ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND SUSTAINABILITY

DIVISION OF AIR QUALITY

Air Pollution Control

TBAC Emissions Reporting, Permitting, and Gasoline Transfer Operations

Adopted Amendments: N.J.A.C. 7:27-8.1, 8.2, 8.3, 16.1, 16.3, 22.1, 22.3, 22.5, 22.9, 22.11, 22.23, 22.24, and 22.33; and 7:27A-3.10

Adopted Repeal: N.J.A.C. 7:27-34

Proposed: July 3, 2017, at 49 N.J.R. 1762(a).

Adopted: October 24, 2017, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: October 25, 2017, as R.2017 d.201, **with non-substantial changes** not requiring additional public notice (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 13:1D-134 et seq., and 26:2C-1 et seq., in particular 26:2C-9.2 and 9.4.

DEP Docket Number: 09-17-06.

Effective Date: November 20, 2017.

Operative Date: December 23, 2017.

Expiration Dates: Exempt, N.J.A.C. 7:27;

March 21, 2020, N.J.A.C. 7:27A.

The Department is repealing the t-butyl acetate (TBAC) emissions reporting requirements, and amending the air permitting and gasoline transfer operations rules, and related penalty provisions.

TBAC

In 2016, the Environmental Protection Agency (EPA) promulgated a final rule removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC, because the requirements were not achieving their primary objective, which was to inform more accurate photochemical modeling, and because, given the completion of studies regarding the long-term health risks of TBAC, the continuation of the requirements did not appear relevant to any likely future determination about the health risks of TBAC. The EPA's final rule allows state air pollution control agencies to no longer require entities to report emissions of TBAC. The Department is, therefore, repealing its rules at N.J.A.C. 7:27-34, which require any person within the State who manufactures TBAC and any person who manufactures a product containing TBAC for sale in the State to report in-State emissions of TBAC to the Department, and to maintain records related to such reports. The Department is also deleting the related penalty provisions at N.J.A.C. 7:27A-3.10.

Gasoline Transfer Operations

The 1990 amendments to the Federal Clean Air Act required two types of controls for capturing gasoline vapor during vehicle refueling: Phase II vapor recovery systems (also known as Stage II) and onboard refueling vapor recovery (ORVR) systems. Phase II vapor recovery systems control the emissions of gasoline vapors during the transfer of gasoline from the gasoline dispensing facility storage tank to the motor vehicle fuel tank, by returning the vapors to

the facility tank. ORVR systems are carbon canisters installed directly on motor vehicles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle of a gas pump. Prior to these adopted amendments, the Department's rules at N.J.A.C. 7:27-16.3 required both Phase II and Phase I systems (also known as Stage I, but hereafter referred to as Phase I), which prevent emissions when gasoline is delivered to the dispensing facility storage tank.

As ORVR systems installed on vehicles have become more prevalent, the Phase II systems have become less necessary, and the emissions benefit from the Phase II vapor recovery systems has decreased. In fact, the EPA has stated that differences in operational design characteristics between ORVR and vacuum assist Phase II systems may, in some cases, cause a reduction in the overall control system efficiency of vehicle fuel tank emissions compared to what could be achieved by either individually. Congress authorized the EPA to allow states to remove Phase II from their state Implementation Plans (SIPs), at a time that is appropriate for each state, after the EPA finds that ORVR is in widespread use. The EPA made that finding in 2012.

The Department is adopting amendments to the vapor recovery provisions to allow new gasoline dispensing facilities to be constructed without Phase II vapor recovery systems. Existing facilities with Phase II vapor recovery systems that are incompatible with ORVR systems must decommission the systems within three years. Existing facilities with ORVR-compatible Phase II vapor recovery systems may decommission the systems, but are not required to do so; however, if the system is left in place, the facility must continue to maintain the system.

The Department is also amending the rules governing Phase I vapor recovery systems, and the rules governing gasoline refueling system nozzles and hoses, to minimize drips and spills

and associated emissions. The adopted rules require facilities to use Phase I components that are certified by the California Air Resources Board (CARB) to be 98 percent efficient, and to upgrade nozzles and hoses to the most up-to-date CARB-certified standard. The Department is adopting corresponding penalty provisions at N.J.A.C. 7:27A, Air Administrative Procedures and Penalties.

Permitting

The Department is adopting amendments to the permitting rules at N.J.A.C. 7:27-8, Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit), and 22, Operating Permits, in response to an EPA audit of the State's air permitting program. The EPA expressed concern that the Department's rules did not clearly state that the terms of a preconstruction permit are incorporated into and become part of the operating permit. The amendments clarify the incorporation. Other amendments provide that the Department will publish notice of a draft operating permit by posting the notice on its website, rather than by publishing the notice in a newspaper, in accordance with a recent EPA rulemaking (October 2016).

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on this rulemaking and the associated proposed SIP revision on August 24, 2017, at the Department's Public Hearing Room, 1st Floor, 401 East State Street, Trenton. Ken Ratzman, Assistant Director, Air Quality, Regulation and Planning, served as hearing officer. One person provided oral comments. After reviewing the comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed amendments and repeal with the non-substantial changes described below in the Summary of Public Comments and Agency Responses and in the

Summary of Agency-Initiated Changes below. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 09-17-06

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

This adoption document can also be viewed or downloaded from the Department's website at http://www.nj.gov/dep/rules/adoptions.html.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal and the proposed SIP revision through September 1, 2017. The following individuals provided written and/or oral comments:

1. Sandra L. Carl, Sunoco LP
2. Eric DeGesero, Fuel Merchants Association of New Jersey (FMA)
3. Dennis Hart, Chemistry Council of New Jersey (CCNJ)
4. Ed Kubinsky, Crompco, LLC

5. Michael Matri, Speedway LLC

6. Mary Ellen Peppard, New Jersey Food Council

7. Daniel Pourreau, LyondellBasell

8. Sal Risalvato, New Jersey Gasoline, C-Store, Automotive Association (NJGCA)

9. Glenn Walker, Vapor Systems Technologies, Inc. (VST)

10. Timothy Wieroniey, American Coatings Association (ACA)

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

Gasoline Transfer Operations

General

1. COMMENT: The gasoline transfer operations proposal is an excellent approach to utilize the best available technologies for maximizing reductions of fugitive emissions that affect both the environment and public health issues associated with hazardous exposure to volatile organic compounds (VOCs) in a cost-effective manner. (9)

2. COMMENT: Overall, the proposed elimination of Phase II vapor recovery at gasoline dispensing facilities has been necessary for a long time since ORVR was required on new vehicles. Removal of Phase II means that business owners will no longer have to comply with annual testing and maintenance expenses that not only yield no environmental benefit but in instances where the gasoline dispensing facility utilizes vacuum-assisted Phase II, actually causes environmental harm since the two control systems are incompatible and cancel one another out allowing for increased emissions. (2)

RESPONSE TO COMMENTS 1 AND 2: The Department acknowledges the commenters' support for the adopted rules.

3. COMMENT: The proposed amendments at N.J.A.C. 7:27-16 greatly exceed the requirements of the EPA's regulations at 40 CFR Part 63 Subpart CCCCCC. For example, on August 31, 2017, the New York State Department of Environmental Conservation (NYDEC) released draft rules allowing for the decommissioning of Phase II equipment. The New York rules are aligned with 40 CFR Part 63 and are, therefore, less cumbersome and less costly than what New Jersey has proposed. (5)

RESPONSE: The Department acknowledges the difference between the adopted rules and 40 CFR Part 63 Subpart CCCCCC (the NESHAP rule) in the Federal Standards Statement below and in the notice of proposal at 49 N.J.R. at 1772. The NESHAP rule was established to address hazardous air pollutants, not ozone nonattainment. The Department's Phase I rules for the transfer of gasoline from a delivery truck to a stationary storage tank were promulgated several years prior to the NESHAP rule, and are more stringent than the NESHAP rule, as are the adopted amendments. However, the more stringent provisions are necessary in order that the State remains in compliance with the ozone National Ambient Air Quality Standards (NAAQS) SIP and Federal ozone NAAQS requirements.

Based on available information, the Department believes the NYDEC has not yet released the draft rules referenced by the commenter, but has released only a fact sheet as part of a stakeholder process to facilitate discussion on proposed changes to 6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles. This fact sheet provides a broad outline of

what NYDEC's rules might encompass, but does not provide the details for a full analysis. Accordingly, the Department is not able to compare its adopted rules to the draft NYDEC rules.

Corrective Action Prior to Testing and Notification to the Department of Failure

4. COMMENT: Please clarify whether the Department must be notified of a test that is failed initially but subsequently passed that same day after repairs are made. If the owner is required to notify the Department of a failed test that is passed that same day, the Department will receive many notifications of failed tests that have been corrected so that no follow-up is needed. If corrections cannot be made the same day that a test is failed, then the Department should be notified of the failure. Most testing contractors do not even document the failed initial test. However, testing contractors usually do document the replacement of parts at a site after tests have been performed. Also, without Department oversight during tests, how is the Department going to determine whether or not testing contractors are taking corrective action before or during a test to achieve a passing result? The Department could require testers to note any corrections made while conducting testing activities to achieve a passing result instead of requiring them to "fail" a test which would in turn require the owner to report the failure to the Department. Corrections are often made on site to achieve a passing test that same day and no follow-up is needed. (4)

5. COMMENT: Proposed new N.J.A.C. 7:27-16.3(j)7 requires notification to the Department in writing upon failure of a vapor test. This requirement is burdensome as in most cases a failure can be easily remedied on the day of the test and may have been caused by other testing performed pursuant to the Underground Storage Tanks rules, N.J.A.C. 7:14B, on the same date. The requirement to report failures should be limited to those instances where a test failure is

unresolved before a tester departs the location. Testing performed pursuant to N.J.A.C. 7:14B entails a significant amount of disassembly. The Department should not penalize the regulated community for being compliant in this regard. Other testing is typically combined on the day of Phase I/II testing. Typically, operators perform testing related to N.J.A.C. 7:14B, such as overfill verification, removal of tank gauging probes, and other tank top disassembly related to this work. Ideally, Phase I pressure decay testing is conducted at the end of all testing to confirm the tank system has been reassembled correctly. It would be ill-advised, for example, to perform Phase I pressure decay testing first, then remove drop tubes, and so forth. Because some component could be damaged during this other testing the Department should not prohibit this repair activity. The Department should modify the rule on adoption to provide an exception for other testing that is done in accordance with N.J.A.C. 7:14B on the day of the test. (5)

6. COMMENT: The Department should permit repairs to be made before a test is conducted. Requiring the submission of every test result to the Department is inefficient and would overwhelm the Department with test results. An example would be when just a probe cap visibly needs to be replaced, which is a common problem. Instead of requiring a test be performed and reported prior to the repair, the Department could require the repair to be made by a certified individual, and then tested in order to make certain the repair was done properly. (8)

7. COMMENT: The proposed rules prohibit corrective action on the day of the test. Other states permit the contractor performing the work to make sure all caps and gaskets were properly installed and tight prior to testing. Why would this not be allowed under New Jersey's proposed rules? This would help to eliminate problems and potential failures if found prior to beginning the test. If any parts had to be replaced prior to testing, this could be noted on the test report. (1)

RESPONSE TO COMMENTS 4 THROUGH 7: As explained in the notice of proposal Summary, 49 N.J.R. at 1768, the proposed amendments to the testing procedures were intended to ensure an accurate assessment of site operating conditions. The Department was concerned that corrective action taken on the day of the test would prevent the Department from determining how well the system is really working; some facilities could be delaying maintenance and repairs, performing them only when necessary to pass the test. However, as the commenters state, some of the causes of testing failure are a result of adjustments to or deconstruction of the underground storage tank (UST) system as part of testing. Not all test failures are a result of ongoing problems with the UST systems.

Therefore, consistent with its intent, the Department is modifying N.J.A.C. 7:27-16.3(j) on adoption to allow corrective action to the system prior to and during the test, but also require that any corrective action, repairs, or equipment replacement made to the vapor recovery systems on the day of the test be recorded with the test results on the documentation of test results. In this way, the Department can review the documentation to determine what corrective action (if any) was taken on the day of the test, and can determine, based on the nature of the corrective action, whether the action reflects an ongoing problem with the operation of the facility. Allowing corrective action, repairs, or equipment replacement at the time of testing is consistent with the required California Air Resources Board (CARB) test procedure TP-201.3 Section 7.4, which states, "If the system failed to meet the [test criteria], repressurize the system and check all accessible vapor connections using leak detector solution or a combustible gas detector. If vapor leaks in the system are encountered, repair or replace the defective component and repeat the test. Potential sources of leaks include nozzle check valves, nozzle vapor paths, pressure/vacuum relief valves, containment box drain valve assemblies, and plumbing

connections at the risers." The modification on adoption will eliminate some of the burden on the regulated community, while ensuring the Department will have the information necessary to assess site operating conditions.

The Department is not modifying the rule on adoption to eliminate the requirement at N.J.A.C. 7:27-16.3(j)7i that the owner or operator notify the Department after every test failure, including the first. When the Department promulgated the previous rule, notice to the Department was on paper and usually by mail. With the advance of technology such that notice of failed tests is now provided by e-mail, the requirement to submit the results of the first failed test (including documentation of any repairs) should add almost no burden or cost to the regulated community. The Department will thereby acquire information regarding the operation and functionality of the system.

Restrictions on Days and Times of Testing and Decommissioning

8. COMMENT: The notice of proposal requires that decommissioning testing be conducted during the Department's daytime business hours in the presence of a Department official. Is this requirement specific to decommissioning testing or does it extend to general tank monitoring testing? Tank monitoring tests are typically conducted after midnight since the entire fuel station needs to be shut down during the testing. If required to conduct testing during the day, the regulated community would lose substantially more sales than if they could continue testing during overnight hours. Individual gas stations estimate a loss of sales of 4,000 to 6,000 gallons of fuel per test. In addition, the gas station may lose significant ancillary sales from inside its convenience store, as customers may decline to go inside to shop if they are unable to purchase fuel outside. Since each test takes approximately three to four hours, it would seem challenging

for a Department representative to be able to schedule and perform the tests in a timely manner, given there are over 3,000 fuel sites throughout New Jersey. (6)

9. COMMENT: The Department proposed that decommissioning can be conducted only Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M. in order that the Department may inspect the decommissioning, but what purpose does this time constraint serve? Small businesses who perform the testing and decommissioning of Phase II often work earlier than 8:00 A.M., later 5:00 P.M. and they work holidays and weekends in order to get work completed. (8)

10. COMMENT: Restricting decommissioning to Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M., imposes significant challenges to both the owners and operators of gasoline dispensing facilities and those performing decommissioning of Phase II vapor recovery systems and is of great concern. Gasoline dispensing facilities often have maintenance and testing operations performed during off-peak hours and on weekends, as it minimizes the impact of business disruption and provides a safer environment for the personnel providing the services. While the hours specified in the proposed rule comport to the hours the Department chooses to operate, those hours are not the hours that businesses choose to operate, nor are they the most conducive to the work being performed. The New Jersey Department of Community Affairs does not stipulate that work done under the Uniform Construction Code be performed Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M. Furthermore, the Department does not require work on UST systems be performed Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M. Decommissioning should also not be encumbered by an "hours of service" restriction. The Department should not adopt N.J.A.C. 7:27-16.3(h)5. (2)

RESPONSE TO COMMENTS 8 THROUGH 10: As indicated in the notice of proposal Summary at 49 N.J.R. 1766 and 1767, the Department proposed to restrict decommissioning and periodic testing to Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M., so that the Department "may" inspect the decommissioning. The proposed rule did not require a Department employee to be present at the decommissioning, nor did the rule require the owner or operator of the facility to schedule the decommissioning to accommodate a Department inspector's availability.

The Phase II vapor recovery system is integrated into the UST system. As the commenters note, the UST rules do not limit the days or hours of work on a UST system; Department inspectors inspect work performed on the UST systems, as needed. Accordingly, the Department is modifying the rule on adoption to remove the day and time restrictions on decommissioning and testing. The adopted requirement that the owner or operator of the facility provide the Department with notice 14 days in advance of the decommissioning or testing will allow the Department to conduct inspections it determines are necessary. See the discussion of advance notice in the Response to Comments 11 and 12.

Decommissioning: Advance Notification to the Department

11. COMMENT: Providing notice to the Department prior to decommissioning is unnecessary and needlessly burdensome. The decommissioning process, as outlined in Petroleum Equipment Institute (PEI) document RP 300-09, Recommended Practices for Installation and Test of Vapor-Recovery at Vehicle-Fueling Site (PEI RP 300-09), is relatively simple. Testing of the system is required after the decommissioning is complete. The Department can rely on the notification requirement of proposed N.J.A.C. 7:27-16.3(h)6, which requires the owner or operator of the

gasoline dispensing facility to submit the decommissioning checklist to the Department within 14 days. This should be sufficient for the Department to conduct interim facility inspections as may be appropriate. The Department should not adopt N.J.A.C. 7:27-16.3(h)4. (2)

12. COMMENT: Does the proposed requirement of the 14-day notice of Phase II vapor recovery system decommissioning mean that a Department inspector must be present to witness the work? If so, this could hold up work and cause contractor scheduling problems. (1)

RESPONSE TO COMMENTS 11 AND 12: As discussed in the Response to Comments 8, 9, and 10, the rule does not require that decommissioning work or testing be delayed in order that Department staff be present. The required 14-day advance notice of decommissioning work or periodic testing will allow the Department to know in advance that the decommissioning or testing is taking place, and will allow the Department to conduct whatever inspections it determines are necessary. Notification within 14 days after the decommissioning is complete does not allow the Department the same opportunity. The notice, which is by e-mail, requires only the name, address, and registration number of the facility, name and contact information for the owner and operator, the name and contact information of the certified individual and business conducting the decommissioning, and the date the decommissioning is to begin. There is no cost associated with providing the notice to the Department, other than the few minutes that assembling the information may require.

Note that the Department has proposed the same 14-day advance notice requirement in its notice of proposal to amend the Underground Storage Tanks rules, N.J.A.C. 7:14B (49 N.J.R. 1121(a), 1138). The proposed UST rule requires advance notice to the Department prior to work related to installations, substantial modifications, or closure of an UST system. As stated in the UST proposal, "This provides an opportunity for the Department's inspectors to visit the site to

ensure the work is being performed in accordance with the registration/permit and is being performed by individuals and business firms certified to perform these activities, pursuant to N.J.A.C. 7:14B-13."

Decommissioning: Certification of Individuals/Firms

13. COMMENT: The Department's rules regarding the certification of individuals and firms engaged in performing underground storage tanks services (UST rules, N.J.A.C. 7:14B-13) do not extend to services performed on gasoline dispensing equipment above the ground, such as dispensers. While the rules do require that individuals and firms be certified pursuant to N.J.A.C. 7:14B-13 to perform service on underground storage tanks and ancillary piping, N.J.A.C. 7:14B-1.6 defines piping as "any hollow cylinder or tubular conveyance which contains a hazardous substance or routinely contains a hazardous substance, is in contact with the ground and is constructed of nonearthed materials including any fill pipe, valves, elbows, joints, flanges and flexible connectors. Piping does not include vent lines, vapor recovery lines or fittings located on the top of the tank." The piping modifications required to complete decommissioning of Phase II vapor recovery systems are limited to the piping specifically excluded by definition at N.J.A.C. 7:14B-1.6, which means that the decommissioning of Phase II does not need to be performed by certified individuals. The inclusion of a requirement that decommissioning Phase II systems requires a Department-certified UST contractor changes the scope of the certification rules, since it expands the services for which certification is required to components of a gasoline dispensing facility that were specifically exempted. If the Department seeks to have a certification requirement for individuals and firms engaged in the performance of installation,

maintenance and testing of vapor recovery systems, the Department must initiate a certification process specific to this rule. The Department should not adopt N.J.A.C. 7:27-16.3(h)2. (2) RESPONSE: The UST rules at N.J.A.C. 7:14B-13.1(a) state that no individual shall provide any of the services listed at N.J.A.C. 7:14B-13.2(a) on an UST system regulated under the Water Pollution Control Act, N.J.S.A. 58:10A-21 et seq., and the UST rules for the purpose of complying with N.J.A.C. 7:14B, unless the individual is certified or working under the immediate supervision of a certified person. An UST system is defined at N.J.A.C. 7:14B-1.6 as "an underground storage tank and its associated ancillary equipment and containment system." An UST is defined in the same section as including "appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances."

Adopted N.J.A.C. 7:27-16.3(h)2 states that decommissioning of a Phase II vapor recovery system shall be conducted or supervised by an individual who is certified by the Department in UST installation or closure and who also works for a certified firm. Installation, according to N.J.A.C. 7:14B-13.2(b)1, includes any maintenance or repair of any part of the UST system or release detection monitoring system. Maintenance ensures that the UST system is operational and complies with the applicable regulations. The adopted rules allow a Phase II vapor recovery system to remain in use only if it is an ORVR-compatible Phase II vapor recovery system. Decommissioning the Phase II system, therefore, constitutes maintenance in order to ensure compliance with the rules, which falls within the activities of an individual or business firm certified in UST installation.

Closure includes all physical activities required by N.J.A.C. 7:14B relative to the removal or abandonment in place of an UST, associated piping, and appurtenant equipment (N.J.A.C. 7:14B-13.3). The commenter states that a Phase II vapor recovery system is not "piping," as

defined under N.J.A.C. 7:14B-1.6, because the definition of "piping" excludes vapor recovery lines. However, a Phase II vapor recovery system consists of more than just lines. Whether or not the vapor recovery system is within the definition of piping, certification is required to decommission it because the Phase II vapor recovery system is appurtenant equipment. It is interconnected with the UST system components, which include tank top fittings and underground equipment connections to the fuel dispensers, and it is used to contain emissions of gasoline vapor, a hazardous substance. Therefore, decommissioning of the Phase II system involves the removal of equipment appurtenant to an UST system, and falls within the description of "closure" at N.J.A.C. 7:14B-13.2(b)3. The presence of a Department-certified installer helps protect the facility, workers, public, and the environment from releases of volatile organic compounds (VOCs).

The Air Pollution Control Act at N.J.S.A. 26:2C-8 provides the Department with the authority both to require the decommissioning of Phase II vapor recovery systems on USTs and aboveground storage tanks, and to establish requirements as to who may perform this work. The Department determined that there is no need to create an entirely new certification process to qualify such workers; the certification of individuals and firms engaged in performing UST services pursuant to N.J.A.C. 7:14B-13 adequately addresses this need. These individuals and firms are certified as having the training and expertise needed to ensure that the decommissioning is safely and properly done.

14. COMMENT: Proposed N.J.A.C. 7:27-16.3(h) requires decommissioning to be in accordance with PEI RP 300-09. The proposed rule establishes requirements to ensure decommissioning is done properly. Decommissioning work must be conducted or supervised by

a Department-certified individual who also works for a certified firm. The only exception is for the decommissioning testing, for which the Department certification is not required. The Department should require that all individuals who test decommissioned equipment be certified by the Department. (8)

RESPONSE: The testing of the decommissioning of a vapor recovery system is comparable to the periodic vapor recovery system testing required under N.J.A.C. 7:27-16.3, Table 3A. The Department has not previously required an individual to be Department-certified to test a vapor recovery system. In the absence of a justification for such a recommended change, the Department is not modifying the rule on adoption.

Decommissioning: Procedures

15. COMMENT: Standards developed by the PEI at Section 14.6.6 of PEI RP 300-09 direct that the below-grade vapor piping is to be disconnected from the dispenser "at a point that is at or below the level of the base of the dispenser." Some states have interpreted this as below the vapor shear valve. Some states have interpreted this as permitting the capping of the vapor shear valve at grade level. The Department should provide guidance on where the Phase II piping may be capped in the dispensers (at grade level or below grade level). (4)

RESPONSE: PEI RP 300-09 section 14.6.6 states, "Disconnect the below-grade vapor piping from the dispenser at a point that is at or below the level of the base of the dispenser. This may require the removal of the vapor shear valve. Seal the below-grade portion of the vapor piping using a threaded plug, threaded cap, or glued fitting if the piping is fiberglass. Do not use any type of rubber cap held in place by a hose clamp to seal the vapor piping. The vapor piping must be sealed so that it is vapor tight." PEI RP 300-09 recognizes that in some instances it will be

necessary to remove the vapor shear valve to disconnect the below-grade vapor piping, which would require capping the piping below the vapor shear valve. In other instances, however, it may be possible to leave the vapor shear valve in place, provided that the below-grade vapor piping is disconnected at a point at or below the base of the dispenser. Thus, the Department will require the decommissioning to meet the stated requirements of PEI RP 300-09, as supplemented or amended. Whether this means capping above or below the vapor shear valve will depend on the individual circumstances of the decommissioning.

16. COMMENT: Section 14.6.7 of PEI RP 300-09 provides that disconnection of the Phase II piping from the tank is to be performed only if this procedure can be done without excavation. This must be done very carefully, because often the Phase II and vent piping are tied together underground and cutting and capping this piping improperly could lead to a tank that is unvented, which could be a major problem. Most states do not require the piping to be disconnected and allow it to remain in the ground after decommissioning. Thousands of sites have been piped with Phase II piping to the dispensers where the Phase II was never hooked up and the pipe has been in the ground and not caused a problem. The Department should not require that the pipe be disconnected, even if the pipe is accessible without excavation, but should require removal of the pipe when a major modification occurs or if the pipe is found to be not tight underground in future testing. (4)

RESPONSE: The Department interprets the comment as a request to modify the rules to allow a facility to deviate from PEI RP 300-09 when decommissioning a Phase II vapor recovery system. PEI is a nationally recognized organization with expertise in Phase II decommissioning, and its documents are well-known industry standards; deviation from the PEI procedures are

unwarranted. The requirement that decommissioning be performed by an UST-certified contractor will ensure the proper precautions are taken to avoid the potential problems discussed by the commenter, such as a tank that is no longer vented. A person certified in UST installation and/or closure must have participated in a minimum of 10 to 25 UST installations or closures, in addition to completing and maintaining health and safety training in accordance with national standards.

Decommissioning: Applicability and Timeframe

17. COMMENT: The Department should consider the fact that Phase II vacuum assist nozzles, hoses, and other components are rapidly becoming obsolete. The various manufacturers of this equipment will soon cease production, as there are very few regions still requiring Phase II and California (associated CARB Phase II) equipment is almost entirely balance equipment. The Department should revise N.J.A.C. 7:27-16 to require Phase II decommissioning within 60 days when Phase II vacuum assist components are no longer available and maintenance of the Phase II system is no longer possible. (5)

RESPONSE: Phase II vacuum assist nozzles are available for purchase at the time of this adoption. Adopted N.J.A.C. 7:27-16.3(e)1 and 2 require a facility to maintain its Phase II system prior to decommissioning, which must take place within three years after the operative date of the rules (vacuum assist systems are not ORVR-compatible). If vacuum assist nozzles become unavailable for purchase, then the facility cannot maintain its Phase II system; therefore, the facility must decommission the system or be in violation of the adopted rule. There is no need to modify the rule as the commenter suggests.

18. COMMENT: How will the Department determine that existing facilities with vacuum assist Phase II vapor recovery systems are incompatible with ORVR systems, and, thus, subject to the new requirement that they must decommission the systems within three years? Will the same determination apply to sites with Healy Systems? How is this applicable to aboveground storage tanks? (8)

RESPONSE: "ORVR-compatible Phase II vapor recovery system" was proposed to be defined at N.J.A.C. 7:27-16.1 as including the following:

1. A vapor balance system;

2. A vapor recovery system with tank pressure management emission control equipment installed on the atmospheric vent of the system and operated in conjunction with the Phase I and Phase II vapor recovery systems with the purpose of reducing emissions and recovering gasoline vapors during fuel deliveries and refueling vehicles at a gasoline dispensing facility at greater than or equal to 95 percent recovery efficiency for the Phase II system and 98 percent recovery efficiency for the Phase I system. A system with only a pressure/vacuum relief vent valve on the atmospheric vent is not considered an ORVR-compatible Phase II system;

3. A vacuum assist system that has ORVR-compatible nozzles, which are nozzles that are approved in a CARB-certified Phase II enhanced vapor recovery (EVR) system Executive Order; or

4. A vapor recovery system used exclusively for the refueling of marine vehicles or aircraft.

This term applies to aboveground storage tanks, as well as underground storage tanks.

The Department has determined that there are nozzles that, while not approved in a CARB-certified Phase II EVR system Executive Order, are compatible with ORVR and should be considered to be ORVR-compatible nozzles for the purposes of these rules. Therefore, based on this information, the Department is modifying item three of the definition of "ORVR-compatible Phase II vapor recovery system" at N.J.A.C. 7:27-16.1 to include nozzles that are approved in a CARB-certified Phase II system Executive Order or can be demonstrated to the Department to be ORVR-compatible. This would also encompass nozzles at facilities using specialized systems, such as Healy (https://www.arb.ca.gov/vapor/eos/eo-vr202/eo-vr202n/vr202n.pdf), if the nozzles fall under the adopted definition of ORVR-compatible.

"Stop at the Click"

19. COMMENT: In addition to prohibiting the continued transfer of gasoline after the nozzle's automatic shut-off point at N.J.A.C. 7:27-16.3(g)1 and 2, the Department should consider taking the additional step of making gasoline dispensing facilities and their customers aware of the Department's "Stop at the Click" campaign by bringing the "Stop at the Click" stickers to every facility during compliance inspections. (8)

RESPONSE: "Stop at the Click" refers to the noise that the gasoline pump is designed to make when a vehicle's tank is full. Beyond that first click, any additional gasoline that is pumped may result in a spill, either immediately or when gas is pumped into the next vehicle, causing unnecessary emissions of VOC. The Department will consider the suggestion that "Stop at the Click" stickers be brought to facilities during inspections; however, the provision of stickers is beyond the scope of the rulemaking. Any facility or individual can obtain a sticker by calling the

Department at (609) 292-7953. Information on "Stop at the Click" is available at http://www.nj.gov/dep/cleanairnj/docs/satc.pdf.

Nozzles and Hoses

20. COMMENT: The requirement that an affected gasoline dispensing facility must be equipped with CARB-certified enhanced conventional (ECO) nozzles and CARB-certified low permeation hoses after Phase II decommissioning raises concerns. Although an existing facility is not required to replace the nozzles and hoses until either the decommissioning or when the nozzles and hoses are otherwise replaced, the ECO nozzles and CARB-certified hoses were not available at the time of the notice of proposal, and may not be available when a facility chooses to decommission. Also, there may only be one manufacturer of these items, making the economic impact a deterrent for such purchases. At the time of decommissioning, if a facility installs non-compliant nozzles and hoses because ECO nozzles and CARB-certified hoses are not available, will the facility be cited and penalized? Will the facility be required to remove the non-compliant nozzles and hoses and re-install ECO nozzles and CARB-certified hoses when they do become available? The Department should not cite and penalize a facility that uses non-compliant nozzles and hoses if ECO nozzles and CARB-certified hoses were not available at the time of decommissioning. The Department should also not require a facility to prematurely remove functional hardware that is operating properly before its life expectancy has been exhausted, in order to replace it with the specified equipment when it does become available. Will a facility be permitted to mix and match? Should the specified equipment become available, and a facility needs to replace one or two inoperable hoses and/or nozzles, will only the equipment being replaced be required to conform to the equipment specified in this rule? (8)

21. COMMENT: The CARB ECO nozzle is merely a low drip nozzle. Conventional nozzles create six drips of fuel at the termination of dispensing. The CARB test calls for a maximum of three drips over a certain period of time. Full-service attended fueling inherently minimizes the dripping of fuel, as there is a period of time when the nozzle is inserted in the vehicle, fueling has ceased and the attendant travels to the vehicle to complete the transfer. At this point any residual dripping enters the vehicle tank. In other states, where self-service occurs, the nozzle is removed much sooner after the completion of the transfer and residual dripping may reach the environment. CARB ECO nozzles are not needed in New Jersey's full-service dispensing environment.

There is no viable CARB ECO nozzle product on the market. The Department could not possibly have completed an economic assessment of this nozzle type. It appears the Department has used a manufacturer estimated price of $100.00 per nozzle. It is well documented that certain commercially available Phase II nozzles can cost more than $300.00 per nozzle. The rule requires the use of ECO nozzles when a product becomes available. When a manufacturer finally obtains CARB certification and has the only product on the market, that product will certainly cost more than $100.00, as a monopoly will exist until a second product becomes available.

If the Department continues to require CARB ECO nozzles, it should revise the rules to provide that the ECO nozzle is required when there are at least two product offerings by different manufacturers. The Department claims a CARB ECO nozzle will last three times as long as a conventional nozzle. It is not possible to have reached this conclusion as there are no certified CARB ECO nozzles available. The economic assessment is likely flawed. Further, if a CARB ECO nozzle fails, it is less likely to be replaced; an operator is far more likely to change out a

lower cost malfunctioning conventional nozzle than a malfunctioning $300.00 CARB ECO nozzle. (5)

RESPONSE TO COMMENTS 20 AND 21: According to CARB Executive Order NVR-1-B, CARB has certified four manufacturers of low permeation hoses. Although there is not yet a CARB-certified ECO nozzle, the Department is aware of three ECO nozzles that are in the process of CARB certification testing. As discussed in the notice of proposal Summary (49 N.J.R. at 1768) and in accordance with adopted N.J.A.C. 7:27-16.3(g)3, a facility may install a non-certified conventional nozzle if no ECO nozzle is CARB-certified at the time of decommissioning or maintenance replacement. But if at the time of regular maintenance replacement there is a CARB-certified ECO nozzle, a facility must install it. A functioning nozzle does not have to be replaced merely because a CARB-certified ECO nozzle becomes available. A facility may have a combination of CARB-certified ECO and uncertified conventional nozzles in use at the same time. As nozzles are replaced due to regular maintenance, a facility will have a larger percentage of CARB-certified nozzles, until all of the nozzles comply with the rules.

In its cost analysis, set forth in the Economic Impact (49 N.J.R. at 1771), the Department used a nozzle price of $120.00 per ECO nozzle and $50.00 per conventional nozzle, resulting in a difference of $70.00 per nozzle. Cost estimates were based on information from two manufacturers. The estimated life of the ECO nozzles was obtained from a manufacturer of the nozzles, and is based on its experience in California with Phase II nozzles meeting the same specifications and technology that the adopted rules require. The nozzles have been in use in California since 2007. The ECO nozzles utilize the same technology as the CARB Phase II EVR

nozzles. The estimated life of the nozzle is also based on pilot testing of the nozzles in a northeast state for approximately three years.

The Department estimated that ECO nozzles will result in an overall cost savings over time, including recovery of gasoline and the estimated longer life of the nozzles. Even using a more conservative scenario, such as a cost of $250.00 per nozzle, the resulting estimated cost effectiveness would be $428.00 per ton of VOC reduced. Under an extremely conservative scenario of $300.00 per nozzle and an estimated nozzle life of only two years instead of three, the resulting cost effectiveness would be $2,137 per ton of VOC reduced. These alternative conservative scenarios demonstrate that ECO nozzles are cost-effective strategies for reducing VOC emissions.

With regard to the comments about gasoline drips, ECO nozzles meet more stringent performance standards for liquid retention, spitting, drips, and spillage than pre-EVR nozzles, and are better designed and more durable than conventional nozzles. Vapor emissions also occur when gasoline retained in the nozzle evaporates between vehicle fuelings. Nozzle spitting occurs when the nozzle latch is squeezed before activating the dispenser. CARB's spitting standards minimize accidental liquid gasoline releases that can occur while moving the nozzle from the dispenser to the vehicle before fueling. The standards for dripping address drips after vehicle refueling. Based on information obtained from manufacturers of fuel nozzles, the Department anticipates that ECO nozzle prices from initial market entrants will be within an appropriate range for cost-effectiveness. The commenters have not documented the claim that filling by an attendant (such as in New Jersey) results in any less spilling and fewer drips than unattended filling. Therefore, the Department is not able to address in its calculations any loss or savings that may result from an attendant pumping the gas.

22. COMMENT: The Department should consider a phase-in period for using CARB EVR certified balance nozzles during the three-year decommissioning period in the proposed rules. For example, allow for a six-month transition period from pre-EVR balance nozzles to only EVR balance nozzles, so as to allow for existing inventories of pre-EVR nozzles to be depleted. After six months, only EVR balance nozzles could be sold. A hanging pre-EVR balance nozzle could stay in application until failure, and then be replaced with an EVR balance nozzle. At the end of the three-year timeline, only EVR-certified balance nozzles would be allowed in application.

The rule proposal offers the option to decommission Phase II equipment, but does not require it if the system is ORVR-compatible. There are a significant number of Phase II balance systems currently operating in New Jersey. Many will continue to operate throughout the three-year transition period and possibly beyond, since they are ORVR-compatible. The Department recognizes the fugitive emission savings of the conventional ECO nozzle, which are dripless and spitless. Pre-EVR balance nozzle designs do not include dripless or spitless spouts or a full-proof, controlled methodology for blocking the vapor path from being potentially open while the nozzle is off or sitting in the dispenser cradle. The vapor path is controlled by a separate valve. Should the interlock device be damaged or accidentally engaged while the nozzle is not in use, then there is an open vapor path all the way back to the UST. This open vapor path allows for fugitive emissions to escape in an uncontrolled manner. The Department would gain the recognized benefits of EVR balance nozzles more quickly, as well as into the future, if a balance system continues to operate.

The Department should require CARB EVR certified low permeation vacuum assist hoses for replacement parts while the decommissioning process evolves over three or more

years. The Department could follow a similar integration timeline as CARB has done in the past for new products: a) allow for a six-month transition period from pre-EVR balance nozzles to only EVR balance nozzles so as to allow for existing inventories of pre-EVR nozzles to be depleted; b) after six months, only EVR balance nozzles could be sold; c) any hanging pre-EVR balance nozzle could stay in application until failure, and then be replaced with an EVR balance nozzle; and d) at the end of the three-year timeline only EVR certified balance nozzles would be allowed in application. (9)

RESPONSE: N.J.A.C. 7:27-16.3(d)4 requires a facility to use CARB-certified Phase I EVR components, but the rules do not require the use of CARB-certified EVR balance nozzles on Phase II systems; accordingly, the Department interprets this comment as a request that the Department modify the rules to require facilities to upgrade their ORVR-compatible Phase II vapor recovery systems to use CARB-certified Phase II EVR nozzles.

There are two primary types of Phase II systems: balance systems and vacuum assist systems. Balance systems return vapors to the gasoline dispensing facility storage tank based on displacement in a sealed system, while vapor assist systems use a vacuum pump to transfer the vapors back to the facility storage tank. EVR balance nozzles are used only on balance systems, which are ORVR-compatible; therefore, balance systems are not subject to the three-year decommissioning period, but are required to maintain their systems, including the requirement that all nozzles are in good working condition.

CARB adopted a requirement for upgraded Phase II nozzles in March of 2000, along with several other enhanced vapor recovery equipment upgrades. Most Phase II states, including New Jersey, adopted some but not all of the stringent CARB requirements. Unlike New Jersey,

CARB does not allow decommissioning of Phase II systems, but requires facilities to upgrade their Phase II equipment in accordance with its EVR requirements.

The Department anticipates that all Phase II vapor recovery systems that are not compatible with ORVR will be decommissioned within three years, as the rules require. Additionally, the Department anticipates that many, if not most, ORVR-compatible Phase II systems will also be decommissioned to save the cost of maintaining the systems, although the adopted rules do not require it. Therefore, it is not practical to impose additional Phase II upgrade requirements at this time, nor is it necessary to adopt a timeline similar to CARB's. The Department will take this suggestion under consideration if, in the future, a significant number of balance systems remain in use.

23. COMMENT: The Department should require an actively operated vapor control system at the vent pipes of the UST to be installed as a means to mitigate VOC fugitive emissions from over-pressurization of the UST due to inactivity during the night time or periods of shutdown, such as holidays. UST vapor growth occurs during idle hours. As the UST pressurizes during this inactive period, excessive VOC fugitive emissions ultimately crack open the pressure vent valve and are released into the atmosphere. Facilities that operate on a 24-hour schedule would not require such a device, especially as New Jersey transitions away from Phase II vapor recovery systems. Multiple options are currently available and marketed. (9)

RESPONSE: The Department interprets the comment as a request that the Department modify the rules to require facilities that are not operated at night, or on holidays, to install an UST vapor control system to prevent fugitive emissions from the pressure vent valve. The commenter has not submitted data that supports the need for a vent pipe vapor control system either before or

after decommissioning of Phase II systems. If data becomes available to indicate the necessity of such controls, the Department will consider the commenter's suggestion.

Phase I

24. COMMENT: The Department should clarify whether or not all dual point Phase I systems must have rotatable fill adapters and rotatable Phase I adapters installed. These pieces of equipment should already have been installed on systems that had Phase II vacuum-assist systems per the appropriate CARB Phase II Executive Order (although they may not have been). However, there is no requirement to install rotatable adapters on the fills and Phase I adapters in the CARB executive order for balance Phase II systems. There are many balance Phase II systems out there that do not have these components installed, and the Department should clarify whether or not they must be installed after the effective date of the rule, especially since the torque test is required annually according to N.J.A.C. 7:27-16.3, Table 3A. Table 3A states that the torque test shall be done to those systems that have rotatable adapters installed, but there is no clarity on who must have them installed. The owner should install the rotatable equipment on the fills and Phase I on dual point systems either within one year after the effective date of the rule along with the EVR pressure vacuum valves, or upon decommissioning a Phase II system. (4)

RESPONSE: Rotatable adapters are part of the Phase I vapor recovery system, not the Phase II vapor recovery system in the CARB certification procedure CP-201 and CARB Phase I Executive Orders. The rules at N.J.A.C. 7:27-16.3(d)4 require CARB-certified Phase I EVR systems, including rotatable adapters, for all new systems. The rules also require existing dual point Phase I systems to install CARB-certified Phase I EVR system parts, including rotatable

adapters, within seven years of the operative date of the rule, except for a CARB-certified pressure vacuum valve, which is required within one year of the operative date of the rule. Existing single-point Phase I systems are not required to install dual point systems or rotatable adapters. Accordingly, the torque test applies only to those systems with the adapters installed, as explained in the notice of proposal Summary at 49 N.J.R. 1767.

TBAC Emissions Reporting

25. COMMENT: The removal of TBAC, and the subsequent removal of the recordkeeping requirements, frees industry from a superfluous reporting requirement, and, as is stated as the rationale of this amendment, promotes consistency with the EPA's definitions. (2 and 3)

RESPONSE: The Department acknowledges the commenters' support for the adopted rules.

Summary of Agency-Initiated Changes:

The Department is modifying the rules on adoption to correct grammar and punctuation. Additionally, an e-mail address is inserted at N.J.A.C. 7:27-16.3(h) and (j), for the purpose of submitting notification or reports to the Department. The notice of proposal anticipated that the Department would make the e-mail address available on its website; however, the Department is identifying the e-mail address in the rules, instead. This is the same e-mail address that the Department provided in the pending notice of proposal to amend the Underground Storage Tanks rules, N.J.A.C. 7:14B (49 N.J.R. 1121(a)) for purposes of notifying the Department of work related to installations, substantial modifications, or closure of an UST system. The proposed rule also stated that guidance for notifying the Department would be made available on the

Department's website; however, the adopted rule identifies the e-mail address and the information to be provided. No further guidance is needed.

Proposed N.J.A.C. 7:27-16.3(e)2 states that an ORVR-compatible Phase II system must be either decommissioned at any time, or maintained in accordance with N.J.A.C. 7:27-16.3. The phrase "decommission the system at any time" at proposed N.J.A.C. 7:27-16.3(e)2i does not mean that that facility can delay decommissioning if it cannot maintain the system. The Department intended the words "at any time" to be in contrast to the requirement at N.J.A.C. 7:27-16.3(e)1 that a Phase II vapor recovery system that is not ORVR-compatible be decommissioned within three years of the operative date of the rule. "At any time" could be misinterpreted as allowing a facility to delay decommissioning, even if it is unable to maintain the ORVR-compatible Phase II system. In order to avoid confusion, the Department is modifying N.J.A.C. 7:27-16.3(e)2i on adoption to remove "at any time." As adopted, a Phase II vapor recovery system that is ORVR-compatible must be either maintained or decommissioned. The Department is removing the sentence in N.J.A.C. 7:27-16.3(j)2 that applicable CARB test methods cited in Table 3A are incorporated by reference. The statement is not necessary; Table 3A already incorporates the test methods by reference.

Federal Standards Statement

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

TBAC Emissions Reporting Repeal

The TBAC repeal removes reporting and recordkeeping requirements. The repeal is based on and consistent with the amended Federal definition of VOC and does not include requirements more stringent than the Federal requirements. Accordingly, no further analysis is required.

Permitting

The adopted amendments to the permitting rules do not impose requirements more stringent than Federal requirements. Rather, the EPA's approval of New Jersey's SIP revision to incorporate adopted amendments at N.J.A.C. 7:27-8, and subsequent administrative changes submitted to the EPA on February 24, 2014, is contingent on the adopted permitting amendments. As discussed in the notice of proposal Summary at 49 N.J.R. 1763, the adopted amendments are the result of an EPA audit of the Department's rules. The adopted amendments to the draft permit public notice requirements at N.J.A.C. 7:27-22.11 are consistent with Federal regulations allowing permitting authorities to substitute e-notice and e-access for newspaper legal ads. No further analysis is required.

Gasoline Transfer Operations

The adopted Phase II-related amendments are consistent with Federal requirements. As discussed in the notice of proposal Summary at 49 N.J.R. 1765, the EPA has exercised its authority under the Clean Air Act to allow states, such as New Jersey, to permit the construction of new gasoline dispensing facilities that are not equipped with Phase II vapor recovery systems

and to allow the decommissioning of existing Phase II vapor recovery systems, once ORVR is in widespread use, to prevent duplicate technology.

The Department's rules governing gasoline transfer operations at N.J.A.C. 7:27-16.3 are designed to address attainment and maintenance of the Federal NAAQS for ozone and are incorporated into the Department's SIP. The Department's requirement for a Phase I system to be 98 percent efficient was adopted in 2003. These adopted amendments for Phase I vapor recovery systems reinforce the existing New Jersey requirement and make it clear that, consistent with the existing requirement for 98 percent efficiency, all Phase I vapor recovery systems must include the CARB-certified Phase I EVR components that are necessary to obtain 98 percent efficiency. This is consistent with the Department's existing rules and the EPA-approved SIP for the attainment of the ozone NAAQS. If the Department were to weaken the standard, the Department would be out of compliance with the State's ozone NAAQS SIP and the Federal ozone NAAQS requirements.

Other Federal requirements applicable to Phase I vapor recovery operations at gasoline dispensing facilities are the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR Part 63 Subpart CCCCCC for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities. The NESHAP rules were established to address hazardous air pollutants, not ozone nonattainment. The Department's existing Phase I rules for the transfer of gasoline from a delivery truck to a stationary storage tank were promulgated several years prior to the NESHAP rules, and are more stringent than the NESHAP rules, as are the adopted amendments. However, as the existing and adopted rules are necessary in order that the State remains in compliance with the ozone NAAQS SIP and Federal

ozone NAAQS requirements, and are part of the State's EPA-approved SIP, no further analysis is required.

There are no applicable Federal standards for gasoline dispensing facilities that address refueling components at a facility without a Phase II system. The Department's adopted amendments regarding ECO nozzles and low permeation hoses reflect the latest technology, are not inconsistent with Federal standards, and further the Department's efforts for attainment of the ozone NAAQS, a Federal requirement.

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

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

7:27-8.1 Definitions

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

…

"Operating permit" means the consolidated preconstruction and operating permit issued pursuant to Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., this subchapter, Title I of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., and N.J.A.C. 7:27-22. This term includes a general operating permit that is applicable facility wide, but does not include a general operating permit that 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).

…

7:27-8.2 Applicability

(a) (No change.)

(b) The following requirements apply to a significant source subject to this subchapter at a facility that becomes subject to operating permit requirements under N.J.A.C. 7:27-22:

1. All permits and certificates required by this subchapter must be obtained and maintained until an operating permit, as defined at N.J.A.C. 7:27-8.1 and 22.1, is issued. Upon issuance of an operating permit, the terms and conditions of the preconstruction permit and operating certificates shall be consolidated in the operating permit.

2. If a new source that 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 continue to comply with the terms and conditions of the preconstruction permit and operating certificate, which shall be consolidated in the operating permit, as defined at N.J.A.C. 7:27-8.1 and 22.1; 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 owner or operator of the facility shall obtain and maintain a separate preconstruction permit and operating certificate for the portion of the facility that is not subject to an operating permit. The terms and conditions of the preconstruction permit and operating

certificate shall remain separate from and shall not be consolidated into the facility's operating permit.

(c)-(j) (No change.)

7:27-8.3 General provisions

(a)-(j) (No change.)

(k) The Department will note in the preconstruction permit any requirements derived from an existing or terminated consent decree between the permittee and the EPA, and will not change such requirements or remove them from the preconstruction permit without first notifying the EPA.

(*l*)-(n) (No change.)

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

7:27-16.1 Definitions

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

…

"CARB-certified Phase I Enhanced Vapor Recovery system" or "CARB-certified Phase I EVR system" means a Phase I vapor recovery system that has been certified by CARB in an Executive Order after February 1, 2001, which Executive Order has not been superseded or disapproved at the time of installation.

"CARB-certified Phase II Enhanced Vapor Recovery system" or "CARB-certified Phase II EVR system" means a Phase II vapor recovery system that has been certified by CARB in an

Executive Order after February 1, 2001, which Executive Order has not been superseded or disapproved at the time of installation.

…

"Dual-point vapor balance system" means a vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

…

"Gasoline dispensing facility" means a stationary facility that dispenses gasoline into the fuel tank of a motor vehicle.

…

"Onboard refueling vapor recovery system," "ORVR system," or "ORVR" means a vehicle emission control system that captures vapors from the vehicle gasoline tank during refueling. The gasoline tank and fill pipe are designed so that***,*** during the vehicle refueling, vapors in the tank travel to an activated carbon packed canister, which adsorbs the vapor. When the engine is in operation, it draws the gasoline vapors into the engine intake manifold to be used as fuel.

…

"ORVR-compatible Phase II vapor recovery system" means a Phase II vapor recovery system that is one of the following:

1. A vapor balance system;

2. A vapor recovery system with tank pressure management emission control equipment installed on the atmospheric vent of the system and operated in conjunction with the Phase I and Phase II vapor recovery systems with the purpose of reducing emissions and

recovering gasoline vapors during fuel deliveries and refueling vehicles at a gasoline dispensing facility at greater than or equal to 95 percent recovery efficiency for the Phase II system and 98 percent recovery efficiency for the Phase I system. A system with only a pressure/vacuum relief vent valve on the atmospheric vent is not considered an ORVR-compatible Phase II system;

3. A vacuum assist system that has ORVR-compatible nozzles, which are nozzles that are approved ***as ORVR-compatible*** in a CARB-certified Phase II *[EVR]* system Executive Order ***or that can be demonstrated to the Department to be ORVR-compatible***; or

4. A vapor recovery system used exclusively for the refueling of marine vehicles or aircraft.

…

"Phase I vapor recovery system" means a system that controls vapors during the transfer of gasoline from a delivery vessel to a gasoline dispensing facility vessel. This system is also known as a Stage I vapor recovery system or a Stage I vapor control system.

"Phase II vapor recovery system" means a system that controls vapors during the transfer of gasoline from a gasoline dispensing facility vessel to a motor vehicle. This system is also known as a Stage II vapor recovery system or a Stage II vapor control system.

…

"Single-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with one entry port for a gasoline fill pipe and the same port is used as an exit port for vapor recovery. A single-point vapor balance system utilizes a coaxial drop tube that consists of a pipe within a pipe.

…

"Submerged fill pipe" means a fill pipe whose point of discharge into the receiving vessel is entirely submerged when:

1. The liquid level is no more than six inches (15.2 centimeters) above the vessel bottom; or

2. At a facility other than a gasoline dispensing facility, in the case of a top or side-entering fill pipe, when, the liquid level is no more than three times the inside radius of the fill pipe plus five inches (12.7 centimeters), but no more than 42 inches (106.7 centimeters), above the vessel bottom.

…

"Vacuum assist system" means a vapor recovery system that employs a pump, blower, or other vacuum-inducing device, to collect and/or process vapors at a subject facility.

…

"Vapor balance system" means a system for controlling vapor losses during the transfer of a VOC liquid from one vessel to another vessel by means of the simultaneous counter-transfer of displaced vapors from the receiving vessel to the vessel supplying the liquid.

…

"Vapor recovery system" or "vapor control system" means a system for preventing the emission of organic vapors into the outdoor atmosphere.

…

7:27-16.3 Gasoline transfer operations

(a) – (c) (No change.)

(d) Except as provided in (i) below, no person shall cause, suffer, allow, or permit the transfer of gasoline from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless the storage tank meets the requirements of N.J.A.C. 7:27-16.2. The storage tank shall either have a floating roof or *[shall]* be equipped and operating with all of the following Phase I vapor recovery system emission controls:

1. A Phase I vapor recovery system that reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 98 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline;

2. A pressure/vacuum relief vent valve on each atmospheric vent;

3. A CARB-certified Phase I EVR system pressure/vacuum relief vent valve. A Phase I vapor recovery system installed before *[(the operative date of this amendment)]* ***December 23, 2017***, shall comply with this paragraph on or before *[(one year after the operative date of this amendment)]* ***December 23, 2018***; ***and***

4. A CARB-certified Phase I EVR system, including a dual point vapor balance system, the components of which shall *[be]* ***have been*** approved in one or more CARB-certified Phase I EVR System executive orders *[that are]* in effect at the time of installation, but the components need not all be approved in the same executive order. A Phase I vapor recovery system installed before *[(the operative date of this amendment)]* ***December 23, 2017***, shall comply with this paragraph on or before *[(seven years after the operative date of this amendment)]* ***December 23, 2024***, except:

i. A Phase I vapor recovery system that is using a single-point vapor balance system installed before *[(the operative date of this amendment)]* ***December**

23, 2017*, is not required to replace the single-point vapor balance system with a dual-point vapor balance system. The CARB-certified Phase I EVR System Executive Order requirements for rotatable adapters shall not apply to a gasoline dispensing facility using a single-point vapor balance system.

(e) The owner or operator of a gasoline dispensing facility with an existing Phase II vapor recovery system for the transfer of gasoline into any gasoline-laden vehicular fuel tank shall either:

1. Decommission the system on or before *[(three years after the operative date of this amendment)]* ***December 23, 2020,*** in accordance with (h) below and maintain the system in accordance with the requirements of this section until the decommissioning is completed; or

2. For a Phase II vapor recovery system that is ORVR-compatible, either:

i. Decommission the system *[at any time]* in accordance with (h) below; or

ii. Maintain the system in accordance with the requirements of this section.

(f) Except as provided in (e) above, the owner or operator of an existing gasoline dispensing facility with an existing Phase II vapor recovery system shall ensure that:

1. The transfer of gasoline into any gasoline-laden vehicular fuel tank *[shall be]* ***is*** made using a vapor recovery system that is approved by the Department and that reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 95 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline;

2. The vapor recovery system *[shall be]* ***is*** one of the following:

i. A Phase II vapor recovery system that is CARB-certified;

ii. A Phase II vapor recovery system that was certified by CARB prior to July 25, 2001, for which all replacement parts/equipment/components and all subsequent construction modifications:

(1) Are approved in an Executive Order or approval letter issued by CARB on or after July 25, 2001; and

(2) Do not decrease the VOC emission control efficiency of the system; or

iii. A Phase II vapor recovery system that is equivalent for the purpose of VOC emission control to a CARB-certified Phase II vapor recovery system and that is approved by the Department and the EPA;

3. Each dispensing device at a gasoline dispensing facility *[shall]* meet***s*** the following requirements:

i. Each nozzle shall have a check valve located in the nozzle;

ii. At a facility with a vacuum assist vapor control system, each nozzle shall be equipped with a splash-guard that prevents spillage during refueling; and

iii. Each dispensing device and its nozzle(s) shall be designed to be compatible, such that:

(1) The nozzle together with its vapor boot fits into the housing in which it is hung on the dispensing device; and

(2) The nozzle's vapor check valve remains in the closed position when the nozzle is properly hung on the dispensing device.

(g) Except as provided in (i) below, the owner or operator of a gasoline dispensing facility with a stationary storage tank greater than or equal to 2,000 gallons (7,570 liters) shall ensure that:

1. During the transfer of gasoline into any gasoline-laden vehicular fuel tank, any person refueling a vehicle *[shall]* prevent***s*** overfilling and spillage and *[shall]* ***does*** not allow the transfer of gasoline to continue after the nozzle automatic shut-off point;

2. At a gasoline dispensing facility that was constructed on or after June 29, 2003, and for which ***the Department issued*** a construction permit *[was issued by the Department]* after June 29, 2003, each dispensing device that dispenses more than one grade of gasoline *[shall]* utilize***s*** a unihose system for dispensing gasoline;

3. At a gasoline dispensing facility without a Phase II vapor recovery system, each nozzle *[shall be]* ***is*** a CARB-certified enhanced conventional (ECO) nozzle in accordance with CARB certification procedure CP-207, as amended or supplemented. If no nozzle is CARB-certified at the time of the installation, decommissioning, or nozzle replacement, a conventional nozzle may be installed.

i. A gasoline dispensing facility installed before *[(the operative date of this amendment)]* ***December 23, 2017***, shall comply with this paragraph as a part of the decommissioning of a Phase II system, and each time a nozzle is replaced thereafter; and

4. At a gasoline dispensing facility without a Phase II vapor recovery system, each dispenser hose *[shall be]* ***is*** a CARB-certified low permeation hose in accordance with CARB certification procedures CP-201 and CP-207, as amended or supplemented.

i. A gasoline dispensing facility installed before *[(the operative date of this amendment)]* ***December 23, 2017***, shall comply with this paragraph as a part of the decommissioning of a Phase II system, and each time a dispenser hose is replaced thereafter.

(h) The decommissioning of a Phase II vapor recovery system shall be conducted in accordance with the following:

1. Petroleum Equipment Institute document PEI/RP300-09 "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites" (available at www.pei.org), incorporated herein by reference, as amended or supplemented, which includes the testing set forth at Table 3A below, and (j) below, as applicable;

2. *[Decommissioning]* ***The decommissioning*** of a Phase II vapor recovery system shall be conducted or supervised by an individual *[that]* ***who*** is certified by the Department in underground storage tank installation or closure and who also works for a certified firm in accordance with N.J.A.C. 7:14B-13, except neither a certified individual nor a certified firm is required for decommissioning testing ***performed*** in accordance with PEI requirements and Table 3A below;

3. All underground piping and/or condensate traps associated with the decommissioned vapor recovery system that are not removed at the time of decommissioning shall be removed at such time in the future that they become exposed as a part of a modification to the gasoline dispensing facility, or if the system fails a static pressure performance test as required in (j) below and the leak is associated with the vapor recovery system underground piping system;

4. At least 14 days prior to commencing work to decommission, the owner or operator of the gasoline dispensing facility shall notify the Department by e-mail ***to 14dayUSTnotice@dep.nj.gov*** and include the ***name,*** address*,* and registration number of the facility, ***name and*** contact information for the owner and operator, the name and contact information of the certified individual and business conducting the

decommissioning, and the date ***on which*** the decommissioning is scheduled to begin*[. Guidance for notifying the Department is available at (to be added upon adoption), and includes the e-mail address to which the notice shall be provided;

5. Decommissioning shall be performed only on Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M.]*; and

[6.] ***5.*** Within 14 days after decommissioning is complete, the owner or operator of the gasoline dispensing facility shall notify the Department by e-mail ***to 14dayUSTnotice@dep.nj.gov*** and include the ***name,*** address*,* and registration number of the facility, ***name and*** contact information for the owner and operator, the name and contact information of the certified individual and business conducting the decommissioning, the date ***on which*** the decommissioning was conducted and a decommissioning checklist in accordance with PEI/RP300-09, or a checklist that may be amended by the Department as applicable *[and posted on the Department's website. Guidance for notifying the Department is available at (to be added upon adoption), and includes the e-mail address to which the notice shall be provided]*.

(*i*) The provisions of (d)3 and 4 and (g)2, 3, and 4 above *[shall]* ***do*** not apply to a gasoline dispensing facility installed after *[(the operative date of this amendment)]* ***December 23, 2017***, if:

1. The vapor recovery system and refueling equipment subject to (d) and (g) above is used exclusively for the refueling of marine vehicles, unless the equipment identified in (d)3 or 4 or (g)2, 3, or 4 above is being replaced; or

2. The vapor recovery system and refueling equipment subject to (d) and (g) above is used exclusively for the refueling of aircraft, unless the equipment identified in (d)3 or 4 or (g)2, 3, or 4 above is being replaced.

(j) The owner or operator of a gasoline dispensing facility shall perform tests to demonstrate that the facility's vapor recovery systems or equipment are performing properly, as follows:

1. Each test set forth in Table 3A below that is applicable to the facility shall be conducted in accordance with the schedule for testing given in the Table;

2. Each test required to be performed pursuant to (j)1 above shall be conducted utilizing the applicable CARB test method cited in Table 3A below, *[which are incorporated herein by reference, as amended or supplemented,]* or utilizing some other method approved by the Department and the EPA. A copy of the test methods cited in Table 3A above is available at www.arb.ca.gov/vapor/vapor.htm;

3. At least 14 days prior to performing any tests, the owner or operator of the gasoline dispensing facility shall notify the Department by e-mail ***to 14dayUSTnotice@dep.nj.gov*** and include the ***name,*** address***,*** and registration number of the facility, ***name and*** contact information for the owner and operator, the name and contact information of the business conducting the testing, and the date ***on which*** the testing is scheduled to begin*[. Guidance for notifying the Department is available at (to be added upon adoption), and includes the e-mail address to which the notice shall be provided;

4. Testing shall be performed only on Monday through Friday, except State holidays, between 8:00 A.M. and 5:00 P.M.]*;

[5.] ***4.*** On the day of the test, *[no]* ***any *** corrective action***, repairs, or equipment replacement made to the vapor recovery system*** shall be *[taken before or during the test, but may be taken after the test results have been]* recorded ***with the test results on the documentation of the test results***;

[6.] ***5.*** A vapor recovery system or equipment shall be deemed to have passed a test conducted pursuant to (j)1 above, if it meets the applicable performance standards and specifications that are set forth in CARB's Vapor Recovery Certification Procedures and/or Test Procedures, including all subsequent revisions thereto, which are incorporated herein by reference. A copy of CARB's Vapor Recovery Certification and Testing Procedures may be downloaded from CARB's website at https://www.arb.ca.gov/vapor/vapor.htm*[. If corrective action is needed on the day of the test, the vapor recovery system or equipment shall not be deemed to have passed the test]*;

[7.] ***6.*** If the vapor recovery system or equipment at a gasoline dispensing facility fails any test required to be performed pursuant to (j)1 above, the owner or operator of the facility shall:

i. Notify the Department in writing within 72 hours of the failure. Such notification shall be submitted to the Department by e-mail ***to 14dayUSTnotice@dep.nj.gov*** and include the ***name,*** address***,*** and registration number of the facility, ***name and*** contact information for the owner and operator, the name and contact information of the business conducting the testing, the date the testing was conducted, and the results of the testing using the forms in the applicable CARB method*[. Guidance for notifying the Department

is available at (to be added upon adoption), and includes the e-mail address to which the notice shall be provided]*; and

ii. Have the system repaired and retested within 14 days of failure of the test ***and record any repairs on the documentation of the test results***;

[8.] ***7.*** If the vapor recovery system or equipment at a gasoline dispensing facility fails any retesting required to be performed pursuant to (j)1 above, the owner or operator of the facility shall:

i. Notify the Department in writing within 72 hours of the failure. Such notification shall be submitted to the Department by e-mail ***to 14dayUSTnotice@dep.nj.gov*** and include the ***name,*** address***,*** and registration number of the facility, ***name and*** contact information for the owner and operator, the name and contact information of the business conducting the testing, the date the testing was conducted, and the results of the testing using the forms in the applicable CARB method*[. Guidance for notifying the Department is available at (to be added upon adoption), and includes the e-mail address to which the notice shall be provided]*; and

ii. Have the system repaired and retested in accordance with a compliance plan approved by the Department;

[9.] ***8.*** The owner or operator of the gasoline dispensing facility shall maintain a record of the performance of each of the tests, and of the results obtained, in accordance with (t) below;

[10.] ***9.*** Upon the request of the Department, the owner or operator of a gasoline dispensing facility shall provide the testing documentation and results required pursuant

to *[(j)9]* ***(j)8*** above and (t) below to the Department, either at the facility or to the Department's offices, as specified by the Department; and

[11.] ***10.*** Upon the request of the Department, the owner or operator of a gasoline dispensing facility shall demonstrate the efficiency of the facility's vapor recovery system in reducing the total applicable VOC emissions released from the facility into the outdoor atmosphere, as required pursuant to (d)1 and/or (f)1 above, in accordance with test procedures or documentation approved by the Department.

Table 3A

Testing for Gasoline Dispensing Facilities

Test	Applicability	Testing Schedule	Test Method
Static Pressure Performance Test	Applies to any facility required to have a vapor recovery system under (d) above or that decommissions a vapor recovery system under (h) above	Within 90 days from the date of installation of the system, at least once in every 12-month period thereafter, and as part of decommissioning	CARB TP-201.3* for underground storage tanks and CARB TP-206.3B for aboveground storage tanks, as applicable, including all subsequent revisions thereto, which are incorporated herein by reference

Pressure Vacuum Vent Valve Test	Applies to any facility required to have a vapor recovery system under (d) above or that decommissions a vapor recovery system under (h) above	Within 90 days from the date of installation of the system, at least once in every 12-month period thereafter, and as part of decommissioning	CARB TP-201.1E, including all subsequent revisions thereto, which are incorporated herein by reference
Dynamic Backpressure Performance Test	Applies to any facility that has a Phase II vapor recovery system under (f) above	Within 90 days from the date of installation of the system and at least once in every 36-month period thereafter	CARB TP-201.4, including all subsequent revisions thereto, which are incorporated herein by reference
Air to Liquid Volume Ratio Test	Applies to any facility that has a Phase II vacuum assist vapor recovery system under (f) above	Within 90 days from the date of installation of the system and at least once in every 36-month period thereafter	CARB TP-201.5, including all subsequent revisions thereto, which are incorporated herein by reference

Torque Test	Applies to any facility that has rotatable adapters under (d) above	Within 90 days from the date of installation of the system and at least once in every 12-month period thereafter	CARB TP-201.1B, including all subsequent revisions thereto, which are incorporated herein by reference
Tie-Tank Test	Applies to any facility that decommissions a Phase II vapor recovery system under (h) above	As part of decommissioning	CARB TP-201.3C, including all subsequent revisions thereto, which are incorporated herein by reference

*In CARB TP-201.3, the compliance equation for a Phase II vacuum assist system with one to six nozzles shall be used for a gasoline dispensing facility with a Phase I vapor recovery system and no Phase II vapor recovery system. This compliance equation for a Phase I vapor recovery system is also included in CARB's Vapor Recovery Certification Procedure CP-201.

(k) No person shall cause, suffer, allow, or permit a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater, except if it is a railroad tank car or marine tank vessel, to contain gasoline unless:

1. (No change.)

2. Pressure and vacuum tests are performed on the delivery vessel at least once in every 12-month period, in accordance with test procedures specified by the Department, to determine whether or not the requirements of (k)1 above are met;

3.-4. (No change.)

(*l*) No person shall cause, suffer, allow, or permit a transfer of gasoline, to or from a delivery vessel, if the transfer is subject to the provisions of (d) above, and (m) or (n) below, and if the delivery vessel being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the delivery vessel being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge.

(m) Except as provided in (q) below, no person shall cause, suffer, allow, or permit the transport or transfer of gasoline in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC***,*** except during:

1. – 3. (No change.)

(n) No person shall cause, suffer, allow, or permit the transfer of gasoline or any other substance into a gasoline vapor laden delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater, unless:

1. The transfer operation is conducted at a gasoline loading facility equipped with a vapor control system *[which]* ***that*** meets the requirement of (o) below, the vapor control system is properly connected to the delivery vessel, and the vapor control system is properly operated throughout the duration of the transfer operation; or

2. (No change.)

(*o*) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any other substance into any gasoline vapor laden delivery vessel except at a gasoline loading facility that is equipped and operating with a vapor control system in accordance with the following provisions:

1. At a facility where the daily loading rate does not exceed 15,000 gallons (56,775 liters) of gasoline per day, as determined in accordance with (o)3 below, the facility shall be equipped and operating with a vapor balance system or some other vapor control system of equal or higher efficiency. Such vapor balance system shall not have a vent that is open to the atmosphere during transfer and shall not return the vapors to a tank equipped with a floating roof;

2. At a facility where the daily loading rate exceeds, or may exceed, 15,000 gallons (56,775 liters) of gasoline per day, as determined in accordance with (o)3 below, the facility shall be equipped and operating with a vapor control system which:

i.-ii. (No change.)

3. For the purposes of (o)1 and 2 above, a gasoline loading facility's daily loading rate shall be its average daily rate during the month in which the facility had its highest monthly throughput in the last 12 months of operation.

TABLE 3B

(No change.)

(p) Except as provided in (q) below, no person shall cause, suffer, allow, or permit any transfer of gasoline, subject to the provisions of (d), (f), (n), or (*o*) above, if:

1.-3. (No change.)

(q) A delivery vessel subject to the provisions of (k) above that is found to be in violation of (m) or (p) above shall be:

1. Repaired and a new certification, in accordance with (k)3 and 4 above, shall be affixed to the delivery vessel within 15 days; or

2. Removed from service until (m) and (p) above are met in full.

(r) No person shall cause, suffer, allow, or permit the transfer of gasoline at a gasoline loading facility, into or from a delivery vessel, or at a gasoline dispensing facility that is required to have a vapor control system pursuant to (d), (f)1, (n), or (o) above unless:

1. The vapor control system is designed to meet the applicable requirements in (d), (f), (n), or (o) above;

2.-5. (No change.)

(s) (No change in text.)

(t) The owner or operator of a gasoline dispensing facility shall maintain the following records at the facility:

1. (No change.)

2. If the facility is required to test a vapor control system pursuant to (j) above:

i. Documentation of the performance of each test required pursuant to (j) above, including the date, ***the*** name of the testing company, and the test method used; and

ii. A record of the results of each test performed pursuant to (j) above.

(u) The owner or operator of a gasoline loading facility with a vapor control system pursuant to (*o*) above shall maintain the following records at the facility:

1.-3. (No change.)

SUBCHAPTER 22. OPERATING PERMITS

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.

…

"Operating permit" means the consolidated preconstruction and operating permit issued pursuant to Title V of the Federal Clean Air Act, 42 U.S.C. § 7661 et seq., this subchapter, Title I of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., and N.J.A.C. 7:27-8. This term includes a general operating permit that is applicable facility wide, but does not include a general operating permit that 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).

…

7:27-22.3 General provisions

(a)-(tt) (No change.)

(uu) The Department will note in the operating permit any requirements derived from an existing or terminated consent decree between the permittee and the EPA and will not change such requirements or remove them from the operating permit without first notifying the EPA.

(vv) (No change.)

7:27-22.5 Application procedures for initial operating permits

(a)-(f) (No change.)

(g) A new facility subject to this subchapter may either obtain preconstruction permit and operating certificate approval pursuant to N.J.A.C. 7:27-8 or such facility may elect to obtain both preconstruction and operating permit approval simultaneously by the submittal and approval of a consolidated preconstruction and operating permit application pursuant to this subchapter and N.J.A.C. 7:27-8 prior to construction of the facility. In either situation, the facility shall comply with the application deadline in (f) above.

(h)-(j) (No change.)

7:27-22.9 Compliance plans

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

(c) A proposed compliance plan shall include the following:

1.-4. (No change.)

5. For each applicable requirement for which the facility is not in compliance at the time the application for an operating permit is submitted to the Department:

i. (No change.)

ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order, including an administrative consent order, or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and

iii. (No change.)

6.-7. (No change.)

(d)-(e) (No change.)

7:27-22.11 Public comment

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

(c) The Department will provide public notice of the opportunity for public comment on each draft operating permit. The notice will:

1.-3. (No change.)

4. Give the name and address of the Department, including the name, telephone number, and e-mail address of a person at the Department from whom interested persons may obtain additional information;

5.-7. (No change.)

(d) (No change.)

(e) The Department will post the public notice and each draft operating permit on the Department's air permitting website (www.nj.gov/dep/aqpp) for the duration of the public comment period. The Department will also provide notice of the draft operating permit using e-mail, postal service, or other means to persons on a mailing list developed by the Department, including to persons who request in writing to be on the mailing list or who subscribe to the Department's Air Quality Regulation Listserv. The Department may occasionally update the mailing list and may delete from the list the name of any person who does not respond to the Department's request for a written indication of continued interest in being on the list, or for whom a notice returns to the Department as undeliverable. The Department will publish the notice for each draft general operating permit in the New Jersey Register. The Department may also provide additional notice by using any other means the Department finds appropriate for ensuring adequate notice to the public of the opportunity for public comment.

(f)-(n) (No change.)

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 that may increase actual emissions by insignificant amounts, and other changes that do not increase emissions, but may increase ambient concentrations of air contaminants. The Department will, upon approval of an application for a minor modification of the operating permit, incorporate the changes into the operating permit. The application for a minor modification constitutes an application for a consolidated preconstruction and operating permit under this subchapter and N.J.A.C. 7:27-8. 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.-3. (No change.)

(b)-(n) (No change.)

7:27-22.24 Significant modifications

(a) Notwithstanding any other provision of this subchapter, a permittee is required to make any of the changes listed at (b) below through the significant modification procedures set forth in this section. The Department will, upon its approval of an application for a significant modification of the operating permit, incorporate the change(s) into the operating permit. The application for a significant modification constitutes the consolidated preconstruction and operating permit application under this subchapter and N.J.A.C. 7:27-8. For a significant modification of the operating permit, the permittee may begin construction of the significant modification, but may not operate the modified facility until the Department has approved the significant modification.

(b)-(g) (No change.)

7:27-22.33 Consolidated preconstruction and operating permit review

(a) (No change.)

(b) The owner or operator of a facility subject to this subchapter that is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c)*[,]* shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until the Department issues an operating permit for the facility. When the Department issues the operating permit to the facility, the operating permit shall include the terms and conditions of the preconstruction permit.

(c) The owner or operator of a facility subject to this subchapter that commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c)*[,]* shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. When the Department issues the operating permit to the facility, the operating permit shall include the terms and conditions of the preconstruction permit.

(d) (No change.)

(e) For an application for a minor or significant modification, the Department will simultaneously conduct the preconstruction permit review pursuant to N.J.A.C. 7:27-8 and the operating permit review pursuant to this subchapter. Ordinarily, the Department will issue the preconstruction approval as part of the final operating permit modification approval. However, if requested by an applicant for a modification, the Department will issue the preconstruction approval simultaneously with the proposed operating permit that is forwarded to the EPA

pursuant to N.J.A.C. 7:27-22.12. For a minor modification pursuant to N.J.A.C. 7:27-22.23, preconstruction approval will authorize the permittee to begin construction and operation of a minor modification, at the permittee's own risk. For a significant modification of the operating permit pursuant to N.J.A.C. 7:27-22.24, the permittee may begin construction of a significant modification, but may not operate the modified facility until the Department has approved the significant modification.

(f) (No change.)

CHAPTER 27A

AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(*l*) (No change.)

(m) The violations of N.J.A.C. 7:27, whether the violation is minor or non-minor in accordance with (q) through (t) below, and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 15. (No change.)

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
...						
N.J.A.C. 7:27-16.3(c)	Phase I Gasoline Unloading, Submerged Fill	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(d)	Phase I Gasoline Unloading to Tank, Efficiency, Vapor Recovery System	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(e)	Decommissioning Options	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(f)	Phase II Gasoline Vehicle Refueling, Vapor Recovery System	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]

N.J.A.C. 7:27-16.3(g)	Gasoline Vehicle Refueling Requirements	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(h)	Decommissioning Specifications	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3 (j)1	Testing	NM	$500[3]	$1,000[3]	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.3 (j)*[9, 10, or 11]* ***8, 9, or 10***	Records**:** Periodic Testing and System Efficiency	M	**$500**	**$1,000**	**$2,500[3]**	**$7,500[3]**
N.J.A.C. 7:27-16.3 (k)	Transfer Pressure	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3 (m)	Vapor-Tight Delivery Vessel (Gasoline)	NM	$600[3]	$1,200[3]	$3,000[3]	$9,000[3]

N.J.A.C. 7:27-16.3 (n)	Transfer of Gasoline to Delivery Vessel	NM	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3 (*o*)1	Transfer of Gasoline to Delivery Vessel 15,000 gallons per day or less**,** Vapor Recovery System	NM	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.3 (o)2	Transfer of Gasoline to Delivery Vessel more than 15,000 gallons per day, Vapor Recovery System	NM	$5,000	$10,000	$25,000[3]	$50,000[3]
N.J.A.C. 7:27-16.3 (p)1	Delivery Vessel Vapor Leak Specs	NM	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3 (p)2	Delivery Vessel Vapor Component Malfunction	NM	$800	$1,600	$4,000[3]	$12,000[3]
N.J.A.C. 7:27-16.3 (p)3	Delivery Vessel Liquid Spill	NM	$2,000	$4,000	$10,000[3]	$30,000[3]

N.J.A.C. 7:27-16.3(q)	Delivery Vessel Recertification	M	$200	$400	$1,000[3]	$3,000[3]
N.J.A.C. 7:27-16.3(r)	Gasoline Facility Transfers, Vapor-Tight and Liquid Leak Free	NM	$600	$1,200	$3,000 [3]	$9,000 [3]
N.J.A.C. 7:27-16.3(t)	Records	M	$500	$1,000	$2,500[3]	$7,500[3]

…

(n) – (t) (No change.)