

**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 October 20,1997 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. 7:27-22.4, 22.5

**Proposed:** June 2, 1997 at 29 N.J.R. 2509(a).

**Adopted:** September 26, 1997, 1997 by Robert C. Shinn, Jr., Commissioner,  
Department of Environmental Protection.

**Filed:** September 26, 1997 as R. 1997, d, with substantive and technical 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:** 09-97-05/625.

**Effective Date:** October 20, 1997

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**Expiration Date:** Exempt

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**Summary of Public Comments and Agency Responses:**

The Department of Environmental Protection (Department) is adopting amendments to N.J.A.C. 7:27-22.4 General application procedure, and N.J.A.C. 7:27-22.5 Application procedures for initial operating permits, to encourage electronic submittal of operating permits and renewals. N.J.A.C. 7:27-22.4 General application procedures, and N.J.A.C. 7:27-22.5 Application procedures for initial operating permits, prescribe the procedures to submit an initial operating permit application and the schedule for submittal. This schedule specifies that applications are due to the Department at different times in seven waves. The due date for which a facility must submit an operating permit application is determined by the facility's Standard Industrial Classification (SIC) Code.

These amendments will encourage the electronic submittal of Title V operating permit applications. The Department's computerized system designed for electronic permit application submittal is expected to be operational on or about January 1, 1998. At the time of proposal, the Department expected that the Air Information Management System (AIMS) would be operational to accept operating permit applications from Wave 6 of the operating permit phase-in schedule by late July 1997. However, because of the need to make numerous adjustments to the system in order to make it operational with the permit package software, RADIUS, and to improve the systems's efficiency in response to industry reviewers' comments, the AIMS/RADIUS system implementation has been delayed. The Department now fully expects the system to be operational on or about January 1, 1998. Therefore, upon adoption the Department is making no change on adoption to the electronic filing deadlines for Wave 6 and Wave 7. Both groups will receive a six month extension to the original due dates if the operating permit application is submitted electronically. Thus, industry and the Department may benefit from the efficiencies that electronic submission will provide.

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The due dates for Wave 6 operating permit applications which are submitted electronically are as follows: the early submittal date is extended from August 15, 1997 to February 15, 1998, and the application deadline is extended from November 15, 1997 to May 15, 1998. The due dates for Wave 7 operating permit applications which are submitted electronically are as follows; the early submittal date is extended from February 15, 1998 to August 15, 1998, and the application deadline is extended from May 15, 1998 to November 15, 1998.

A public hearing concerning the proposed rule was held on July 2, 1997, 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 July 3, 1997. The Department received written comments from two persons. No person presented oral testimony at the public hearing.

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#### **Summary of Hearing Officer Recommendations and Agency Response:**

Tom Micai, Chief, Bureau of Operating Permits served as the hearing officer at the July 2, 1997 public hearing held at the Department of Environmental Protection, Trenton, New Jersey. As no written or oral testimony was presented at the hearing, Chief Micai recommended the rule proposal be adopted in a manner which addresses any written comments. The Department agrees with the hearing officer's recommendation.

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

**ATTN: DOCKET #09-97-05/625**

Department of Environmental Protection

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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 July 2, 1997 is ten pages. The Department will charge \$ 7.50 for copies of the public record.

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### **Summary of Public Comments and Agency Responses**

The following people submitted written comments on the proposal:

1. Pat Parsons, Exxon Chemical Company (1)
2. Glenn Roberts, Flavor and Extract Manufacturers' Association of the United States (2)

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

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The following is a summary of comments received on the proposal and the Department's responses.

1. COMMENT: The commenter supports the Department's efforts to encourage electronic submittal of operating permit applications. However, this commenter questions the operational and functional readiness of the AIMS/RADIUS system to support electronic submittal of permits in time for the Wave 6 applications. The commenter recommends that the permit extension clock be extended until RADIUS is revised. (1)

RESPONSE: The Department has continued to refine and improve the RADIUS software package for permit and report submittal. The final release of the AIMS/RADIUS system has been delayed until January 1, 1998 to incorporate key improvements to the AIMS/RADIUS system. Subsequent to the pre-testing of the system by the Department and the regulated community, additional improvements to the system have been subsequently made. The Department believes that the January 1998 release date provides sufficient time for facilities to file operating permit applications electronically. The application due date extensions for Wave 6 and Wave 7 applications remain as proposed (six months from the original due dates) for electronic submittal.

2. COMMENT: The commenter notes that because the RADIUS package is missing key elements essential for an effective electronic permit submittal system, the program will be burdensome and ineffective. The commenter estimates that about half of the final version of the program has not yet been developed and integrated into the system. The commenter also expresses concern that industry would have had no opportunity to review and comment on operational features and essential functions of AIMS/RADIUS (1).

RESPONSE: The Department appreciates the concerns raised by the commenter. At the time that the RADIUS software was distributed to industry for testing, the Department acknowledged that the system was incomplete and that additional improvements would be made prior to its final release. The Department has since met with and briefed members of the regulated community on three different occasions to discuss the Departments progress to date.

The AIMS/RADIUS system was not yet complete and ready for public release as early as had been anticipated by the Department when the rule proposal was published on June 2, 1997. The Department recognized at the time various aspects of the system needed to be corrected before the system could begin to receive electronically submitted permit applications. Following the May and August pre-test of the AIMS/RADIUS system by industry and the Department, a list

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of tasks was developed of items that had to be completed prior to the startup for the AIMS/RADIUS system. All of the elements critical for AIMS/RADIUS to be operational for processing Wave 6 operating permit applications will be functional and operational by the January 1, 1998 release of the AIMS/RADIUS system. The remaining system enhancements will be addressed in the spring of 1998.

The Department had originally targeted a July 1997 public release date for the AIMS/RADIUS system. Because of the outstanding tasks and issues that remained to be resolved, the Department has moved the public release date of AIMS/RADIUS to January 1, 1998. By moving the public release date of the AIMS/RADIUS system to January 1, 1998 and by extending Wave 6 and Wave 7 application due dates by six months from the original due dates, the applicants are being provided an adequate amount of time to prepare operating permits for electronic submission.

3. COMMENT: The commenter recommends that the revised RADIUS product be reviewed by industry and tested with real data prior to finalization. In addition, the commenter attached 26 technical and format recommended modifications to the RADIUS software version 1.0 (1).

RESPONSE: The Department agrees with the commenter that the revised RADIUS should be reviewed and tested with real data prior to its finalization and release and has done so. The Department also appreciates the commenter's effort to develop technical and format modifications to the AIMS/RADIUS system for the Department's use. The list of recommended modifications submitted by the commenter has been forwarded to the Director of the Office of Information Services for consideration during the Department's ongoing endeavor to refine and improve the AIMS/RADIUS system. Critical modifications will be completed prior to the public release of the AIMS/RADIUS system on January 1, 1998. Modifications considered to be system enhancements will be addressed during the next round of enhancements to the RADIUS software in the spring of 1998 (1).

In May 1997, the Department and 40 members from the regulated community conducted an early pre-test of the system. At the time the software was distributed, the Department indicated to the test participants that the RADIUS software needed improvements but that the Department was distributing the software package for testing because the Department was eager for industry to have an early preview of the system. The testing conducted in May 1997, and additional system testing conducted in August 1997, revealed areas for improvement in the software which were critical to the efficient and accurate processing of electronically submitted operating permit applications. The Department is completing those recommended modifications that are critical to making the system operational for Wave 6 operating permit processing. The remaining recommended modifications to the system will be considered during the system enhancement phase that will be undertaken in the spring of 1998.

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Since August 1997, modifications have been made to the RADIUS software and up to ninety percent of the planned revisions have been completed. The system is currently useable and all of the essential features are operational. The remaining tasks to be completed are system refinements which involve changes that are not essential to the primary functioning of the system. Due to the unanticipated delays to the AIMS/RADIUS schedule, the Department has moved the public release of AIMS/RADIUS to January 1, 1998. The final copy of the software will include a user's guide, a permit library, and many other productivity features that were not available in the early release of the software. Since the early release of the software, the Department has met three times with industry to provide updates on both the essential improvements being made in time for the January 1, 1998 public release of the AIMS/RADIUS system and the future enhancements that will be undertaken in the spring 1998.

4. COMMENT: The commenter notes that serious flaws exist in the logic of the RADIUS program. For example, the RADIUS program incorrectly deletes whole sections of data. Four (4) additional items are identified by the commenter as deficiencies in the prototype reviewed:

- 1) Inability to allow multiple users to access the system simultaneously
- 2) Flaws in program logic
- 3) No "UNDO" feature to recover from program errors
- 4) Absent supplemental forms, standard permit conditions library, import/export functions, quality control checks for data input, and control checks for data input.

In addition to these issues identified above, this commenter submitted three additional pages of recommended modifications to the RADIUS permit software package (1).

RESPONSE: The Department appreciates the commenter's recommendations and is considering these recommendations in its ongoing endeavor to refine and improve the AIMS system. The Department was aware at the time that the software was distributed to members of the regulated community in May 1997 for pre-testing, that the software package required improvement. Following the May 1997 and later August 1997 testing, all deficiencies in the AIMS/RADIUS system were identified and have been corrected. The remaining ten percent of system refinements will be implemented during the Spring 1998. The RADIUS software which will be made public on January 1, 1998 will include a user's guide, a permit library, and many other productivity features that were not available

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in the earlier release of the software. Since the early release of the software, the Department had three meeting with industry to update them on which features the Department added in the final release and which ones the Department plans to include as part of the next version of the software package.

5. COMMENT: This commenter is concerned about whether the AIMS will appropriately protect trade secrets in accordance with provisions of the New Jersey law and regulations and how confidential information will be treated for extension requests (2).

RESPONSE: The AIMS/RADIUS system is designed for public access to permit data and report data. Clarification has been added at N.J.A.C. 7:27-22.5 upon rule adoption to indicate that, if an operating permit applicant asserts a claim of confidentiality, then the confidential information shall be submitted separately to the Department on a paper application form and in conformance with the confidentiality provisions at N.J.A.C. 7:27-1 et seq.

If the applicant intends to submit the public copy electronically, the due date extensions apply to both the paper confidential application form and the electronic submittal. The confidential paper version of the operating permit would be submitted at the same time as the electronic AIMS/RADIUS submittal.

6. COMMENT: The commenter notes that in its treatment of confidentiality, the AIMS final detail design document contains confidentiality check boxes for emission statement process information, and permit application fuels, material inputs and coding information. However, pursuant to N.J.A.C. 1 et seq. subchapter 1 and the New Jersey Air Pollution Control Act, a wider range of information may be classified as confidential. For example, batch processing information such as step descriptions and times or number of batches is often considered as confidential information by particular companies (2).

RESPONSE: The confidentiality provisions at N.J.A.C. 7:27-1 et seq. govern any assertion of a claim of confidentiality. The examples of confidential information presented in the AIMS project document are not meant to suggest that the Department is limiting or changing in any way the confidentiality provisions at N.J.A.C. 7:27-1 et seq.

7. COMMENT: The commenter notes that from the AIMS/RADIUS system design it is unclear what becomes of the confidential information that is submitted electronically. The commenter questions whether procedures are in place for securing this information so that it is protected from public disclosure. The commenter expresses concern that the public will have access to confidential information submitted through the AIMS/RADIUS system. The commenter also



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questions how the information which has been declared confidential on an AIMS document field is to be secured against public review or by review by unauthorized persons within the department (2).

RESPONSE: Information classified as confidential should not be submitted through the AIMS/RADIUS system. Rather confidential information should be submitted to the Department separately on a paper permit application which will be handled in accordance with the procedures at N.J.A.C. 7:27-1.6.

8. COMMENT: The commenter urges the Department to give paper and electronic filers the same extended deadline, so as not to discriminate against those who wish to claim confidentiality. The commenter requested the Department to make absolutely clear, through an aggressive outreach effort to the regulated community, that the new AIMS system does not now protect confidentiality (2).

RESPONSE: An applicant who wishes to assert a claim of confidentiality in its operating permit application may submit the application by the extended deadline by submitting all non-confidential information electronically and at the same time making a submittal on paper which includes the confidential information. However if the applicant chooses to submit both the confidential copy and the public copy on paper, then the original deadline (not extended deadline) applies. This procedure does not discriminate against applicants who wish to assert a claim of confidentiality.

9. COMMENT: The commenter has learned from Department staff that an additional effort is planned over the next year to add effective confidentiality safe guards to the AIMS system, and is happy to participate in that effort (2).

RESPONSE: The Department is pleased that the commenter is interested in working with the Department to enhance the AIMS/RADIUS electronic permit submittal program. The Department has consulted a group of facilities from the regulated community and has sought their comments on the emerging AIMS/RADIUS program. The Department invites the commenter and any other regulated facility or member of the public to participate in the AIMS/RADIUS work group.

10. COMMENT: The Department should allow companies in the sixth Wave up to six months to prepare and submit their applications after the RADIUS program has been modified to correct the most serious deficiencies (2).

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RESPONSE: At the time the rule proposal was proposed, the Department fully expected to have the AIMS/RADIUS system operational by July 1997. In order to encourage and enable sources with permit applications due in the Waves 6 and 7 to file the applications electronically using this new and more efficient system, the Department determined to extend the due dates for applications by six months. However, implementation of the AIMS system has been delayed, despite the Department's best efforts to have it ready in July. As a result, permit applicants that may have planned to file applications electronically are concerned that the system will not be ready soon enough for them to make an informed decision whether to file electronically or "play it safe" and file a paper application before the deadline for paper applications expire. The Department anticipates the AIMS/RADIUS computer system will be ready to electronically process permit applications by January 1, 1998. This release date will allow facilities at least six months to prepare and submit their applications to the department.

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### **Summary of Agency-Initiated Changes**

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

At N.J.A.C. 7:27-22.5 'Application Procedures' in the table at N.J.A.C. 7:27-22.5(c)(3)

the single dagger, , is used to indicate that Wave 6 and Wave 7 facilities have six months from the original application due dates to submit their operating permit applications. If the Wave 6 or Wave 7 applicant also plans to assert a claim of confidentiality, this confidential paper application is also provided the same extension to the application due dates as the electronic version.

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The Department is making two agency initiated changes to the rule upon adoption at N.J.A.C. 7:27-22.4 and 22.5(c)(3) based on the comments regarding the confidentiality of submitted information received during the public comment period and changes in the final release date of RADIUS to on or about January 1, 1998.

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

7:27-22.4 General application procedures

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

(c) An applicant may submit an application or notice to the Department electronically, using the Air Information Management System (AIMS). **\*However, if the applicant is asserting a confidentiality claim for any element of information in the application pursuant to N.J.A.C. 7:27-1.6(a), the applicant shall omit the confidential information from the electronically submitted application, as the electronic copy of the application shall be a public copy which the Department may disclose to any person, without restriction or limitation. In such case, the applicant shall also make a paper submission of the application in accordance with N.J.A.C. 7:27-1.6 which included the confidential information. Information about AIMS and guidance regarding electronic submittal of an application or notice is available from the Department at the address listed at N.J.A.C. 7:27-22.3(t).\***

(d)-(f) (No change.)

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7:22-22.5 Application procedures for initial operating permits

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

(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:

Complete Application Early

SIC code Deadline Submittal

... ..

2087 11/15/97 8/15/97

2600 Through 2699 11/15/97 8/15/97

2835 through 2899 11/15/97 8/15/97

2800 through 2834 5/15/98 2/15/98

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4940 through 4999 5/15/98 2/15/98

(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.

Applications may be submitted up to six months after these dates if submitted electronically. **\*If the application includes information for which a claim of confidentiality is being asserted, this six month deadline extension applies 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.)

*Based upon consultation with staff, I hereby certify that this document permits the public to accurately and plainly understand the purposes and expected consequences of these proposed new amendments.*

DATE:

ROBERT C. SHINN, JR.

Commissioner, Department of Environmental Protection

