

(a) Except as provided in N.J.A.C. 7:27–21.2(b), each owner or operator of a facility shall submit to the Department an emission statement pertaining to the emissions released directly or indirectly into the outdoor atmosphere during any calendar year in which the facility is subject to this subchapter pursuant to N.J.A.C. 7:27–21.2. Such emission statement shall include information only for the air contaminant(s) for which the facility's potential to emit equals or exceeds the applicable threshold set forth at N.J.A.C. 7:27–21.2, Table 1; however, if the facility's potential to emit equals or exceeds the reporting threshold for VOC, NO_x, or CO, the facility must report information for VOC, NO_x and CO.

(b) The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter shall subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 26:2C–19(f)1 and 2. All owners and operators are jointly and severally liable for such civil and criminal penalties.

(c) Compliance with the emission statement requirements of this subchapter does not relieve any owner or operator of a facility from the responsibility to comply with any other applicable reporting requirements set forth in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

(d) Submittal of an emission statement to the Department, or the Department's acceptance thereof, does not constitute approval by the Department of unauthorized releases of air contaminants into the outdoor atmosphere or of any exceedance of any applicable emission limit established in any Federal or state law, rule, or regulation, or in the conditions of approval of any permit or certificate in effect.

(e) Acceptance or receipt of an emission statement by the Department does not constitute the Department's acceptance of the truth, accuracy or completeness of the emission statement. The Department's failure to act on the information contained in the emission statement at the time of its receipt does not bar the Department from any future action based on that information.

(f) With respect to the provisions of N.J.A.C. 7:27–21.5 below, emissions associated with any delivery vessel loading

operation shall be included in a facility's emission statement submittal. Emissions from any delivery vessel, used as a storage tank, which is subject to the requirements of N.J.A.C. 7:27–16.2 pursuant to N.J.A.C. 7:27–16.2(m) also shall be included in a facility's emission statement submittal. All other emissions associated with delivery vessels (for example, motor vehicle tailpipe emissions, locomotives, and tugboats) shall be excluded from the requirements of N.J.A.C. 7:27–21.5(c) through (i).

Case Notes

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

7:27–21.4 Procedure for submitting an emission statement

(a) Emission statements shall be submitted to the Department on or before:

1. May 31, 1993 for a facility applicable to this subchapter due to the emissions of 1992; and

2. For each following year, April 15 of each calendar year following any calendar year in which the facility is subject to this subchapter.

(b) Emission statements shall be submitted to the following address:

Chief, Bureau of Air Quality Planning
Department of Environmental Protection
CN 418
Trenton, NJ 08625–0418
ATTN: Emission Statements

(c) Emission statements shall be submitted on a form obtainable from the Department at the address listed in (b) above.

(d) Any person submitting an emission statement shall transmit the report to the Department on paper. With the written prior approval of the Department, an emission statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an emission statement on paper. Notwithstanding this subsection, certification in accordance with the provisions of N.J.A.C. 7:27–8.24 as required in this subchapter shall accompany any transmission of an emission statement to the Department.

(e) Any person who submits information to the Department may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27–1.6. Emissions information, as defined at N.J.A.C. 7:27–21.1, is not confidential. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27–1.6 through 1.30 inclusive.

Case Notes

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

7:27–21.5 Required contents of an emission statement

(a) Any person who submits an emission statement to the Department shall include, as an integral part of the report:

1. Certification, in accordance with the requirements of N.J.A.C. 7:27–21.7; and

2. The date of the signature of certification, and the telephone number of the certifying individual.

(b) Emission statements shall include the following facility identification information:

1. The full name of the facility;

2. The parent company name, if applicable;

3. The physical location of the facility (that is, the street address);

4. The mailing address of the facility;

5. The SIC code(s) of the facility;

6. The UTM coordinates or latitude and longitude of the facility;

7. The calendar year of the emissions;

8. Number of employees;

9. Plant contact; and

10. Plant contact phone number.

(c) Emission statements shall include the following operating data for each source operation which has the potential to emit VOC or NO_x or both:

1. Seasonal throughput;

2. Average days of operation per week;

3. Average hours of operation per day; and

4. Total hours of operation for the year.

(d) Emission statements shall include the following information at the process level for NO_x (expressed as molecular weight of NO_2) and VOC:

1. Emissions information:

i. The actual emissions of VOC and NO_x in tons per year;

ii. The average actual emissions of VOC and NO_x in pounds per day of operation during the peak ozone season;

iii. The code for the method used to quantify the actual emissions (see (*l*) and Table 2 below); and

(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 SO_2 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.

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

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

"CFR" means the United States Code of Federal Regulations.

"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.

"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, unpainted 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 60, or promulgated under 42 USC 7411;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61, 40 CFR 63, or promulgated under 42 USC 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 preconstruction permit 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 70; 40 CFR 71; 40 CFR 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:

Air Contaminant	Major Facility 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 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 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 considered 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 a process unit, or the replacement 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 control apparatus; and

2. $80,000, in 1995 dollars, adjusted by the 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 "SO_2" 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 emissions limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the 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. The list at 40 CFR 51.100(s)(1) currently excludes the compounds and the classes of perfluorocarbons set forth below from the definition of VOC:

Compounds:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

trifluoromethane (FC–23)

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

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

chloropentafluoroethane (CFC–115)

chlorodifluoromethane (CFC–22)

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1,2–tetrafluoroethane (HFC–134a)

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

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

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF) cyclic, branched or linear completely methylated siloxanes

Classes of perfluorocarbons:

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 set forth 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).

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

(g) If an administratively complete application for renewal is received by the Department at least 12 months prior to the date the operating permit expires, the facility will be covered by the application shield set forth at N.J.A.C. 7:27–22.7.

(h) An application for renewal of an operating permit is subject to the requirements for public comment and EPA comment set forth at N.J.A.C. 7:27–22.11 and 22.12.

(i) Unless a facility subject to this subchapter is covered by an application shield pursuant to N.J.A.C. 7:27–22.7, the right to operate the facility terminates upon the expiration of its operating permit.

(j) If an operating permit has expired, the conditions of the operating permit remain enforceable until the operating permit is reissued, except as provided in acid deposition control regulations promulgated by EPA under Title IV of the CAA.

(k) A permit shield provided pursuant to N.J.A.C. 7:27–22.17 shall apply to an operating permit renewal approved by the Department.

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).
In (d) added reference to DER generation.

7:27–22.31 Fees

(a) The owner or operator of a facility subject to this subchapter shall submit fees to the Department in accordance with this section. The type of fee due, and the amount due, will vary depending on the fiscal year, the amount of regulated air contaminant emissions at the facility, and the number of significant source operations at the facility. Table 2 below summarizes which fees are due for each fiscal year. The types of fees are:

1. Annual emission fees, set forth at (b) below;

2. Supplemental surcharge fees, based on emissions, set forth at (c) below;

3. Initial operating permit application fees, based on the number of significant source operations at a facility, set forth at (d) below; and

4. Modification fees, based on the number of significant source operations being modified, set forth at (e) below;

(b) Emission fees shall be paid by January 31 of each fiscal year, except for the emission fee for fiscal year 1995, which is due October 8, 1995. Emission fees shall be based on the facility's actual emissions during the emission-statement year which was two years prior to the fiscal year for which the fee is due. If actual emission information on a source operation is unavailable, or an emission statement has not been filed for a source operation, the emission fee shall be based on permitted emissions, or if no permit has been issued, on the facility's potential to emit. Guidance on calculating actual emissions and potential to emit may be requested from the Department at the address in N.J.A.C. 7:27–22.3(t). Guidance on calculating the CPI for purposes of fee calculations can be found at (i) below. A facility's emission fee shall be calculated as follows:

1. For fiscal year 1995, the emission fee shall be $25.00 (in 1989 dollars, adjusted by the CPI) per ton of emissions. (For FY95, $25.00 in 1989 dollars adjusted by the CPI is equal to $30.07.) The emission fee for FY95 shall be payable only on the following emissions:

i. NO_x emissions, up to 8,000 tons;

ii. VOC emissions, up to 8,000 tons;

iii. One half the total emissions of CO; and

iv. Emissions of all other regulated air contaminants, up to 4,000 tons;

2. For fiscal years 1996 and 1997, the emission fee shall be $25.00 (in 1989 dollars, adjusted by the CPI) per ton of emissions, payable on the same emissions as for FY95 in 1 above, except that each facility subject to this subchapter shall pay a minimum emission fee of $1,000; and

3. For FY98 and thereafter, the emission fee shall be $25.00 (in 1989 dollars adjusted by the CPI) per ton of emissions, payable on all emissions of any regulated air contaminant except CO, and each facility subject to this subchapter shall pay a minimum emission fee of $1,000.

(c) Supplemental surcharge fees shall be paid for FY95 and FY96 by all facilities subject to this subchapter. No supplemental surcharge fee shall exceed $20,000 per facility per fiscal year. The FY95 supplemental surcharge fee shall be paid by October 8, 1995. The FY96 supplemental surcharge fee (excluding the excess, if any, payable under (f) below) shall be paid by January 31, 1996, and shall be based on the facility's actual annual emissions as reported on the facility's emission statement. If actual emission information on a source operation is unavailable, or an emission statement has not been filed for a source operation, the supplemental surcharge fee shall be based on permitted emissions, or if no permit has been issued, on the facility's potential to emit. The supplemental surcharge fee shall be calculated according to the following formulas:

$$(Q \times Te_s + (\$20{,}000 \times L) = \$1{,}500{,}000$$

where:

Q is the per–ton supplemental surcharge, expressed in dollars per ton;

Te_s is the total emissions, expressed in tons, from facilities with emissions below the size threshold;

L is the number of facilities above the size threshold; and

The size threshold is $20,000 ÷ Q

For FY95, the supplemental surcharge fee is $20.00 per ton, payable on all emissions of any regulated air contaminant, except for CO. The Department shall publish a notice in the New Jersey Register, stating the supplemental surcharge fee for FY96 and describing how the fee was calculated.

(d) The initial operating permit application fee shall be paid on or before the deadline for submittal on the facility's initial operating permit application, except for applications due on August 15, 1995, for which application fees are due October 8, 1995. The application fee calculation is the same for all fiscal years. The application fee shall be $125.00 for each piece of equipment listed on the permit application which, considered singly, constitutes a significant source operation as defined at N.J.A.C. 7:27–22.1. However, no initial operating permit application fee shall exceed $25,000.

(e) Operating permit modification fees shall be paid upon submittal of an application for a minor or significant modification, in accordance with (k) through (s) below.

(f) The Department will make forms available to use for submittal of fees. The Department may also provide estimated emission fee or supplemental surcharge fee calculations for individual facilities. If a person required to submit any fees pursuant to this section does not receive a fee form, the person shall obtain a fee form from the Department at the address set forth in N.J.A.C. 7:27–22.3(t), and shall submit the required fees by the deadlines set forth in this section. Any person submitting fees shall provide the information specified on the fee form. Backup information and calculations carried out pursuant to this section to determine the fee amount shall be maintained by the facility for at least five years after submittal of the fee, and shall be made available to the Department upon request.

(g) All fee payments required by this section shall be submitted to the Department by check or money order made payable to the "Treasurer, State of New Jersey," shall be accompanied by a completed fee form, and shall be submitted to:

Department of Environmental Protection
Bureau of Revenue
CN 417
Trenton, New Jersey 08625

(h) On or before March 1, 1996, and annually thereafter, the Department shall prepare and submit to the Governor and the Legislature the report required by P.L. 1995, c.188, §7 (N.J.S.A. 26:2C), which will include information on whether there is a need for legislative action to adjust the annual emission fee to adequately fund the operating permit program.

(i) The Consumer Price Index which is used to adjust the emission fee shall be calculated using the CPI–U data published monthly by the U.S. Department of Labor. The CPI–U data is re-published monthly in the Survey of Current Business, Bureau of Economic Analysis, U.S. Department of Commerce. The percentage increase in the CPI for the current year, relative to the CPI for 1989, shall be determined in accordance with the following procedure:

1. The CPI for 1989 is 122.15, representing the average of the monthly CPI–U for the 12 month period ending August 31, 1989;

2. The CPI to be used in calculating the fee for the current fiscal year shall be the average of the monthly CPI–U for the 12 month period ending August 31 of the current fiscal year. For example, the CPI for the fee which is due on January 31, 1999, for fiscal year 1999 shall be the average of the monthly CPI–U for the 12 month period ending August 31, 1998; and

3. The percentage increase in the current CPI relative to the 1989 CPI shall be calculated in accordance with the following formula:

i. $$\text{Percentage Increase} = 100 \times \frac{\text{Current Year CPI} - 122.15}{122.15}$$

ii. Where:

Current Year CPI is the CPI determined pursuant to (i)2 above; and

122.15 is the CPI for 1989, pursuant to (i)1 above.

(j) To assist in calculations of the annual emission fee required pursuant to this section, the Department will annually publish a notice in the New Jersey Register in November of the fiscal year in which the fee is due, setting forth the percentage increase, for that year, of the current CPI relative to the 1989 CPI and the resultant per-ton emission fee for the year. The Department will calculate the percentage increase in accordance with the procedure set forth in (i) above. For the FY95 emission fee, which is due October 8, 1995, the per-ton emission fee is $30.07.

TABLE 2
SUMMARY OF FEES BY FISCAL YEAR

	FY95	FY96	FY97	FY98 and on
Emission fee	$25[1]/ton on: up to 8,000 tons of NO_x, VOC; ½ of CO emissions, 4,000 tons of all other RACs[2]	Same as FY95, except that all facilities must pay at least $1,000	Same as FY96	$25[3]/ton on all RACs except CO, all facilities must pay at least $1,000. No emission caps

	FY95	FY96	FY97	FY98 and on
Initial application fee	$125 per significant source operation, up to $25,000	Same as FY95	Same as FY95	Same as FY95
Supplemental surcharge fee	$20 per ton of emissions of any RAC except CO, up to $20,000	Subject to adjustment pursuant to N.J.A.C. 7:27-22.31(c)	None	None
Modification fee	As set forth at N.J.A.C. 7:27-22.31(k), up to $25,000 per application	Same as FY95, except that, for certain source operations, the fee is limited to $500 per piece of equipment modified[4]	Same as FY96	Fees for significant modifications only, as set forth at N.J.A.C. 7:27-22.31(k) through (s), up to $25,000 per application

[1] In 1989 dollars adjusted by the CPI.

[2] For purposes of this table, RAC means regulated air contaminant.

[3] In 1989 dollars adjusted by the CPI.

[4] The limit for $500 per piece of equipment applies to all source operations EXCEPT solid or hazardous waste treatment and disposal equipment, reciprocating engines, and fuel combustion processes with heat input greater than 100 million BTU/hour or that burn solid fuel.*

(k) A permittee shall submit, as part of each application for a minor or significant modification of an operating permit, a modification application fee, not to exceed $25,000 per modification, consisting of:

1. The base fee for application review, from the Base Fee schedule in (r) below; and

2. Any applicable fees for additional services, assessed in accordance with the Supplementary Fee Schedule in (s) below.

(*l*) In some cases, the supplementary fees due pursuant to (k)2 above cannot be determined at the time of the submittal of the modification application. Prior to taking final action on any modification, the Department will invoice the applicant for any unpaid fee due pursuant to (k) above. The applicant shall submit all fees to the Department within 60 days of receipt of the invoice.

(m) A modification application fee shall not exceed $25,000 per minor or significant modification, and shall be assessed as follows:

1. For FY95, the application fee shall be that required pursuant to (k) above, and shall be charged for both minor and significant modifications;

2. For FY96 and 97, the modification application fee shall be that required pursuant to (k) above, and shall be charged for both minor and significant modifications. However, for all but the following source operations, the modification fee shall be limited to $500.00 per piece of equipment:

i. Solid or hazardous waste treatment and disposal equipment;

ii. Reciprocating engines; and

iii. Fuel combustion processes with heat input greater than 100 million BTU/hour or that burn solid fuel; and

3. For FY98 and thereafter, the modification application fee shall be that required pursuant to (k) above, but shall only be charged for significant modifications.

(n) Consistent with N.J.A.C. 7:27–22.10(e) and (f), if an applicant fails to submit additional information on the application, requested by the Department, by the due date provided in the request, the Department may deny the application. In such a case, a new fee shall be due for any subsequent application.

(*o*) If the operating permit requires the Department to incur any of the following charges, the permittee shall reimburse the Department for the full amount of these charges:

1. The charges billed by a telephone company for the maintenance of a dedicated telephone line for the electronic transmission of data; or

2. The charges billed by a laboratory for analyzing audit samples.

(p) If a request for an approval of an environmental improvement pilot test or a general permit registration is related to an application for a minor or significant modification, it shall be accompanied by the applicable supplementary fee from the Supplementary Fee Schedule at (s) below, as well as the modification application fee set forth in the Base Fee Schedule below at (r).

(q) (Reserved)

(r) The Base Fee Schedule for modification applications is as follows:

Activity	Basis	Amount
1. Category I[1]	Per application	$100.00
2. Category II	Per first new or modified significant source operation,	$500.00 plus
	Per each additional new or modified significant source operation, provided that identical equipment to be used in identical processes and using identical materials shall be treated as one piece of equipment (or significant source operation) for fee calculations.	$350.00
3. Application for environmental improvement pilot test	Per application	250.00
4. General Permit Registration	Per registration for each new or modified significant source operation	250.00

[1] Should both Category I and Category II equipment and control apparatus be included in a single application, the new or modified Category I equipment and control apparatus will be subject to the Category I fee; and the new or modified Category II equipment and control apparatus will be subject to the Category II fee.

(s) The Supplementary Fee Schedule for modification applications is as follows:

	Activity	Basis	Amount
1.	Prevention of significant deterioration		
	i. Engineering review	Per air contaminant	$500.00
	ii. Implement public comment procedures	Per comment period	$500.00
2.	Ambient air monitoring		
	i. Review protocol	Per protocol	$500.00
	ii. Inspect monitoring locations and equipment installation	Per inspection	$500.00
	iii. Review quality assurance plan	Per plan	$500.00
	iv. Review data	Per report	$500.00
3.	Air quality impact analysis		
	i. Evaluate protocol	Per protocol	$500.00
	ii. Review screening modeling	Per review	$500.00
	iii. Review refined modeling	Per review	$500.00
4.	Risk assessment		
	i. Evaluate protocol	Per protocol	$500.00
	ii. Review risk assessment	Per review	$500.00
5.	Testing		
	i. Evaluate source-specific testing protocol		
	(1) Process materials testing	Per protocol	$450.00
	(2) Source emission testing	Per protocol	$500.00
	ii. On-site monitoring of sample collection pursuant to an approved source-specific testing protocol		
	(1) Process materials testing	Per collection event	$200.00
	(2) Source emissions testing	Per performance test	$500.00
	iii. Review testing report		
	(1) Process materials testing	Per report	$200.00
	(2) Source emissions testing	Per report	$500.00
6.	Audit performance of continuous monitoring system		
	i. Evaluate protocol	Per protocol per permit	$500.00
	ii. Observe testing	Per protocol per permit	$500.00
	iii. Review testing report	Per report	$500.00

New Rule, 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).
Public Notice: Supplemental surcharge fee amount for operating permit facilities.
See: 28 N.J.R. 1562(b).

7:27–22.32 Hearings and appeals

(a) An adjudicatory hearing regarding a determination made by the Department pursuant to this subchapter may be requested and granted in accordance with N.J.A.C. 7:27–8.12.

(b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27–8.12, there is final agency action as to that person when the Department takes final action on the application.

(c) If a person does have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27–8.12, there is final agency action as to that person when the Department denies the request for an adjudicatory hearing, or when the Commissioner issues a final decision on the matter, whichever is later.

(d) A person who wishes to appeal a penalty assessed for a violation of this subchapter may request an adjudicatory hearing pursuant to the procedures at N.J.A.C. 7:27A.

(e) The Department's failure to take final action on an administratively complete application for an initial operating permit, renewal, minor modification or significant modification, within the deadlines provided by this subchapter, shall constitute grounds for the commencement of an action in lieu of the prerogative writ of mandamus, to compel Departmental action on the application.

7:27–22.33 Preconstruction review

(a) This section sets forth the procedures by which the Department will implement the preconstruction review requirements of N.J.S.A. 26:2C–1 et seq., as they apply to facilities subject to this subchapter.

(b) The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27–22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27–8 until an operating permit is issued for the facility. These approvals will be superseded by the operating permit when it is issued.

(c) The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27–22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27–22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27–8. These approvals will be superseded by the operating permit when it is issued.

(d) An application for 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 be subject to preconstruction review, which will include a demonstration that any equipment or control apparatus which is constructed, reconstructed, or modified incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted pursuant to N.J.A.C. 7:27–22.35.

2. Fails to submit the Notice of Intent to Use DERs before the use period was to begin, or fails to submit an amendment to the notice before the amended use was to begin;

3. Fails to hold the full quantity of DERs required for compliance by the date on which the Notice and Certification of DER Use is due under N.J.A.C. 7:27–30.15; or

4. Fails to replace invalid DERs as required under (h) above.

7:27–30.12 DER use: computation of DERs

(a) The quantity of DERs needed for compliance shall be calculated in accordance with this section and an emission quantification protocol that conforms with the requirements of N.J.A.C. 7:27–30.20.

(b) The quantity of DERs needed for compliance is the difference between the user source's actual emissions and its baseline emissions, adjusted to retire 10 percent of such DERs for the benefit of the environment. The following formula describes the calculation:

$$DERs = \frac{(Actual\ Emissions - Baseline\ Emissions)}{0.9}$$

where:

1. DERs is the quantity of discrete emission reductions needed for compliance, rounded to the next highest twentieth of a ton of VOC or NO_x;

2. Actual emissions are the total mass emissions of VOC or NO_x (as applicable) that the user source actually emitted during the use period. Actual emissions are expressed as units of mass (pounds or tons) of VOC or NO_x emitted during the use period;

3. Baseline emissions are the total mass emission of VOC or NO_x (as applicable) that the user source would have emitted during the use period, if the user source's emissions rate had been at the lowest allowable emission rate applicable during the use period, minus a design margin. Baseline emissions are expressed as units of mass (pounds or tons) of VOC or NO_x emitted during the use period; and

4. Division by 0.9 ensures that 10 percent of the DERs needed for compliance are retired at the time of use.

Administrative change.
See: 28 N.J.R. 4959(b).

7:27–30.13 DER use: required, authorized and prohibited uses

(a) The owner or operator of an emissions source shall use DERs for compliance if such use is required under another provision of this chapter. Examples of required DER uses include:

1. Pursuant to N.J.A.C. 7:27–16.17(m), compensation for excess VOC emissions authorized under an alternative VOC control plan approved after August 2, 1996;

2. Pursuant to N.J.A.C. 7:27–19.13(i), compensation for excess NO_x emissions authorized under an alternative maximum allowable emission rate approved after August 2, 1996;

3. Pursuant to N.J.A.C. 7:27–19.23, compensation for any emissions attributable to the difference between the rate of NO_x emissions to be attained under an innovative control technology plan (as stated in N.J.A.C. 7:27–19.23(c)3), and the actual rate of NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in N.J.A.C. 7:27–19.3(c)5v); and

4. Pursuant to N.J.A.C. 7:27–19.24(c), compensation for excess NO_x emissions authorized during a MEG alert.

(b) A person may use DERs to comply with an emission limit established under this chapter, unless the use is prohibited by Federal or State law or is listed under (d) below. Examples of authorized DER uses include:

1. Compliance with an applicable VOC control requirement under N.J.A.C. 7:27–16;

2. Compliance with an applicable NO_x control requirement under N.J.A.C. 7:27–19;

3. Compliance with any VOC or NO_x emissions limit which becomes operative on or after August 2, 1996, unless the use of DERs for such purpose is expressly prohibited;

4. Compliance with emission offset requirements under N.J.A.C. 7:27–18, in accordance with (c) below; and

5. Compliance with requirements, if any, for emission reductions in connection with the employer trip reduction program administered under N.J.A.C. 16:50, if consistent with rules promulgated by the State Department of Transportation. However, DERs may not be used in lieu of submitting the compliance plan required under N.J.A.C. 16:50.

(c) A person may use DERs to comply with the emission offset requirements of N.J.A.C. 7:27–18, if all of the following requirements are satisfied:

1. The generation and use of the DERs complies with all applicable requirements of 42 U.S.C. § 7503, 40 CFR 51.165(a), N.J.A.C. 7:27–18, and this subchapter (except for the requirements of this subchapter specifically made inapplicable under (c)4 and 5 below);

2. The DERs are generated at the same time they are used (and accordingly, the user is not required to hold the DERs before the use period begins);

3. Before each use period begins, the user submits to the Department a legally binding commitment from one or more DER generators to generate the needed DERs for the upcoming use period and convey those DERs to the user;

4. In lieu of submitting a Notice of Intent to Use DERs, the user submits the emission offset demonstration

required under N.J.A.C. 7:27–18.3(e). In the demonstration the user shall establish that the user is able to obtain sufficient DERs for the shorter of the following periods: the period that the user proposes to use DERs as emission offsets; or the period that extends until the applicable primary standard attainment date established under 42 U.S.C. § 7511(a). In the demonstration, the user is not required to establish that the emission reductions on which the DERs are based are permanent, if DERs based on a series of consecutive temporary reductions will cover this entire period. The user shall submit the demonstration to the address listed in N.J.A.C. 7:27–18.8(a);

5. The user enters into an enforceable commitment to continue to obtain the DERs for the life of the equipment or until emission reductions which meet the standards for creditable emission reductions at N.J.A.C. 7:27–18.5 are secured for use as emission offsets;

6. In lieu of having the DERs verified before use, the user has the DERs used in each year verified before April 30 of the following year. If the quantity of DERs verified by that date is insufficient for compliance with N.J.A.C. 7:27–18, a violation of the user source's operating permit or permit and certificate (as applicable) shall have occurred; and

7. In the permit issued pursuant to N.J.A.C. 7:27–22 and 18, the Department has approved the use of the DERs to comply with the emission offset requirements.

(d) The owner or operator of an emissions source may not use DERs for any of the following purposes:

1. To avoid the applicability of the emission offset requirements at N.J.A.C. 7:27–18;

2. To comply with new source performance standards (NSPS) under 42 U.S.C. § 7411, lowest achievable emission rate (LAER) standards under 42 U.S.C. § 7503(a)(2), best available control technology (BACT) standards under 42 U.S.C. § 7475(a)(4), standards for hazardous air pollutants (HAPs) under 42 U.S.C. § 7412, standards for solid waste combustion under 42 U.S.C. § 7429, acid deposition control requirements under 42 U.S.C. § 7651 through 7651o, or requirements under N.J.A.C. 7:27–8.6(b) or 22.35 to incorporate advances in the art of air pollution control;

3. To comply with requirements for a vehicle inspection and maintenance program mandated under 42 U.S.C. § 7511a(b)(4) or (c)(3), or for clean fueled fleets mandated under 42 U.S.C. § 7511a(c)(4)(B) or 7586;

4. To comply with motor vehicle emissions standards under 42 U.S.C. § 7521, the standards for nonroad vehicles under 42 U.S.C. § 7547, or the motor vehicle emissions standards at N.J.A.C. 7:27–14, 15 and 26;

5. To comply with requirements for reformulated gasoline under 42 U.S.C. § 7545(k), or for Reid vapor pressure under 42 U.S.C. § 7545(h) and (i) and N.J.A.C. 7:27–25;

6. To comply with ozone control standards set under 42 U.S.C. § 7511b, except for NO_x RACT or VOC RACT requirements set forth at N.J.A.C. 7:27–16 or 19; or

7. To comply with the State prohibition of air pollution at N.J.A.C. 7:27–5 or with the similar requirements at N.J.A.C. 7:27–8.3(j) and 8.8(f) and at N.J.A.C. 7:27–22.16(g)8.

(e) A use of DERs is prohibited if it results in an increase in emissions of any HAP which exceeds the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. § 7412(g). The de minimis levels are currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative change pursuant to N.J.A.C. 1:30–2.7.

7:27–30.14 DER use: Notice of Intent to Use DERs

(a) At least 30 days before the use period begins, the user shall submit a Notice of Intent to Use DERs to the registry. Late notices are governed by N.J.A.C. 7:27–30.11(e).

(b) In the Notice of Intent to Use DERs, the user shall include the information, statements and certification required under N.J.A.C. 7:27–30.16, and the following:

1. The requirements with which the user intends to comply through the use of DERs;

2. For each DER to be used, the place where the DER was generated, and the date on which the DER was acquired (or is to be acquired);

3. The quantity of NO_x DERs and the quantity of VOC DERs that the user has acquired (or will acquire) for use, with the DERs of each type generated during the ozone season and outside the ozone season listed separately; and

4. If the use of DERs, compared with other methods of complying with applicable emission limits, is expected to result in an increase in emissions of any HAP, the amount of such increase.

(c) If a material change occurs in any of the information, statements or certification required under (b) above, the user shall submit an amendment to the registry. The user shall submit the amendment at least 30 days before the use described in the amendment begins. In the amendment, the user shall describe the changes to the information submitted under (b) above, and provide all information and documentation required under (b) above for any DERs listed in the amendment which were not listed in the original notice or previous amendment. Late amendments are governed by N.J.A.C. 7:27–30.11(e).