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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SUBCHAPTER 1. GENERAL PROVISIONS

7:27–1.1 Scope

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

7:27–1.2 Construction

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

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

7:27–1.3 Practice where rules do not govern

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

7:27–1.4 Definitions

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

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

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

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

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

"Carbon monoxide" or "CO" means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

"CFR" means the Code of Federal Regulations.

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

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

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

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
PO Box 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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

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 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 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. 7:27–1.33.

(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
PO Box 402
Trenton, New Jersey 08625–402

(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).
Recodified from N.J.A.C. 7:27–8.12 and amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (a), deleted "regarding any preconstruction permit and certificate, amendment, certificate renewal, variance, or registration," preceding "may contest" in the introductory paragraph, and changed N.J.A.C. reference in 4.

7:27–1.33 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).
Recodified from N.J.A.C. 7:27–8.13 by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–1.34 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 unconsti-

tutional 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.

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

Subchapter Historical Note

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

7:27–8.1 Definitions

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

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

"Agricultural commodity" means any vegetable matter or animal matter.

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

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

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

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

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

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

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

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

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

1. Metalworking equipment including, but not limited to, welders, grinders, and drill presses;

2. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum removal efficiency of 99 percent and the particulate control apparatus serving the equipment;

3. Plastics machining or extruding equipment;

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

5. Used oil space heaters which burn on-specification used oil and have a capacity of 500,000 British Thermal Units per hour or less for which a registration has not been filed pursuant to N.J.A.C. 7:27–20.3. The terms space heater, on-specification used oil, and registration are as defined in N.J.A.C. 7:27–20.1.

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

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

"CFR" means the Code of Federal Regulations.

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

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

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

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

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

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

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

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

"Control apparatus" means any device which prevents or controls emissions.

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

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

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

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

"Distillates of air" means helium (He), nitrogen (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.

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

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

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

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

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

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

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

"Emit" means to cause or release emissions.

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

"EPA" means the United States Environmental Protection Agency.

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

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

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

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

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

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60 or promulgated under 42 U.S.C. § 7411;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;

3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or

4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit and certificate issued pursuant to N.J.A.C. 7:27–8 or any operating permit issued pursuant to N.J.A.C. 7:27–22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

"Fuel cell system" means an electrochemical device that converts the chemical energy in its fuel directly into electricity and heat. This term also includes any associated fuel processor, such as a reformer, that produces the fuel.

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

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

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

"Greenhouse gas" means any of the following: carbon dioxide (CO_2), methane (CH_1), nitrous oxide (N_2O), any hydrofluorocarbon (HFC), and sulphur hexafluoride (SF_6).

"Group 1 TXS" means an air contaminant that is found on the list of Group 1 TXS at N.J.A.C. 7:27–17.3, which is incorporated by reference herein, together with all amendments and supplements. As of June 12, 1998, the following is the complete list of Group 1 TXS: Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4–Diethylene dioxide; 1,4–Dioxane), Ethylenimine (Aziridine), Ethylene dibromide (1,2–Dibromoethane), Ethylene dichloride (1,2–Dichloroethane), 1,1,2,2–Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2–Trichloroethane (Vinyl trichloride), and Trichloroethylene (Trichlorethene).

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

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

"Hazardous waste" means those materials defined as hazardous waste under N.J.A.C. 7:26–8.

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

"Identical" means, in relation to the replacement of equipment or control apparatus, that the equipment or control apparatus is of the same type and size as the equipment or control apparatus being replaced, and is used in the same process, with the same materials.

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

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

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

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

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

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

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

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

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

1. Promulgated by EPA pursuant to 42 U.S.C. § 7412; or

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

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

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
NO_x	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs, collectively	25 tons per year
Any other air contaminant	100 tons per year

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Periodic compliance inspection" means any compliance inspection carried out in accordance with a schedule 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 preconstruction permit as defined in this section.

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

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

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

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

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

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

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D–41 and 42, N.J.A.C. 7:1K–3 and N.J.A.C. 7:1K–4.

This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K–1.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and

2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Stratospheric ozone depleting substance" means any Class I substance or any Class II substance.

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

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

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

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

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

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

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

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

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

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

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

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods, or which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

chlorodifluoromethane (HCFC–22)

trifluoromethane (HFC–23)

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

chloropentafluoroethane (CFC–115)

2,2–dichloro–1,1,1–trifluororethane (HCFC–123)

1,1,1,2–tetrafluoroethane (HFC–134a)

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

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC–32)

ethylfluoride (HFC–161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC–31)

1–chloro–1–fluoroethane (HCFC–151a)

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

1,1,1,2,2,3,3,4,4–nonafluoro–4–methoxy-butane;($C_4F_9OCH_3$)

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

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

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

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

Amended by R.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", "$PM\text{-}_{10}$", "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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.
Administrative change.
See: 31 N.J.R. 639(b).
Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).
See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).
Inserted "Fuel cell system".
Amended by R.1999 d.428, effective December 6, 1999 (operative January 8, 2000).
See: 30 N.J.R. 4003(a), 31 N.J.R. 4016(a).
In "Category I", added 5.

Case Notes

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

7:27–8.2 Applicability

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

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

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

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

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

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

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

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

3. Dry cleaning equipment;

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

i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;

ii. A heated open top surface cleaner;

iii. A conveyorized surface cleaner; or

iv. A stationary spray cleaning or surface stripping operation using one half gallon or more of cleaning solution in any one hour;

5. Equipment used in a graphic arts operation which includes newspaper, lithographic, gravure, flexographic, letterpress and screen printing, in which the quantity of ink, fountain solution, or cleaning material used by a source in any one hour is equal to or greater than one half gallon;

6. Any tank or vessel which has a capacity of more than 100 gallons and which is used:

i. In etching, pickling, or plating; or

ii. In chromium electroplating or chromium anodizing;

7. A transfer operation involving gasoline or other VOCs regulated under N.J.A.C. 7:27–16.3 or 16.4, or a marine tank vessel loading or ballasting operation regulated under N.J.A.C. 7:27–16.5, if the operation is required to have a control device other than bottom fill or submerged fill;

8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air;

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of a VOC or mixture of VOCs having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1.0 millimeters of mercury) or greater at standard conditions;

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

11. Stationary material handling equipment using pneumatic, bucket or belt conveying systems from which emissions occur;

12. Equipment used in a surface coating operation including, but not limited to, spray and dip painting, roller coating, and electrostatic depositing, in which the quantity of coating or cleaning material used by a source in any one hour is equal to or greater than one half gallon of liquid;

13. Except where a registration has been filed pursuant to N.J.A.C. 7:27–20.3, any equipment used for the burning of non-commercial fuel, crude oil, or process by-products in any forms. This includes off-specification used oil, processed used oil fuel, or on specification used oil as defined in N.J.A.C. 7:27–20.1;

14. An incinerator, except an incinerator exempted under (d)9 below;

15. Equipment which is used for treating groundwater, industrial waste water, or municipal wastewater with a solids content of less than two percent by weight as it enters the equipment (typical operations performed by this type of equipment include, but are not limited to, air stripping, aeration, digestion, thickening, flocculating, surface impounding, and dewatering), if the equipment does either of the following:

i. Treats or handles influent which has one or both of the following:

(1) A total concentration of VOCs and Group 2 TXS in the influent of 3,500 parts per billion by weight (ppbw) or more; or

(2) A total Group 1 TXS concentration in the influent of 100 ppbw or more; or

ii. Discharges more than 50 pounds per hour of sludge. For the purposes of this paragraph, wastewater with a solids content of two percent by weight or greater is considered sludge;

16. Equipment used for treating waste soils or sludges, including municipal solid wastes, industrial solid wastes, or recycled materials, if the influent to the equipment has a solids content of two percent by weight or greater. Typical operations performed by this type of equipment include, but are not limited to, soil cleaning, composting, pelletizing, grit classifying, drying, and transfer station operations. However this shall not include an area used as a temporary storage area, such as a concrete pad or a roll-off container, provided that the area is not also used for treatment;

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

18. Any control apparatus serving equipment for which a permit and certificate is required pursuant to this section; and

19. Equipment in which the combined weight of all raw materials used, excluding air and water, exceeds 50 pounds in any one hour, except for equipment excluded from permit requirements under (c)3 through 18 above.

(d) Even if a source is listed in (c) above, it does not need a permit and certificate if it is:

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

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

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

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

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

6. Hand held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal or plastic. For the purposes of this subsection, "hand held" means "can reasonably be carried by one person";

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

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

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

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

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

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

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

10. A source which:

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

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

iii. Is still operable; or

11. A fuel cell system that uses hydrogen without a fuel processor, or a fuel cell system that uses a natural gas fuel processor and that has a power output no greater than 500 kilowatts.

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

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

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

Amended by R.1985 d.96, effective March 4, 1985 (operative April 5, 1985).
See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).
Substantially amended.
Amended by R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 22 N.J.R. 593(a), 23 N.J.R. 723(a).
Heading changed from "Permits and certificates required" to "Applicability".
Clarification of types of equipment and control apparatus reported in permit and certificate process.
Added (a)17(b)1 and 2.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
VOC parameters added at (a)9 and (a)15i.
Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Administrative change in (a)15.
See: 26 N.J.R. 4184(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.
Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).
See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).
In (d), added 11.
Amended by R.1999 d.428, effective December 6, 1999 (operative January 8, 2000).

See: 30 N.J.R. 4003(a), 31 N.J.R. 4016(a).
Rewrote (c)13.

Case Notes

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

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

7:27–8.3 General provisions

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

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

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

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

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

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

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

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

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

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

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

(*l*) (Reserved)

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

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

Amended by R.1985 d.96, effective March 4, 1985 (operative April 5, 1985).
See: 16 N.J.R. 1671(a), 17 N.J.R. 587(a).
Substantially amended.
Amended by R.1991 d.109, effective March 4, 1991 (operative March 31, 1991).
See: 22 N.J.R. 292(a), 22 N.J.R. 593(a), 23 N.J.R. 723(a).
Replaced (b) and (c). Added (j).
Clarification of procedural requirements for permit process.
Amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
New subsection (k) added.
Amended by R.1993 d.428, effective September 7, 1993 (operative October 4, 1993).
See: 24 N.J.R. 4323(a), 25 N.J.R. 4075(b).
Amended by R.1994 d.502, effective October 3, 1994 (operative October 31, 1994).
See: 25 N.J.R. 3963(a), 25 N.J.R. 4836(a), 26 N.J.R. 793(a), 26 N.J.R. 3943(b).
Public Notice: Temporary enforcement response policy and permit amnesty program.
See: 26 N.J.R. 4225(b).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.

Law Review and Journal Commentaries

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

(a) An application for a preconstruction permit and certificate, permit revision, compliance plan change, environmental improvement pilot test approval, or for a renewal thereof, as well as a general permit registration, or a seven-day-notice, shall be submitted to the Department on forms obtained from the Department, in accordance with this section.

(b) Application forms and information may be obtained in the following ways:

1. In paper form, by contacting the Department at:

Bureau of New Source Review
Air Quality Permitting Program
Department of Environmental Protection
401 East State Street, Second Floor
PO Box 027
Trenton, New Jersey 08625–0027
Telephone: (609) 292–6716 or 1–800 441–0065
DEP Electronic Bulletin Board Service: (609) 292–2006
E-mail: AIRFORMS@dep.state.nj.us; or

2. In electronic form, through the Department's Air Information Management System (AIMS), which can be accessed in accordance with the AIMS guidance manual, available from the Department at the address in (b)1 above.

(c) An application, registration, or notice shall be submitted to the Department in one of the following ways:

1. On paper, sent or delivered to the address listed on the application form; or

2. Electronically, through AIMS.

(d) An application, registration or notice shall contain such details regarding the equipment or control apparatus as necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any relevant State or Federal laws or regulations. In addition, if a source is required to document advances in the art of air pollution control (or SOTA) under N.J.A.C. 7:27–8.11, Standards for issuing a permit, the Department shall require information necessary to determine compliance with the SOTA requirement in accordance with N.J.A.C. 7:27–8.12, State of the art. Information required under this subsection 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.

(e) 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 N.J.A.C. 7:27–1. To claim information submitted as part of an application, registration or notice as confidential information, the applicant shall clearly mark the information as required at N.J.A.C. 7:27–1.6. The Department shall handle the confidentiality claim in accordance with N.J.A.C. 7:27–1.6 through 1.30.

(f) 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, if such a protocol is required in the conditions of approval of the preconstruction permit or certificate. The protocol shall be submitted at least 60 days prior to the anticipated date of the testing, except where the Department determines that a different submittal date is needed to allow for adequate testing;

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. Contact the Department to schedule mutually acceptable testing dates and startup times at least 30 days in advance of the planned testing date for any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has approved a different test notification requirement in the preconstruction permit or certificate;

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.

(g) The application, registration or notice form shall require the applicant to provide information about significant sources. The applicant does not need to include information on any insignificant sources, except where emissions

from the insignificant source are released through the same control device as emissions from a significant source. Where this occurs, the form shall require a list of the emissions from the insignificant source(s), as well as the emissions from the significant source. (Even if emissions from an insignificant source are listed, there is no fee for the insignificant source. This is stated at N.J.A.C. 7:27–8.6(k).)

(h) In some cases, an application, registration or notice (and the issued permit) may cover more than one source. Determination of the number of sources to be included shall depend on how each source is vented or, in the case of batch processing operations, how the product is made or it may be based on another basis for a logical grouping, provided that this basis is approved by the Department:

1. For a single source that exhausts through one or more stacks or vents, the applicant shall apply for one permit;

2. For multiple sources that exhaust through a common stack or vent, or through common stacks or vents, the applicant shall apply for one permit to cover all these sources;

3. For multiple sources that each exhaust through an individual stack or vent, the applicant shall either apply for a single permit for each source, so that the number of permits will be equal to the number of sources, or shall apply for permit(s) based on logical grouping(s) approved by the Department; and

4. For batch processing operations in which two or more sources make up a process unit, an applicant may choose to include these sources in one permit application.

(i) Any person who is applying for a preconstruction permit or permit revision 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.

(j) If required under N.J.A.C. 7:27–8.5, an application shall include a protocol for conducting an air quality impact analysis. The protocol shall include a risk assessment if one is required under N.J.A.C. 7:27–8.5.

(k) An application, registration or notice shall, if required by the applicable form, list each air contaminant which meets either of the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable reporting threshold set forth in Table A or B in Appendix 1; or

2. The source operation may, under normal operations, emit the air contaminant in an amount which may result in noncompliance with the air pollution odor provisions at N.J.A.C. 7:27–8.3(j) and N.J.A.C. 7:27–5.

(*l*) When listing raw materials on an application, registration or notice, the applicant shall list each HAP raw material separately. Each non-HAP raw material shall be:

1. Listed separately; or

2. Listed in a group of non-HAP raw materials with similar physical and/or chemical properties. If a group is listed, the group shall be sufficiently limited so as to allow the Department to evaluate whether the source, using those raw materials, shall comply with specified maximum emission rates and applicable requirements. The grouping shall be approved by the Department.

(m) When listing the emissions for a contaminant for which emissions information is required under (k) above:

1. The applicant shall separately list emissions for each HAP;

2. Emissions for each non-HAP shall be:

i. Listed separately; or

ii. If the contaminant is a VOC or particulate, the emissions may be listed in a group of total VOCs or total particulates; and

3. If a source emits a contaminant that is both a HAP and is also a VOC or a particulate, emissions of that air contaminant shall be listed separately as a HAP, and shall also be included in any grouping of total VOCs or total particulates.

(n) 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.

(*o*) Any person submitting an application, registration or notice 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.

(p) Any information an applicant wants the Department to take into consideration in making a decision on an application, registration or notice shall be submitted to the Department in writing prior to the Department's making a decision on the application, registration or notice.

(q) If the permit and certificate shall cover any of the sources listed below, the application, registration or notice shall also include a demonstration that appropriate odor prevention measures will ensure compliance with the odor provisions at N.J.A.C. 7:27–8.3(j) and 7:27–5:

1. Sewage sludge treatment and storage equipment;

2. Municipal wastewater treatment equipment;

3. A landfill;

4. A municipal solid waste transfer station;

5. A composting facility;

6. Coffee roasting equipment; or

7. Equipment used for slaughtering, meat or shellfish processing, meat byproduct processing, or rendering.

(r) If an application, registration or notice includes a voluntary pollution prevention measure(s) or voluntary air pollution control measure(s) not otherwise required, the applicant may request that the permit authorize use of the emission reductions resulting from the measure(s) as a basis for generating discrete emission reduction (DER) credits under N.J.A.C. 7:27–30.

(s) If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27–18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. 7:27–30.13(c).

(t) For a significant source included in any of the following categories, the Department has prepared permitting procedures manuals, which summarize certain alternative application and permitting procedures developed to take into consideration the specific characteristics of these sources. An applicant may elect, for sources in these categories, to use the alternative procedures, rather than the corresponding standard procedures set forth in this subchapter. The manuals are available from the Department at the address in (b) above:

1. Batch plants (see technical manual 1301);

2. Pilot plants (see technical manual 1302); and

3. Dual plants (see technical manual 1302).

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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.
Petition for Rulemaking.
See: 31 N.J.R. 691(a).

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 Air quality impact analysis

(a) An application shall include an air quality impact analysis, conducted in accordance with this section, if:

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

2. The proposed maximum allowable emissions of an 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 as defined at N.J.A.C. 7:27–8.1; 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;

3. A State or Federal rule requires that an air quality impact analysis be performed; or

4. The Department determines that an air quality impact analysis is required for an accurate assessment of the environmental impact of the activities proposed.

(b) An air quality impact analysis shall include ambient air monitoring and risk assessment, if the Department determines that this is required for an accurate assessment of the impact of the activities proposed.

(c) An air quality impact analysis shall demonstrate 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 Part 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.

(d) An air quality impact analysis and/or a risk assessment 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/or risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of a protocol can be found in the Air Quality Permitting Program's Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions). Additional technical guidance on preparing a protocol may be requested from:

New Jersey Department of Environmental Protection
Air Quality Permitting Program
401 East State Street, 2nd Floor
PO Box 027
Trenton, New Jersey 08625–0027
Attention: Bureau of Air Quality Evaluation

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Former N.J.A.C. 7:27–8.5, Public comment, recodified to N.J.A.C. 7:27–8.10.

7:27–8.6 Service fees

(a) Every application, notice, or registration submitted to the Department shall be accompanied by the fee, if any, set forth in the Base Fee Tables below.

(b) After an application, notice or registration is submitted, 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 apply to all applications, notices or registrations which are deemed administratively complete on or after the date on which this section is operative.

(d) If an application is denied or a permit is revoked, for any reason, and the applicant reapplies, the new application shall meet all application requirements, including the fee requirement.

(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) Except for applications for sources at facilities subject to (g) below, a complete application fee for a preconstruction permit and certificate shall include both a preconstruction permit application fee and an operating certificate fee, as set forth below in the Base Fee Tables.

(g) The owner or operator of a facility subject to N.J.A.C. 7:27–22 is not required to pay the operating certificate fees set forth in Tables 1, 2, 5, 6 and 10 below after June 30, 1995. However, the owner or operator of a facility subject to N.J.A.C. 7:27–22 is required to maintain operating certificates for sources at the facility under this subchapter until the issuance of an operating permit for the facility. In addition, after June 30, 1995 the owner or operator shall pay fees in accordance with N.J.A.C. 7:27–22.31 for any significant modification, as defined in the operating permit rules at N.J.A.C. 7:27–22.1, while the issuance of an operating permit for the facility is pending.

(h) Fees due to the Department may be paid by personal check, corporate check, or money order, made payable to "Treasurer, State of New Jersey."

(i) If both Category I and Category II sources are included in a single application, the Category I source(s) shall be subject to the Category I preconstruction permit fee, and the Category II source(s) shall be subject to the Category II preconstruction permit fee. All sources shall be subject to the Category II certificate fee.

(j) If one application for a Category II initial permit or permit revision includes multiple sources or control apparatus, there may in some cases be a fee for the additional sources or control apparatus. This subsection applies only to Category II initial permit applications under Table 2 below, and to Category II permit revisions under Table 6 below. Under those tables, the first significant source on the application is subject to a fee of $500.00. If more than one source or control apparatus is included in the application, there is no additional fee for the additional sources or control apparatus if they are identical (as defined at N.J.A.C. 7:27–8.1) to the first one, for which a fee is already being paid. If an additional significant source or control apparatus does not meet the definition of identical at N.J.A.C. 7:27–8.1, the fee for the source or control apparatus is $350.00. The following examples illustrate how to calculate these additional Category II fees under Tables 2 and 6:

1. An application which includes four identical boilers would require a fee of $1,000: $500.00 for the first boiler, no fee for the second, third and fourth identical boilers, and $500.00 for the certificate fee;

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).
Recodified from N.J.A.C. 7:27–8.10 and amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.

7:27–8.17 Changes to existing permits and certificates

(a) There are several ways to change a permit and certificate once it is issued. They are described in N.J.A.C. 7:27–8.18 through 8.23. Some require prior approval from the Department, while others merely require notice to the Department, before or after the change.

(b) If an action or change fits under more than one of the sections listed at (b)1 through 4 below, it shall be submitted and reviewed through the most comprehensive of the sections which apply. The list of permit change sections at (b)1 through 4 below has the most comprehensive section listed first, and the others arranged in descending order. For example, if a permittee plans a change which fits under both the compliance plan change section (paragraph (b)2 below) and the seven-day-notice change section (paragraph (b)3 below), the change shall be submitted as a compliance plan change, because that is listed first, as it is the more comprehensive of the two sections. The permit change sections are:

1. Permit revisions (N.J.A.C. 7:27–8.18);
2. Compliance plan change (N.J.A.C. 7:27–8.19);
3. Seven-day-notice change (N.J.A.C. 7:27–8.20);
4. Amendment (N.J.A.C. 7:27–8.21).

(c) To submit an application for a permit revision or compliance plan change, or to submit a seven-day-notice or amendment, a form shall be obtained from the Department at the address in N.J.A.C. 7:27–8.4(b). The completed form shall be submitted to the Department in accordance with the application requirements in N.J.A.C. 7:27–8.4, with the fee, if any, required under N.J.A.C. 7:27–8.6. If a permittee wishes to document the date upon which a completed form is submitted, the permittee may choose to submit the form in a way that will provide documentation of the submittal date, such as by certified mail. The completed form may be submitted to the Department by mail, hand delivery, or electronic submittal, as follows:

1. If on paper, submit to:

   Bureau of New Source Review
   Air Quality Permitting Program
   Department of Environmental Protection
   401 East State Street, Second Floor
   PO Box 027
   Trenton, New Jersey 08625–0027; or

2. If in electronic form, submit through the Department's Air Information Management System (AIMS), which can be accessed in accordance with the AIMS guidance, available at the address in (c)1 above.

(d) If a permittee wishes to submit a change to an existing permit electronically, the permittee may do so only if:

1. The permit was originally applied for electronically through AIMS; or

2. Complete application information for the permitted source is submitted electronically through AIMS, prior to, or simultaneously with, submittal of the permit change.

(e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27–30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27–18 and 7:27–30.13(c), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27–8.18 is required.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.18 Permit revisions

(a) The following actions require prior approval from the Department through a permit revision:

1. A request for an increase in a maximum allowable emission limit, including correction of a typographical error or inaccurate calculation, if the correction would result in a higher maximum allowable emission limit;

2. An action that shall:

   i. Increase actual emissions, to a rate or concentration greater than a maximum allowable emission limit; or

   ii. Cause the emission of a new air contaminant not specified in the permit and certificate. If the permit and certificate allows emission of a group of air contaminants, such as "total VOCs," or "total particulates," then any non-HAP air contaminant in that group is considered to be specified in the permit and certificate;

3. Use of a new raw material not specified in the permit, if the use would cause any of the following results (If the use would not cause any of these results, it shall be processed as a seven-day-notice under N.J.A.C. 7:27–8.20, or as an amendment under N.J.A.C. 7:27–8.21):

   i. An increase in actual emissions, to a rate or concentration greater than a maximum allowable emission limit;

   ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or

exceeds the applicable reporting threshold in Appendix 1, Tables A and B, incorporated herein by reference; or

iii. The source to become subject to a requirement that did not previously apply;

4. A reconstruction, as described in N.J.A.C. 7:27–8.23;

5. Any of the following changes, if the change would cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;

i. The replacement of an existing stack or chimney with a shorter stack or chimney;

ii. A change in the number of stacks or chimneys serving a source, which results in any discharge height less than that of the tallest stack or chimney existing prior to the change;

iii. An increase in the diameter of a stack or chimney; or

iv. A decrease in the exit temperature or volume of gas emitted from a stack or chimney;

6. Except as allowed at N.J.A.C. 7:27–8.21(b)6, the replacement of an entire permitted significant source with a replacement source. For the purposes of this section, replacement means that the replacement source will take the place of the replaced source in the manufacturing process, and the replaced source will be permanently shut down; or

7. Construction or installation of a new significant source (including a control apparatus), if there are existing, permitted sources onsite, and the new source could, under N.J.A.C. 7:27–8.4(h), be combined on one permit application with the existing permitted sources. If the new source could not be combined under one permit with existing permitted sources under N.J.A.C. 7:27–8.4(h), installation of the new source would require a new permit of its own.

(b) To obtain Department approval of a permit revision, the applicant shall demonstrate that the source shall meet the requirements of N.J.A.C. 7:27–8.11, Standards for issuing permits.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.19 Compliance plan changes

(a) The following actions require prior Department approval of a compliance plan change:

1. A decrease in the frequency of testing, monitoring, recordkeeping or reporting, to below the frequency specified in the permit and certificate;

2. A change in monitoring method;

3. A change in a level, rate, or limit for an operational parameter if:

i. The change would cause the source to operate outside of the range set by the permit for that parameter;

ii. The parameter is required under the permit and certificate to be tested, monitored, recorded, or reported to the Department; and

iii. The level, rate, or limit is not an emission limit; and

4. A reduction in a source's potential to emit, through any of the actions listed at i through iii below. The permittee may take these actions without contacting the Department, but the reduction in potential to emit does not take effect until the Department approves the compliance plan change, making the emission decrease Federally enforceable. Until Department approval, the source's potential to emit remains unchanged. The following types of actions may be taken to reduce potential to emit under this paragraph:

i. A decrease in a maximum allowable emission rate;

ii. A decrease in maximum allowable hours of operation per time period (number of batches per time period for batch operations); or

iii. A decrease in maximum allowable production rate (production amount per batch for batch operations).

(b) The applicant may not proceed with a compliance plan change until the Department issues a written approval of the change, except for emission decreases that are not reflected in a change to a source's potential to emit made under (a)4 above.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.20 Seven-day-notice changes

(a) A seven-day-notice change allows a permittee to proceed with a change seven days after the notice of the change is submitted to the Department. A person acting under the authority of a seven-day-notice does so at risk. Should the Department determine that an action was incorrectly processed as a seven-day-notice change, and should have been processed as a compliance plan change or permit revision, the permittee may be subject to penalties for noncompliance with this subchapter.

(b) A seven-day-notice may be used for any change made to a permitted source which meets all three of the following requirements:

1. The action is a physical or operational change that is outside the scope of activities allowed by the permit;

2. The action has the potential to result in an increase in actual emissions, but will not increase emissions over the allowable limits in the permit and certificate; and

3. The action will not alter stack parameters or characteristics so as to cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access.

(c) A permittee shall submit a seven-day-notice for construction or installation of a new insignificant source (as defined at N.J.A.C. 7:27–8.1), if the emissions from the insignificant source shall be released through the same control device as emissions from an existing, permitted significant source.

(d) A permittee shall not use a seven-day-notice for a change which shall:

1. Result in emissions exceeding permit limits; or

2. Result in emission of a new air contaminant at a level which would cause the source's potential to emit to exceed reporting thresholds in Table A or B in Appendix 1.

(e) The Department shall evaluate each change separately to determine its effect on actual emissions. If a change, evaluated alone, would cause an increase in actual emissions (but not to a level over permit allowables), it shall be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions (but not to a level over permit allowables), and one reducing emissions by the same amount, the change which increases emissions shall be processed through a seven-day-notice. Similarly, the Department shall evaluate each change separately to determine its effect on allowable emissions. If a change, evaluated alone, would cause a permit limit to be exceeded, it may not be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions over a permit limit, and one reducing emissions by the same amount, the change which increases emissions may not be processed through a seven-day-notice. Instead, the change shall be submitted as a permit revision under N.J.A.C. 7:27–8.18.

(f) The Department shall send an acknowledgment when a seven-day-notice, including the appropriate fee, is received. However, the acknowledgment only indicates the date upon which the Department received the notice. It does not mean that the Department has reviewed or approved the notice. Therefore, if the notice is incomplete or deficient, the Department's acknowledgment does not in any way relieve the owner or operator from liability for penalties for any unauthorized activities.

(g) If all of the requirements of this section are met, the permittee may begin the actions proposed in the seven-day-notice starting seven days after the notice has been submitted to the Department.

(h) The permittee shall maintain a copy of each seven-day-notice with the permit and certificate maintained at the facility.

(i) The procedures in this section shall also be used for submittal of a notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27–8.24 or 8.25.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.21 Amendments

(a) An amendment allows a permittee to proceed with a change to a permitted source, or to its permit or certificate, provided that the permittee submits a notice of the change within 120 days after the start of the change.

(b) A permittee shall notify the Department of the following changes as an amendment:

1. A change in the permit and certificate information which allows the Department to identify and contact the permittee, including company name or mailing address; division name; plant name or address; name or address of any owner's agent; or name or telephone number of the on-site facility manager, any additional plant contact, or of any responsible official (as defined at N.J.A.C. 7:27–1.4);

2. A transfer of ownership or operational control of the source or the facility;

3. A change to the name, number, or designation given to any equipment or stack in the permit or certificate;

4. Any of the following changes to a permitted source's stack or chimney or the use thereof, if the change complies with EPA stack height regulations at 40 CFR Part 51:

i. A change in the number of stacks or chimneys serving the source, if the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

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

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

iv. An increase in the exit temperature or volume of gas emitted from a stack or chimney;

5. The use in a permitted source of a new raw material not specified in the permit (including a change in the contents of a storage tank or container), or a change in the source's use of a raw material outside the limits in the permit, if the change shall not cause any of the following:

i. An increase in actual emissions;

ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold in Appendix 1, Tables A and B; or

iii. The source to become subject to a requirement that did not previously apply;

6. Replacement of an entire permitted source with a replacement source which performs the same function as the replaced source and which, for each HAP that the replacement source may emit, has a potential to emit the HAP in an amount that is less than the applicable SOTA threshold levels in Appendix 1, Tables A and B; and

7. Correction of a typographical error, unless the correction would result in an increase in the actual or allowable emissions. If the correction would result in such an increase, the permittee shall:

i. File a permit revision under N.J.A.C. 7:27–8.18(a)1ii; or

ii. If the change does not meet the criteria for a permit revision at N.J.A.C. 7:27–8.18(a)1ii, the permittee shall submit a seven-day-notice under N.J.A.C. 7:27–8.20.

(c) The permittee shall maintain a copy of each amendment with the permit and certificate maintained at the facility.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.22 Changes to sources permitted under batch plant, pilot plant, and dual plant permitting procedures

(a) To make a change to a permit issued using the NJDEP Batch Production Plant Permit Procedure, refer to the procedures in technical manual number 1301, which covers certain batch plant permits. Technical manual 1301 is available at the address listed in N.J.A.C. 7:27–8.4(b).

(b) To make a change to a permit issued using the NJDEP Pilot Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain pilot plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27–8.4(b).

(c) To make a change to a permit issued using the NJDEP Dual Plant Permit Procedure, refer to the procedures in technical manual number 1302, which covers certain dual plant permits. Technical manual 1302 is available at the address listed in N.J.A.C. 7:27–8.4(b).

(d) If the applicable technical manual referenced in (a) through (c) above does not provide a procedure for making the desired change, the change shall be processed through the applicable provisions of N.J.A.C. 7:27–8.17 through 8.21.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.23 Reconstruction

(a) A reconstruction is a replacement of part(s) of a significant source included in a process unit, or the replacement of part(s) of a control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

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

2. $80,000, in 1995 dollars, adjusted by the Consumer Price Index. The Department shall publish this threshold dollar amount each November in the same New Jersey Register notice in which it publishes the current CPI and annual emission fee as required by N.J.A.C. 7:27–22.31(j);

(b) When evaluating whether a replacement of part(s) amounts to a reconstruction, the process unit and the control apparatus are considered separately. Thus, when determining the fixed capital cost of reconstructing a new process unit, the control apparatus serving the process unit is not included.

(c) The replacement of an entire significant source operation or control apparatus is not a reconstruction, regardless of its cost. Rather, it is construction, as defined at N.J.A.C. 7:27–8.1, and must be authorized through one of the following:

1. Department issuance of a new permit or

2. If allowed under N.J.A.C. 7:27–8.21(b)6, an amendment.

(d) A reconstruction of a permitted source shall be submitted and reviewed under the procedures for a permit revision at N.J.A.C. 7:27–8.18. If a replacement of part(s) of a permitted source does not constitute a reconstruction under (a) above, it may still require notice to the Department under the seven-day-notice or amendment provisions or Departmental approval of a permit revision, if the replacement meets one or more of the other criteria requiring either notice or a permit revision under N.J.A.C. 7:27–8.18 through 8.23.

(e) If a source is not covered by a permit and certificate, and a reconstruction is planned, the owner or operator of the source shall obtain a permit and certificate for the source pursuant to N.J.A.C. 7:27–8.3(a). If a replacement of part(s) of an unpermitted source does not constitute a reconstruction under (a) above, it would still require a permit if the replacement would result in an increase in actual emissions or would otherwise meet one or more of the other criteria set forth at N.J.A.C. 7:27–8.18 through 8.23 which determine when a permit revision is required. In that case, the replacement would constitute a modification and a permit shall be obtained for the source as required at N.J.A.C. 7:27–8.3(a).

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.
See: 30 N.J.R. 4079(a).
Public Notice: Air Contaminant Emission Fee and Reconstruction Determination.
See: 32 N.J.R. 116(a).

7:27–8.24 Special provisions for construction but not operation

(a) As provided in N.J.S.A. 26:2C–9.2j, an applicant may construct, reconstruct, install, and/or put in place a source, including a control apparatus, while the Department reviews an application if:

1. The applicant has submitted a complete application to the Department, proposing the construction, reconstruction, installation, and/or placement of the source;

2. The applicant only constructs, reconstructs, installs, and/or places the source on footings or a foundation, and does not test or operate it;

3. The construction, reconstruction, installation, and/or placement is carried out as proposed in the application;

4. The construction, reconstruction, installation, and/or placement is not prohibited by any Federal law or requirement, including but not limited to PSD requirements, offsets requirements set forth at N.J.A.C. 7:27–18, MACT requirements, or acid rain requirements at 40 CFR Part 72; and

5. All other requirements of this section are met.

(b) To act under the authority of this section, the applicant shall notify the Department in writing seven days prior to beginning the activities listed in (a) above. This notice shall be submitted in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27–8.20, and shall include the fee for a seven-day-notice set forth at N.J.A.C. 7:27–8.6.

(c) This section does not limit the Department in establishing construction, installation, maintenance, or operating standards, nor in reviewing any application.

(d) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds for an appeal of the Department's decision on the application.

(e) If the Department determines that the applicant has acted inconsistently with applicable law by any action taken under this section, the applicant shall be subject to penalties if the action has caused emissions of any air contaminant.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

7:27–8.25 Special provisions for pollution control equipment or pollution prevention process modifications

(a) As provided at N.J.S.A. 26:2C–9.3 and 9.4, a private entity, as defined at N.J.A.C. 7:27–8.1, may proceed with the following activities while an application covering those activities is being reviewed by the Department:

1. Construction, installation, reconstruction or operation of control apparatus serving an existing source; or

2. Implementation of a pollution prevention process modification, as defined at N.J.A.C. 7:27–8.1, involving one or more existing sources.

(b) This section does not authorize any activities which:

1. Are prohibited under the Federal Clean Air Act;

2. Shall result in increased emissions;

3. Shall result in emission of an air contaminant not previously emitted; or

4. If the source is covered by a permit or certificate, shall result in air contaminant emissions which are not authorized under that permit or certificate.

(c) To act under the authority of this section, the applicant shall:

1. Have submitted a complete application covering activities listed at (b) above; and

2. Notify the Department in writing seven days prior to beginning the activities listed in (b) above. This notice shall be submitted in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27–8.20, and shall include the fee for a seven day notice set forth at N.J.A.C. 7:27–8.6.

(d) An applicant who acts under the authority of this section assumes all risks for the actions. If an applicant pursues activities under this section, and the Department does not approve the activities as proposed in the application, the applicant may be required to reverse the activities, and may be liable for penalties for the activities under (h) or (i) below.

(e) This section does not limit the Department in establishing standards, nor in reviewing any application.

(f) Costs incurred by the applicant in connection with actions taken under this section may not be used as grounds for an appeal of the Department's decision on the application.

(g) If the Department determines that actions taken at risk by the applicant under this section are inconsistent with applicable law, the Department and the applicant shall enter into an agreement. The agreement shall contain a date by which the applicant shall comply with the law. If the Department and the applicant fail to enter into an agreement, the Department may issue a schedule setting forth a date by which the applicant shall comply.

(h) If the applicant fails to comply with the schedule set under (g) above, the applicant shall be subject to penalties if the applicant's actions have caused:

1. Emission of an air contaminant not previously being emitted;

2. Emission of an air contaminant not authorized by an existing permit; or

3. An exceedance of an emission limit in an existing permit.

New Rule, R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).

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

Any person who is subject to 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. 26:2C–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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Changed N.J.S.A. reference.

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 Special facility-wide permit provisions

(a) The holder of a facility-wide permit, as defined at N.J.A.C. 7:27–8.1, is not required to obtain a permit and certificate under this subchapter for a planned action or change if:

1. The production process affected by the action or change is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq.;

2. The planned action or change 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 planned action or change 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) An action or change for which no permit is required under (a) above shall be reported to the Department within 120 days after the start of the action or change, as an amendment of the facility-wide permit. A copy of the Pollution Prevention Plan Modification or Pollution Prevention Assessment shall be submitted with the amendment to the facility-wide permit.

(c) If the holder of a facility-wide permit makes a change which does not meet the criteria at (a) above, the change would require a permit, or shall be processed through any applicable procedures for changes to existing permits at N.J.A.C. 7:27–8.17 through 8.22.

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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote the section.

6. An application for a permit 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. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27–8, an operating permit under N.J.A.C. 7:27–22, or a facility-wide permit as defined at N.J.A.C. 7:1K–1.5; 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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
Rewrote (d)6.

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.

(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.

(c) The provisions of N.J.A.C. 7:27–9.2(a) and (b) shall not apply to number 2 grade fuel oil should the Commissioner at any time between February 16, 2000 and April 16, 2000 make the determination that it is necessary, in order to protect the health and welfare of the residents of New Jersey, to waive those requirements.

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).
Emergency amendment, R.2000 d.102, effective February 16, 2000 (to expire April 16, 2000).
See: 32 N.J.R. 836(a).
Added (c).

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:

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

where:

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 a permit for the conversion to coal or other solid fuel. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27–8, an operating permit under N.J.A.C. 7:27–22, or a facility-wide permit as defined at N.J.A.C. 7:1K–1.5; 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.

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:

1. Calculate the emission factor for each applicable VOC transferred from the storage tank to regulated delivery vessels 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 (g)1 above, by the annual quantity (in gallons) of each applicable VOC transferred into delivery vessels at the regulated facility. Sum the calculated annual emission rates for each applicable VOC transferred. For a facility 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 facility 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 uncontrolled emission rate resulting from the total transfers from the storage tank to 2,000 pounds. If the calculated annual emission rate is less than 2,000 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 (f) above must be used.

(h) The provisions of (f) above shall not apply to:

1. A delivery vessel used for less than 30 days for the purpose of holding VOC from a storage tank during a period in which the storage tank is undergoing repair or maintenance;

2. A delivery vessel used in groundwater remediation operations for temporary storage and handling of VOC contaminated groundwater and recovered VOC; and

3. Vacuum trucks used for equipment clean-out or other clean-up operations.

(i) On and after May 31, 1995, no person shall cause, suffer, allow, or permit any tank truck having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain applicable VOC unless such tank truck is certified to comply with DOT regulations concerning inspection and pressure testing, codified at 40 CFR 180.407. A record of DOT certification shall be kept with the delivery vessel at all times.

(j) On and after May 31, 1995, no person shall cause, suffer, allow, or permit a transfer to or from a tank truck of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if the tank truck being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the tank truck being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge. This provision shall not apply to the loading or unloading of applicable VOC that is typically stored or transferred at elevated pressure, or under vacuum, into or from a delivery vessel that is designed for pressure or vacuum service.

(k) No person shall cause, suffer, allow, or permit any transfer of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if any components of the delivery vessel designed for preventing the release of applicable VOC vapors are not installed and operating as designed. Any loading or unloading transfer operations must cease immediately if:

1. On and after May 31, 1995, the delivery vessel 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 within 1.0 inch (2.54 centimeters) of the source; or

ii. Is a liquid leak; or

2. The transfer results or would result in a liquid leak of applicable VOC.

(*l*) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or storage of any applicable VOC in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel, while containing any applicable VOC, is vapor-tight at all times, except during:

1. Sample collection;

2. Emergency conditions;

3. Gauging; or

4. Venting through a vapor control apparatus approved by the Department.

(m) After a leaking tank truck, subject to the provisions of (i), (k) or (*l*) above is repaired, the owner or operator shall test the delivery vessel before it is loaded with applicable VOC. A record of the repair and test shall be maintained with the delivery vessel for one year.

(n) Any owner or operator of a facility with transfer operations subject to the provisions of (c) or (f) above shall comply with the following schedule:

1. By October 26, 1994, submit to the Chief, Bureau of New Source Review, Environmental Regulation Pro-

gram, Department of Environmental Protection, CN 401, Trenton, New Jersey 08625–0401, a complete application for each permit required, pursuant to N.J.A.C. 7:27–8, to achieve compliance with (c) or (f) above; and

2. By May 31, 1995, achieve compliance with (c) or (f) above and maintain compliance with this section thereafter.

(*o*) The owner or operator of any VOC loading facility subject to (f) above shall maintain the following records:

1. On a daily basis, record the name and total quantity of each applicable VOC, 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 record the date of carbon bed the replacement and, on a daily basis, check the functioning of the automatic system for switching between carbon beds; and

3. Upon request of the Department and at a frequency specified by the Department, record any other operating parameter relevant to the prevention or control of the emission of air contaminants from the facility.

(p) Upon the request of the Department, any owner or operator utilizing a vapor control system pursuant to (c)1 or (f) above shall demonstrate to the satisfaction of the Department achievement of the required control efficiency through testing performed when the ambient air temperature is 70 degrees Fahrenheit (21 degrees Celsius) or greater, unless the Department, in writing, approves the performance tests at a lower ambient temperature.

(q) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (n)1 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 (n)2 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

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).
Prior text at section, "Open top tanks and surface cleaners", recodified as 7:27–16.6.
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).

7:27–16.5 Marine tank vessel loading and ballasting operations

(a) The provisions of this section apply to the following marine tank vessel operations conducted at marine terminals in New Jersey:

1. The transfer of applicable VOC, including gasoline, as cargo into a marine tank vessel; and

2. Ballasting conducted in a marine tank vessel, unless the ballasting is conducted in dedicated ballast tanks that never contain anything other than water.

(b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September 15, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.

(c) The owner or operator of any marine terminal that meets the following criteria shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from applicable VOC transfers at the facility by no less than 95 percent by weight, or shall, by October 26, 1994, submit to the Department a written alternative emission control plan in accordance with N.J.A.C. 7:27–16.17 that shall be implemented in accordance with a schedule in the plan approved in accordance with N.J.A.C. 7:27–16.17:

1. The marine terminal is a major VOC facility;

2. A transfer of some applicable VOC that is not gasoline is conducted at the marine terminal; and

3. Any of the source operations at the terminal which include the transfer of some applicable VOC that is not gasoline has the potential to emit 10 tons per year or more of VOC.

(d) Effective on July 26, 1994, the Department shall not approve an application for a permit for equipment or control apparatus, required pursuant to (b) or (c) above, unless:

1. The system has been designed to collect and control the emissions of applicable VOC resulting from ballasting; or

2. The potential to emit VOC from ballasting is limited to less than two pounds of VOC per 1,000 barrels of ballast transferred.

(e) Effective on July 26, 1994, if a marine tank vessel and marine terminal is equipped with a control apparatus, no person shall cause, suffer, allow, or permit ballasting to be conducted on a marine tank vessel at a marine terminal, unless:

1. The ballasting is conducted in dedicated ballast tanks that only use water;

2. The control apparatus is used during ballasting; or

3. The potential to emit VOC from ballasting is less than two pounds of VOC per 1,000 barrels of ballast transferred.

(f) Effective on July 26, 1994, no person subject to the provision of (b) above, and effective May 31, 1995, no person subject to (c) above, shall cause, suffer, allow, or permit any transfer of any applicable VOC, or ballasting if:

1. The delivery vessel being loaded, 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 source; or

ii. Is a liquid leak of applicable VOC;

2. Any component of the marine tank vessel or any control apparatus serving the source operation is not installed and operating as designed; or

3. The transfer results or would result in a liquid VOC spill.

(g) Monitoring for gaseous leaks of VOC shall be conducted according to EPA's Reference Method 21 (40 CFR–Part 60–Appendix A), incorporated herein by reference, or any other equivalent test method approved in advance in writing by the Department and acceptable to EPA.

(h) Any testing to determine VOC emissions during the transfer of VOC to a marine tank vessel, conducted in order to determine compliance with this section, shall be performed for at least 60 minutes during the transfer of the last 50 percent of total liquid cargo. For a transfer operation for which the transfer of the last 50 percent of the total liquid cargo is less than a 60 minute duration, the testing shall be performed during the transfer of the entire last 50 percent of the total liquid cargo.

(i) Any tests conducted pursuant to this section to determine emissions of VOC shall be carried out in accordance with:

1. New Jersey Air Test Method 3 (N.J.A.C. 7:27B–3);

2. EPA's Reference Method 25 or 25(a) (40 CFR–Part 60–Appendix A); or

3. Any other equivalent test method approved in advance in writing by the Department and acceptable to EPA.

(j) Effective on July 26, 1994, the owner or operator of a marine terminal subject to (b) or (c) above shall maintain at the marine terminal records sufficient to demonstrate compliance with this section. Any records required by this section shall be made available to the Department upon request and shall be maintained for five years. For each transfer of gasoline or other applicable VOC to the marine tank vessel and for performance of ballasting on a marine tank vessel at the marine terminal, the records shall include the following information:

1. The company name and address of the marine terminal;

2. The date;

3. The name and registry of the marine tank vessel;

4. For any transfer operation, the type of VOC and the quantity, in gallons or liters, loaded into the marine tank vessel;

5. The prior cargo carried by the marine tank vessel and the condition (that is, cleaned, crude oil washed, gas freed, etc.) of the cargo tanks on the marine tank vessel prior to their being loaded or ballasted; and

6. For ballasting, the amount of ballast water or other liquid added to ballast tanks which are unsegregated and which may contain VOC vapor.

(k) It is an affirmative defense to liability for a violation of any of the provisions of this section that compliance would have any of the following effects:

1. Require any act or omission that would be in violation of any statute or regulation over which the United States Coast Guard has jurisdiction; or

2. Prevent an act that was necessary to secure the safety of a vessel or the safety of the passengers or crew.

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).
Prior text at section, "Surface coating and graphic arts operations", recodified as 7:27–16.7.

7:27–16.6 Open top tanks and surface cleaners

(a) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated or heated open top tank unless such tank is covered by a lid which protects the VOC vapors from drafts and diffusion when the tank is not in active use.

(b) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than six square feet (0.56 square meters) but not more than 25 square feet (2.3 square meters) unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. Has a freeboard ratio of 0.5 or greater.

(c) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than 25 square feet (2.3 square inches) unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens.

(d) No person shall cause, suffer, allow, or permit the use of any VOC in a heated open top tank which is operated at a temperature lower than the boiling point of such VOC unless such tank:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any agitating system which causes splashing of the VOC;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens; and

5. Has a thermostat or approved equivalent which automatically maintains the VOC temperature below the boiling point.

(e) No person shall cause, suffer, allow, or permit the use of any VOC in an open top vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC;

5. Blocks drafts from contact with VOC vapors by:

i. Having a freeboard ratio of 0.75 or greater; or

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens;

6. Has a visible high-level vapor mark which shall not be exceeded by the VOC;

7. Is free from the influence of any local exhaust ventilation system unless such ventilation system collects at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

8. Is free from the influence of any positive pressure source located within 20 feet (6.1 meters) of the tank rim unless the cleaner is equipped with and operates a means of collecting at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

9. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid VOC bath;

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 each permit required. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27–8, an operating permit under N.J.A.C. 7:27–22, or a facility-wide permit as defined at N.J.A.C. 7:1K–1.5;

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 new permit required and for each change to an existing permit 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 any new preconstruction permit and certificate, operating permit, or facility-wide permit, or any change thereto required for the control apparatus, and has agreed to install and use all such control apparatus in accordance with the applicable permit and certificate;

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 any preconstruction permit and certificate, operating permit, or facility-wide permit, or change thereto, required for the alteration. Each 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. 7:27–1.32, 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
PO Box 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
PO Box 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.
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d)2, rewrote xi; in (e), substituted "new permit required and for each change to an existing permit" for "permit required under N.J.A.C. 7:27–8" in 3; in (*l*), rewrote 2; in (n), rewrote 2; and in (p), changed N.J.A.C. reference in the introductory paragraph.

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.

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
PO Box 417
Trenton, New Jersey 08625–0417
(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.

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" means one of the following changes to equipment or control apparatus, or to a source operation, for which a permit has been issued:

1. If the equipment, control apparatus, or source operation is subject to preconstruction permit requirements, a

change which requires a permit revision under N.J.A.C. 7:27–8.18; or

2. If the equipment, control apparatus, or source operation is at a facility for which an operating permit has been issued, a change which requires a minor modification or a significant modification of the permit under N.J.A.C. 7:27–22.23 or 24.

"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.

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. 7:27–8.12 or 22.35. 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. 7:27–8.12 or 22.35 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. 7:27–1.39, 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. 7:27–1.39, 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
PO Box 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
PO Box 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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (c) and (e), changed N.J.A.C. references.

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. 7:27–1.39.

(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. 7:27–1.39. 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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (i)5 and (j)1, changed N.J.A.C. references.

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.

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. 7:27–1.39.

(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 changes thereto, as are required under N.J.A.C. 7:27–8 or 22, N.J.A.C. 7:1K–1.5, 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 or 22, N.J.A.C. 7:1K–1.5, 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. 7:27–1.32, 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
PO Box 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.
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d)9, changed N.J.A.C. reference; in (j)2 and (k)2ii, inserted "or 22, N.J.A.C. 7:1K–1.5"; and in (m), changed N.J.A.C. reference in the introductory paragraph.

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
PO Box 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. 7:27–1.39; 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

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.

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).

7:27–19.20 Fuel switching

(a) The owner or operator of a combustion source included in a plan for fuel switching is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27–19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) A combustion source may be included in a fuel switching plan only if it will be deriving from a cleaner fuel a greater percentage of its total heat input than it derived in the base year.

(c) An owner or operator seeking approval of a plan for fuel switching shall submit an application to the Department by June 22, 1995, in accordance with N.J.A.C. 7:27–19.14(a), (b) and (c). In addition to the information required under N.J.A.C. 7:27–19.14(c), the owner or operator shall include in the application the following information regarding each combustion source that is to combust a cleaner fuel seasonally:

1. Information sufficient to identify the combustion source, including a brief description, (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its location, its permit number, its company stack designation, 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 the combustion source, expressed in million BTUs per hour;

3. The type of fuel or fuels combusted in the combustion source;

4. The maximum allowable NO_x emission rate for the combustion source, determined under (d) below, together with the calculations made to determine that rate;

5. The method to be used to measure the actual NO_x emission rate of each combustion source;

6. A statement that the owner or operator will operate each combustion source included in the plan in accordance with the requirements of (g) below;

7. The name and business telephone number of the individual responsible for recordkeeping and reporting required under N.J.A.C. 7:27–19.19; and

8. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the source operations and items of equipment subject to fuel switching will comply with the requirements of this section.

(d) The maximum daily and annual NO_x emission rate for a combustion source included in the fuel switching plan is determined as follows (except that for a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, only (d)1 through 3 below apply):

1. Establish the base year. The base year is calendar year 1990, unless the Department approves the use of calendar year 1991, 1992 or 1993 as the base year. The Department shall approve the use of 1991, 1992 or 1993 as the base year only if the owner or operator demonstrates that the alternative year is more representative of the normal operation of the combustion source;

2. For each fuel that the combustion source combusted during the base year (established under (d)1 above), determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the base year;

3. Determine the maximum allowable NO_x emissions rate (in lb/MMBTU) for the combustion of each fuel, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

4. For each fuel, multiply the heat input in the base year (determined under (d)2 above) by the maximum allowable emissions rate (determined under (d)3 above);

5. Add all of the amounts determined under (d)4 above;

6. Divide the total determined under (d)5 above by the sum of all of the heat inputs that the combustion source derived from the combustion of each fuel (determined under (d)2 above). The result is the maximum allowable NO_x emission rate, expressed in lb/MMBTU, provided, however, that the maximum allowable NO_x emission rate shall not be greater than the rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year;

7. The calculations under (d)4, 5 and 6 above can be expressed in the following equation:

$$M = \frac{(HI_1 L_1) + (HI_2 \times L_2) + \ldots + (HI_N \times L_N)}{(HI_1 + HI_2 + \ldots + HI_N)}$$

where:

i. M is the maximum allowable NO_x emission rate, in lb/MMBTU;

ii. HI_1 is the heat input that the combustion source derived from the combustion of Fuel 1 during the base year, expressed in MMBTU;

iii. L_1 is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 1, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

iv. HI_2 is the heat input that the combustion source derived from the combustion of Fuel 2 during the base year, expressed in MMBTU;

v. L_2 is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel 2, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable;

vi. N is number of fuels combusted during the base year;

vii. HI_N is the heat input that the combustion source derived from the combustion of Fuel N during the base year, expressed in MMBTU; and

viii. L_N is the maximum allowable emissions rate (in lb/MMBTU) for the combustion of Fuel N, under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10, as applicable.

(e) The Department shall approve a plan for fuel switching only if the application satisfies all requirements of (c) above and N.J.A.C. 7:27–19.14. A plan for fuel switching shall be deemed to meet these requirements if it provides for a combustion source to attain compliance with the emission limits under (g)3, 4 and 5 below partly through combustion of cleaner fuel and partly through the use of other NO_x control measures, and satisfies all other requirements of (c) above and N.J.A.C. 7:27–19.14.

(f) Any owner or operator seeking to comply with this subchapter by fuel switching in accordance with this section shall obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27–19.14 before May 1, 1995, and maintain that approval in effect.

(g) Beginning in calendar year 1995, the owner or operator shall operate each combustion source included in the plan in compliance with the following:

1. All conditions of the Department's written approval of the fuel switching plan shall be met;

2. From May 1 through September 15 of each year, the combustion source shall combust the cleaner fuel exclusively, or derive a higher percentage of its total heat input from cleaner fuel than the percentage it derived from May 1 through September 15 of the base year;

3. During each calendar day from May 1 through September 15 of each year, the combustion source shall emit NO_x at an average rate no higher than the maximum allowable NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, the maximum allowable NO_x emission rate shall be 1.0 lb/MMBTU;

4. During the 30–day period ending on September 16 of each year, and each 30–day period ending on each subsequent day thereafter until April 30 of the following year, the combustion source shall emit NO_x at an average rate no higher than the rate under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would apply if the combustion source were combusting the primary fuel that it had used in the base year; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit NO_x at a rate no higher than 1.5 lb/MMBTU; and

5. During each calendar year, the combustion source shall emit NO_x at an average rate no higher than the maximum NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method shall emit NO_x at a rate no higher than 1.5 lb/MMBTU. Compliance with this requirement shall be determined based on averaging over each calendar year.

(h) The owner or operator shall determine the NO_x emissions from each combustion source included in an approved fuel switching plan in accordance with N.J.A.C. 7:27–19.15(a).

(i) The owner or operator shall demonstrate compliance with this section as follows:

1. Each calendar day from May 1 through September 15 of each year, the owner or operator shall determine whether each combustion source included in the plan is in compliance with the applicable daily NO_x emission limit under (g)3 above. The owner or operator shall perform the calculations necessary to verify compliance and make a record of them within three working days after the date that is the subject of the calculation;

2. For the 30–day period ending on September 16, and for each 30–day period ending on each subsequent day until April 30 of the following year, the owner and operator shall determine whether each combustion source included in the plan is in compliance with the applicable 30–day NO_x emission limit under (g)4 above; and

3. By January 15 of each year, the owner or operator shall determine whether the total actual NO_x emissions from each combustion source included in the plan (determined under (k) below) complied with the limit on annual NO_x emissions (determined under (j) below) during the preceding calendar year.

(j) The limit on annual NO_x emissions is calculated as follows:

1. For each fuel that the combustion source combusted during the year, determine the heat input (in MMBTU) that the combustion source derived from the combustion of that fuel during the year;

2. Add all of the amounts determined under (j)1 above;

3. Multiply the sum determined under (j)2 above by the maximum NO_x emissions rate determined under (d) above. The result is the limit on annual NO_x emissions, expressed in pounds;

4. The calculations under (j)2 and 3 above can be expressed in the following equation:

$$L = M \times (AHI_1 + AHI_2 + \ldots + AHI_N)$$

where:

i. L is the limit on annual NO_x emissions, in pounds;

ii. M is the maximum allowable emissions rate determined under (d) above;

iii. AHI_1 is the heat input that the combustion source derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iv. AHI_2 is the heat input that the combustion source derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. N is number of fuels combusted during the year; and

vi. AHI_N is the heat input that the combustion source derived from the combustion of Fuel N during the year, expressed in MMBTU.

(k) The actual annual NO_x emissions from the combustion source are calculated as follows:

1. Determine the heat input (expressed in MMBTU) that the combustion source actually derived from each fuel it combusted during the year;

2. Determine the average rate (in lb/MMBTU) at which the combustion source actually emitted NO_x when combusting each fuel listed in 1 above, in accordance with N.J.A.C. 7:27–19.15(a);

3. For each fuel combusted during the year, multiply the heat input (determined under (k)1 above) by the average rate of NO_x emissions (determined under (k)2 above);

4. Add all of the amounts determined under (k)3 above;

5. The calculations under (k)3 and 4 above can be expressed in the following equation:

$$AE = (AHI_1 \times AR_1) + (AHI_2 \times AR_2) + \ldots + (AHI_N \times AR_N)$$

where:

i. AE is the actual NO_x emissions during the year from the combustion source, expressed in pounds;

ii. AHI_1 is the heat input that the combustion source actually derived from the combustion of Fuel 1 during the year, expressed in MMBTU;

iii. AR_1 is the average rate at which the combustion source actually emitted NO_x when combusting Fuel 1 during the year, expressed in lb/MMBTU;

iv. AHI_2 is the heat input that the combustion source actually derived from the combustion of Fuel 2 during the year, expressed in MMBTU;

v. AR_2 is the average rate at which the combustion source actually emitted NO_x when combusting Fuel 2 during the year, expressed in lb/MMBTU;

vi. N is number of fuels that the combustion source actually combusted;

vii. AHI_N is the heat input that the combustion source actually derived from the combustion of Fuel N during the year, expressed in MMBTU; and

viii. AR_N is the average rate at which the combustion source actually emitted NO_x when combusting Fuel N during the year, expressed in lb/MMBTU.

(*l*) For each combustion source included in the approved plan, the owner or operator shall comply with the recordkeeping and reporting requirements of N.J.A.C. 7:27–19.19.

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).

7:27–19.21 Phased compliance—repowering

(a) The owner or operator of a combustion source included in a repowering plan is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27–19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with emission limit under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By June 22, 1995, an owner or operator seeking approval of a repowering plan shall submit to the Department an application for approval of the repowering plan pursuant to N.J.A.C. 7:27–19.14, including a repowering plan pursuant to (c) below. If an owner or operator fails to submit the application by June 22, 1995, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, whether the owner or operator advised the Department before the application due date that a late application would be submitted, and the extent of the emission reductions promised in the late application. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source is subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the repowering plan with respect to each combustion source included in the plan:

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. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submitting applications for all necessary permits and certificates if installing a new combustion source;

ii. Obtaining all necessary permits and certificates if installing a new combustion source;

iii. Awarding contracts to repower the source including contracts for the purchase of heat or power from a new combustion source or placing orders for the purchase of component parts and/or equipment necessary to repower the source;

iv. Initiating construction and/or installation of the replacement unit if installing a new combustion source; and

v. Completing the repowering.

3. Specific procedures and schedules for implementing interim measures for control of NO_x emissions for the combustion source during the interim period;

4. A list of all NO_x control technologies available for use with the combustion source;

5. An analysis of the technological feasibility of installing and operating each NO_x emission control technology identified in 4 above for the interim period;

6. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

7. 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. If a control technology installed before the combustion source is repowered cannot be used after repowering, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

8. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)6 above and the estimated emission reductions under (c)7 above;

9. The NO_x control measures that the owner or operator proposes to employ during the interim period;

10. The proposed interim NO_x emission limit with which the source will comply during the interim period;

11. The method to be used to measure the actual NO_x emission rate of the combustion source;

12. The name and business telephone number of the person responsible for recordkeeping and reporting under N.J.A.C. 7:27–19.19 and under (e)8 below;

13. The location of the proposed replacement unit; and

14. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the repowering plan will comply with the requirements of this section.

(d) The Department shall approve a repowering 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 without limitation the requirement that the proposed repowering plan consider all control technologies available for the control of NO_x emissions from each type of combustion source included in the plan during the interim period;

2. For each combustion source included in the plan, the replacement unit will incorporate advances in the art of air pollution control for the kind and amount of air contaminant emitted;

3. The repowering will improve the efficiency with which each combustion source included in the plan combusts fuel and/or generates power;

4. The completion date listed in (c)2v above is no later than May 1, 1999;

5. For any control technologies described in (c)4 above that the owner or operator does not propose to use on the combustion source, 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 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 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).

6. For each combustion source included in the plan, the interim emission limit proposed under (c)10 above is the lowest rate that can practicably be achieved at a cost within the limits described in (d)5iii and iv above;

7. For each combustion source included in the plan, the cost of achieving an additional emission reduction beyond the interim emission limit proposed under (c)10 above would be disproportionate to the size and environmental impact of that additional emission reduction; and

8. 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 a repowering plan shall:

1. Beginning on May 31, 1995, operate all combustion sources included in the approved repowering 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. Repower 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 repowering 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 repowering is completed;

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 repowering plan for completion of a milestone listed in (c)2 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 repowered source, as required in the preconstruction permit for the replacement equipment;

9. If the plan includes a utility boiler, cause the repowered utility boiler to emit NO_x at a rate no higher than the applicable maximum allowable NO_x listed in Table 6 below (provided however, that the NO_x emission limits in Table 6 shall not be construed to limit the owner or operator's obligations under (e)8 above); and

10. If repowering of any combustion source included in the plan is not completed by May 1, 1999, cease operating the combustion source to be repowered by May 1, 1999.

TABLE 6

Maximum Allowable NO_x Emission Rates for Utility Boilers Which Have Been Repowered
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	0.2	0.2	0.2
Coal—Dry Bottom	0.2	0.2	N/A
Oil and/or Gas	0.1	0.1	0.1
Gas Only	0.1	0.1	0.1

(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 repowering 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 repowering plan (and agreement to repower) 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, it shall be Federally enforceable. Plans listed under (g) below shall be Federally enforceable upon the issuance of the Department's approval.

(g) A repowering plan (and agreement to repower) 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, using natural gas as the "cleaner fuel"; or

2. The use of selective non-catalytic reduction from May 1 through September 15 of each year.

(h) Before the Department approves a repowering 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)2 above by specified dates;

ii. Ceasing to operate a combustion source if repowering is not completed by a date specified for that source;

iii. Implementing interim measures to control NO_x emissions from each combustion source during the interim period;

iv. 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;

v. Using a specified method to measure the actual NO_x emission rate of the combustion source; and

vi. 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 repowering plan if the owner or operator materially fails to complete the repowering or any other milestone by the date specified in the 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).
Administrative correction added (f)3.
See: 27 N.J.R. 3157(a).

7:27–19.22 Phased compliance—impracticability of full compliance by May 31, 1995

(a) The owner or operator of a combustion source included in a phased compliance plan is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27–19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By June 22, 1995, an owner or operator seeking approval of a phased compliance plan shall submit to the Department an application for approval of the phased compliance plan pursuant to N.J.A.C. 7:27–19.14. If an owner or operator fails to submit the application by June 22, 1995, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, and whether the owner or operator advised the Department before the application due date that a late application would be submitted. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source is subject in the absence of an approved plan. In the application, the owner or operator shall include the following information in addition to the information required under N.J.A.C. 7:27–19.14:

1. The phased compliance plan described in (c) below;

2. A description of the steps that the owner or operator has taken to cause each combustion source included in the plan to attain compliance with the applicable NO_x emission limit under this subchapter; and

3. For each combustion source included in the plan, a detailed explanation of the reasons why the owner or operator believes that compliance with the applicable NO_x emission limit by May 31, 1995 is impracticable.

(c) The owner or operator shall include the following information in the phased compliance plan with respect to each combustion source included in the plan:

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. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submit applications for all necessary permits and certificates;

ii. Obtain all necessary permits and certificates;

iii. Award contracts for the implementation of control measures or place orders for the purchase of component parts, equipment and/or control apparatus necessary to attain compliance with the applicable NO_x emission limit under this subchapter;

iv. Initiate construction and/or installation of the component parts, equipment and/or control apparatus necessary to attain compliance with the applicable NO_x emission limit under this subchapter; and

v. Attain full compliance with the applicable NO_x emission limit under this subchapter;

3. The NO_x control measures or technology that the owner or operator proposes to employ during the interim period; and

4. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the phased compliance plan will comply with the requirements of this section.

(d) The Department shall approve a phased compliance plan only if the following requirements are satisfied with respect to each combustion source included in the plan:

1. The application satisfies all the requirements of N.J.A.C. 7:27–19.14 and (b) above;

2. The information submitted under (b)1ii above establishes that the owner or operator has made a good faith effort to cause the combustion source to attain compliance with the applicable NO_x emission limit under this subchapter;

3. The information submitted under (b)1iii above, evaluated in light of the criteria set forth in (e) below, establishes that it is impracticable for the combustion source to attain compliance with the applicable NO_x emission limit under this subchapter by May 31, 1995; and

4. The interim period is less than 12 months.

(e) In determining whether compliance with the applicable NO_x emission limit under this subchapter by May 31, 1995 is impracticable, the Department shall apply the following criteria:

1. The amount of time needed to obtain all permits and certificates necessary to attain compliance, following the submission of an administratively complete application;

2. The amount of time needed to obtain all component parts and/or equipment necessary to obtain compliance, following the placement of orders for such parts and/or equipment. The estimate of time may reflect shortages in the supply of such parts and/or equipment;

3. The amount of time needed to complete construction and/or installation of the component parts and/or equipment necessary to attain compliance, following the initiation of construction and/or installation; and

4. The nature, extent and probability of any harm to public safety or welfare that could result from accelerating construction and/or installation in order to attain compliance by May 31, 1995. For example, if it were probable that an electric generating utility could not cause all of its electric generating units to attain compliance by that date without subjecting a substantial number of customers to voltage reductions and/or interruptions in electric service, that fact would be relevant in establishing impracticability.

(f) On the date that the approved compliance plan provides for a combustion source to attain full compliance with the applicable NO_x emission limit under this subchapter, the Department's approval of the plan shall expire. Upon expiration of the Department's approval, the combustion source shall be subject to all applicable requirements of this subchapter, including the NO_x emission limits that would have applied to the source in the absence of an approved plan.

(g) An owner or operator who has obtained the Department's approval of a phased compliance plan shall:

1. Operate all combustion sources included in the plan in a manner that complies with the plan and with all conditions of the Department's approval;

2. Meet all milestones in the approved phased compliance plan;

3. Within 15 days after the date of each milestone in the approved phased compliance plan, advise the Department in writing whether the owner or operator has met the milestone; and

4. During the interim period, control NO_x emissions from the combustion source as follows:

i. By adjusting the combustion process in accordance with N.J.A.C. 7:27–19.16, if the source's air-to-fuel ratio can be adjusted in a manner that reduces NO_x emissions; or

ii. By seasonally combusting natural gas in accordance with N.J.A.C. 7:27–19.20, implementing selective non-catalytic reduction, or implementing other measures that the Department determines are appropriate in light of the costs involved and the total quantity of NO_x reductions that will be achieved until the full compliance date listed in (c)2v above.

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).

7:27–19.23 Phased compliance—use of innovative control technology

(a) The owner or operator of a combustion source included in a phased compliance plan is authorized to comply with the plan if the Department approves the plan pursuant to this section and N.J.A.C. 7:27–19.14. The owner or operator's compliance with the plan is in lieu of causing the combustion source to comply with the emission limit under N.J.A.C. 7:27–19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 that would otherwise apply to the combustion source.

(b) By June 22, 1995, an owner or operator seeking approval of an innovative control technology plan shall submit to the Department an application pursuant to N.J.A.C. 7:27–19.14 and the plan itself pursuant to (c) below. If an owner or operator fails to submit the application by June 22, 1995, the Department may reject the application. The Department may elect to process a late application, based on how late the application is, the nature and extent of the owner or operator's efforts to submit the application on time, whether the owner or operator advised the Department before the application due date that a late application would be submitted, and the extent of the emission reductions promised in the late application. If the Department elects to process a late application, the pendency of the application shall not be a defense to a violation of a NO_x emission limit to which the source would be subject in the absence of an approved plan.

(c) The owner or operator shall include the following information in the innovative control technology plan with respect to each combustion source included in the plan:

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. A description of the NO_x control measures that the owner or operator proposes to employ as innovative control technology;

3. The rate of NO_x emissions that the owner or operator expects that the source will attain in employing the proposed innovative control technology, and the basis for that expectation;

4. Information establishing that the proposed innovative control technology is technically sound and sufficiently developed to be implemented by May 1, 1999;

5. A proposed schedule setting dates by which the owner or operator will complete the following milestones for the combustion source:

i. Submitting applications for all necessary permits and certificates;

ii. Obtaining all necessary permits and certificates;

iii. Awarding contracts for the implementation of the innovative control technology, or placing orders for the purchase of any component parts, equipment and/or control apparatus associated with the innovative control technology;

iv. Awarding contracts and initiating implementation of the innovative control technology (including any construction and/or installation, if applicable); and

v. Completing the implementation of the innovative control technology.

6. Specific procedures and schedules for implementing interim measures for control of NO_x emissions for the combustion source during the interim period;

7. A list of all NO_x control technologies available for interim use with the combustion source during the interim period;

8. An analysis of the technological feasibility of installing and operating each NO_x emission control technology identified in (c)7 above for the interim period;

9. For each control technology that is technologically feasible to install and operate, an estimate of the cost of installation and operation;

10. 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. If a control technology installed before the innovative control technology is implemented cannot be used after that time, the owner or operator may limit the estimate of emission reductions to those that will be attained during the interim period;

11. An analysis of the cost-effectiveness of each control technology, based on the costs of installation and operation under (c)9 above and the estimated emission reductions under (c)10 above;

12. The NO_x control measures that the owner or operator proposes to employ during the interim period;

13. The proposed interim NO_x emission limit with which the source will comply during the interim period;

14. The method to be used to measure the actual NO_x emission rate of the combustion source;

15. The name and business telephone number of the person responsible for recordkeeping and reporting under N.J.A.C. 7:27–19.19 and under (e)8 below; and

16. Any other information that the Department requests, which is reasonably necessary to enable it to determine whether the operation of combustion sources included in the plan will comply with the requirements of this section.

(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. 7:27–1.39. 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:

$$E = (ER\text{-}M) \times H$$

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).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (b), changed N.J.A.C. reference.

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. USED OIL COMBUSTION

Authority

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

Source and Effective Date

R.1999 d.428, effective December 6, 1999 (operative January 8, 2000).
See: 30 N.J.R. 4003(a), 31 N.J.R. 4016(a).

7:27–20.1 Definitions

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

"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 ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

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

"Ash" means the residue remaining after the burning of a material as tested according to ASTM Standard Test Method for Ash from Petroleum Products by ASTM D482–91, incorporated herein by reference. This specification can be obtained from the ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"Brake fluid" means oil drained from the braking system of a conveyance.

"Combustion unit" means a unit into which fuel is charged and heated to the point at which oxidation occurs and energy is generated.

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

"Crankcase oil" means oil drained from the crankcase of a conveyance.

"Do-it-yourselfer used oil collection center" means any site or facility that accepts and/or aggregates and stores used oil collected only from household do-it-yourselfer used oil generators.

"Energy recovery" means the use of heat from combustion for a useful purpose, such as the heating of air or water for space heating or wash water.

"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 P.L. 1954, c.212 (N.J.S.A. 26:2C–1 et seq.) or any codes, rules, or regulations adopted pursuant thereto.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Any plastics grinding equipment; and

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

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

"CFR" means the United States Code of Federal Regulations.

"Chemical Abstract Service number" or "CAS number" means a number assigned to a chemical by the American Chemical Society's Chemical Abstract Service Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"DOT" means the New Jersey Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

"Exempt activity" means one of the following:

1. Source operations which have no potential for emitting any air contaminant, including but not limited to:

i. Stationary storage tanks which are used for the storage of water or distillates of air; and

ii. Enclosed stationary material handling equipment using pneumatic, bucket or belt conveying systems from which no emissions of air contaminants occur;

2. Any of the following activities, if the activity supports the one or more production processes of the facility, and does not itself constitute a facility production process or a part thereof:

i. Office activities and the equipment and implements used therein, such as typewriters, printers, and pens;

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

iii. Bathroom and locker room ventilation and maintenance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. A fuel cell system that uses hydrogen without a fuel processor, or a fuel cell system that uses a natural gas fuel processor and that has a power output no greater than 500 kilowatts.

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

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

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

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

1. Any standard of performance for new stationary sources (NSPS) promulgated at 40 CFR Part 60, or promulgated under 42 U.S.C. § 7411;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR Part 61, 40 CFR Part 63, or promulgated under 42 U.S.C. § 7412;

3. Any standard or other requirement provided for in a SIP that has been approved by EPA, or promulgated through rulemaking by EPA; or

4. Any permit or order issued pursuant to requirements established at 40 CFR 51, Subpart I (including any preconstruction permit and certificate issued pursuant to N.J.A.C. 7:27–8 or any operating permit issued pursuant to N.J.A.C. 7:27–22); 40 CFR 52.21; 40 CFR Part 70; 40 CFR Part 71; or 40 CFR Part 72.

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

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

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

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

"Fuel cell system" means an electrochemical device that converts the chemical energy in its fuel directly into electricity and heat. This term also includes any associated fuel processor, such as a reformer, that produces the fuel.

"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 rate 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.

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

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

"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 actual

emissions of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted. This term shall not include normal repair and maintenance. A modification may be incorporated into an operating permit through a significant modification, a minor modification, or a seven-day-notice change.

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

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

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

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

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

"Nonattainment area" means any area of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds a NAAQS or NJAAQS; or

2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Process unit" means equipment assembled to produce intermediate or final products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The storage and transfer of product or raw materials to and from the process unit shall be considered separate from the process unit for the purposes of making reconstruction determinations. Product recovery equipment shall be 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 the process unit, or the replacement of part(s) of control apparatus, if the fixed capital cost of replacing the part(s) exceeds both of the following amounts:

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

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

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

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

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

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

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

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

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

"Responsible official" has the meaning defined for this term at N.J.A.C. 7:27–1.4.

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

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

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

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

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

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

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

1. Equipment used in a manufacturing process involving a surface coating operation or graphic arts operation including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

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

3. All heated open top surface cleaners;

4. All conveyorized surface cleaners;

5. Equipment, in addition to that set forth in paragraph 2, 3, and 4 above, used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of any air contaminant occur from a tank or vessel, the capacity of which is in excess of 100 gallons;

6. Equipment, used in a process, other than as set forth in paragraphs 1, 2, 3, 4, and 5 above, from which direct or indirect emissions of any air contaminant occur and in which the combined weight of all raw materials, excluding air and water introduced into any one source operation is in excess of 50 pounds in any one hour;

7. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air, not including a storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sulfur dioxide" or "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 emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term excludes those compounds which EPA has excluded

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

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

chlorodifluoromethane (HCFC–22)

trifluoromethane (HFC–23)

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

chloropentafluoroethane (CFC–115)

2,2–dichloro–1,1,1–trifluororethane (HCFC–123)

1,1,1,2–tetrafluoroethane (HFC–134a)

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

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1–trifluoroethane (HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC–32)

ethylfluoride (HFC–161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC–31)

1–chloro–1–fluoroethane (HCFC–151a)

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

1,1,1,2,2,3,3,4,4–nonafluoro–4–methoxy-butane ($C_4F_9OCH_3$)

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

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

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

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

Administrative correction
See: 27 N.J.R. 1406(a)
Amended by R.1995 d.492, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 22(b), 27 N.J.R. 3472(a).
Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In "Federally enforceable", inserted a reference to certificates in 4; in "Modify" or "modification", inserted "of actual emissions" following "amount" in the first sentence; and in "Reconstruct" or "reconstruction", inserted "part(s) of" preceding "control" in the introductory paragraph, and rewrote 1.
Administrative change.
See: 31 N.J.R. 639(b).
Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).
See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).
In "Exempt activity", added 8; inserted "Fuel cell system"; and in "Insignificant source operation", substituted "rate" for "rather" following "production".

7:27–22.2 Applicability

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

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

i. Ten tons per year of any HAP;

ii. Twenty-five tons per year of any combination of HAPs;

iii. Such lesser quantity of any HAP as the EPA may establish by rule, pursuant to 42 USC 7412(a)(1), as the threshold amount for a major HAP facility.

iv. Such quantity of any radionuclides as the EPA may establish by rule.

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

Table 1

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

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

i. Coal cleaning plants (with thermal dryers);

ii. Kraft pulp mills;

iii. Portland cement plants;

iv. Primary zinc smelters;

v. Iron and steel mills;

vi. Primary aluminum ore reduction plants;

vii. Primary copper smelters;

viii. Municipal incinerators capable of charging more than 250 tons of refuse per day;

ix. Hydrofluoric, sulfuric, or nitric acid plants;

x. Petroleum refineries;

xi. Lime plants;

xii. Phosphate rock processing plants;

xiii. Coke oven batteries;

xiv. Sulfur recovery plants;

xv. Carbon black plants (furnace process);

xvi. Primary lead smelters;

xvii. Fuel conversion plant;

xviii. Sintering plants;

xix. Secondary metal production plants;

xx. Chemical process plants;

xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

xxiii. Taconite ore processing plants;

xxiv. Glass fiber processing plants;

xxv. Charcoal production plants;

xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).
See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).
In (b), substituted "promulgates rules" for "completes rulemaking" following "EPA".

7:27–22.3 General provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The Department may terminate an operating permit upon request of the permittee if the Department determines that the facility is no longer subject to operating permit requirements pursuant to N.J.A.C. 7:27–22.2.

(w) Except as provided in the permit shield provisions at N.J.A.C. 7:27–22.17, an operating permit does not relieve any person from the obligation to comply with all applicable provisions of this chapter, including preconstruction requirements under this subchapter, to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, and local laws, rules or regulations.

(x) Notwithstanding the other provisions of this section, if any of the acid deposition control provisions of N.J.A.C. 7:27–22.29 conflicts with any other provision of the subchapter, the requirements of N.J.A.C. 7:27–22.29 shall prevail for an affected Title IV facility.

(y) The owner or operator of any facility which contains equipment or control apparatus that is subject to preconstruction permit and operating certificate requirements under N.J.A.C. 7:27–8 shall continue to obtain, maintain, and renew 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.

(z) For a facility with an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq., the facility-wide permit shall constitute the operating permit under N.J.A.C. 7:27–22 if:

1. The air pollution control portion of the facility-wide permit meets the requirements of N.J.A.C. 7:27–22 and EPA approves the Department's request to allow a facility-wide permit to constitute a facility's operating permit; and

2. The facility-wide permit was issued after the date of such EPA approval.

(aa) The provisions of N.J.A.C. 7:27–22.20, 22.22, 22.23, and 22.24, concerning modifications to operating permits, shall not apply to repair or maintenance of a significant source operation.

(bb) This subchapter shall not preclude the owner or operator of a facility from voluntarily treating an insignificant source operation as a significant source operation for the purposes of obtaining or modifying an operating permit. Treating an insignificant source operation in such a manner shall subject it to all of the requirements in this subchapter which apply to a significant source operation.

(cc) The Department shall deny an application for an initial operating permit, minor modification, significant modification, or renewal, if approval of the application would authorize a violation of any applicable requirement, or a contravention of other criteria established by the Department by rule or pursuant to technical manuals published with public input, to protect human health and welfare and the environment, unless the Department simultaneously approves a compliance schedule to achieve compliance.

(dd) The Department will deny an application for a minor modification or significant modification of an operating permit that constitutes construction, reconstruction, or modification unless the applicant shows, to the satisfaction of the Department, that the significant source operation covered by the proposed permit provisions incorporates advances in the art of air pollution control pursuant to N.J.A.C. 7:27–22.35, Advances in the art of air pollution control.

(ee) No person shall carry out, or allow to be carried out, any change designated in this subchapter as a minor modification or significant modification to any source operation unless the changed source operation meets the requirements of N.J.A.C. 7:27–22.35, Advances in the Art of Air Pollution Control.

(ff) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, 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.

(gg) The Department may deny an application for an initial operating permit, minor modification, significant modification, or renewal, if the applicant fails to pay any monies due and owing to the Department, and those monies are related to the fees specified in N.J.A.C. 7:27–22.31.

(hh) The Department will deny an operating permit application, or modification to an operating permit, that includes a paint spray operation that is a significant source operation, unless at a minimum the operation is served by particulate control apparatus.

(ii) No person may construct, install, or change any source operation for which a minor modification or significant modification of the operating permit is required pursuant to this subchapter other than as described in N.J.A.C. 7:27–22.23 and 22.24, respectively. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the permit.

(jj) The Department may establish conditions of approval of any operating permit, administrative amendment, minor modification, or significant modification. In the event that a discrepancy exists between the information in an application and the conditions of its approval, the conditions of approval shall prevail.

(kk) The Department may withdraw its approval of an operating permit, minor modification, or significant modification if the person to whom the Department has issued the permit or modification:

1. Does not begin construction or installation within one year from the date of approval of the permit or modification; or

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

(ll) 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. 26:2C–19 or both.

(mm) Any information which the Department needs to take into consideration in making a decision on an application shall be submitted to the Department for incorporation into the application prior to the Department making a decision on the application. If the Department needs any information beyond what is submitted in the application, the Department shall request such additional information from the applicant.

(nn) An affirmative defense to liability shall be available pursuant to the conditions of this section for penalties or other sanctions for violating certain provisions or conditions of an operating permit. The affirmative defense shall be available for a violation of a provision or condition of the operating permit only if:

1. The violation occurred as a result of an equipment malfunction, an equipment start-up or shutdown, or during the performance of necessary equipment maintenance; and

2. The affirmative defense is asserted and established as required by N.J.S.A. 26:2C–19.1 through 19.5 and any implementing rules.

(oo) Any person who has submitted to the Department an administratively complete application for an initial operating permit or for a modification to an operating permit may, during the Department's review of the application, place the equipment or control apparatus covered by the application on the footings or foundation where it is intended to be used, provided that:

1. The person notifies the Department, via certified mail, of the intent to so place the equipment or control apparatus, at least seven days prior to commencing the placement; and

2. Such placement is not prohibited by Federal law.

(pp) If a person constructs or places equipment or control apparatus in accordance with (oo) above, and the Department determines that the equipment or control apparatus or its placement is inconsistent with applicable State law or rules, the person shall be subject to civil or criminal penalties for the inconsistent action only if the construction or placement results in air contaminant emissions. Any costs incurred by the person in connection with the construction or placement may not be used as grounds for an appeal of the Department's decision on the permit application.

(qq) No permittee shall test or operate air pollution control apparatus or process equipment that has been installed at risk, pursuant to (oo) above, until a minor modification or significant modification of the operating permit has been submitted and a preconstruction approval has been issued by the Department.

(rr) For a person seeking approval of an environmental improvement pilot test, as defined at N.J.A.C. 7:27–22.1, of air pollution control equipment or other environmental clean-up equipment, the Department will take final action on the application for preconstruction approval within 30 days of an administratively complete application. An administratively complete application shall meet all application contents requirements for a minor modification of the operating permit set forth at N.J.A.C. 7:27–22.23(f) and (g). 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. 7:27–22.31.

(ss) For the purposes of this subchapter, any VOCs which are neither HAPs, nor are specified by the Department as air contaminants regulated by New Jersey pursuant to N.J.S.A. 26:2C–9.2i (P.L. 1995, c.188, § 4(i)), shall be considered as a single air contaminant, and may be used interchangeably. Such use shall not be considered installation or modification.

(tt) The following information is available from the Department:

1. A list of air contaminants currently listed by EPA as HAPs pursuant to 42 U.S.C. § 7412(b) may be requested from the Department at the address set forth at N.J.A.C. 7:27–22.3(t). A list of regulated air contaminants may also be requested from the Department at that address; and

2. Technical manuals may be requested from the Department at the following address:

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

Amended by R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
Amended (*l*).

3. The applicable requirements of the acid deposition control program, consistent with 42 U.S.C. § 7651g(a);

4. The ability of EPA to obtain information from a facility pursuant to the requirements for recordkeeping, monitoring, inspections and entry at 42 U.S.C. § 7414; or

5. The Department's authority to enter and inspect a facility subject to this subchapter, pursuant to N.J.A.C. 7:27–1.

(g) A permit shield does not relieve the permittee of any liability for noncompliance with the operating permit.

7:27–22.18 Source emissions testing and monitoring

(a) This section sets forth the procedures by which the Department will implement the source emissions testing and monitoring requirements contained in an approved operating permit. Any deadline in this section may be extended through written approval by the Department, unless prohibited by Federal regulations. Such procedures shall be consistent with the federal rules for enhanced monitoring of stationary sources, set forth at 40 CFR Part 64.

(b) Within 90 days after approval of the operating permit, or within the time frame specified in the operating permit, a permittee shall submit, pursuant to this section, a request for approval of a protocol prepared in accordance with the Department's published technical manual on Air Contaminant Testing and Monitoring. The protocol shall describe how the permittee proposes to carry out any source emissions testing or monitoring, including any type of CMS monitoring, required by the operating permit. Any revisions of the technical manual will be subject to public input prior to finalization.

(c) The protocol shall, in accordance with the Department's technical manual on Air Contaminant Testing and Monitoring, include details of the implementation of the source emissions testing and monitoring practices required by the operating permit and shall specify sampling and analytical procedures, equipment specifications, example calculations, and the form in which data will be submitted.

(d) The Department will inform the permittee in writing of any deficiencies in the proposed protocol, and will provide a reasonable deadline for correction of the deficiencies. The permittee shall correct the deficiencies and resubmit the protocol to the Department within the deadline.

(e) If the operating permit requires source emissions testing, the permittee shall carry out the following initial source emissions testing procedures:

1. Contact the Department within 30 days after approval of the protocol and schedule a testing date;

2. Perform the source emissions testing within 180 days after the Department's approval of the operating permit; and

3. Submit the source emissions test report to the Department, within 45 days after completion of the source emissions testing. The test report shall include all raw field and laboratory data, as well as the operating and production parameters required by the approved protocol, so that the Department may reproduce the calculations and verify the findings of the test report. The test report shall be reviewed and certified pursuant to (h) before it is submitted to the Department.

(f) After completion of the initial source emissions testing required pursuant to (e) above, the permittee shall perform periodic source emissions testing in accordance with any applicable schedule in the operating permit, the approved protocol, and this section.

(g) If the operating permit requires monitoring using a CMS, the permittee shall perform the following initial procedures in accordance with the approved monitoring protocol:

1. Install the CMS by the date specified in the operating permit;

2. Calibrate, operate and maintain all components of the CMS to measure continuously and record continuously the parameters specified in the operating permit;

3. For facilities required to install CEMs, contact the Department within 30 days after approval of the monitoring protocol and schedule a date for a performance specification test to verify that the CEM is operating according to the requirements of the operating permit;

4. Perform the performance specification test prior to any required source emissions testing and within 90 days after the latter of the following events:

i. Installation of the CMS;

ii. The commencement of operation of the equipment being monitored; or

iii. Department approval of the testing protocol; and

5. Submit to the Department the performance specification report within 30 days after the completion of the performance specification test. The performance specification report shall include all raw field and laboratory data necessary for the Department to reproduce the test results as specified by the approved protocol and shall be reviewed and certified pursuant to (h) before it is submitted to the Department.

(h) Each source emissions test report or performance specification test report shall be reviewed and certified, pursuant to N.J.A.C. 7:27–1.39, by a licensed professional engineer or by an industrial hygienist certified by the American Board of Industrial Hygiene.

(i) The owner or operator of a facility subject to this subchapter shall, upon request of the Department, provide

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 any significant source operation at the facility. During testing by the Department, the significant source operation shall be operated, within their capacities, under conditions requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the owner or operator of the facility, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

(j) Each permittee shall meet all requirements of the approved protocol during the term of the operating permit.

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).

7:27–22.19 Recordkeeping, reporting and compliance certification

(a) Each permittee shall maintain records of all source emissions testing or monitoring performed at the facility and required by the operating permit in accordance with this section. Records shall be maintained, for at least five years from the date of each sample, measurement, or report. Each permittee shall maintain all other records required by the operating permit for a period of five years from the date each record is made.

(b) Source emissions testing or monitoring records shall contain, at a minimum, the following information, unless alternative types of records or recordkeeping are expressly approved in the operating permit:

1. The date, source operation, and time of sampling or measurements;

2. The date(s) analyses were performed;

3. The company and the name of the person representing that company who was responsible for performing the sampling, measurements or analyses;

4. The analytical techniques or methods used;

5. The results of such analyses;

6. The operating conditions, as specified in the operating permit, existing at the time of sampling or measurement. If the record indicates a deviation from applicable requirements at a facility equipped with a CMS, the permittee shall include all CMS data recorded beginning one hour before the recorded deviation and continuing through one hour after the recorded deviation.

7. All calibration and maintenance records, and all original strip-chart recordings, or the equivalent for continuous monitoring instrumentation;

8. Copies of all reports required by the operating permit; and

9. Any other information required by the Department to interpret the monitoring data.

(c) A permittee shall submit reports of all source emissions testing and monitoring required by the operating permit, and supporting information, to the Department in accordance with (d) and (e) below. The reports shall conform to a format acceptable to the Department. The reports shall be certified pursuant to N.J.A.C. 7:27–1.39 by a responsible official.

(d) A report submitted pursuant to (c) above shall be submitted:

1. For a source emissions test report, within 45 days after the completion of the sampling, unless a longer period for submittal is approved in advance in writing by the Department; and

2. For a CMS report, within 30 days of completion of each calendar quarter for the calendar quarter; and

3. For any other report or supporting information relating to testing or monitoring required by the operating permit to be performed from January 1 through June 30, by July 30 of the same calendar year; or from July 1 through December 31, by January 30 of the following calendar year.

(e) Any report submitted pursuant to (c) above shall clearly identify all deviations from operating permit requirements, including those attributable to emergencies, startup, shutdown and maintenance, the probable cause of such deviations, and any corrective actions or preventive measures taken.

(f) Each permittee shall submit to the Department, at the address given in N.J.A.C. 7:27–22.9(d), and to EPA at the address given in N.J.A.C. 7:27–22.4(d), a periodic compliance certification, in accordance with the schedule for compliance certifications set forth in the compliance plan in the operating permit. This periodic compliance certification shall include the following:

1. For each applicable requirement, a statement that the facility is:

i. In compliance with the applicable requirement and, if so, whether the compliance is continuous or intermittent, as defined in the Federal rules for the enhanced monitoring of stationary sources set forth at 40 CFR Part 64;

ii. In compliance with a compliance schedule, included in the operating permit pursuant to N.J.A.C. 7:27–22.9(c)7ii, which includes a sequence of actions with milestones leading to compliance with the applicable requirement;

iii. In compliance with an order or consent decree not incorporated into a compliance schedule; or

iv. Not in compliance;

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

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

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

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

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

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

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

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

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

(h) A change made through an administrative amendment shall not be covered by any permit shield contained in the operating permit, except for administrative amendments made pursuant to (b)7 above. The permit shield shall become effective upon approval of the administrative amendment by the Department.

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

New Rule, R.1995 d.493, effective September 5, 1995 (operative October 8, 1995).
See: 27 N.J.R. 1040(a), 27 N.J.R. 3421(a).
Amended by R.1999 d.242, effective August 2, 1999 (operative August 31, 1999).
See: 30 N.J.R. 2396(a), 31 N.J.R. 2200(a).
Rewrote (b)7.

7:27–22.21 Changes to insignificant source operations

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

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

1. Is not prohibited in the operating permit;

2. Is not subject to any requirements under the acid deposition control provisions at Title IV of the CAA;

3. Is not a modification under any provision of Title I of the CAA;

4. Does not cause the source operation to become subject to an applicable requirement, to which it was not previously subject and which is not already included as a requirement of the operating permit; and

5. Meets all applicable requirements and does not violate any existing permit term or condition.

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

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

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

7:27–22.22 Seven–day–notice changes

(a) A permittee may make any of the changes listed at (c) or (d) below through the procedures for a seven-day-notice change set forth in this section. The Department shall attach the notice of the seven-day-notice change to the operating permit, but shall not revise the operating permit until the next application for a renewal. If the requirements of this section are met, a permittee may make a seven-day-notice change seven days after the Department's receipt of the notice of the change.

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

1. Require an increase in any allowable emissions limit established in the operating permit, including any maximum allowable emissions rate (whether expressed as pounds per hour, tons per year, total pounds, total tons, or other units expressed as a rate of emissions or total emissions) or concentration limit or any emissions cap;

2. Cause the emission of a new air contaminant or class of air contaminants;

3. Constitute a minor modification or significant modification, as defined at N.J.A.C. 7:27–22.23 or 22.24, respectively;

4. Change a monitoring, recordkeeping, or reporting requirement set forth in the operating permit, if the changed requirement would be less stringent than, the existing requirement;

5. Constitute a modification under any provision of Title I of the CAA; or

6. Subject the facility to the requirements of the acid deposition control provisions in Title IV of the CAA, or would violate such requirements.

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

1. Any reconfiguration to an operating scenario, including an alternative configuration or a change in the production process, not authorized in the operating permit in effect, provided that the notice to the Department of the change contains the information required at N.J.A.C. 7:27–22.27 (Operating scenarios) and that the operating scenario conforms with the requirements of that section;

2. The attachment of an emissions trading program to an operating permit pursuant to N.J.A.C. 7:27–22.28A(d) (Emissions trading);

3. A change in operation to an emissions trading program attached to an operating permit pursuant to N.J.A.C. 7:27–22.28A(g);

4. Use of DERs for compliance pursuant to the open market emission trading rule at N.J.A.C. 7:27–30;

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

6. Any change to a significant source operation which:

i. Is not already authorized by the operating permit;

ii. Does not cause actual emissions to exceed allowable emissions in the operating permit; and

iii. Does not cause the emission of a new air contaminant not specified in the operating permit.

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

1. The production process containing the significant source operation is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D–35 et seq.;

2. The proposed change, construction, or installation is either:

i. Allowed under the facility-wide permit; or

ii. Documented in a modification to a Pollution Prevention Plan which satisfies the requirements of N.J.A.C. 7:1K–3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K–1.5; and

3. The proposed change, construction, or installation does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the significant source operation or production process;

ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;

iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

iv. The addition of a new production process.

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

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

(g) Except pursuant to (i) below, to be deemed administratively complete, the notice shall include all information required by the form for a seven-day-notice obtained from the Department, including, but not limited to, the following information:

1. A description of the planned change, and a statement of the reason the change is being made;

2. The date(s) or schedule for when the change will be made, or a description of the types of circumstances under which the change would be made;

3. The specific source operations that will be changed or will be affected by the change;

4. For each source operation given in (g)3 above, the change in the quantity or rate of actual emissions as a result of the change;

5. Specification of any permit requirement or applicable requirement that will be:

i. Complied with through the change; or

ii. No longer applicable as a result of the change;

6. A statement affirming that, after implementation of the seven-day-notice the facility will continue to comply with all applicable requirements; and

7. Certification of the notice of the change in accordance with N.J.A.C. 7:27–1.39.

(h) To be administratively complete, any notice submitted pursuant to (d) above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K–3 and 4 in addition to the items required in (g) above.

(i) To be administratively complete, a notice submitted for the trading of DERs under the open market emission trading rules at N.J.A.C. 7:27–30, as authorized pursuant to (c)4 above, shall be a copy of the Notice of Intent to Use DERs, completed in accordance with N.J.A.C. 7:27–30.14.

(j) No permittee shall make a change at a facility, including use of a DER for compliance, pursuant to this section unless the written notice of the change is submitted to both the Department and EPA at least seven days before the change is made, and all other requirements of this chapter are met.

(k) The Department may review a seven-day-notice change at any time prior to the next renewal of the operating permit. If the Department finds that the change was inconsistent with the requirements for a seven-day-notice change, the Department will notify the facility and may take enforcement action.

(*l*) Upon receipt of a notice of a seven-day-notice change, the Department will file the notice as an attachment to the operating permit. The permittee shall include all such changes in the application for the next renewal of the operating permit, in accordance with N.J.A.C. 7:27–22.30.

(m) The permittee shall attach a copy of each notice submitted pursuant to this section to the copy of the operating permit the permittee maintains at the facility.

(n) The permit shield described at N.J.A.C. 7:27–22.17 shall not apply to any change made pursuant to this section.

(*o*) A permittee may elect to make any change authorized to be made as a seven-day-notice change as a minor modification or significant modification.

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).
Added references to DERs.

7:27–22.23 Minor modifications

(a) A permittee may make any change listed at (c) below through the minor modification procedures set forth in this section. Minor modifications are set forth in (c) below, and include changes which may increase actual emissions by insignificant amounts, and other changes which do not increase emissions, but may increase ambient concentrations of air contaminants. The Department shall, upon approval of an application for a minor modification of the operating permit, incorporate the changes into the permit. A separate application for a preconstruction permit is not required. The permittee shall not make any change proposed in a minor modification of the operating permit until the Department has approved the minor modification, except as specified in (a)1, 2, and 3 below.

1. Equipment and control apparatus may be installed at risk pursuant to the requirements of N.J.A.C. 7:27–22.3(oo).

2. The proposed minor modification may, at the permittee's risk, be made at the facility after the administratively complete application is received by the Department, and a preconstruction approval has been issued by the Department.

3. Any permittee who elects to implement the change proposed in an application prior to the Department's final decision on the minor modification (after the EPA review period) shall comply with both the applicable requirements governing the change and the conditions of preconstruction approval contained in the proposed minor modification. During this time, the facility need not comply with any outdated existing operating permit provisions it seeks to modify. However, if the permittee fails to comply with the proposed permit provisions during this

time, or the minor modification is not approved, the existing permit provisions it seeks to modify shall be enforced.

(b) (Reserved)

(c) Except as provided at N.J.A.C. 7:27–22.22(d) above, construction or installation of any new significant source operation, reconstruction of a process unit or control apparatus made pursuant to N.J.A.C. 7:27–22.24A, or any of the following changes to existing significant source operations, shall be made as a minor modification unless the change violates an applicable requirement or constitutes a significant modification pursuant to N.J.A.C. 7:27–22.24:

1. A change in the location of the point of discharge of any air contaminant from a significant source operation into the outdoor atmosphere, unless the change is authorized in the permit in effect;

2. Any of the following changes to a significant source operation, or to the use thereof, if the change may increase actual emissions over the allowable concentration or allowable rate of any air contaminant emission, or will increase allowable emissions, unless the change is authorized in the operating permit in effect:

i. Change in the relative use, expressed in percent by weight, of any raw material in the operation of a significant source operation, including the introduction of a new raw material not authorized in the operating permit in effect; or

ii. Change in the production process in which the significant source operation is used;

3. An increase in any maximum allowable emission rate or concentration, or any emissions cap;

4. Emission of any air contaminant or class of air contaminants not authorized by the operating permit in effect;

5. Any change to a stack or chimney, or the use thereof, not authorized in the operating permit in effect, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if the change may result in an increase in the ambient concentration of any air contaminant;

6. Any increase in the concentration of any air contaminant in the influent to existing control apparatus, if the influent is limited in the operating permit in effect;

7. Any increase in the total hours of operation per time period or the rate of production above that authorized in the operating permit in effect;

8. Reduction of the frequency of testing, monitoring, recordkeeping or reporting, provided the frequency is not less than that in any applicable requirement.

9. Any of the following decreases, if a method by which the Department can verify and enforce the decrease is not already included in the operating permit in effect, and the permittee requests such decrease to be incorporated into its operating permit:

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

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

iii. A decrease in maximum allowable rate of production;

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

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

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

11. The introduction of a raw material, not authorized in the operating permit in effect if the change involves the use of any new HAP;

12. At the option of the applicant, any change which is eligible to be processed as an administrative amendment, a change to an insignificant source operation or a seven-day-notice change pursuant to N.J.A.C. 7:27–22.20, 22.21, or 22.22, respectively.

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

(e) A permittee shall, pursuant to (f), (g), (h) and (p) below, submit an administratively complete application for a minor modification of the operating permit for any change being made pursuant to this section as a minor modification.

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

1. A description of the proposed change, the allowable and estimated actual emissions before and after the change, and any new applicable requirements which will apply if the change occurs;

(d) Any owner or operator of a MSW incinerator that submits to the Department a report of compliance testing, including all test runs, for a MSW incinerator shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial Hygiene.

(e) Any owner or operator of a MSW incinerator shall maintain at the facility a complete record, including all test reports, of all compliance testing, including all test runs, conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of a MSW incinerator who submits to the Department a report of compliance testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27–8.24.

(g) The owner or operator shall make any record made pursuant to (e) above available to the Department, or its authorized representatives, for inspection for a period of five years after the date the record is made.

7:27–27.10 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. 2C–28.3 and N.J.S.A. 26:2C–19(f)1 and 2.

SUBCHAPTERS 28 THROUGH 29. (RESERVED)

SUBCHAPTER 30. OPEN MARKET EMISSIONS TRADING

Authority

N.J.S.A. 26:2C, especially 26:2C–8 and 26:2C–9.8.

Source and Effective Date

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).

7:27–30.1 Purpose and scope

(a) This subchapter establishes procedures and standards for persons who generate discrete emission reductions (DERs) and persons who use DERs to comply with certain air pollution control requirements.

(b) Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit. For example, if N.J.A.C. 7:27–8 or 22 would require that a permit be revised to reflect a physical or operational change that results in an emission increase, that permit revision would still be required regardless of whether the change arose from the generation or use of DERs.

7:27–30.2 Definitions

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

"Activity" means an emission source's activity during a selected period of time, expressed in units that correlate directly with the source's emission rate. For example, if a source's emission rate is expressed as pounds of VOC per hour, activity would be expressed in hours; if a source's emission rate is expressed as pounds of NO_x per million BTU, activity would be expressed in millions of BTU.

"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 control region" means a geographic area designated by the EPA under 42 U.S.C. § 7407(b) or (c), or any contiguous area which has not been so designated.

"Allowable emission rate" means the most stringent of any air quality emission limit or standard in any State or Federal law or rule which is applicable to a particular emissions source.

"Alternative emission limit" means an emission limit that the Department has established for a specific emissions source, which is less stringent than the limit in a State or Federal rule that would otherwise apply to the source.

"Area source" means a stationary source which:

1. Is not located at a facility subject to the emission statement requirements of N.J.A.C. 7:27–21; or

2. Is located at a facility subject to the emission statement requirements of N.J.A.C. 7:27–21, but is not individually listed in the facility's emission statement as a source operation with VOC or NO_x emissions.

"Attainment area" means any area that the EPA has designated or redesignated at 40 CFR Part 81 or pursuant to 42 U.S.C. § 7407 as attainment or unclassifiable for the ozone NAAQS.

"Batch of DERs" means the set of NO_x and/or VOC DERs generated by a single emissions source and included in a single Notice and Certification of DER Generation submitted to the registry.

"Best available control technology (BACT)" is as defined in 40 CFR § 51.166(b)(12).

"Creditable emission reduction" shall have the meaning defined for this term at N.J.A.C. 7:27–18.1.

"Curtailment" means a temporary or partial reduction in an emissions source's activity level (for example, hours of operation or process rate). For the purposes of this subchapter, this term does not include either of the following reductions:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or by a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or

2. A reduction in an electric generator's activity level that results from implementing electrical energy efficiency measures in residential, commercial, industrial, institutional or government facilities.

"Day" means calendar day, unless the phrase business day or working day is used.

"Department" means the New Jersey Department of Environmental Protection (or its authorized agent).

"Design margin" means the difference between the allowable emission limit for an emissions source, and the actual level of emissions that the source would be designed to achieve, such that expected variations in the source's emissions would not cause it to exceed the allowable emission limit.

"Discrete emission reduction" or DER means a unit of emission reductions generated over a finite period of time in accordance with this subchapter.

"Economic output" means the output which an emission source produces during a selected period of time. Examples of economic output may include production output, amount of coating application, or vehicle miles traveled.

"Electric generator" means any person who generates electric power.

"Emission quantification protocol" means a method to determine the quantity of DERs generated or the quantity of DERs needed for compliance.

"Emissions source" means any mobile source or stationary source.

"EPA" means the United States Environmental Protection Agency, or its authorized agent.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into the outdoor atmosphere, and any stack, chimney, conduit, flue, duct, vent, or similar device connected or attached to, or serving, the equipment. This term includes, but is not limited to, any 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, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties, which are under common control of the same person or persons.

"Federal Clean Air Act" means 42 U.S.C. § 7401 et seq., as amended or supplemented.

"Generation period" means that period of time over which a batch of DERs is generated.

"Generator" means the owner or operator of a generator source, or a person who causes emission reductions to be generated through actions listed in N.J.A.C. 7:27–30.4(a)1 or 2.

"Generator source" means any emissions source that generates emission reductions to be used as a basis for a batch of DERs.

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

"Hold" means to have the registry show that a DER is credited to one's account.

"Lowest achievable emission rate" or LAER means the control technology defined at 40 CFR § 51.165(a)(1)(xiii).

"Maintenance area" means a former nonattainment area for which the EPA has approved a maintenance plan submitted by a state under 42 U.S.C. § 7505a.

"Mobile source" means any of the following:

1. A vehicle or engine used for on-highway purposes;

2. A vehicle or engine used for nonroad purposes. Examples of vehicles used for nonroad purposes include marine vessels, locomotives, and airplanes. Examples of engines used for nonroad purposes include engines in the above vehicles, and engines smaller than 175 horsepower used in construction equipment or vehicles or farm equipment or vehicles;

3. A fuel intended for use in such a vehicle or engine; or

4. A fuel delivery system (including, but not limited to, pipelines, tanker trucks, storage tanks, and dispenser pumps) associated with a fuel intended for use by such a vehicle or engine.

"National ambient air quality standard" or NAAQS means an ambient air quality standard promulgated at 40 CFR Part 50.

"Nonattainment area" means any area that the EPA has designated or redesignated at 40 CFR Part 81 or pursuant to 42 U.S.C. § 7407 as nonattainment for the ozone NAAQS.

"Normal source operation" means a condition in which an emissions source's activity level falls within a range that is typical for that emissions source.

"Operating permit" is as defined in N.J.A.C. 7:27–22.1.

"Operator" means the individual who is in control of or in charge of an emissions source while it is in operation.

"Owner" means a person who claims lawful possession of an emissions source by virtue of legal title or equitable interest therein which entitles that person to such possession.

"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 fourth at 40 CFR Part 60 Appendix A methods 7 through 7E.

"Ozone season" means the portion of each year beginning May 1 and ending September 30.

"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.

"Real" means actual, genuine and authentic.

"Registry" means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer and use of DERs.

"Retire" means, with respect to DERs, to make a DER permanently unavailable for use.

"Shutdown" means the permanent cessation of the activity that results in emissions at all or part of an emissions source. For the purposes of this subchapter, scrappage of mobile sources is not considered a shutdown.

"State Implementation Plan" or "SIP" means a plan developed by New Jersey, as required under Titles I and II of the Federal Clean Air Act, and submitted by the State to the EPA. The plan sets forth the means by which the State will attain or maintain the NAAQS established by the EPA.

"Stationary source" means an emissions source that is not a mobile source.

"Surplus" means, with respect to emission reductions used for the generation of DERs, not required pursuant to any air quality emission limit or standard in any applicable law, regulation, permit, or order and not relied upon in a SIP. An emission reduction calculated in accordance with N.J.A.C. 7:27–30.5 and 30.20, and not prohibited as a basis for DERs under N.J.A.C. 7:27–30.6, is considered surplus.

"Use period" means the period of the time when a user uses DERs to comply with an applicable emission limit.

"User" means the owner or operator of a user source.

"User source" means any emissions source for which the owner or operator seeks to use DERs for compliance in accordance with this subchapter.

"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 in the approved SIP (such as N.J.A.C. 7:27B–3) or 40 CFR Part 60, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

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

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

chlorodifluoromethane (HCFC–22)

trifluoromethane (HFC–23)

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

chloropentafluoroethane (CFC–115)

2,2–dichloro–1,1,1–trifluororethane (HCFC–123)

1,1,1,2–tetrafluoroethane (HFC–134a)

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

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

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

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1–trifluoroethane(HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

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

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

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

difluoromethane (HFC–32)

ethylfluoride (HFC–161)

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

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

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

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

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

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

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

chlorofluoromethane (HCFC–31)

1–chloro–1–fluoroethane (HCFC–151a)

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

1,1,1,2,2,3,3,4,4–nonafluoro–4–methoxy-butane ($C_4F_9OCH_3$)

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

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

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

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

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

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

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

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

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

7:27–30.3 General provisions

(a) A DER used for compliance under this subchapter is a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C–1 et seq.) and rules promulgated thereunder. A DER does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.

(b) A person may generate, transfer or use DERs in accordance with this subchapter, without prior Federal, State or local government approval except when DERs are to be used pursuant to N.J.A.C. 7:27–30.13(c) to comply with emission offset requirements under N.J.A.C. 7:27–18.

(c) Any submittal to the Department that is required or allowed under this subchapter shall be made to the applicable address listed below:

1. If the submittal concerns a generator source or user source located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Enforcement
PO Box 407
Trenton, NJ 08625–0407

2. If the submittal concerns a generator source or user source located in Bergen, Essex, Hudson, or Union County:

Department of Environmental Protection
Metro Regional Office
Air and Environmental Quality Enforcement
2 Babcock Place
West Orange, NJ 07052

3. If the submittal concerns a generator source or user source located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Enforcement
1259 Route 46, Building 2
Parsippany–Troy Hills, NJ 07054

4. If the submittal concerns a generator source or user source located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Enforcement
20 East Clementon Road
Gibbsboro, NJ 08525

(d) Any submittal to the registry that is required under this subchapter shall be made to the following address:

Mosakin International Corporation
1075 Easton Avenue
Tower 3, Suite 4
Somerset, New Jersey 08873
Attention: Emissions Trading Registry

(e) A DER represents one-twentieth of a ton of emission reductions. Any quantity of DERs generated shall be rounded to the next lowest twentieth of a ton. Any quantity of DERs used shall be rounded to the next highest twentieth of a ton. Only whole DERs may be transferred.

Administrative change.
See: 29 N.J.R. 2561(a).
In (d), changed the address for emissions trading registry submittals.
Administrative change.
See: 30 N.J.R. 4041(a).

7:27–30.4 DER generation: general requirements

(a) Except as provided under N.J.A.C. 7:27–30.6, a person may generate one or more DERs by taking an action to reduce the actual emission rate of a generator source owned or operated by the person below the source's baseline emission rate. An owner or operator of a facility may also generate one or more DERs, if the facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D–48, by taking pollution prevention measures which reduce the facility's fugitive emissions (as defined at N.J.A.C. 7:27–18.1); and an owner or operator of a refinery may generate one or more DERs by reformulating motor vehicle fuel sold in New Jersey. In addition, a person may generate one or more DERs through the reduction of emissions from sources not owned or operated by that person by causing emission reductions to result from either of the following:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or

2. A reduction in an electric generator's activity level that results from implementing electrical energy efficiency measures in residential, commercial, industrial, institutional or government facilities.

(b) DERs shall be based only on emission reductions that are real, surplus, and quantified in accordance with N.J.A.C. 7:27–30.5 and 30.20. A DER shall not be based on an emission reduction which has previously been the basis for generating a DER.

(c) The generation period for any batch of DERs shall not exceed one year. However, additional batches of DERs may be generated over consecutive generation periods.

7:27–30.5 DER generation: computation of DERs

(a) The generator shall calculate the quantity of DERs generated in accordance with this section and an emission quantification protocol that satisfies the requirements of N.J.A.C. 7:27–30.20.

(b) The quantity of DERs generated is the difference between baseline emissions and actual emissions. The following formula describes the calculation:

DERs = (Baseline Emission Rate − Actual Emission Rate) × Economic Output

where:

1. DERs is the quantity of discrete emission reductions generated, rounded to the next lowest twentieth of a ton of VOC or NO_x;

2. The baseline emission rate is the rate at which the generator source would have emitted VOC or NO_x (as applicable) had it not taken measures to generate DERs. To calculate the baseline emission rate:

i. Select the lowest of the following rates which applies to the generator source:

(1) The lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. If the Department has approved an alternative emission limit for the source, the lowest allowable emission rate is the lowest rate which would apply in the absence of the alternative emission limit, minus a design margin;

(2) The generator source's actual emission rate during the baseline period described in (c) below; or

(3) The emission rate which would have resulted had the generation strategy not been applied, based on measurements made during the generation period, taken upstream of the point of application of the generation strategy. If it is not technically feasible to take such measurements, this emission rate shall not be considered in determining the baseline emission rate;

ii. Calculate the quantity of VOC or NO_x which would have been emitted at the rate selected under (b)2i above.

(1) If (b)2i(1) or (3) above was selected, and the rate is expressed as emissions per unit of activity, multiply the rate by the generator source's activity during the generation period;

(2) If (b)2i(1) or (3) above was selected, and the rate is expressed as emissions per unit of time, multiply the rate by the amount of time in the generation period;

(3) If (b)2i(2) above was selected, and the rate is expressed as emissions per unit of activity, multiply the rate by the generator source's activity during the baseline period described in (c) below; and

(4) If (b)2i(2) above was selected, and the rate is expressed as emissions per unit of time, multiply the rate by the amount of time in the baseline period described in (c) below; and

iii. If (b)2i(1) or (3) above was the rate selected under (b)2i above, divide the quantity determined under ii above by the generator source's economic output in the generation period. If (b)2i(2) above was selected, divide the quantity determined under (b)2ii above by the generator source's economic output in the baseline period described in (c) below. The result is the baseline emission rate, expressed as the quantity of VOC or NO_x emitted per unit of economic output;

3. The actual emission rate is the rate at which the generator source actually emitted VOC or NO_x (as applicable) during the generation period. The actual emission rate is expressed as the quantity of VOC or NO_x emitted per unit of economic output. The unit of economic output is the same as the unit used under (b)2iii above; and

4. Economic output is the generator source's economic output during the generation period.

(c) The baseline period includes two intervals in the five calendar years before the generation period (or the first of multiple consecutive generation periods) began. These intervals shall contain the same dates that is, month(s) and date(s) as the dates in the generation period. Of the five such intervals available (that is, one interval in each of the five calendar years), the generator shall use as the baseline the two which are most representative of normal source operation for the generator source. The generator source's actual emission rate, activity, or economic output during the baseline period is the sum of its actual emission rate, activity, or economic output in each of the two intervals, divided by two.

(d) If the action taken to reduce actual emissions results in emission increases from emissions sources other than the

generator source, the quantity of DERs generated shall be reduced by the amount of those emission increases.

(e) If the generator source's actual emissions (that is, the rate described in (b)3 above multiplied by economic output described in (b)4 above) over any part of the generation period exceed the maximum quantity of emissions which the generator source's permit authorizes, no DERs shall have been generated during that part of the generation period.

Administrative Change.
See: 28 N.J.R. 3786(b).

7:27–30.6 DER generation: limitations on generation

(a) None of the following emission reductions is a basis for generation of a DER:

1. An emission reduction that results from a shutdown or curtailment;

2. An emission reduction that results from modifying or discontinuing activity that violates any Federal, State or local law, regulation, permit, or order;

3. An emission reduction that is required to comply with a requirement in the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C–1 et seq.), any regulation, permit, or order pursuant thereto; any air quality emission limit or standard in any applicable law, regulation, permit, or order; or any SIP or Federal Implementation Plan (except to the extent that emissions are reduced below the level required to comply);

4. An emission reduction which has been used under any other emissions trading program, or which has previously been the basis for generating a DER;

5. An emission reduction occurring at a generator source which received approval from the Department of an alternative emission limit (including, without limitation, an emission limitation that is part of an averaging plan) to meet a requirement for reasonably available control technology (RACT) under N.J.A.C. 7:27–16 or 19, except to the extent that the emissions are reduced below the level that would have been required had the approval of the alternative emission limit not been issued;

6. An emission reduction from a stationary source that is subject to N.J.A.C. 7:27–16 or 19, but for which the Department has not yet established an applicable RACT limit either in the rule or in a facility-specific emissions limit submitted to the EPA as a SIP revision;

7. An emission reduction which is accompanied by 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; and

8. An emission reduction which is accompanied by a violation of a Federal or State law, regulation, order or permit. For example, if the generator source's actual emissions during any portion of the generation period exceed the maximum quantity of emissions which the generator source's permit authorizes for such portion of the generation period, no DERs shall have been generated.

(b) No emission reduction generated before May 1, 1992 is a basis for generation of a DER. An emission reduction generated at any time between May 1, 1992 and August 2, 1996 may be a basis for generation of a DER only if it satisfies the applicable requirements of this subchapter, and one of the following occurs on or before October 31, 1996:

1. The Department informs the generator in writing that the emission reduction is real, surplus, and properly quantified; or

2. The generator submits to the Department and the registry a Notice and Certification of DER Generation in accordance with N.J.A.C. 7:27–30.7 for the emission reductions.

(c) No emission reduction is the basis for generation of a DER until the generator source's emissions are reflected in the emissions inventory submitted by the State to the EPA for inclusion in the SIP, or in the annual major point source emission inventory conducted pursuant to N.J.A.C. 7:27–21. Appendix A, incorporated herein by reference, lists the emissions included in the emissions inventory as of August 2, 1996.

7:27–30.7 DER generation: Notice and Certification of DER Generation

(a) For each batch of DERs generated, the generator shall submit a Notice and Certification of DER Generation to the registry within 90 days after the last day of the generation period. If the generator submits the Notice late, the generator shall reduce the quantity of DERs in the Notice by ten percent immediately, and by an additional ten percent for each additional 30 days that the Notice is late. For example, if a generator has generated 100 tons of DERs, but submits the Notice 40 days late, the generator shall include only 80 tons of DERs in the Notice.

(b) In the Notice, the generator shall include the information, statements and certification required under N.J.A.C. 7:27–30.16 (except for the supporting information listed in N.J.A.C. 7:27–30.16(c)4, and the serial number referenced in N.J.A.C. 7:2730.16(c)6), and the following:

1. If the emission reductions on which the DERs are based were accompanied by increases in emissions of any HAP, the amount of such increases;

2. A statement that the emission reductions on which the DERs are based are both real and surplus;

3. A statement that the DERs were not generated from an emissions reduction listed in N.J.A.C. 7:27–30.6 or as a result of actions prohibited under this subchapter or other provisions of law; and

4. If the generator filed the Notice more than 90 days after the last day of the generation period, a statement that the generator has reduced the quantity of DERs as required under (a) above.

7:27–30.8 DER registry

(a) A user source located in New Jersey may not use a DER for compliance unless the registry shows that the user holds the DER, that the DER is verified, that the DER has not been used previously or retired, and that neither the Department nor the EPA has found the DER to be invalid.

(b) The registry includes information from the following notices:

1. The Notice and Certification of DER Generation;

2. The Notice of Transfer;

3. The Notice of DER Verification;

4. The Notice of Intent to Use DERs;

5. The Notice and Certification of DER Use;

6. The notice from the Department or the EPA pursuant to N.J.A.C. 7:27–30.10(e) or 30.11(h) that a DER is invalid; and

7. The Notice of Retirement pursuant to N.J.A.C. 7:27–30.11(j).

(c) This subsection shall become operative June 2, 1997. Within one business day after receiving a notice listed in (b) above, the operator of the registry shall determine whether the notice contains all items required under this chapter. If the notice contains all required items, then within one additional business day the operator of the registry shall update the registry to include the notice (and, if the notice is a Notice and Certification of DER Generation, assign a unique serial number to the DERS included in the notice and note all such serial numbers of the registry's copy of the notice). If the notice is missing a required item, the operator of the registry shall return the notice to the person who submitted it, and shall not update the registry to include the notice.

(d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.

Administrative change.
See: 29 N.J.R. 2561(a).
In (c), changed operative date from the time of publication of an administrative correction to N.J.A.C. 7:27–30.3 to June 2, 1997; and deleted (e).

7:27–30.9 DER transfer

(a) A person who transfers one or more DERs shall provide a complete copy of the following to the transferee at the time of the transfer:

1. The Notice and Certification of DER Generation for each batch of DERs of which the transferred DERs are a part;

2. All supporting documentation for the Notice and Certification of DER Generation; and

3. The Notice of DER Verification, if any.

(b) A user shall obtain a complete copy of the documentation listed in (a) above at the time a DER is transferred to the user.

(c) When one or more DERs is transferred, the transferor and transferee shall execute a Notice of Transfer. The transferor and transferee shall complete the Notice of Transfer on a form obtained from the registry, including information to identify the transferor, the transferee, the DERs, and the purchase price. The transferee shall submit the Notice of Transfer to the registry.

7:27–30.10 DER verification

(a) Only the following persons may verify DERs that are to be used in New Jersey:

1. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8; or

2. A certified public accountant certified by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B.

(b) A verifier shall be independent of the generator. A verifier shall not be considered independent if he or she:

1. Is employed by the generator, or was employed by the generator within the six months before the verification; or

2. Is employed by an entity that prepared the Notice and Certification of DER Generation or any of its supporting documentation for the batch of DERs being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of DERs being verified.

(c) A DER can be verified only if the verifier determines that all of the following apply, based on diligent inquiry that is not limited to reliance upon representations made by the generator:

1. The DER is not based on an emission reduction which cannot be the basis for generation of a DER pursuant to N.J.A.C. 7:27–30.6;

2. The generator used an emission quantification protocol that applies to the emission reductions generated and satisfies the requirements of N.J.A.C. 7:27–30.20;

3. The Notice and Certification of DER Generation, and all supporting documentation, contains all of the information required under this subchapter and the applicable emission quantification protocol;

4. The Notice and Certification of DER Generation, and all supporting documentation, does not appear on its face to omit any information necessary to make it true, accurate and complete;

5. The supporting documentation establishes that all calculations were performed as required under this subchapter and the emission quantification protocol; and

6. The supporting documentation establishes that DERs are based on emission reductions which are real and surplus, and satisfy all applicable requirements of this subchapter for the generation of DERs.

(d) After verifying the DERs, the verifier shall complete a Notice of DER Verification on a form provided by the registry. The verifier shall submit the Notice to the person who holds the DERs and to the registry. In the Notice, the verifier shall include the following:

1. Information identifying the verifier and the verifier's employer;

2. The unique serial numbers assigned to each DER verified;

3. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above;

4. A statement that the DERs are verified; and

5. The certification required under N.J.A.C. 7:27–1.39.

(e) If the Department or the EPA determines at any time that a DER in the registry does not satisfy all of the requirements of (c) above, the Department or the EPA (as applicable) shall notify the registry and the generator that the DER is invalid.

7:27–30.11 DER use: general requirements

(a) A user shall use only DERs which satisfy the requirements of N.J.A.C. 7:27–30.8(a).

(b) A user shall not use a DER based on NO_x emission reductions to comply with a VOC requirement, and shall not use a DER based on VOC emission reductions to comply with a NO_x requirement.

(c) A user shall not use a DER based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.

(d) A use period shall not exceed one year. However, DERs may be used over consecutive use periods.

(e) At least 30 days before using a DER, the user shall give notice of the intended use to the registry. The notice shall be in the form of a Notice of Intent to Use DERs, or an amendment to a previously submitted Notice of Intent to Use DERs. If the notice is late, then the number of DERs required for compliance from the beginning of the use period described in the notice (or amended notice) until the full 30 days has elapsed shall be multiplied by 1.5. The use period or amended use period (as applicable) shall not begin before the notice is filed.

(f) The user shall hold the full quantity of DERs needed for compliance before using them, and shall continue to hold all such DERs until filing the Notice and Certification of DER Use. If the user fails to do so, then the number of DERs needed for compliance for each day that the shortfall continues shall be multiplied by three.

(g) For each day on which the multipliers in both (e) and (f) above apply, the number of DERs needed for compliance shall be multiplied by 4.5.

(h) If the Department determines that the DERs that a user intends to use or has used are invalid, the Department shall so notify the user and the registry. Within 60 days after receiving the notice, the user shall become the holder of other DERs to replace the invalid DERs and shall amend the Notice of Intent to Use DERs or Notice and Certification of DER Use to reflect the replacement DERs.

(i) The Department may request an interim calculation (pursuant to N.J.A.C. 7:27–30.12) of the quantity of DERs needed for compliance as of any date during the use period. The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.

(j) A person may retire one or more DERs. To retire a DER, the person who holds the DERs shall execute a Notice of Retirement and submit it to the registry. The holder shall complete the Notice of Retirement on a form provided by the registry, including information to identify the DERs and the holder. A person who retires a DER is not required to submit a Notice of Intent to Use DERs or Notice and Certification of DER Use for that DER.

(k) The user may be subject to penalties for violation of the emission limit for which DERs were to be used for compliance, if the user:

1. Purports to use DERs which do not satisfy the requirements of N.J.A.C. 7:27–30.8(a), or for purposes prohibited under (b) or (c) above;

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:

$$\text{DERs} = \frac{\text{(Actual Emissions} - \text{Baseline Emissions)}}{0.9}$$

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. 7:27–8.12 or N.J.A.C. 7:27–22.35 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 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.

Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d), changed N.J.A.C. reference in 2, and deleted a reference to N.J.A.C. 7:27–8.8(f) in 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).

7:27–30.15 DER use: Notice and Certification of DER Use

(a) Within 30 days after the end of each use period, the user shall submit a Notice and Certification of DER Use to the Department and the registry.

(b) In the Notice and Certification of DER Use, the user shall:

1. Attach a copy of the Notice of Intent to Use DERs which had been submitted for the use period, together with all amendments;

2. For each DER, attach a copy of all documentation and information required to be transferred to the user pursuant to N.J.A.C. 7:27–30.9(a);

3. For each item of information which was set forth in the Notice of Intent to Use DERs (or amendment thereto), either confirm that the information is still correct, or provide revised information based on what actually occurred in the use period;

4. Make all statements and the certification required under N.J.A.C. 7:27–30.16;

5. State that the user has calculated the number of DERs used in accordance with the same emission quantification protocol used in the corresponding Notice of Intent to Use DERs, and that the user has based the calculation on actual data from the use period; and

6. State that the user has determined that the DERs used have not been used previously or retired, based on information in the registry and in the user's own records.

7:27–30.16 General notice requirements

(a) This section establishes general requirements for a Notice and Certification of DER Generation pursuant to N.J.A.C. 7:27–30.7, a Notice of Intent to Use DERs pursuant to N.J.A.C. 7:27–30.14, and a Notice and Certification of DER Use pursuant to N.J.A.C. 7:27–30.15. Any of these notices is referred to in this section as a Notice.

(b) The generator or user shall submit each Notice on a form obtained from the registry.

(c) In each Notice, the generator or user shall include the following information, as applicable:

1. Information that identifies the generator or user and the generator or user source;

2. The generation period or the use period;

3. The emission quantification protocol used to calculate the quantity of DERs generated, needed for compliance, or used;

4. All supporting information required by the emission quantification protocol used, and all supporting information required under N.J.A.C. 7:27–30.20;

5. The quantity of VOC and the quantity of NO_x DERs determined pursuant to the emission quantification protocol to have been generated, needed for use, or used, with the quantity for the ozone season and the quantity for the rest of the year listed separately;

6. The unique serial number assigned under N.J.A.C. 7:27–30.8(c) to each DER generated, needed for use, or used;

7. A statement that the quantity of DERs generated, needed for use, or used has been calculated in accordance with an emission quantification protocol that meets the requirements of N.J.A.C. 7:27–30.20; and

8. A statement attesting that all documentation and supporting information required by the emission quantification protocol or by N.J.A.C. 7:27–30.20 is enclosed.

(d) The generator or user, as applicable, shall certify each Notice and all supporting information and documentation required pursuant to the emission quantification protocol used or required under N.J.A.C. 7:27–30.20, as follows:

1. The generator shall certify each Notice and Certification of DER Generation in accordance with N.J.A.C. 7:27–1.39;

2. The user shall certify each Notice of Intent to Use DERs as follows: "I certify under penalty of law that I believe the information provided in his Notice of Intent to Use DERs is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgment, using techniques, factors, or calculations approved by the Department or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information";

3. The user shall certify each Notice and Certification of DER Use in accordance with N.J.A.C. 7:27–1.39.

7:27–30.17 Geographic scope of trading

(a) A DER generated in New Jersey may be used by a user source located anywhere in New Jersey.

(b) A user source located in New Jersey may use a NO_x DER generated outside New Jersey only if the generator source is located in a state that meets the requirements of (d) below, and is located either to the west and/or south of New Jersey or in the same air quality control region as the user source.

(c) A user source located in New Jersey may use a VOC DER generated outside New Jersey only if the generator source and the user source are located in the same air quality control region, and the generator source is located in a state that meets the requirements of (d) below.

(d) No DER generated in another state may be used in New Jersey unless:

1. Except as provided in (e) below, the other state has promulgated rules or enacted laws which:

i. Require that all notices regarding the generation, verification, transfer and use of DERs be sent to the registry listed in N.J.A.C. 7:27–30.3(d), or to another registry which contains all of the same data as the registry listed in N.J.A.C. 7:27–30.3(d) and which supplies all of its data to the registry listed in N.J.A.C. 7:27–30.3(d);

ii. Prohibit a user source from using NO_x DERs generated in New Jersey, if the user source is located in an air quality control region which lies to the south and/or west of New Jersey and does not include any part of New Jersey; and

iii. Prohibit a user source from using VOC DERs generated in New Jersey if the user source is located in an air quality control region which does not include any part of New Jersey; and

2. A written agreement is in effect between the Department and the other state's air pollution control agency, and the agreement:

i. Satisfies all applicable requirements established by the EPA for interstate DER trading agreements; and

ii. Provides that upon the Department's request, the other state's air pollution control agency will provide the Department with all information and documentation required to be submitted to that agency regarding DERs generated in New Jersey which are to be used in the other state, and regarding DERs generated in the other state which are to be used in New Jersey.

(e) The requirements of (d)1ii and iii above do not apply to a DER which:

1. Was generated in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, or in a portion of New York State which is in the New York–Northern New Jersey–Connecticut ozone nonattainment area identified at 40 CFR 81;

2. Is used in Burlington, Camden, Cumberland, Gloucester, Mercer or Salem County, and was generated in the Philadelphia–Trenton–Wilmington ozone nonattainment area identified at 40 CFR 81; or

3. Is used in Warren County and was generated in Carbon, Northampton or Lehigh County, Pennsylvania.

(f) A user who purports to use DERs which do not satisfy the applicable requirements of (a) through (d) above may be subject to penalties for violation of the emission limit for which DERs were to be used for compliance.

7:27–30.18 Recordkeeping

(a) For each batch of DERs generated, the generator shall retain the following records at the facility where the generator source is located until five years after all DERs in the batch are used, and shall provide such records to the Department within 15 days after receiving a request from the Department:

1. The Notice and Certification of DER Generation; and

2. All information relevant to documenting and quantifying the DERs generated.

(b) For each DER used, the user shall retain the following records at the facility where the user source is located until five years after the end of the use period, and shall provide such records to the Department within 15 days after receiving a request from the Department:

1. The Notice and Certification of DER Generation, the Notice of Intent to Use DERs, the Notice of DER Verification, the Notice and Certification of DER Use, and any Notice of Retirement or notice that the EPA or the Department has found the DER invalid; and

2. All information relevant to documenting and quantifying the generation and use of the DER.

(c) Within 15 days after receiving a request from the Department, a generator, user or verifier shall submit to the Department information which the Department finds reasonably necessary to determine if the generation, verification, proposed use, or use of DERs complies with this chapter and all applicable State and Federal laws and regulations. This information includes, but is not limited to, copies of any notice required to be submitted to the registry under this subchapter, all supporting information required by the emission quantification protocol used, and all supporting information required under N.J.A.C. 7:27–30.20.

7:27–30.19 Public availability

(a) All information submitted to the Department or the registry under this subchapter is a public record under N.J.S.A. 47:1A–2. To inspect, copy or obtain a copy of any public record, a person shall submit a request to the registry at the address listed in N.J.A.C. 7:27–30.3(d). To inspect, copy or obtain a copy of any public record held by the Department, a person shall submit a request to:

Department of Environmental Protection
Office of Legal Affairs
Attention: Public Records Requests
401 East State Street
CN 402
Trenton, New Jersey 08625–0402

(b) A generator or user shall make all documentation and supporting information required for a notice or relied on pursuant to the emission quantification protocol used available to any person who requests it.

7:27–30.20 Emission quantification protocols

(a) Each generator or user shall use an emission quantification protocol that complies with this section. The generator shall follow the protocol to demonstrate that the DERs generated are real, surplus, and properly quantified. The user shall follow the protocol to demonstrate that the amount of DERs needed is properly quantified.

(b) A mobile source generator or user shall use an emission quantification protocol which complies with all applicable guidance issued by the EPA concerning mobile source protocols, and which requires that the data on which each calculation is based are the most representative, accurate and reliable data available. If the EPA approves a quantification protocol for a specific class of mobile sources, the generator or user shall use that protocol for DERs generated or used by mobile sources within the class.

(c) Pursuant to the specific emission quantification protocol, a stationary source generator or mobile source generator shall:

1. Describe the actions taken to reduce emissions to generate DERs;

2. State the degree to which the emission reduction is already relied upon in the SIP, and explain the basis for this determination;

3. Identify whether emissions may be shifted to other equipment or facilities as a result of the actions taken to reduce emissions; and

4. In accordance with (e) below, establish and document the terms (that is, baseline emission rate, actual emission rate, and the economic output for the generation period) used to calculate the quantity of DERs generated under N.J.A.C. 7:27–30.5(b), and any increase in actual emissions of other emissions sources referenced in N.J.A.C. 7:27–30.5(d).

(d) Pursuant to the specific emission quantification protocol, a stationary source user or mobile source user shall:

1. Describe the requirements for which the DERs are used (or are to be used) to comply; and

2. In accordance with (e) below, establish and document the terms (that is, baseline emissions and actual emissions) used to calculate the quantity of DERs needed or used under N.J.A.C. 7:27–30.12(b) and (c).

(e) To establish and document each term used in the calculation under N.J.A.C. 7:27–30.5(b) and (c) or 30.12(b) and (c) (as applicable), the generator or user (as applicable) shall supply the following supporting information:

1. Include all calculations performed to determine the value of the term, and specify all assumptions made in the calculations, all limitations of the calculations, and any other information appropriate to the specific generation or use strategy;

2. Include a design margin, and an explanation of the method used to determine the design margin;

3. Document (e)1 and 2 above with records from the emission rate measurement/quantification technique identified in (f) below (that is, a copy of the continuous emissions monitoring data, stack test results, parameters monitored for predictive emissions monitoring purposes, emission factors, fuel use records, activity level records, and other relevant documents);

4. Reference the source of all records provided under (e)3 above;

5. If the records provided under (e)3 above contain data based on measurements made at the generator source, provide the monitoring or measurement protocol relied on in collecting this data; and

6. Identify all applicable State and Federal regulations, orders and permits, and specify the applicable limits and requirements set therein for the air contaminant and (as applicable) for the generator source or user source.

(f) Emission rates from stationary sources shall be measured and quantified as follows:

1. If Federal or State regulations or permit conditions require that the emissions source's emissions be monitored through a continuous emission monitoring (CEM) system during the baseline period described in N.J.A.C. 7:27–30.5(c), generation period or use period, the generator or user shall use the CEM data to determine emissions.

2. For emissions sources not required to use CEMs, the generator or user shall determine emission rates using one of the emission rate determination techniques listed below. The generator or user shall use the first listed technique which the emissions source is required to use under any applicable Federal or State regulation or permit condition, or which is in fact being used to determine the source's emissions:

i. An alternative monitoring methodology set forth in an alternative monitoring plan approved by the Department pursuant to N.J.A.C. 7:2719.18(b) or approved by the EPA;

ii. Source emission testing performed on the user or generator source, as applicable, in accordance with a protocol approved by the Department pursuant to N.J.A.C. 7:27B;

iii. A material balance;

iv. Source emission testing or other emission measurements conducted on similar emissions sources;

v. Calculation using emission factors that differ from AP–42 (as defined in N.J.A.C. 7:27–8.1), which are designed to estimate emissions from the particular emissions source more accurately than AP–42;

vi. Calculation using EPA emission factors from AP–42; and

vii. For area sources only, an emission estimation model approved or published by the EPA.

(g) A generator or user need not obtain the Department's approval before using an emissions quantification protocol. If the Department approves any emissions quantification protocol, it shall make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies.

Administrative change.
See: 28 N.J.R. 4959(b).

7:27–30.21 Compliance responsibilities

The generator is responsible for ensuring that it has generated DERs in accordance with this subchapter, and that the DERs are real, surplus, and properly quantified. The verifier is responsible for making the Notice of DER Verification true, accurate and complete. The user is responsible for ensuring that its use of DERs complies with this subchapter, and that all DERs used satisfy the requirements of N.J.A.C. 7:27–30.8(a). In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities.

7:27–30.22 Penalties

A person who fails to comply with any provision of this subchapter shall be subject to civil administrative 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. 2C:28 and N.J.S.A. 26:2C–19(f)1 and 2. If there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

APPENDIX A

Emissions Included in Emissions Inventory
as of August 2, 1996

The emissions inventory which the State has submitted to the EPA as a revision to the State Implementation Plan includes the following emissions:

1. Emissions from major point sources. A major point source is a facility with the potential to emit at least 10 tons of VOC per year; 25 tons of NO_x per year; or 100 tons of CO per year. VOC or NO_x emissions from a source operation at a major point source are included in the inventory if the emission statement submitted pursuant to N.J.A.C. 7:27–21 contains VOC or NO_x emissions (as applicable) for that source operation.

2. Emissions from minor point sources and area sources. Minor point sources are industrial sources with the potential to emit less than 10 tons of VOCs per year, less than 25 tons of NO_x per year, and less than 100 tons of CO per year. Area sources are source categories with emissions that are not readily controllable at a single point or set of points; for example, the use of consumer products results in VOC emissions at a multitude of points that could not readily be controlled individually. Emissions from a minor point source or area source are included in the inventory if the source is within one of the following categories:

Industrial Fuel Combustion
- Anthracite coal
- Bituminous coal
- Distillate oil
- Residual oil
- Natural gas
- Liquefied petroleum gas (LPG)

Commercial Fuel Combustion
- Bituminous coal
- Distillate Oil
- Residual Oil
- Natural Gas
- Liquefied petroleum gas (LPG)

Residential Fuel Combustion
- Anthracite coal
- Distillate oil
- Natural gas
- Liquefied petroleum gas (LPG)
- Wood
- Kerosene

Industrial Solvent Use
- Architectural coatings
- Autobody refinishing
- Traffic Paints
- Degreasing
- Dry cleaning
- Graphic arts

Bioprocesses
- Bakeries
- Breweries
- Distilleries
- Wineries

Surface Coating
- Factory finished wood
- Furniture and fixtures
- Metal containers
- Sheet, strip and coal coating
- Machinery and equipment
- Appliances

Electrical insulation
New automobiles
Other transportation equipment
Marine vessels
Other products
High-performance maintenance coatings
Other special purpose coatings
Consumer/Commercial Solvent Use
Pesticides (Lawn, agricultural and golf courses)
Consumer products
Asphalt Application
Emulsified asphalt
Cutback asphalt
Roofing asphalt
Gasoline Handling
Aircraft refueling
Truck unloading (at gas stations)
Motor vehicle refueling
Tank breathing (gas stations)
Transit by rail car
Transit by truck
Marine Vessel Transport of VOCs
Loading, ballasting and transit of crude oil
Loading, ballasting and transit of gasoline
Loading and transit of residual oil
Loading and transit of distillate oil
Loading and transit of jet fuel
Loading and transit of kerosene
Waste Management
Incineration (on-cite, pathological and municipal)
Landfills
Industrial treatment works (ITWs)
Publicly owned treatment works (POTWs)
Fires
Agricultural field burning
Wildfires
Managed burning
Cigarette smoking

3. Highway mobile sources. The highway mobile source component of the emission inventory is an estimate of VOC, NO_x, and CO tailpipe emissions and VOC evaporative emissions from vehicles operating on public roadways. Emissions from such vehicles are included in the inventory.

4. Off-highway equipment and engine categories. The off-highway mobile source and equipment component of the emission inventory is an estimate of the VOC, NO_x and CO emissions from motorized vehicles and equipment that are not operated on public roadways. Emissions from such vehicles and equipment are included in the inventory if the source is within one of the following categories:

Agricultural Equipment
Agricultural Mowers
Agricultural Tractors
Balers
Combines
Hydro Power Units
Sprayers
Swathers
Tillers >5 HP
2–Wheel Tractors
Other Agricultural Equipment
Aircraft Operations and Support
Air taxi operations
Commercial/Military aircraft operations
General aviation
Aircraft support equipment
Terminal tractors
Construction Equipment
Asphalt Pavers
Bore/Drill Rigs
Cement and Mortar Mixers
Concrete Pavers
Concrete/Industrial Saws
Cranes
Crawler Tractors
Crushing/Proc. Equipment Dumpers/Tenders
Excavators
Graders
Off-Highway Tractors
Off-Highway Trucks
Other Construction Equipment
Paving Equipment
Plate Compactors
Rollers
Rough Terrain Forklifts
Rubber Tired Dozers
Rubber Tired Loaders
Scrapers
Signal Boards
Skid Steer Loaders
Surfacing Equipment
Tampers/Rammers Tractors/Loaders/Backhoes
Trenchers
Logging Equipment
Chainsaws >4 HP
Fellers/Bunchers
Shredders >5 HP

- Skidders
- Industrial Equipment
  - Aerial Lifts
  - Forklifts
  - Other General Industrial Equipment
  - Other Material Handling Equipment
  - Sweepers/Scrubbers
- Lawn and Garden Equipment
  - Chainsaws <4 HP
  - Chippers/Stump Grinders
  - Commercial Turf Equipment
  - Front Mowers
  - Lawn and Garden Tractors
  - Lawn Mowers
  - Leaf Blowers/Vacuums
  - Other Lawn and Garden Equipment
  - Rear Engine Riding Mowers
  - Shredders <5 HP
  - Snowblowers
  - Tillers <5 HP Trimmers/Edgers/Brush Cutters
  - Wood Splitters
- Light Commercial Equipment
  - Air Compressors <50 HP
  - Gas Compressors <50 HP
  - Generator Sets <50 HP
  - Pressure Washers <50 HP
  - Pumps <50 HP
  - Welders <50 HP
- Recreational Vehicles and Vessels
  - All Terrain Vehicles (ATVs)
  - Golf Carts
  - Minibikes
  - Off-Road Motorcycles
  - Sailboat Auxiliary Inboard Engines
  - Sailboat Auxiliary Outboard Engines
  - Snowmobiles
  - Specialty Vehicles Carts
  - Vessels w/Inboard Engines
  - Vessels w/Outboard Engines
  - Vessels w/Sterndrive Engines
- Other Transportation Equipment
  - Locomotives
  - Marine vessels

APPENDIX B

CHEMICALS DEFINING SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

CAS #	Chemical
105-57-7	Acetal
75-07-0	Acetaldehyde
107-89-1	Acetaldol
60-35-5	Acetamide
103-84-4	Acetanilide
64-19-7	Acetic acid
108-24-7	Acetic anhydride
67-64-1	Acetone
75-86-5	Acetone cyanohydrin
75-05-8	Acetonitrile
96-86-2	Acetophenone
75-36-5	Acetyl chloride
74-86-2	Acetylene
107-02-8	Acrolein
79-06-1	Acrylamide
79-10-7	Acrylic acid
107-13-1	Acrylonitrile
124-04-9	Adipic acid
111-69-3	Adiponitrile
††	Alkyl naphthalenes
107-18-6	Allyl alcohol
107-05-1	Allyl chloride
1321-11-5	Aminobenzoic acid
111-41-1	Aminoethylethanolamine
123-30-8	p-Aminophenol
628-63-7, 123-92-2	Amyl acetates
71-41-0,†	Amyl alcohols
110-58-7	Amyl amine
543-59-9	Amyl chloride
110-66-7,†	Amyl mercaptans
1322-06-1	Amyl phenol
62-53-3	Aniline
142-04-1	Aniline hydrochloride
29191-52-4	Anisidine
100-66-3	Anisole
118-92-3	Anthranilic acid
84-65-1	Anthraquinone
100-52-7	Benzaldehyde
55-21-0	Benzamide
71-43-2	Benzene
98-48-6	Benzenedisulfonic acid
98-11-3	Benzenesulfonic acid
134-81-6	Benzil
76-93-7	Benzilic acid
65-85-0	Benzoic acid
119-53-9	Benzoin
100-47-0	Benzonitrile
119-61-9	Benzophenone
98-07-7	Benzotrichloride
98-88-4	Benzoyl chloride
100-51-6	Benzyl alcohol
100-46-9	Benzylamine
120-51-4	Benzyl benzoate
100-44-7	Benzyl chloride
98-87-3	Benzal chloride
92-52-4	Biphenyl
80-05-7	Bisphenol A
108-86-1	Bromobenzene
27497-51-4	Bromonaphthalene
106-99-0	Butadiene

CAS #	Chemical
106-98-9	l-butene
123-86-4	n-butyl acetate
141-32-2	n-butyl acrylate
71-36-3	n-butyl alcohol
78-92-2	s-butyl alcohol
75-65-0	t-butyl alcohol
109-73-9	n-butylamine
13952-84-6	s-butylamine
75-64-9	t-butylamine
98-73-7	4-tert-butyl benzoic acid
107-88-0	1,3-butylene glycol
123-72-8	n-butyraldehyde
107-92-6	Butyric acid
106-31-0	Butyric anhydride
109-74-0	Butyronitrile
105-60-2	Caprolactam
75-15-50	Carbon disulfide
558-13-4	Carbon tetrabromide
56-23-5	Carbon tetrachloride
9004-35-7	Cellulose acetate
79-11-8	Chloroacetic acid
108-42-9	m-chloroaniline
95-51-2	o-chloroaniline
106-47-8	p-chloroaniline
35913-09-8	Chlorobenzaldehyde
108-90-7	Chlorobenzene
†	Chlorobenzoic acid
†	Chlorobenzotrichloride
1321-03-5	Chlorobenzoyl chloride
25497-29-4	Chlorodifluoromethane
75-45-6	Chlorodifluoroethane
67-66-3	Chloroform
25586-43-0	Chloronaphthalene
88-73-3	o-chloronitrobenzene
100-00-5	p-chloronitrobenzene
25167-80-0	Chlorophenols
126-99-8	Chloroprene
7790-94-5	Chlorosulfonic acid
108-41-8	m-chlorotoluene
95-49-8	o-chlorotoluene
106-43-4	p-chlorotoluene
75-72-9	Chlorotrifluoromethane
108-39-4	m-cresol
95-48-7	o-cresol
106-44-5	p-cresol
1319-77-3	Mixed cresols
1319-77-3	Cresylic acid
4170-30-0	Crotonaldehyde
3724-65-0	Crotonic acid
98-82-8	Cumene
80-15-9	Cumene hydroperoxide
372-09-8	Cyanoacetic acid
506-77-4	Cyanogen chloride
108-80-5	Cyanuric acid
108-77-0	Cyanuric chloride
110-82-7	Cyclohexane
108-93-0	Cyclohexanol
108-04-1	Cyclohexanone
110-83-8	Cyclohexene
108-91-8	Cyclohexylamine
111-78-4	Cyclooctadiene
112-30-1	Decanol
123-42-2	Diacetone alcohol
27576-04-1	Diaminobenzoic acid
†	Dichloroaniline
541-73-1	m-dichlorobenzene
95-50-1	o-dichlorobenzene
106-46-7	p-dichlorobenzene
75-71-8	Dichlorofluoromethane
107-06-2	1,2-dichloroethane (EDC)
111-44-4	Dichloroethyl ether
96-23-1	Dichlorohydrin
26952-23-8	Dichloropropene
101-83-7	Dicyclohexylamine
109-89-7	Diethylamine
111-46-6	Diethylene glycol
112-36-7	Diethylene glycol diethyl ether
111-96-6	Diethylene glycol dimethyl ether
112-34-5	Diethylene glycol monobutyl ether
124-17-4	Diethylene glycol monobutyl ether acetate
111-90-0	Diethylene glycol monoethyl ether
112-15-2	Diethylene glycol monoethyl ether acetate
111-77-3	Diethylene glycol monomethyl ether
64-67-5	Diethyl sulfate
75-37-6	Difluoroethane
25167-70-8	Diisobutylene
26761-40-0	Diisodecyl phthalate
27554-26-3	Diisooctyl phthalate
674-82-8	Diketene
124-40-3	Dimethylamine
121-69-7	N,N-dimethylaniline
115-10-6	N,N-dimethyl ether
68-12-2	N,N-dimethylformamide
57-14-7	Dimethylhydrazine
77-78-1	Dimethyl sulfate
75-18-3	Dimethyl sulfide
67-68-5	Dimethyl sulfoxide
120-61-6	Dimethyl terephthalate
99-34-3	3,5-dinitrobenzoic acid
51-28-5	2,4-dinitrophenol
25321-14-6	Dinitrotoluene
123-91-1	Dioxane
646-06-0	Dioxolane
122-39-4	Diphenylamine
101-84-8	Diphenyl oxide
102-08-9	Diphenyl thiourea
25265-71-8	Dipropylene glycol
25378-22-7	Dodecene
28675-17-4	Dodecylaniline
27193-86-8	Dodocylphenol
106-89-8	Epichlorohydrin
64-17-5	Ethanol
†	Ethanolamines
141-78-6	Ethyl acetate
141-97-9	Ethyl acetoacetate
140-88-5	Ethyl acrylate
75-04-7	Ethylamine
100-41-4	Ethylbenzene
74-96-4	Ethyl bromide
9004-57-3	Ethylcellulose
75-00-3	Ethyl chloride
105-39-5	Ethyl chloroacetate
105-56-6	Ethylcyanoacetate
74-85-1	Ethylene
96-49-1	Ethylene carbonate
107-07-3	Ethylene chlorohydrin
107-15-3	Ethylenediamine
106-93-4	Ethylene dibromide
107-21-1	Ethylene glycol
111-55-7	Ethylene glycol diacetate
110-71-4	Ethylene glycol dimethyl ether

CAS #	Chemical
111-76-2	Ethylene glycol monobutyl ether
112-07-2	Ethylene glycol monobutyl ether acetate
110-80-5	Ethylene glycol monoethyl ether
111-15-9	Ethylene glycol monoethyl ether acetate
109-86-4	Ethylene glycol monomethyl ether
110-49-6	Ethylene glycol monomethyl ether acetate
122-99-6	Ethylene glycol monophenyl ether
2807-30-9	Ethylene glycol monopropyl ether
75-21-8	Ethylene oxide
60-29-7	Ethyl ether
104-76-7	2-ethylhexanol
122-51-0	Ethyl orthoformate
95-92-1	Ethyl oxalate
41892-71-1	Ethyl sodium oxalacetate
50-00-0	Formaldehyde
75-12-7	Formamide
64-18-6	Formic acid
110-17-8	Fumaric acid
98-01-1	Furfural
56-81-5	Glycerol
26545-73-7	Glycerol dichlorohydrin
25791-96-2	Glycerol triether
56-40-6	Glycine
107-22-2	Glyoxal
118-74-1	Hexachlorobenzene
67-72-1	Hexachloroethane
36653-82-4	Hexadecanol
124-09-4	Hexamethylenediamine
629-11-8	Hexamethylene glycol
100-97-0	Hexamethylenetramine
74-90-8	Hydrogen cyanide
123-31-9	Hydroquinone
99-06-9	p-hydroxybenzoic acid
26760-64-5	Isoamylene
78-83-1	Isobutanol
110-19-0	Isobutyl acetate
115-11-7	Isobutylene
78-84-2	Isobutyraldehyde
79-31-2	Isobutyric acid
25339-17-7	Isodecanol
26952-21-6	Isooctyl alcohol
78-78-4	Isopentane
78-59-1	Isophorone
121-91-5	Isophthalic acid
78-79-5	Isoprene
67-63-0	Isopropanol
108-21-4	Isopropyl acetate
75-31-0	Isopropylamine
75-29-6	Isopropyl chloride
25168-06-3	Isopropylphenol
463-51-4	Ketene
††	Linear alkyl sulfonate
123-01-3	Linear alkylbenzene
110-16-7	Maleic acid
108-31-6	Maleic anhydride
6915-15-7	Malic acid
141-79-7	Mesityl oxide
121-47-1	Metanilic acid
79-41-4	Methacrylic acid
563-47-3	Methallyl chloride
67-56-1	Methanol
79-20-9	Methyl acetate
105-45-3	Methyl acetoacetate
74-89-5	Methylamine
100-61-8	n-methylaniline
74-83-9	Methyl bromide
37365-71-2	Methyl butynol
74-87-3	Methyl chloride
108-87-2	Methylcyclohexane
1331-22-2	Methylcyclohexanone
75-09-2	Methylene chloride
101-77-9	Methylene dianiline
101-68-8	Methylene diphenyl diisocyanate
78-93-3	Methyl ethyl ketone
107-31-3	Methyl formate
108-11-2	Methyl isobutyl carbinol
108-10-1	Methyl isobutyl ketone
80-62-6	Methyl methacrylate
77-75-8	Methylpentynol
98-83-9	a-methylstyrene
110-91-8	Morpholine
85-47-2	a-naphthalene sulfonic acid
120-18-3	b-naphthalene sulfonic acid
90-15-3	a-naphthol
135-19-3	b-naphthol
75-98-9	Neopentanoic acid
88-74-4	o-nitroaniline
100-01-6	p-nitroaniline
91-23-6	o-nitroanisole
100-17-4	p-nitroanisole
98-95-3	Nitrobenzene
†	Nitrobenzoic acid (o, m, & p)
79-24-3	Nitroethane
75-52-5	Nitromethane
88-75-5	2-Nitrophenol
25322-01-4	Nitropropane
1321-12-6	Nitrotoluene
27215-95-8	Nonene
25154-52-3	Nonylphenol
27913-28-8	Octylphenol
123-63-7	Paraldehyde
115-77-5	Pentaerythritol
109-66-0	n-pentane
109-67-1	l-pentene
127-18-4	Perchloroethylene
594-42-3	Perchloromethyl mercaptan
94-70-2	o-phenetidine
156-43-4	p-phenetidine
108-95-2	Phenol
†	Phenolsulfonic acids
91-40-7	Phenyl anthranilic acid
††	Phenylenediamine
75-44-5	Phosgene
85-44-9	Phthalic anhydride
85-41-6	Phthalimide
108-99-6	b-picoline
110-85-0	Piperazine
†	Polybutenes
25322-68-3	Polyethylene glycol
25322-69-4	Polypropylene glycol
123-38-6	Propionaldehyde
79-09-4	Propionic acid
71-23-8	n-propyl alcohol
107-10-8	Propylamine
540-54-5	Propyl chloride
115-07-1	Propylene
127-00-4	Propylene chlorohydrin
78-87-5	Propylene dichloride
57-55-6	Propylene glycol
75-56-9	Propylene oxide
110-86-1	Pyridine
106-51-4	Quinone
108-46-3	Resorcinol

CAS #	Chemical
27138-57-4	Resorcylic acid
69-72-7	Salicyclic acid
127-09-3	Sodium acetate
532-32-1	Sodium benzoate
9004-32-4	Sodium carboxymethyl cellulose
3926-62-3	Sodium chloracetate
141-53-7	Sodium formate
139-02-6	Sodium phenate
110-44-1	Sorbic acid
100-42-5	Styrene
110-15-6	Succinic acid
110-61-2	Succinonitrile
121-57-3	Sulfanilic acid
126-33-0	Sulfolane
1401-55-4	Tannic acid
100-21-0	Terephthalic acid
†	Tetrachloroethanes
117-08-8	Tetrachlorophthalic anhydride
78-00-2	Tetraethyl lead
119-64-2	Tetrahydronaphthalene
85-43-8	Tetrahydrophghalic anhydride
75-74-1	Tetramethyl lead
110-60-1	Tetramethylenediamine
110-18-9	Tetramethylethylenediamine
108-88-3	Toluene
95-80-7	2,4,-diaminotoluene
584-84-9	Toluene-2,4-diisocyanate
26471-62-5	Toluene diisocyanates (mixture)
1333-07-9	Toluenesulfonamide
†	Toluenesulfonic acids
98-59-9	Toluenesulfonyl chloride
26915-12-8†	Toluidines
†	Trichlorobenzenes
71-55-6	1,1,1-trichloroethane
79-00-5	1,1,2-trichloroethane
79-01-6	Trichloroethylene
75-69-4	Trichlorofluoromethane
96-18-4	1,2,3-trichloropropane
76-13-1	1,1,2-trichlorotrifluoroethane
121-44-8	Triethylamine
112-27-6	Triethylene glycol
112-49-2	Triethylene glycol dimethyl ether
7756-94-7	Triisobutylene
75-50-3	Trimethylamine
57-13-6	Urea
108-05-4	Vinyl acetate
75-01-4	Vinyl chloride
75-35-4	Vinylidene chloride
25013-15-4	Vinyl toluene
1330-20-7	Xylenes (mixed)
95-47-6	o-xylene
106-42-3	p-xylene
1300-71-6	Xylenol
1300-73-8	Xylidine
1634-04-4	Methyl tert-butyl ether
9002-88-4	Polyethylene
9003-07-0	Polypropylene
9003-53-6	Polystyrene

† CAS numbers for the various isomers and mixtures have not been listed here.
†† CAS numbers not available.

SUBCHAPTER 31. NO_X BUDGET PROGRAM

Authority

N.J.S.A. 13:1B–3 and 26:2C–1 et seq.

Source and Effective Date

R.1998 d.379, effective July 20, 1998 (operative August 16, 1998).
See: 29 N.J.R. 3924(b), 29 N.J.R. 4226(a), 30 N.J.R. 2660(a).

7:27–31.1 Purpose and scope

This subchapter establishes a NO_x Budget Program in New Jersey which, beginning in 1999, limits emissions from stationary sources of NO_x. It sets forth requirements for the monitoring, recordkeeping, and reporting of NO_x emissions and for certification of compliance with this program. It makes available a trading mechanism, which allows intrastate trading as well as interstate trading. In order to support the trading mechanism, this subchapter establishes rules and procedures for the allocation of the tradeable units (that is, allowances); the transfer, use, and retirement of the allowances; and the tracking of the allowances.

7:27–31.2 Definitions

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

"AAR" means authorized account representative.

"Account" means the place in the NO_x Allowance Tracking System where allowances are held for a specific person or purpose. Such a place may be a compliance account, a general account, or a retirement account.

"Account number" means the identification number given by the NATS Administrator to an account in which allowances are held in the NO_x Allowance Tracking System pursuant to N.J.A.C. 7:27–31.13, NO_x Allowance Tracking System.

"Acquiring account" means the account in an allowance transfer to which allowances are conveyed.

"Allocate" or "allocation" means:

1. In respect to New Jersey, the assignment of allowances pursuant to N.J.A.C. 7:27–31.7, Annual allowance allocation; or in respect to another jurisdiction, the assignment of allowances pursuant to that jurisdiction's comparable rules; and

2. The recording of the assigned allowances by the NATS Administrator in the appropriate NO_x Allowance Tracking System compliance account or general account.

"Allowance" means a tradeable unit which represents the limited authorization to emit one ton of NO_x during a control period.

"Allowance deduction" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a retirement account. As prescribed in the procedures at N.J.A.C. 7:27–31.17 and 31.19, allowance deduction events relating to

end-of-season reconciliation and penalty deductions may only be made from compliance accounts. As prescribed at N.J.A.C. 7:27–31.10, allowance deduction events relating to voluntary retirement may be made from a compliance account or a general account.

"Allowance transfer" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a different general account or compliance account.

"Allowance transfer deadline" means midnight of December 31 of a given calendar year, and is the deadline by which an allowance transfer request may be submitted to the NATS Administrator to effect an allowance transfer for the purpose of meeting the requirement of N.J.A.C. 7:27–31.3(i) for the year's control period.

"Alternative monitoring system" means a monitoring system other than a CEMS, or component of such a system, that is designed to determine mass emissions per time period, air contaminant concentrations, or volumetric flow of a given source or group of sources, as provided for in N.J.A.C. 7:27–31.14, Emissions monitoring.

"Authorized account representative (AAR)" means the responsible individual designated in writing by the person who holds an account. This individual (or his or her alternate) is the sole person who has the authority, on behalf of the account, to submit allowance transfer requests to the NATS Administrator, and to as certify and submit reports to the NATS and the NETS.

"Banked allowance" means an allowance in a general account or a compliance account which has been neither used to reconcile emissions in the year it was originally allocated nor retired, and which is therefore carried forward in the account into the next year or into successive future years. The NATS Administrator shall flag such an allowance as "banked."

"Base budget" or "base emission budget" means the emissions budget for each control period that has been developed by applying the emission limits, jointly agreed to by the jurisdictions who are signatories of the OTC MOU, to the baseline sources' baseline emissions. This term when used in respect to:

1. A specific OTR jurisdiction, is the emission budget so established for that jurisdiction; and

2. The OTR as a whole, is the sum of the emission budgets so established for all jurisdictions in the region.

"Banking" means the retention in a general account or a compliance account of one or more allowances that were allocated for use in the current or in a previous control period, but have been neither used nor retired. Such allowances may be used or retired in a future control period.

"Baseline" means, when used in reference to the emissions or productivity of a source, one of the following:

1. For an opt-in source, the average emissions or average productivity of that source during the two consecutive May 1 through September 30 periods on which the increase in the New Jersey emission budget made to accommodate the source was based, pursuant to N.J.A.C. 7:27–31.4; or

2. For a baseline source, the emissions or productivity attributed to that source in the 1990 baseline NO_x emission inventory.

"Baseline NO_x emission inventory" means the emissions inventory which developed jointly by all jurisdictions in the OTR and which sets forth, for all baseline sources, the NO_x emissions of these sources for the period May 1 and September 30, 1990. This inventory is the emission baseline from which emission reductions are calculated for purposes of determining the effectiveness of the NO_x Budget Program in limiting NO_x emissions.

"Baseline source" means a source which is one of the following and which operated during the May 1 through September 30 period in 1990:

1. A fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;

2. An electric generating unit with a rated output of at least 15 MW.

"Boiler" means an indirect heat exchanger which combusts fossil fuel to produce steam, or to heat water or any other heat transfer medium.

"British Thermal Unit" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Btu" means British Thermal Unit.

"Budget source" means any of the following sources located in the OTR:

1. A fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;

2. An electric generating unit with a rated output of at least 15 MW; or

3. Any source that has been approved as an opt-in source.

"CEMS" means continuous emission monitoring system.

"Clean Air Act" means the Federal Clean Air Act as amended in 1990 (42 U.S.C. §§ 7401 through 7626).

(m) For any opt-in source which is subsequently repowered or replaced, the amount by which the New Jersey emission budget is increased in any given year to accommodate the source shall continue to be the final amount originally approved for the opt-in source pursuant to (f) and (g) above. The source which is repowering or replacing the opt-in source shall continue to be allocated the full amount, provided that the productivity of the repowered or replaced source is at least as great as that of the original opt-in source and no new law or rule establishes a lower allowable emissions limit applicable to the original opt-in source. Otherwise the amount shall be adjusted pursuant to (k) or (*l*) above, as applicable.

(n) Each year, prior to December 31, the Department shall provide the following information to the Administrator of the NATS and to USEPA, Region II:

1. A list of all sources that are opt-in sources, including any new opt-in sources approved that year; and

2. The number of allowances by which the current year New Jersey emission budget has been increased, for each opt-in source, to accommodate that source.

(*o*) An owner or operator who elects to opt a source into the NO_x Budget Program shall not opt the source out of the program. The source shall remain in the program and remain subject to the requirements of this subchapter until:

1. The source has ceased to operate and:

i. Any permits and certificates issued for the source pursuant to N.J.A.C. 7:27–8 have been canceled; and

ii. The provisions of any operating permit issued pursuant to N.J.A.C. 7:27–22 pertaining to the source have been removed; or

2. The source has been replaced, in which case the replacement source shall become a budget source.

7:27–31.5 Interface with the emission offset program

(a) Any owner or operator of a new or modified budget source which is subject to the emission offset requirements at N.J.A.C. 7:27–18 shall meet the applicable emission offset requirements of that subchapter as well as the requirements of this subchapter. Obtaining and holding sufficient allowances for a source under this subchapter does not relieve an owner or operator from the obligation also to obtain any required emission offsets.

(b) Allowances shall be allocated from New Jersey's emissions budget to a new or modified budget source in accordance with N.J.A.C. 7:27–31.7. New Jersey's base emission budget is established at N.J.A.C. 7:27–31.3(b), and shall not be increased to accommodate the new or modified source.

(c) If a budget source's emission reductions, which are creditable emission reductions under N.J.A.C. 7:27–18.5, are secured for use, by the owner or operator of the budget source or by another person, as NO_x emission offsets for a source which is not a budget source, the owner or operator of the budget source shall report this to the Department. The NATS administrator shall deduct allowances from the budget source's compliance account commensurate in value, in terms of control period emissions, to the emission offsets secured for use by the source which is not a budget source, unless the owner or operator of the source using the emission offsets opts the source for which the emission offsets are being secured into the NO_x Budget Program prior to the date the Department approves a permit for that source. However, if creditable emission reductions generated by a budget source are secured for use as NO_x emission offsets by another budget source, no such deduction will be made.

7:27–31.6 Interface with the open market emissions trading program

(a) NO_x emission reductions made by a budget source during any control period may not be used as the basis for a DER credit under N.J.A.C. 7:27–30.

(b) Except as provided in the provisions for early reductions at N.J.A.C. 7:27–31.12, Early reductions, DER credits shall not be converted to allowances and used to satisfy the requirements of this subchapter.

(c) Allowances shall not be converted to DER credits and used pursuant to the Open Market Trading Program rules at N.J.A.C. 7:27–30, except as provided at N.J.A.C. 7:27–31.8, which allows electric consumers who earn allowances by saving electricity through energy efficiency projects to elect to receive DER credits, instead of allowances. In such case the NATS Administrator shall permanently retire the allowances that would otherwise have been provided to the electric consumer.

7:27–31.7 Annual allowance allocation

(a) Beginning in 1999, the Department shall allocate allowances each year in accordance with this section. For the years 1999, 2000, 2001 and 2002, the Department shall allocate the New Jersey emission budget in accordance with (b) and (c) below; for the year 2003 and each year thereafter, the Department shall allocate the New Jersey emission budget in accordance with (d) and (e) below. In addition, in each of these years, the Department shall allocate additional allowances to opt-in sources in accordance with (f) below. Also, in the year 1999, the Department shall allocate allowances in accordance with (g) below to sources which have been approved to receive early reduction allowances pursuant to N.J.A.C. 7:27–31.12.

(b) By April 1 in each of the years 1999, 2000, 2001, and 2002, the Department shall allocate 17,340 allowances of the New Jersey emission budget, minus any allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27–31.17(h). This subsection does not apply to opt-in sources; opt-in sources are addressed

separately in (f) below. The Department shall allocate allowances in accordance with the following steps:

1. Step 1: This step determines the number of allowances which are to be allocated to the New Source Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to new budget sources which have not operated for two full May 1 through September 30 periods. The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey NO_x emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2{,}000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NO_x emission rate. If the allowable emission rate for a given fuel is greater than 0.15 lb/MMBtu, then 0.15 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and

2,000 = The factor converting pounds into tons;

2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

i. Calculate the average NO_x emission rate (ER_{NOx}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$ER_{NOx} = \frac{E1 + E2}{H1 + H2}$$

Where:

E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

ii. If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (b)2i above is greater than 0.15 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to the source.

iii. If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (b)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with the following procedure:

(1) Calculate 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input in accordance with the following equation:

$$H_{150\%} = 1.5 \times \left(\frac{H1 + H2}{2}\right)$$

Where:

$H_{150\%}$ = 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

(2) If $H_{150\%}$, as determined in (b)2iii(1) above, is not greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NOx} \times 0.5 \times \frac{(H1 + H2)}{2} \times \frac{1}{2{,}000}$$

Where:

ER_{NOx} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

(3) If the result of (b)2iii(1) above is greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NOx} \times H_{Allowable} \left(\frac{(H1 + H2)}{2}\right) \times \frac{1}{2{,}000}$$

Where:

ER_{NOx} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

$H_{Allowable}$ = The maximum allowable heat input of the source for the control period which is based on the lesser of the maximum heat input capacity and any limit on the heat input during the control period as established by any law, rule or permit;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

3. (Reserved)

4. Step 3: This step is a preliminary determination of the number of allowances which are to be allocated in (b)5 (Step 4) below to each budget source that is not a new budget source. For this step, the Department shall use the following procedure:

i. If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (b)2i above is greater than 0.15 pounds of NO_x per MMBtu, then the number of allowances determined in this step is calculated in accordance with the following equation:

$$\text{Allowances} = \frac{0.20}{2{,}000} \times \left(\frac{H1 + H2}{2}\right)$$

Where:

0.15 = The allocation rate, expressed in pounds per MMBtu, which is the maximum rate to be used for the allocation of allowances in this step;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

ii. If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (b)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the following procedure:

(1) If the weighted allowable emission rate as calculated in Equation 1 below is less than 0.15 pounds of NO_x per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the Equation 2 below:

$$ER_{Allowable} = \frac{\sum_{i=1}^{n} (AER_i \times (H1_i + H2_i))}{\sum_{i=1}^{n} (H1_i + H2_i)} \qquad \text{Equation 1}$$

Where:

n = The number of types of fuel burned during the two control periods out of the last three which had the greatest heat input;

AER_i = The lowest allowable emission rate, expressed in pounds per MMBtu, for the source for each type of fuel burned during the two control periods out of the last three which had the greatest heat input;

$H1_i$ = The heat input, expressed in MMBtu, for each type of fuel burned during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

$H2_i$ = The heat input, expressed in MMBtu, for each type of fuel burned during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

$$\text{Allowances} = \frac{(ER_{NOx} + ER_{Allowable})}{2} \times \frac{(H1 + H2)}{2} \times \frac{1}{2{,}000} \qquad \text{Equation 2}$$

Where:

ER_{NOx} = The average NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

$ER_{Allowable}$ = The weighted allowable emission rate, expressed in pounds per MMBtu, as calculated in Equation 1 above;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

(2) If the weighted allowable emission rate as calculated in Equation 1 of (b)4ii(1) above is not less than 0.15 pounds per MMBtu, then the preliminary determination of the number of allowances to be allocated to the source is calculated in accordance with the following equation:

$$\text{Allowances} = \frac{(ER_{NOx} + 0.15)}{2} \times \frac{(H1 + H2)}{2} \times \frac{1}{2{,}000}$$

Where:

ER_{NOx} = The average NO_x emission rate, expressed in pounds per MMBtu, as calculated in (b)2i above;

0.15 = 0.15 pounds per MMBtu, which is the maximum rate at which allowances are allocated in this step;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons; and

5. Step 4: The Department shall allocate the remainder of the allowances as follows:

i. The sum of the following shall be determined:

(1) The number of allowances allocated to the New Source Reserve in (b)1 (Step 1) above;

(2) The number of allowances allocated to the Growth Reserve in (b)2 (Step 2) above;

(3) The number of allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27–31.17(h); and

(4) The number of allowances preliminarily determined in (b)4 (Step 3) above to be allocated to each budget source that is not a new budget source;

ii. If the sum in (b)5i above is less than or equal to 17,340, then the Department shall allocate allowances as follows:

(1) Allowances shall be allocated to each budget source that is not a new budget source, as preliminarily determined in (b)4 (Step 3) above; and

(2) The remaining allowances shall be allocated to companies which operated budget sources in 1990. These companies are listed in Table 1 below. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C_{\%}}{100} \times A_R$$

Where:

$C_{\%}$ = The percent that activity of a given company contributes to the 17,054 allowances of the emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1 below; and

A_R = The remaining number of allowances, which have not been allocated in (b)1 through 3 (Steps 1 through 3) and (b)5ii(1) above.

TABLE 1

Company	Percent of Total
Atlantic Electric	15.93175%
Chevron Products Company	0.12314%
CIBA GEIGY	0.13487%
Coastal Corporation	2.36895%
Cogen Technologies Energy Group	0.39287%
General Public Utilities Corporation	5.55881%
Milford Power, Limited Partnership	0.32250%
Mobil Oil Corporation	1.97021%
Prime Energy	1.33107%
Public Service Electric and Gas Company	67.46804%
Roche Vitamins Incorporated	2.33376%
Tosco Refinery	1.74153%
City of Vineland Electric Utility	0.32250%
Total	100.00000%

iii. If the sum determined in (b)5i above is greater than 17,340, then the Department shall allocate the remaining allowances to budget sources in proportion to the amount of preliminarily determined in (b)4 (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

$$\text{Allowances} = \frac{17{,}340 - A0 - A1 - A2}{PA_{Total}} \times PA$$

Where:

A0 = The total number of allowances that have been previously allocated pursuant to (c)3ii or (i) below, or pursuant to N.J.A.C. 7:27-31.17(h);

A1 = The total number of allowances allocated to the New Source Reserve in (b)1 (Step 1) above;

A2 = The total number of allowances allocated to the Growth Reserve in (b)2 (Step 2) above;

PA = The number of allowances preliminarily determined for allocation to the source as determined in (b)4 (Step 3) above; and

PA_{Total} = The sum of all allowances preliminarily determined for allocation to all budget sources in (b)4 (Step 3) above.

(c) For the years 1999, 2000, 2001, and 2002, after each control period, the Department shall allocate allowances from the New Source Reserve, the Growth Reserve, and Incentive Allowances as follows:

1. The Department shall allocate the allowances in the New Source Reserve by November 30 of the current year as follows:

i. For any new budget source, the Department shall allocate allowances equal to the number of tons of NO_x emitted by the source during the control period, unless the emissions exceed the lesser of 0.15 lb/MMBtu or the lowest allowable emissions limit during the control period, in which case the allowances allocated to the source will be reduced by difference between the actual NO_x emission and the emissions at the lesser of the allowable emission rate or 0.15 lb/MMBtu during the period in which the source exceeded this condition within the control period; and

ii. If there are allowances remaining in the New Source Reserve after the allocation of allowances in accordance with (c)1i above, the Department shall allocate these allowances to companies which operated budget sources in 1990. These companies are listed in Table 1 above. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C_{\%}}{100} \times A_R$$

Where:

$C_{\%}$ = The percent that activity of a given company contributes to the 17,054 allowances of the base emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1; above and

A_R = The remaining number of allowances in the New Source Reserve, which have not been allocated in (c)1i above;

2. The Department shall allocate allowances in the Growth Reserve by November 30 of the current year as follows:

i. For each budget source that is not a new budget source and that operated at an average actual emission rate of 0.15 pounds of NO_x per MMBtu or less during the control period, the Department shall allocate allowances according to the following procedure:

(1) Calculate the average actual emission rate for the control period of the current year (ER_{Actual}) in accordance with the following equation:

$$ER_{Actual} = \frac{EA}{HA}$$

Where:

EA = Actual emissions during the control period, expressed in pounds of NO_x; and

HA = Actual heat input during the control period, expressed in MMBtu;

(2) If the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (c)2i(1) above is greater than 0.15 pounds per MMBtu or if the actual emissions during the control period is less than the number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above, then the Department shall allocate no allowances from the Growth Reserve to the budget source;

(3) Except as provided in (c)2iii below, if the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (c)2i(1) above is not greater than 0.15 pounds per MMBtu and if the actual emissions during the control period is greater then than the number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above, then the Department shall allocate allowances from the Growth Reserve to the budget source in accordance with the following equation:

$$\text{Allowances} = E_{Actual} - A$$

Where:

E_{Actual} = The total NO_x emissions, expressed in tons, of the source during the control period, minus any emissions due to the exceedance of an applicable maximum allowable emissions limit; and

A = The number of allowances allocated to the source pursuant to (b)5ii(1) or (b)5iii above;

ii. If there are allowances remaining in the Growth Reserve after the allocation of allowances in accordance with (c)2i above, the Department shall allocate these allowances to companies which operated budget sources in 1990. These companies are listed in Table 1 above. The number of allowances to be allocated to a given company shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{C_{\%}}{100} \times A_R$$

Where:

$C_{\%}$ = The percent that activity of a given company contributes to the 17,054 allowances of the base emission budget for New Jersey for the years 1999 through 2002 as listed in Table 1 above; and

A_R = The remaining number of allowances in the Growth Reserve which have not been allocated in (c)2i above;

iii. If there are not enough allowances in the Growth Reserve to allocate allowances to all of the eligible sources accordance with (c)2i above, then the Department shall prorate the allocations to each source according to the amount of allowances each source

would have otherwise received in accordance with the following equation:

$$\text{Allowances} = \frac{A_{Source}}{A_{Total}} \times A_{Reserve}$$

Where:

A_{Source} = The number of allowances as determined in (c)2i above for each source;

A_{Total} = The total number of allowances as determined in (c)2i above for all of the eligible sources; and

$A_{Reserve}$ = The number of allowances in the Growth Reserve;

3. The Department shall allocate allowances for the implementation of environmentally beneficial techniques which save or generate energy as follows:

i. The Department shall allocate allowances to meet claims which were submitted to the Department by October 15 of the current year and which have been approved by the Department pursuant to N.J.A.C. 7:27–31.8 in accordance with the following equation:

$$\text{Allowances} = \frac{1.50}{2{,}000} \times E$$

Where:

1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;

E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim pursuant to N.J.A.C. 7:27-31.8; and

2,000 = The factor for converting pounds into tons;

ii. The Department shall allocate allowances from the next year's base emission budget for New Jersey until all claims are met.

(d) Prior to the control period in the year 2003 and in each year thereafter, the Department shall transfer 4,822 allowances from the base emission budget for New Jersey into the attainment reserve account held by the Department, leaving 8,200 of 13,022 allowances of the base budget for New Jersey to be allocated. The Department shall allocate 8,200 allowances minus any allowances that have been previously allocated pursuant to (c)3ii above, (e)3ii below, (i) below or pursuant to N.J.A.C. 7:27–31.17(h). This subsection does not apply to opt-in sources; opt-in sources are addressed separately in (f) below. The Department shall allocate allowances in accordance with the following steps:

1. Step 1: This step determines the number of allowances which are to be allocated to the New Source Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to new budget sources which have not operated for two full May 1 through September 30 periods. The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2{,}000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NO_x emission rate. If the allowable emission rate for a given fuel is greater than 0.15 lb/MMBtu, then 0.15 lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation. If the allowable emission rate for a given fuel for an industrial boiler or process heater is greater than 0.20 lb/MMBtu, then 0.20lb/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and

2,000 = The factor converting pounds into tons;

2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

i. Calculate the average NO_x emission rate (ER_{NOx}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$ER_{NOx} = \frac{E1 + E2}{H1 + H2}$$

Where:

E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

7:27–31.20 Program audit

(a) The Department shall conduct an audit of the NO_x Budget Program in 2002 and every three years thereafter to ensure that the program is providing expected performance in regards to emissions monitoring and allowance use. Such audits shall include, as appropriate, confirmation of emissions reporting accuracy through validation of CEMS and data acquisition systems at the budget source, and review of allowance transfer and use by budget sources (geographically and temporally). Each periodic audit shall examine the extent to which use of banked allowances has, or has not, contributed to emissions in excess of the budget for each year preceding the audit. The periodic audit shall further provide an assessments to whether the effect of the program is consistent with the requirements for demonstration of reasonable further progress toward or the attainment and maintenance of the National Ambient Air Quality Standard for ozone.

(b) As an alternative, in whole or in part, to the Department's conduct of an audit pursuant to (a) above, the Department reserves the right to request a third party audit of the program. Such third party audit could be implemented on a state by state basis or could be performed on a region-wide basis under the supervision of the Ozone Transport Commission.

(c) If an audit results in one or more recommendations for revision of New Jersey's NO_x Budget Program, the Department shall consider the audit recommendations, in consultation with the other participating jurisdictions in the OTR. If the Department determines that it is necessary or appropriate, the Department shall propose or recommend to the NATS and NETS Administrator the appropriate changes to current procedures.

7:27–31.21 Guidance documents and sources incorporated by reference

(a) The following documents are incorporated by reference in this subchapter, as are any subsequent revisions thereto:

1. "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," issued by the Ozone Transport Commission, 444 North Capital Street, NW, Washington, DC 20001, January 28, 1997;

2. "Electronic Data Reporting: Acid Rain Program/NO_x Budget Program—Version 2.0," issued by the United States Environmental Protection Agency, July 3, 1997;

3. "NO_x Budget Program Monitoring Certification and Reporting Instructions," issued by the Ozone Transport Commission, 444 North Capital Street, NW, Washington, DC 20001, July 3, 1997; and

4. "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Regulatory Commissioners on April 28, 1993.

(b) Copies of the documents listed at (a)1 through 3 above may be downloaded from USEPA Acid Rain Division's world wide web page, at <http://www.epa.gov/acidrain/otc/otcmain.html>. Copies of the documents referenced in (a) above may be obtained by sending a written request to the following address:

New Jersey Department of Environmental Protection
Office of Air Quality Management—Rule Development Section
401 East State Street—7th floor
PO Box 418
Trenton, New Jersey 08625–0418

(c) With respect to any revision of the documents incorporated by reference in (a) above, the Department shall:

1. Publish a notice in the New Jersey Register;

2. Provide at least 30 days for any interested party to submit written comment; and

3. Submit the revised reference to EPA for incorporation into the SIP.