

ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

Air Administrative Procedures and Penalties

Proposed Amendments: N.J.A.C. 7:27A-3.5 and 3.10

Authorized By: Bob Martin, Commissioner, Department of
Environmental Protection.

Authority: N.J.S.A. 13:1B-3; 13:1D-1 et seq.; 13:1D-125 to
134; and 26:2C-1 et seq., particularly 26:2C-8, 9.2,
and 19.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

DEP Docket Number: 03-12-07.

Proposal Number: PRN 2012-116.

A **public hearing** concerning this proposal will be held on:

Date: Tuesday, September 25, 2012

Time: 9:00 A.M. to close of comments

New Jersey Department of Environmental Protection

Fourth Floor Conference Room

401 East State Street

Trenton, NJ 08625

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Submit comments by October 19, 2012 electronically at

<http://www.nj.gov/dep/rules/comments>.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 03-12-07

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 4th Floor

Mail Code 401-04L

P.O. Box 402

Trenton, New Jersey 08625-0402

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes to amend the Air Administrative Procedures and Penalties, N.J.A.C. 7:27A, to update the penalty matrices and to address an issue raised by

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stakeholders during the rulemaking process. As part of the development of this proposal, the Department met with stakeholders on January 20, 2011, at the Department's headquarters. The meeting was attended by representatives of the regulated community, including a trade group, a major consulting firm, and a law firm that represents several members of the regulated community. The issues discussed at the stakeholder meeting primarily related to enforcement of air pollution regulations generally, rather than the specific content of the rules.

Subchapter 3, Civil Administrative Penalties and Requests for Adjudicatory Hearings, contains procedural rules for the assessment, payment, and contesting of civil administrative penalties, as well as rules setting forth the penalties for specific air pollution violations. N.J.A.C. 7:27A-3.5, Civil administrative penalty determination – general, identifies how the Department determines civil administrative penalties for air pollution violations and sets forth the range and limit of such penalties. The section also sets forth the factors that the Department may consider in determining the penalties for air pollution violations. In response to suggestions at the January 2011 stakeholder meeting, the Department proposes to amend N.J.A.C. 7:27A-3.5(e)3 to expressly allow environmental impact (or the lack of impact) to be taken into account in adjusting penalty amounts, as provided by N.J.A.C. 7:27A-3.10(j). For example, if a process monitor shows a minor deviation from a permit requirement, but the facility's continuous emission monitors on that process show that there was no increase in emissions as a result of the deviation (and therefore no impact on the environment), the Department could reduce the penalty assessed for violation of the permit requirement below the amount specified in the applicable penalty matrix.

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Existing N.J.A.C. 7:27A-3.5(e)6 allows the Department to take into account “any other mitigating, extenuating or aggravating circumstances” when adjusting a penalty. The circumstances considered could include environmental impact; however, the existing rule does not explicitly say so. The proposed amendment is intended to make it clear that the Department may consider environmental impact in adjusting a penalty amount.

Penalties for violations of the Air Pollution Control Act rules, N.J.A.C. 7:27, are set forth in tables at N.J.A.C. 7:27A-3.10. The tables contain penalty matrices setting forth the citation, a summary describing the violation, and penalties for the first, second, third, fourth, and each subsequent offense. The “Type of Violation” column includes one of two different designations, depending on whether the violation is minor (M) or non-minor (NM). A violation of the specific provision identified in the penalty matrix as minor would be subject to a grace period, provided that the violation meets the criteria of N.J.S.A. 13:1D-129.b(1), (4), or (5), which are set forth in N.J.A.C. 7:27A-3.10(s).

The penalty matrix at N.J.A.C. 7:27A-3.10(m)6 provides penalties for violations of N.J.A.C. 7:27-6, Control and Prohibition of Particles from Manufacturing Processes, and indicates that a violation of N.J.A.C. 7:27-6.2(d) is a minor violation, subject to a grace period for correction of the violation. N.J.A.C. 7:27-6.2(d) prohibits stack or chimney emissions with opacity greater than 20 percent, which is an emission violation. An emission violation materially and substantially undermines or impairs the goals of the Department’s Air Quality Program, making it ineligible for designation as a minor violation under the Grace Period Law, N.J.S.A. 13:1D-129.b(3). Accordingly, the Department is amending the rule to designate the violation as non-minor.

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Several references in the penalty matrix at N.J.A.C. 7:27A-3.10(m)8, which provides penalties for violations of N.J.A.C. 7:27-8, Permits and Certificates, are incorrect. The Rule Summaries identified in the matrix as corresponding to N.J.A.C. 7:27-8.9(a) through (d) in fact correspond to N.J.A.C. 7:27-8.15, Reporting requirements. Accordingly, the Department is amending the rule to correct the citations.

The penalty matrix at N.J.A.C. 7:27A-3.10(m)16, which provides penalties for violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOCs), indicates that a violation of N.J.A.C. 7:27-16.3(i)1, identified as “testing,” is a minor violation. A violation of N.J.A.C. 7:27-16.3(i)1 would be a failure to demonstrate, through testing, that the facility’s vapor control system is performing properly. If the vapor control system is not working properly, emissions would not be detected. Failure to detect emissions materially and substantially undermines or impairs the goals of the Department’s Air Quality Program, making such a violation ineligible for designation as a minor violation under the Grace Period Law, N.J.S.A. 13:1D-129.b(3). Accordingly, the Department is amending the rule to designate the violation as non-minor. A violation of N.J.A.C. 7:27-16.3(i)2 or 3, failure to keep records or perform a timely test under N.J.A.C. 7:27-16.3(i), remains a minor violation, as specified in the existing penalty matrix.

The penalty matrix at N.J.A.C. 7:27A-3.10(m)16 indicates that a violation of N.J.A.C. 7:27-16.4(j), relating to the transfer pressure of a VOC transfer operation other than gasoline, is a minor violation. A violation of N.J.A.C. 7:27-16.4(j) would be a failure to meet the pressure or vacuum requirements during a transfer of an applicable VOC, resulting in excess emissions of a VOC. As discussed above, emission-related

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violations are ineligible for designation as a minor violation under the Grace Period Law, N.J.S.A. 13:1D-129.b(3). Accordingly, the Department is amending the rule to designate the violation as non-minor.

Similarly, the penalty matrix at N.J.A.C. 7:27A-3.10(m)16 specifies that violations of N.J.A.C. 7:27-16.12(f) and (g), relating to surface coating operations at mobile equipment repair and refinishing facilities, are minor. Failure to meet the application techniques or methods for mobile equipment repair and refinishing using a VOC would result in an increase in emissions of a VOC, making the violation ineligible for designation as a minor violation under the Grace Period Law, N.J.S.A. 13:1D-129.b(3). Accordingly, the Department is amending the rule to designate the violations as non-minor.

The penalty matrix at N.J.A.C. 7:27A-3.10(m)20, setting forth the penalties for violations of N.J.A.C. 7:27-20, Used Oil Combustion, specifies that a violation of N.J.A.C. 7:27-20.2(d) is a non-minor violation. N.J.A.C. 7:27-20.2(d) requires a registration or a permit to combust used oil or a mixture containing used oil in a space heater. A violation of N.J.A.C. 7:27-20.2(d) is not one that involves an emission release. Rather, it is failure to register with the Department. The violation poses minimal risk to the public health, safety, and natural resources, and it does not materially and substantially undermine or impair the goals of the regulatory program. Accordingly, the Department is amending the rule to designate the violation as minor, as most other such “administrative” violations are designated. Provided the violation also meets the conditions of N.J.A.C. 7:27A-3.10(s), which sets out additional criteria in the Grace Period Law, N.J.S.A. 13:1D-129, the violation will be subject to a grace period.

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The penalty matrix at N.J.A.C. 7:27A-3.10(m)29, associated with violations of the rules regarding the Low Emission Vehicle Program, does not include penalties for violations of N.J.A.C. 7:27-29.4, Emission certification standards, and subsection (a) of N.J.A.C. 7:27-29.8, Fees. The Department proposes to add penalties for these violations. Because a violation of N.J.A.C. 7:27-29.4, failure to obtain California-certification for a motor vehicle, is similar in severity to a violation of N.J.A.C. 7:27-29.3(a), delivery of a non-certified vehicle, the Department proposes that the penalty amounts be the same (\$2,500 for a first offense, \$5,000 for a second offense, \$12,500 for a third offense, and \$30,000 for each subsequent offense). Likewise, because a violation of N.J.A.C. 7:27-29.8(a), failure of the manufacturer to pay the Department an annual fee for certain passenger vehicles or light-duty trucks delivered for sale in New Jersey, is similar in severity to a violation of N.J.A.C. 7:27-29.8(b), failure to report production numbers, the Department proposes that the penalty amounts be the same (\$500.00 for a first offense, \$1,000 for a second offense, \$2,500 for a third offense, and \$7,500 for each subsequent offense). The nonpayment of the annual fee is administrative, poses minimal risk to the public health, safety, and natural resources, and does not materially and substantially undermine or impair the goals of the regulatory program. Accordingly, the violation is proposed to be a minor violation, subject to a grace period. The failure to obtain California-certification is an emission-related violation, which could result in an exceedence of emission standards; therefore, the violation is non-minor and not subject to a grace period.

In October 2005, the Department promulgated amendments to N.J.A.C. 7:27-8, Permits and Certificates for Minor Facilities (and Major Facilities without an Operating

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Permit), N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds, N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and N.J.A.C. 7:27A to update the rules regulating the emission of nitrogen oxides (NO_x). These amendments were known collectively as the NO_x RACT rules. (See 36 N.J.R. 4228(a) and 37 N.J.R. 3976(a).) Because the Department had not yet proposed amendments to N.J.A.C. 7:27A to reflect the requirements of the Grace Period Law, N.J.A.C. 13:1D-125 through 133, at the time the NO_x RACT rules were proposed, the adopted rules did not designate violations of the amended rules as “minor” or “non-minor” for purposes of the Grace Period Law.

The Department proposes to amend the penalty matrix at N.J.A.C. 7:27A-3.10(m)16 to specify violations of N.J.A.C. 7:27-16.8(c)1 through 3, promulgated as part of the NO_x RACT rules and relating to the adjustment of combustion in boilers, as non-minor. Failure to adjust the combustion process can result in excess emissions, which would materially and substantially undermine or impair the goals of the Department’s Air Quality Program, making the violations ineligible for designation as minor under the Grace Period Law, N.J.S.A. 13:1D-129.b(3).

The Department proposes to amend the penalty matrix at N.J.A.C. 7:27A-3.10(m)19 to specify that violations of N.J.A.C. 7:27-19.8(e) and (f) and 19.11(a) and (b) are non-minor, based upon the criteria of the Grace Period Law. A violation of N.J.A.C. 7:27-19.8(e) (excess emissions of NO_x) and 19.8(f) (adjustment of combustion), and 19.11(a) and (b) (recordkeeping), are either emission related, or result in the Department’s being unable to determine if an emission violation occurred in the past, due to lack of records. Accordingly, the Department is amending the rule to designate the

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violations as non-minor. A violation of N.J.A.C. 7:27-19.16(c) is based on failure to submit a report. This violation meets the criteria for a minor violation under the Grace Period Law, N.J.S.A. 13:1D-129, as discussed above with regard to N.J.A.C. 7:27-20.2(d). Accordingly, the Department is amending the rule to designate the violation as minor. The Department is also amending the rule to remove reference to N.J.A.C. 7:27-19.16(i) because there is no such subsection.

The Department also proposes to amend the penalty matrix at N.J.A.C. 7:27A-3.10(m)19 to add a violation of N.J.A.C. 7:27-19.2(d), for the prohibited use of an emergency generator. The violation is proposed to be designated as non-minor, inasmuch as a violation can result in an emissions increase. Most emergency generators emit between 2.5 and 5.7 pounds per hour of VOC and NO_x. Therefore, they are similar to Class 3 sources for which preconstruction permits and operating certificates are required. Class 3 sources emit more than 10 pounds and as much as 22.8 pounds per hour, or more than 2.5 through 5.7 pounds per hour VOC and NO_x. The Department proposes penalties of \$1,200 to \$18,000 for a violation of N.J.A.C. 7:27-19.2(d) (prohibited use of an emergency generator), which are comparable to the penalties for a violation of N.J.A.C. 7:27-8.3(e), Class 3.

The Department proposes to amend N.J.A.C. 7:27A-3.10(n)1(i) and footnote 7 to the tables to refer to “allowable standard,” rather than “standard or allowable.” This is consistent with the rest of the chapter. The Department also proposes to consolidate the notes to the end of the tables, and add the appropriate footnote reference for “Level of Offense” in Table 1 for Continuous Monitoring Systems, to correspond to the first footnote.

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Table 1 of N.J.A.C. 7:27A-3.10(n) specifies the level of offense for violations of N.J.A.C. 7:27-8 and 7:27-22, as reported by continuous monitoring systems. The existing table provides a level of offense for violations of minimum oxygen standards, but could be interpreted as imposing no level of offense for violations of maximum oxygen standards. Accordingly, the Department proposes to amend Table 1 to indicate levels of offense for violations of minimum standards and maximum standards. The amended column is consistent with the last column of the table, which addresses violations of other minimum or maximum specifications.

Also in Table 3 at N.J.A.C. 7:27A-3.10(n), the Department proposes new footnote 8, which states that each day during which the violation continues constitutes an additional, separate, and distinct offense, in accordance with N.J.A.C. 7:27A-3.10(c). The existing rule could be misinterpreted as meaning that a violation would occur only if the violation continued for more than 24 hours. As amended, the “>24 hr” entry in Table 3 refers to an averaging time, not the duration of the violation. If the violation continues for more than one day, each day is a separate and distinct violation. (See N.J.A.C. 7:27A-3.10(c).)

Social Impact

The proposed amended rules will continue to encourage compliance and discourage noncompliance with the State’s air pollution control laws and regulations. There will be a benefit to public health from improved air quality resulting from compliance. Through the amended rules, the Department is complying with the Federal Clean Air Act regulations, which require each state to have an air pollution control

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program with an adequate enforcement mechanism. By continuing to encourage compliance with the Department's air pollution control program, the amended rules will enable the Department to meet Federally-mandated emission reduction commitments set forth in the existing New Jersey State Implementation Plans (SIP).

To the extent that violations are designated as minor and eligible for a grace period, thereby removing the threat of penalties for certain types of violations where compliance is achieved within the time specified, the proposed amended rules encourage the regulated community to take positive action toward achieving compliance.

Economic Impact

The proposed amendments will have an economic impact only on those to whom the Department issues a civil administrative penalty. There is no cost associated with payment of a penalty, other than the penalty itself. If the recipient of an administrative order and notice of civil administrative penalty wishes to challenge the action, then he or she must submit a request for adjudicatory hearing. There is no cost to submit a request for hearing; however, some recipients may wish to retain experts or legal counsel to represent them or assist them in challenging the penalty. The cost of the experts or counsel will vary, depending on the nature of the penalty and the experts or counsel retained.

To the extent that the proposed amended rules classify violations as minor for which the Department has not previously provided a grace period, the regulated community will realize an economic benefit. A violator will have between 30 and 90

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days to achieve compliance, without being assessed a penalty, to allow an opportunity for correction of a minor violation.

Environmental Impact

The proposed amendments are an integral part of the Department's Air Pollution Control Program, and encourage compliance. The penalty provisions will provide a deterrent to those who would violate the regulatory requirements. The control of air pollution will protect the environment and the health, welfare, and the property of New Jersey residents.

The proposed grace period provisions allow a violator an opportunity to correct certain violations within the time provided and thereby avoid a penalty. The Department therefore anticipates that these rules will encourage the regulated community to correct certain types of violations in a timely manner. Prompt correction will reduce the potential risk these minor violations may have created and will, therefore, result in an additional positive environmental impact.

Federal Standards Analysis

P.L. 1995, c. 65 and Executive Order No. 27 (1994) require State agencies that adopt, readopt, or amend any rule or regulation, to provide a comparison with Federal law, and to provide further discussion and analysis (including cost-benefit analysis) if the standards or requirements imposed by the agency exceed standards or requirements imposed by Federal law.

The Air Administrative Procedures and Penalties, N.J.A.C. 7:27A, were promulgated in order to comply with the state implementation plan (SIP) requirements of

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the Federal Clean Air Act, as well as to provide an enforcement mechanism for the implementation of the State Air Pollution Control Act. The penalties for violations of rules for which no penalty was previously provided are proposed as part of the State's SIPs. The purpose of the penalties is to encourage compliance and discourage noncompliance with the State's air pollution control law and regulations and the Federal Clean Air Act requirements, including the State's Federally-mandated emission reduction commitments set forth in the existing SIPs. The proposed amendment allowing the Department to take into account environmental impact (or the lack of impact) in assessing a penalty amount is consistent with the Federal requirements. The proposed amendments designating certain violations as minor or non-minor are made in order to comply with the State's Grace Period Law and do not exceed any standard or requirement imposed by Federal law.

Jobs Impact

The proposed amendments will not result in either the generation or loss of jobs within the State. No facility will incur any costs unless it commits a violation that results in a penalty assessment.

Agriculture Industry Impact

The Department has reviewed the proposed amendments and determined that the rules will have an impact on the agricultural industry only insofar as an agricultural facility commits a violation of the Air Pollution Control Act or regulations. The proposed amendments will have no impact on entities that remain in compliance with the Air Pollution Control Act and regulations.

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Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full-time employees. The proposed amendments impose no reporting or recordkeeping requirements. Small businesses will incur the penalties established under these rules only if they are determined to be in violation of the Air Pollution Control Act or regulations. The amount of a penalty and eligibility for a grace period are not based upon business size, but on the nature of the violation, in order that the rules provide a fair, efficient, and effective penalty scheme.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4.1b, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine their impact, if any, on the affordability of housing. The proposed amendments establish air administrative procedures and penalties associated with violations of the Air Pollution Control Act, which are extremely unlikely to evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine

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their impact, if any, on housing production. The rules establish air administrative procedures and penalties associated with violations of the Air Pollution Control Act, and do not impact residential housing. Therefore, there is an extreme unlikelihood that the rules will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

7:27A-3.5 Civil administrative penalty determination—general

(a) - (d) (No change.)

(e) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section or under N.J.A.C. 7:27A-3.6, 3.7, 3.8, 3.9, 3.10, or 3.11, based upon any or all of the factors listed in (e)1 through 6 below. The Department may apply such factors in addition to the factors listed in N.J.A.C. 7:27A-3.10(e)5 and 3.11. No such factor constitutes a defense to any violation.

1. – 2. (No change.)

3. The severity of the violation, **including impact on the environment**;

4. – 6. (No change.)

(f) - (i) (No change.)

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

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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. - 5. (No change.)

6. The violations of N.J.A.C. 7:27-6, Control and Prohibition of Particles from Manufacturing Processes, 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 | Second | Third | Fourth and |
|----------------------|-------|-------------------|--------------------|----------------------|----------------------|-------------------------|
| | | | Offense | Offense | Offense | Each Subsequent Offense |
| N.J.A.C. 7:27-6.2(d) | All | [M] NM | \$500 ² | \$1,000 ² | \$2,500 ² | \$7,500 ² |

...

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8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

...

| <u>Citation</u> | <u>Rule Summary</u> | <u>Type of Violation</u> | <u>First Offense</u> | <u>Second Offense</u> | <u>Third Offense</u> | <u>Fourth and Each Subsequent Offense</u> |
|---------------------------------------|------------------------|--------------------------|----------------------|-----------------------|----------------------|---|
| N.J.A.C. 7:27-[8.9(a)] 8.15(a) | Submit Records | M | \$500 | \$1,000 | \$2,500 | \$7,500 |
| N.J.A.C. 7:27-[8.9(b)] 8.15(b) | Submit Report | M | \$500 | \$1,000 | \$2,500 | \$7,500 |
| N.J.A.C. 7:27-[8.9(c)] 8.15(c) | Certify Report | M | \$300 | \$600 | \$1,500 | \$4,500 |
| N.J.A.C. 7:27-[8.9(d)] 8.15(d) | Submit Emission Report | M | \$500 | \$1,000 | \$2,500 | \$7,500 |

...

9. - 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:

| <u>Citation</u> | <u>Class</u> | <u>Type of Violation</u> | <u>First Offense</u> | <u>Second Offense</u> | <u>Third Offense</u> | <u>Fourth and Each Subsequent</u> |
|-----------------|--------------|--------------------------|----------------------|-----------------------|----------------------|-----------------------------------|
|-----------------|--------------|--------------------------|----------------------|-----------------------|----------------------|-----------------------------------|

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| | | | | | | <u>Offense</u> |
|------------------------|----------------------------|--------|----------------------|----------------------|----------------------|----------------------|
| ... | | | | | | |
| N.J.A.C. 7:27-16.3(i)1 | Testing | [M] NM | \$500 ³ | \$1,000 ³ | \$2,500 ³ | \$7,500 ³ |
| ... | | | | | | |
| N.J.A.C. 7:27-16.4(j) | Transfer Pressure | [M] NM | \$600 | \$1,200 | \$3,000 ³ | \$9,000 ³ |
| ... | | | | | | |
| N.J.A.C. 7:27-16.8(c)1 | Adjust Combustion | | | | | |
| | 5-10 million BTU per hour | NM | \$500 | \$1,000 | \$2,500 | \$7,500 |
| N.J.A.C. 7:27-16.8(c)2 | Adjust Combustion | | | | | |
| | 10-20 million BTU per hour | NM | \$1,000 | \$2,000 | \$5,000 | \$15,000 |
| N.J.A.C. 7:27-16.8(c)3 | Adjust Combustion | | | | | |
| | 20-50 million BTU per hour | NM | \$2,000 | \$4,000 | \$10,000 | \$30,000 |
| ... | | | | | | |
| N.J.A.C. 7:27-16.12(f) | Coating Application | | | | | |
| | Techniques | [M] NM | \$1,000 ³ | \$1,500 ³ | \$2,000 ³ | \$2,500 ³ |
| N.J.A.C. 7:27-16.12(g) | Spray Gun Cleaning | | | | | |
| | Methods | [M] NM | \$1,000 ³ | \$1,500 ³ | \$2,000 ³ | \$2,500 ³ |
| ... | | | | | | |
| 17. -18. (No change.) | | | | | | |

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19. The violations of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

| <u>Citation</u> | <u>Class</u> | <u>Type of Violation</u> | <u>First Offense</u> | <u>Second Offense</u> | <u>Third Offense</u> | <u>Fourth and Each Subsequent Offense</u> |
|-----------------------|---|--------------------------|----------------------|-----------------------|----------------------|---|
| N.J.A.C. 7:27-19.2(d) | Prohibited use of an emergency generator | NM | \$1,200 | \$2,400 | \$6,000 | \$18,000 |
| ... | | | | | | |
| N.J.A.C. 7:27-19.8(e) | Actual Emissions (grams per brake horsepower hour) | | | | | |
| | 200 bhp or greater, used for generating electricity | | | | | |
| | 1. Less than 25 percent over the allowable standard | NM | \$2,000 | \$4,000 | \$10,000 | \$30,000 |
| | 2. From 25 through 50 percent over the allowable standard | NM | \$4,000 | \$8,000 | \$20,000 | \$50,000 |
| | 3. Greater than 50 percent over the allowable standard | NM | \$8,000 | \$16,000 | \$40,000 | \$50,000 |
| | Less than 200 bhp, used for generating electricity | | | | | |

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| | | | | | |
|---|-----------|---------|---------|----------|----------|
| 1. Less than 25 percent over the allowable standard | NM | \$500 | \$1,000 | \$2,500 | \$7,500 |
| 2. From 25 through 50 percent over the allowable standard | NM | \$1,000 | \$2,000 | \$5,000 | \$15,000 |
| 3. Greater than 50 percent over the allowable standard | NM | \$2,000 | \$4,000 | \$10,000 | \$30,000 |
| N.J.A.C. 7:27-19.8(f) Adjust Combustion | | | | | |
| 50 - 200 bhp | NM | \$500 | \$1,000 | \$2,500 | \$7,500 |
| 200 - 500 bhp | NM | \$1,000 | \$2,000 | \$5,000 | \$15,000 |
| 500 bhp or greater | NM | \$2,000 | \$4,000 | \$10,000 | \$30,000 |

...

| | | | | | | |
|---|----------------------|-----------|-------|---------|---------|---------|
| N.J.A.C. 7:27-19.11(a), (b) Emergency Generators [Record Keeping] | Recordkeeping | NM | \$500 | \$1,000 | \$2,500 | \$7,500 |
|---|----------------------|-----------|-------|---------|---------|---------|

...

| | | | | | |
|--|----------|-------|---------|---------|---------|
| N.J.A.C. 7:27-19.16(c) [or (i)] Submit Report | M | \$500 | \$1,000 | \$2,500 | \$7,500 |
|--|----------|-------|---------|---------|---------|

...

20. The violations of N.J.A.C. 7:27-20, Used Oil Combustion, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

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| Citation | Class | Type of Violation | First Offense | Second Offense | Third Offense | Fourth and Each Subsequent Offense |
|-----------------------|--|-------------------|---------------|----------------|---------------|------------------------------------|
| N.J.A.C. 7:27-20.2(d) | Registration Required, equal or less than 500,000 BTU/Hr | [NM] M | \$200 | \$400 | \$1,000 | \$3,000 |
| | Permit Required, greater than 500,000 BTU/Hr | [NM] M | \$400 | \$800 | \$2,000 | \$6,000 |

...

21. - 28. (No change.)

29. The violations of N.J.A.C. 7:27-29, Low Emission Vehicle Program, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:

| <u>Citation</u> | <u>Class</u> | <u>Type of Violation</u> | <u>First Offense</u> | <u>Second Offense</u> | <u>Third Offense</u> | <u>Fourth and Each Subsequent Offense</u> |
|-------------------------------|-------------------|--------------------------|----------------------|-----------------------|----------------------|---|
| Emission certification | | | | | | |
| N.J.A.C. 7:27-29.4 | standards | NM | \$2,500 | \$5,000 | \$12,500 | \$30,000 |
| N.J.A.C. 7:27-29.8(a) | Pay an annual fee | M | \$500 | \$1,000 | \$2,500 | \$7,500 |

...

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30. - 34. (No change.)

(n) The Department shall determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8 and 7:27-22 as follows: for violations detected by continuous monitoring systems in accordance with (n)1 below; for continuous monitoring systems not installed, out of service or out of control in accordance with (n)2 below; and for violations of continuous monitoring systems recordkeeping and reporting requirements in accordance with (n)3 below. 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.

1. The Department shall determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8.3(e) and 7:27-22.3(e) as indicated by continuous monitoring systems on the basis of the severity level, duration of the offense, and the size or nature of the source operation associated with the violation as follows:

i. Table 1 of this section shall be used to determine the level of offense, based on the percentage or amount of differential from the **allowable** standard [or allowable] set forth in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22.

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ii. – iii. (No change.)

CONTINUOUS MONITORING SYSTEMS ⁷

TABLE 1

| CONTINUOUS EMISSION MONITORS | | | CONTINUOUS PROCESS MONITORS | | | |
|-------------------------------------|---|--|--|--|--|---|
| LEVEL OF OFFENSE ¹ | AIR CONTAMINANTS (% above allowable emission rate or concentration) | OPACITY | OXYGEN (MINIMUM OR MAXIMUM %) | pH | TEMPERATURE degrees Rankine (°F +460) | OTHER MINIMUM OR MAXIMUM SPECIFICATIONS ² |
| | LEVEL I | Greater than 0% up to and including 25% | Greater than the standard up to and including 20% | [75% to less than 100% of the minimum oxygen concentration] Any deviation greater than 0% up to and including 25% of the standard | pH differential of less than 2 | Any deviation greater than 0% up to and including 5% of the standard |
| LEVEL II | Greater than 25% up to and including 50% | Greater than 20% up to and including 40% | [50% to less than 75% of the minimum oxygen concentration] Any deviation greater than | pH differential of 2 through 5 | Any deviation greater than 5% up to and including 15% of the standard | Any deviation greater than 25% up to and including 50% of the standard |

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| | | | | | | |
|-------------------------|--|--|--|--|--|--|
| 25% up to and | | | | | | |
| including 50% of | | | | | | |
| the standard | | | | | | |

| | | | | | | |
|---|------------------|------------------|---|-----------------------------------|--|--|
| LEVEL III | Greater than 50% | Greater than 40% | [Less than 50% of the minimum oxygen concentration] | pH differential of greater than 5 | Any deviation greater than 15% of the standard | Any deviation greater than 50% of the standard |
| Any deviation greater than 50% of the standard | | | | | | |

[_____]

¹ If applicable, use Level of Offense established in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22, if different from Table 1.

² e.g., Pressure Drop, Flow Rate, Oxidation Reduction Potential, etc.]

CONTINUOUS MONITORING SYSTEMS⁷

Tables 2a, 2b, and 3 (No change.)

[_____]

³ Any source operation with estimated potential emissions without control of greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO_x or air contaminants regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS and HAP (Table B) based on Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22.

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⁴ Any source operation with estimated potential emissions without control of 22.8 pounds per hour or less, or 5.7 pounds per hour or less for VOC and NO_x based on a Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Certificate issued pursuant to N.J.A.C. 7:27-22.]

2. (No change.)

3. The violations of N.J.A.C. 7:27-8.3(e) and N.J.A.C. 7:27-22.3(e) for continuous monitoring systems recordkeeping and reporting requirements and the civil administrative penalty amounts for each violation are set forth in the following Table:

(No change in table.)

¹ **If applicable, use Level of Offense established in the Preconstruction Permit or Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. 7:27-22, if different from Table 1.**

² **For example, Pressure Drop, Flow Rate, Oxidation Reduction Potential, etc.**

³⁻⁶ (No change.)

⁷ For instance, a Preconstruction Permit and Operating Certificate issued pursuant to N.J.A.C. 7:27-8 or an Operating Permit issued pursuant to N.J.A.C. 7:27-22 requires that for any [1-hour] **one-hour** period, the average concentration of nitrogen oxides (NO_x) in the stack gas shall not exceed 300 parts per million by volume as determined by continuous monitoring. A violator emitted NO_x from a major source operation at an hourly averaged concentration rate of 350 parts per million by volume. Using Table 1, determine the level of offense for the air contaminant (NO_x). Because the violator emitted NO_x at a concentration less than 25% above the allowable **standard**, the Level of Offense is Level I. The source operation is considered major because it emits NO_x in excess of 5.7 pounds per hour. Using Table 2A for a major

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source operation, determine the base penalty that corresponds to Level I. The base penalty for a Level I offense for a major source operation is \$200.00. Using Table 3, determine the multiplier corresponding to a [1 hour] **one-hour** averaging time. Multiply \$200.00 by 2, the multiplier from Table 3. The penalty for the offense is \$400.00.

⁸ **Each day during which the violation continues shall constitute an additional, separate, and distinct offense; the > 24 hr standard is for averaging time only.**

(o) - (u) (No change.)