

This adoption has been filed with the Office of Administrative Law. The Office of Administrative Law will edit this adoption before publishing it in the New Jersey Register. Please refer to the May 4, 1998 New Jersey Register for the official text of the adoption.

AIR QUALITY REGULATION PROGRAM

Air Pollution Control

Operating Permits

Adopted Amendments: N.J.A.C. 7:27 22.5

Proposed: January 20, 1998 29 N.J.R. 2509(a).

Adopted: April 9, 1998, by Robert C. Shinn, Jr., Commissioner, New Jersey Department of Environmental Protection.

Filed: April 13, 1998 as R. 1998 d, with changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket Number: 33-97-12/648.

Effective Date: May 4, 1998.

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Expiration Date: Exempt

The Department of Environmental Protection (Department) is adopting amendments to N.J.A.C. 7:27-22.5 Application procedures for initial operating permits, to further extend the application due dates for two groups of operating permit facilities, referred to as Wave 6 and Wave 7, for operating permit applications submitted electronically. N.J.A.C. 7:27-22.5 sets forth the schedule for submittal of the initial operating permit applications. In this section, major facilities are divided into seven groups, referred to as waves, and each wave has its own successively later due date. A facility is assigned to a given wave based on its Standard Industrial Classification (SIC) Code.

The Department proposed amendments to the subchapter in the January 20, 1998 New Jersey Register to encourage electronic submittal of air operating permit applications. The Department proposed to extend the application due dates for those due in Wave 6 and Wave 7 of the permit application schedule for applications submitted electronically (see 30 N.J.R. 264).

At the time of this rule proposal, the exact date that the RADIUS software package and Air Information Management Systems (AIMS) would become available to receive and process electronically submitted permit applications was not known. Not having this specific information, the Department linked the due date extensions to the date of publication in the New Jersey Register of a [Notice of Availability of RADIUS](#) (notice), being published by the Department in the same issue of the New Jersey Register.

Thus, the proposal established due dates for electronically submitted Wave 6 permit applications as the earlier of six months from the date of publication of the notice in the New Jersey Register, or June 1, 1999. The due date for electronically submitted Wave 7 operating permit applications was the earlier of twelve months from the date of publication of the notice, or June 1, 1999. The notice of availability of RADIUS is published elsewhere in this issue of the New Jersey Register, therefore, upon adoption the Department is inserting the calendar dates for electronically submitted Waves 6 and 7 operating permit applications. In response to comment the Department is also extending the permit application due date for Wave 6 applications submitted electronically by an additional three

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months. For Wave 6 applications the recommended early submittal date for electronically submitted applications is November 4, 1998, and the final deadline is February 4, 1999. For Wave 7 permit applications submitted electronically, no change is being made upon adoption.

For Wave 7 permit applications submitted electronically, the early recommended submittal date is February 4, 1999 and the application deadline is May 4, 1999.

A public hearing concerning the proposed rule was held on March 3, 1998, at the Department's hearing room at 401 East State Street in Trenton, New Jersey to provide interested parties the opportunity to comment on the proposal. The comment period closed on March 5, 1998. The Department received written comments from four persons. One person presented oral testimony at the public hearing.

Summary of Public Comments and Agency Responses

The following people submitted written comments on the proposal:

1. Mr Thomas J. Detweiler, Regulatory Analyst, New Jersey Paint Council
2. Mr. Thomas J. Detweiler, Chemical Industry Council of New Jersey
3. Ms. Deborah Campbell, State Issues Coordinator, Mobil Business Resources Corporation
4. Mr. Patrick J. Parsons, Exxon Chemical Company Paramus

The number in parentheses after each comment corresponds to the commenters listed above.

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1. COMMENT: The commenters support the Department's extension of the Title V permit due dates to encourage electronic submittal of permit applications. The proposed extension for electronic submittal is necessary to allow facilities sufficient time to complete and electronically submit operating permit application once the RADIUS software becomes available. The commenters further note that electronic permit application submittal will benefit the Department because it will save valuable staff time spent reviewing paper submissions and help reduce the overall program costs. (1), (2), (3), (4)

RESPONSE: The Department is pleased that the commenters, who represent facilities impacted by this rule, support Title V electronic permit application submittal and that advantages and benefits of electronic application submittal for both industry and the Department are clearly understood.

2. COMMENT: The commenters point out that under the proposed schedule, there is insufficient time for a Wave 6 applicant to correct and to re-submit the permit application, should the Department discover any deficiencies in the permit application, by the 'Complete Application deadline'. If this occurs, the applicant would not have a permit shield and would not have the legal authority to operate the facility.

The proposed application schedule for electronic submittal allows only three months for Wave 6 applicants to meet the early submittal date and three months to meet the completed application due date, although in the proposal the Department indicates its intention to provide a six month extension for electronically submitted permit applications. This is insufficient time for the application submittal and review process as already discussed. The commenters provide identical example rule language to further extend by three months the Wave 6 due date for electronic application submittal (1), (2), (4).

RESPONSE: The commenters are concerned that the recommended early submittal date for written permit applications (ninety days before the final application deadline) does not provide enough time for electronic application preparation and submittal by the early recommended application due date. In response to the concern expressed by the commenters and to ensure adequate time for Wave 6 applicants to effectively use the RADIUS/AIMS for electronic application submittal, upon adoption the Department is extending the Wave 6 application due dates for electronic submittal by three months. The recommended early due date is now November 4, 1998 and the complete application deadline is February 4, 1999.

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Summary of Hearing Officer Recommendations and Agency Response:

William O'Sullivan, Administrator, Air Quality Permitting, served as the Hearing Officer at the March 3, 1998 public hearing held at the Department of Environmental Protection, Trenton, New Jersey. Mr. Tim Detweiler presented testimony on behalf of the Chemical Industry Council (CIC) of New Jersey.

Mr. Detweiler requested the Department again further extend the proposed Wave 6 due date for electronically submitted permit applications by three months to allow sufficient time for permit application preparation, for the Department to conduct its administrative completeness review of the application, and for the applicant to correct whatever deficiencies are identified by the complete application deadline.

To ensure adequate time to effectively use the RADIUS/AIMS systems for submitting operating permit applications electronically, Mr. O'Sullivan recommended that upon adoption, the Department extend the final deadline submittal date for electronically submitted Wave 6 permit applications by an additional three months.

The Department agrees with the Hearing Officer's recommendations. Upon adoption, the due dates for Wave 6 applications that are submitted electronically are extended by an additional three months. The new recommended early submittal for Wave 6 applications submitted electronically is November 4, 1998. The complete application deadline is February 4, 1999. There is no change to the Wave 7 application schedule for electronically submitted permit applications. For electronic permit applications due in Wave 7, the recommended early submittal date is February 4, 1998, and the complete application deadline is May 4, 1999.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges by contacting:

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ATTN: DOCKET # 33-97-12/648

Department of Environmental Protection

Office of Legal Affairs

401 East State Street

P.O. Box 402

Trenton, New Jersey 08625-0402

A copy of the record of the public hearing is available upon payment to the Department normal charges for copying (\$0.75 per page for the first ten pages, \$0.50 per page for the following 10 pages, \$0.25 per page for additional pages). The record of the public hearing held on March 3, 1998 is 16 pages. The Department will charge \$ 10.50 for copies of the public record.

Summary of Agency-Initiated Changes

The following administrative changes have been made by the Department upon adoption:

In the footnotes to the table at N.J.A.C. 7:27-22.5(c)(3) concerning the due dates for Wave 6 and Wave 7 operating permit applications, the phrases describing the due dates for electronically submitted applications are replaced by calendar dates. The footnotes are also amended by the addition of sentences that explicitly specify the recommended early submittal dates for electronically submitted applications.

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Federal Standards Statement

Executive Order No. 27(1994) and P.L. 1995 c. 65 (see N.J.S.A. 52:14B-1) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

N.J.A.C. 7:27-22.1 codifies the operating permit requirements for the State of New Jersey pursuant to Title V of the 1990 Clean Air Act Amendments and 40 CFR Part 70. EPA promulgated interim approval of New Jersey's Title V program on May 16, 1996 (61 FR 24715).

The Department has determined that the proposed amendments do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, Executive Order 27 (1994) and P.L. 1995 c. 65, do not require any further analysis.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **thus**; deletions from proposal indicated in brackets with asterisks ***[thus]***).

7:22-22.5 Application procedures for initial operating permits

(a)-(b) (No change.)

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(c) For an existing facility subject to this subchapter, the applicable deadline for submitting an administratively complete application for an initial operating permit is the earliest deadline below which applies to the facility:

1.-2. (No change.)

3. For all other facilities, by the deadline the table below as determined by the facility's primary SIC code, as reported to the New Jersey Secretary of State:

<u>SIC code</u>	Complete Application	Early
	<u>Deadline</u>	<u>Submittal</u>
...
2087	11/15/97 Æ	8/15/97 Æ
2600 Through 2699	11/15/97 Æ	8/15/97 Æ
2835 through 2899	11/15/97 Æ	8/15/97 Æ
2800 through 2834	5/15/98 ÆÆ	2/15/98 ÆÆ
4940 through 4999	5/15/98 ÆÆ	2/15/98 ÆÆ

(1) If the facility is located in Atlantic, Burlington, Gloucester, Hudson, Hunterdon, Salem, Union, Camden, Monmouth, Sussex, or Warren County.

(2) If the facility is located in Bergen, Cape May, Cumberland, Essex, Mercer, Middlesex, Ocean, Morris, Passaic, or Somerset County.

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~~Æ~~ If submitted electronically, applications may be submitted *[instead]* by ***February 4, 1999. The recommended early submittal date for an electronic submittal is November 4, 1998*** *[an extended deadline which is the earlier of the following two dates: six months after the date of publication of the notice of availability of the RADIUS software in the New Jersey Register or June 1, 1999]*. If the application includes information for which a claim of confidentiality is being asserted, this extended deadline shall apply to both the electronic submittal and the accompanying paper submittal which includes the information being claimed confidential. See N.J.A.C. 7:27-22.4(c).

~~ÆÆ~~ If submitted electronically, applications may be submitted *[instead]* by ***May 4, 1999. The recommended early submittal date for an electronic submittal is February 4, 1999*** *[the extended deadline which is the earlier of the following two date: 12 months after the publication date of the notice of availability of the RADIUS software in the New Jersey Register or June 1, 1999]*. If the application includes information for which a claim of confidentiality is being asserted, this extended deadline shall apply to both the electronic submittal and the accompanying paper submittal which includes the information being claimed confidential. See N.J.A.C. 7:27-22.4(c).

(d)-(j) (No change.)

DATE: /s/ April 9, 1998

ROBERT C. SHINN, JR. Commissioner

Department of Environmental Protection

