

This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes.

NEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION NEW JERSEY

AIR POLLUTION CONTROL ACT

TITLE 26

CHAPTER 2C

TABLE OF CONTENTS

Section

Section

N.J.S.A 26 :2C-1. Short title	1
N.J.S.A 26 :2C-2 Definitions	1
N.J.S.A 26 :2C-3.1. Air pollution control commission abolished; transfer of functions, powers and duties	5
N.J.S.A 26 :2C-3.2. Clean Air Council.....	5
N.J.S.A 26 :2C-3.2a. Clean air council; membership by state commissioner of health	6
N.J.S.A 26 :2C-3.3. Powers and duties of council.....	6
N.J.S.A 26 :2C-8 Powers of department relative to air pollution.....	7
N.J.S.A 26 :2C-8.1. Codes, rules, regulations concerning motor vehicles	8
N.J.S.A 26 :2C-8.2. Applicability of code, rule, regulation to classes of vehicles.....	8
N.J.S.A 26 :2C-8.3. Standards and requirements for control of air contaminants; motor vehicles having air pollution control devices.....	9
N.J.S.A 26 :2C-8.4 Standards and requirements for control of air contaminants, motor vehicles without air pollution control devices.....	9
N.J.S.A 26 :2C-8.5. Manner of formulation and promulgation of codes, rules and regulations ...	9
N.J.S.A 26 :2C-8.10. Sale, use of reformulated gasoline; program expiration	9
N.J.S.A 26 :2C-8.11 Air pollution control rules, regulations.	10
N.J.S.A 26 :2C-8.14 Written report, list, inventory.	11
N.J.S.A 26 :2C-8.15 Findings, declarations relative to California Low Emission Vehicle program.	12
N.J.S.A 26 :2C-8.16 Definitions relative to low emission vehicles.	13
N.J.S.A 26 :2C-8.17 Implementation of California Low Emission Vehicle program; substantive changes.....	14
N.J.S.A 26 :2C-8.18 Zero emission vehicle credit bank.....	15
N.J.S.A 26 :2C-8.22 Findings, declarations relative to MTBE.	16
N.J.S.A 26 :2C-8.23 Definitions relative to MTBE.....	17
N.J.S.A 26 :2C-8.24 Prohibitions against sale in State of gasoline containing MTBE.	17
N.J.S.A 26 :2C-8.25 Rules, regulations.	17

This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes.

N.J.S.A 26 :2C-8.26 Findings, declarations relative to regulation of fine particle emissions from diesel engines.	18
N.J.S.A 26 :2C-8.27 Definitions relative to regulation of fine particle emissions from diesel engines.	19
N.J.S.A 26 :2C-8.28 DEP rules, regulations.....	23
N.J.S.A 26 :2C-8.29 DEP to consult when developing rules, regulations concerning diesel commercial buses.....	26
N.J.S.A 26 :2C-8.30 Public outreach program to owners of affected vehicles, equipment.	27
N.J.S.A 26 :2C-8.31 Closed crankcase technology for regulated school buses.	27
N.J.S.A 26 :2C-8.32 Study to identify, quantify sources of fine particles in cabin of regulated school buses.....	29
N.J.S.A 26 :2C-8.33 Rules and regulations relative to idling school buses, consistency with "Air Pollution Control Act (1954)."	32
N.J.S.A 26 :2C-8.34 Submissions to DEP by owner of regulated vehicle, equipment.	33
N.J.S.A 26 :2C-8.35 Approval of fleet retrofit plans.....	36
N.J.S.A 26 :2C-8.36 Anniversary date of plans, submissions required from owner.	38
N.J.S.A 26 :2C-8.37 Inapplicability relative to vehicles, equipment meeting federal standard. .	40
N.J.S.A 26 :2C-8.38 Voluntary repowering, replacing, or rebuilding of equipment.....	41
N.J.S.A 26 :2C-8.39 Record listing for each regulated vehicle, piece of equipment.	41
N.J.S.A 26 :2C-8.40 Labeling of retrofit devices.	42
N.J.S.A 26 :2C-8.41 Compliance forms for regulated equipment.....	42
N.J.S.A 26 :2C-8.42 Issuance of one-page compliance forms.	43
N.J.S.A 26 :2C-8.43 Retaining form on vehicle, piece of equipment; record copies.....	44
N.J.S.A 26 :2C-8.44 MVC rules, regulations relative to one-time confirmation of compliance with plans.	45
N.J.S.A 26 :2C-8.45 Alternative approach for reimbursement of cost for retrofit devices.	46
N.J.S.A 26 :2C-8.46 Joint rules, regulations relative to training.	48
N.J.S.A 26 :2C-8.47 Consultation when adopting rules, regulations.	48
N.J.S.A 26 :2C-8.48 Coordination of programs by DEP with MVC and DLPS.	48
N.J.S.A 26 :2C-8.49 Coordination of programs by DLPS with DEP and MVC.....	49
N.J.S.A 26 :2C-8.50 Percentage of ultra-low sulfur diesel fuel required on-road.....	49
N.J.S.A 26 :2C-8.51 Inapplicability relative to farm vehicles, equipment.....	50
N.J.S.A 26 :2C-8.52 Violations, penalties.	50
N.J.S.A 26 :2C-8.53 "Diesel Risk Mitigation Fund"; money credited, use.....	51
N.J.S.A 26 :2C-8.54 Allocation of moneys in fund, application for reimbursement.	53
N.J.S.A 26 :2C-8.55 Rules, regulations relative to filing requirements for reimbursement.....	53
N.J.S.A 26 :2C-8.56 Denial of application for reimbursement.	54
N.J.S.A 26 :2C-8.57 Prohibitions relative to certain retrofitting of diesel-powered vehicles.	55

This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes.

N.J.S.A 26 :2C-9. Department's duties relative to air pollution control; fees.....	55
N.J.S.A 26 :2C-9.1. Interference with performance of duties; entrance to premises	57
N.J.S.A 26 :2C-9.2. Regulation of equipment, control apparatus	57
N.J.S.A 26 :2C-9.3. Findings, declarations, determinations.....	62
N.J.S.A 26 :2C-9.4. Construction, etc., of air pollution control equipment during pendency of permit application.....	63
N.J.S.A 26 :2C-9.5 Emission fees.....	64
N.J.S.A 26 :2C-9.6. Dedication, appropriation of revenues	66
N.J.S.A 26 :2C-9.7. Annual report on air quality	66
N.J.S.A 26 :2C-9.8 Rules, regulations; fees.	67
N.J.S.A 26 :2C-14. Order to cease.....	68
N.J.S.A 26 :2C-14.1. Hearing on request; final order.....	69
N.J.S.A 26 :2C-16. Evidence at hearing; transcript.....	69
N.J.S.A 26 :2C-17. Hearings before department	69
N.J.S.A 26 :2C-19. Actions to prohibit and prevent violations; civil administrative penalty; civil penalty; notice of release of air contaminants; penalties; alternative dispute resolution.....	70
N.J.S.A 26 :2C-19.1. Findings, declaration	72
N.J.S.A 26 :2C-19.2. Entitlement to affirmative defense	72
N.J.S.A 26 :2C-19.3. No entitlement to affirmative defense.....	73
N.J.S.A 26 :2C-19.4. Construction of act	73
N.J.S.A 26 :2C-19.5. Rules, regulations; unavailability of affirmative defense.....	73
N.J.S.A 26 :2C-20. Review.....	74
N.J.S.A 26 :2C-21. Existing remedies not impaired.....	74
N.J.S.A 26 :2C-22. Relation of local ordinances or regulations to State law	74
N.J.S.A 26 :2C-23. Functions of Department of Health not impaired.....	76
N.J.S.A 26 :2C-24. Clean air scholarship intern program	76
N.J.S.A 26 :2C-25. Graduate study program.....	77
N.J.S.A 26 :2C-25.1. Small Business Compliance Advisory Panel	77
N.J.S.A 26 :2C-25.2. Industry, environmental work groups	78
N.J.S.A 26 :2C-26. Short title.....	79
N.J.S.A 26 :2C-27. Legislative findings	79
N.J.S.A 26 :2C-28. "Area" defined.....	80
N.J.S.A 26 :2C-29. Air pollution emergency; determination	80
N.J.S.A 26 :2C-30. Proclamation by Governor	81
N.J.S.A 26 :2C-31. Gubernatorial order; duration.....	81
N.J.S.A 26 :2C-32. Enforcement of orders	81
N.J.S.A 26 :2C-33. Violation of order; penalty	82

This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes.

N.J.S.A 26 :2C-34. Liability for torts in enforcement of order	82
N.J.S.A 26 :2C-35. Aggrieved persons; hearing; notice.....	82
N.J.S.A 26 :2C-36. Stand-by orders	83
N.J.S.A 26 :2C-37 Short title.....	83
N.J.S.A 26 :2C-38 Findings, declarations relative to greenhouse gas emissions.....	83
N.J.S.A 26 :2C-39 Definitions relative to greenhouse gas emissions.	84
N.J.S.A 26 :2C-40 Limit on Statewide greenhouse gas emissions mandated for 2020, 2050.....	85
N.J.S.A 26 :2C-41 Rules, regulations for monitoring, reporting emissions.....	85
N.J.S.A 26 :2C-42 Evaluation of policies, measures for achievement of 2020 limit, 2050 limit; reports.	86
N.J.S.A 26 :2C-43 Transmission of biennial report on greenhouse gas emission statistics; 2015 evaluation.....	87
N.J.S.A 26 :2C-44 Designation of independent research panel to review agency reports.	88
N.J.S.A 26 :2C-45 Findings, declarations relative to reduction of greenhouse gas emissions....	88
N.J.S.A 26 :2C-46 Definitions relative to reduction of greenhouse gas emissions.....	90
N.J.S.A 26 :2C-47 Actions of department relative to allowances; report to Governor, Legislature.	91
N.J.S.A 26 :2C-48 Certified dispatch agreement facility eligible to purchase allowances, price.	92
N.J.S.A 26 :2C-49 Certification that dispatch agreement facility qualifies for purchase of allowances.	93
N.J.S.A 26 :2C-50 "Global Warming Solutions Fund."	94
N.J.S.A 26 :2C-51 Coordination in administration of programs; use of moneys.....	95
N.J.S.A 26 :2C-52 Guidelines, priority ranking system for allocation of funds.....	97
N.J.S.A 26 :2C-53 Annual appropriation of moneys in fund.	98
N.J.S.A 26 :2C-54 Interim decision as to comparability of national program; rules, regulations; final decision; disposition of allowances.	98
N.J.S.A 26 :2C-55 Authority of commissioner, board president.....	99
N.J.S.A 26 :2C-56 Action plan for ratepayer relief, certain circumstances.....	100
N.J.S.A 26 :2C-57 Severability.	100

N.J.S.A 26 :2C-1. Short title

This act shall be known and may be cited as the "Air Pollution Control Act (1954)."

L.1954, c. 212, p. 780, s. 1.

N.J.S.A 26 :2C-2 Definitions.

2. As used in this act:

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

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property throughout the State and in those areas of the State as shall be affected thereby, and excludes all aspects of an employer-employee relationship as to health and safety hazards;

"Antimicrobial pesticide" means a product that destroys or repels, or prevents or mitigates the growth of, any bacteria, fungus, virus or other micro-organism that is defined as a pest pursuant to 7 U.S.C. s.136w (c)(1), and includes any product required to be registered as an antimicrobial pesticide pursuant to the "Federal Insecticide, Fungicide and Rodenticide Act," 7 U.S.C. s.136 et seq.;

"Commissioner" means the Commissioner of Environmental Protection;

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

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

"Control apparatus" means any device that prevents or controls the emission of any air contaminant;

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"Council" means the Clean Air Council created pursuant to section 3 of P.L.1967, c.106 (C.26:2C-3.2);

"Department" means the Department of Environmental Protection;

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

"Emission statement" means an annual reporting of actual emissions of air contaminants as prescribed by rules and regulations therefor that shall be adopted by the department pursuant to the "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et seq.);

"EPA" means the United States Environmental Protection Agency;

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

"Facility" means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons. Research and development facilities that are located with other facilities shall be considered separate and independent entities for the purposes of complying with the operating permit requirements of P.L.1954, c.212 (C.26:2C-1 et seq.) or any codes, rules, or regulations adopted pursuant thereto;

"Federal Clean Air Act" means the federal "Clean Air Act" (42 U.S.C.s.7401 et seq.) and any subsequent amendments or supplements to that act;

"Grandfathered" means construction, reconstruction, or modification of equipment or control apparatus prior to the date of enactment of section 13 of P.L.1967, c.106 (C.26:2C-9.2) on June 15, 1967, or prior to the subsequent applicable revisions to rules and regulations codified at N.J.A.C.7:27-8.1 et seq. that occurred March 5, 1973, June 1, 1976, April 5, 1985, and October 31, 1994;

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

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"Hospital or medical disinfectant" means an antimicrobial product registered with the United States Environmental Protection Agency that qualifies to bear the name or claim to be a "hospital or medical environment disinfectant" pursuant to United States Environmental Protection Agency guidelines published pursuant to 7 U.S.C. s.136a (c)(2)(A), and shall include, but shall not be limited to, antimicrobial pesticides used in hospitals, doctor and dentist offices, and other medical environments;

"Install" or **"installation"** means to carry out final setup activities necessary to provide equipment or control apparatus with the capacity for use or service, and shall include, but need not be limited to, connection of equipment or control apparatus, associated utilities, piping, duct work, or conveyor systems, but shall not include construction or reconfiguration of equipment or control apparatus to an alternate configuration specified in a permit application and approved by the department;

"Major facility" means a major source, as that term is defined by the EPA in rules and regulations adopted pursuant to the federal Clean Air Act at 40 CFR 70.2 or any subsequent amendments thereto, that has the potential to emit any of the air contaminants listed below in an amount that is equal to or exceeds the applicable major facility threshold levels as follows:

Air Contaminant	Threshold level
Carbon monoxide	100 tons per year
Particulate matter (PM-10)	100 tons per year
Total suspended particulates	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs collectively	25 tons per year
Any other air contaminant	100 tons per year;

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"Modify" or **"modification"** means any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of any air contaminant emitted by that equipment or control apparatus or that results in the emission of any air contaminant not previously emitted, but shall not include normal repair and maintenance;

"Operating permit" means the permit described in Title V of the federal Clean Air Act (42 U.S.C. s.7661 et seq.);

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

"Potential to emit" means the same as that term is defined by the EPA in rules and regulations adopted pursuant to the federal Clean Air Act at 40 CFR 70.2 or any subsequent amendments thereto;

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

"Reconstruct" or **"reconstruction"** means the replacement of parts of equipment included in a process unit, or the replacement of control apparatus, if the fixed capital cost of replacing the parts exceeds both of the following amounts: (1) Fifty percent of the fixed capital cost that would be required to construct a comparable new process unit or control apparatus; and (2) \$80,000 (in 1995 dollars) adjusted by the Consumer Price Index;

"Regulated air contaminant" means the same as the term "regulated air pollutant" as defined by the EPA in rules and regulations adopted pursuant to the federal Clean Air Act at 40 CFR 70.2 or any subsequent amendments thereto;

"Research and development facility" means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner; and

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"VOC" or "volatile organic compound" means the same as that term is defined by the EPA in rules and regulations adopted pursuant to the federal Clean Air Act at 40 CFR 51.100 or any subsequent amendments thereto.

L.1954,c.212,s.2; amended 1967, c.106, s.5; 1995, c.188, s.2; 1999, c.100, s.1.

N.J.S.A 26 :2C-3.1. Air pollution control commission abolished; transfer of functions, powers and duties

The Air Pollution Control Commission is hereby abolished. All of the functions, powers and duties of the Air Pollution Control Commission in the Department of Health are hereby transferred to the Department of Health.

L.1967, c. 106, s. 2, eff. June 15, 1967.

N.J.S.A 26 :2C-3.2. Clean Air Council

(a) There is hereby created in the State Department of Health a Clean Air Council, which shall consist of 17 members, 3 of whom shall be the Commissioner of Commerce and Economic Development or a member of the Department of Commerce and Economic Development designated by him, the Commissioner of Community Affairs or a member of the Department of Community Affairs designated by him, and the Secretary of Agriculture or a member of the Department of Agriculture designated by him, who shall serve ex officio; six citizens of the State, representing the general public at least one of whom shall be a medical doctor licensed to practice in this State; and eight members to be appointed from persons to be nominated by the organizations hereinafter enumerated, by the Governor.

(b) Within 30 days following the effective date hereof and thereafter as required, at least one month prior to the expiration of the term of the member chosen from nominees of each organization hereinafter enumerated, each such organization shall submit to the Governor a list of three recommended nominees for membership on the council, from which list the Governor shall appoint one.

If any organization does not submit a list of recommended nominees at any time required by this act, the Governor may appoint a member of his choice.

The organizations which shall be entitled to submit recommended nominees are: New Jersey Health Officers Association, New Jersey State Chamber of Commerce, New Jersey Society of Professional Engineers, Inc., New Jersey Manufacturers Association, New Jersey Section of the American Industrial Hygiene Association, New Jersey State League of Municipalities, the New Jersey Freeholders' Association and the New Jersey State AFL-CIO.

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(c) Of the 14 members first to be appointed, four shall be appointed for terms of one year, four for terms of two years, three for terms of three years and three for terms of four years. Thereafter, all appointments shall be made for terms of four years. All appointed members shall serve after the expiration of their terms until their respective successors are appointed and shall qualify, and any vacancy occurring in the appointed membership of the council, by expiration of term or otherwise, shall be filled in the same manner as the original appointment, for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid. The Governor may remove any appointed member of the council for cause after a public hearing.

(d) Members of the council shall serve without compensation but shall be reimbursed for expenses actually incurred in attending meetings of the council and in the performance of their duties as members thereof.

(e) The council shall elect annually a chairman and vice-chairman from its own membership.

L. 1967, c. 106, s. 3, eff. June 15, 1967. Amended by L. 1967, c. 286, s. 5, eff. Jan. 23, 1967; L. 1985, c. 430, s. 2, eff. Jan. 13, 1986.

N.J.S.A 26 :2C-3.2a. Clean air council; membership by state commissioner of health

In addition to the membership of the Clean Air Council prescribed by P.L.1967, c. 106, s. 3 (C. 26 :2C-3.2), the State Commissioner of Health or a member of his staff designated by him shall be a member of the council.

L.1973, c. 102, s. 1, eff. May 2, 1973.

N.J.S.A 26 :2C-3.3. Powers and duties of council

The Clean Air Council shall:

(a) Request from the commissioner information concerning the Air Pollution Control Program;

(b) Consider any matter relating to the preservation and improvement of the Air Pollution Control Program and advise the commissioner thereof;

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(c) From time to time submit to the commissioner any recommendations which it deems necessary for the proper conduct and improvement of the Air Pollution Control Program;

(d) Study the Air Pollution Control Program and make its recommendations thereon to the commissioner;

(e) Study the codes, rules and regulations promulgated by the department in regard to air pollution control and make its recommendations for their improvement to the commissioner;

(f) Study and investigate the state of the art and the technical capabilities and limitations of air pollution control and report their findings and recommendations thereon to the commissioner;

(g) Study and investigate the need for programs for the long-range technical support of the Air Pollution Control Program and report their findings and recommendations thereon to the commissioner; and

(h) Hold public hearings at least once a year in regard to existing air pollution control, statutes, codes, rules and regulations and upon the state of the art and technical capabilities and limitations in air pollution control and report its recommendations thereon to the commissioner.

L.1967, c. 106, s. 4, eff. June 15, 1967.

N.J.S.A 26 :2C-8 Powers of department relative to air pollution.

8. a. The department shall have power to formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State or in such territories of the State as shall be affected thereby, except as provided in subsection b. of this section; provided, however, that no such code, rule or regulation and no such amendment or repeal shall be adopted except after public hearing to be held after 30 days' prior notice thereof by public advertisement of the date, time and place of such hearing, at which opportunity to be heard by the department with respect thereto shall be given to the public; and provided, further, that no such code, rule or regulation and no such amendment or repeal shall be or become effective until 60 days after the adoption thereof as aforesaid. Any person heard at such public hearing shall be given written notice of the determination of the department.

All codes, rules and regulations heretofore adopted by the Air Pollution Control Commission shall continue in full force and effect subject to the power of the department to amend and repeal such codes, rules and regulations as provided by this act.

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b. Unless otherwise required by federal law, rule or regulation, no code, regulation, rule or standard may be adopted by the department that diminishes the efficacy of a hospital or medical disinfectant in killing or inactivating agents of infectious diseases, including, but not limited to, restrictions on the volatile organic compound content or emissions caused by the use of such products. No federal requirement to reduce volatile organic compound content or emissions in general may be construed to permit the department to regulate the volatile organic compounds found in, or released in the use of, a hospital or medical disinfectant, unless the federal law, rule or regulation establishing the federal requirement specifically requires the reduction of volatile organic compounds found in, or released in the use of, hospital or medical disinfectants.

L.1954,c.212,s.8; amended 1962, c.215, s.2; 1967, c.106, s.6; 1999, c.100, s.2.

N.J.S.A 26 :2C-8.1. Codes, rules, regulations concerning motor vehicles

1. a. The department, after consultation with the Director of the Division of Motor Vehicles, shall have the power to formulate and promulgate, amend and repeal codes, rules and regulations establishing standards and requirements for the control of air contaminants from motor vehicles.

b. The department, after consultation with the Director of the Division of Motor Vehicles, shall adopt rules and regulations, consistent with the federal Clean Air Act, establishing exhaust emission standards and test methods and standards for emission control apparatus and related items. The department shall not require the "I/M 240" test, but shall adopt an alternative test that is acceptable to the United States Environmental Protection Agency. The department may provide that the standards and test methods vary according to the model year, type, or other vehicle characteristic that the department deems necessary to facilitate inspections or to comply with the federal Clean Air Act. The emission standards and test methods adopted pursuant to this subsection shall not set any quota for emission test failures and shall not require the failure of motor vehicles at any predetermined rate. This subsection shall not preclude the use of the "I/M 240" test in sampling for performance evaluation only or the use of the test at the option of a private inspection facility.

L.1966,c.16,s.1; amended 1967,c.106,s.11; 1995,c.112,s.37; 1995,c.157,s.32.

N.J.S.A 26 :2C-8.2. Applicability of code, rule, regulation to classes of vehicles

2. Any code, rule or regulation establishing standards and requirements for the control of air contaminants from motor vehicles shall be applicable to such classification of motor vehicles as the department shall determine to be necessary to carry out the purpose of P.L.1966, c.16 (C.26:2C-8.1 et seq.).

L.1966,c.16,s.2; amended 1967,c.106,s.12; 1995,c.112,s.38.

N.J.S.A 26 :2C-8.3. Standards and requirements for control of air contaminants; motor vehicles having air pollution control devices

Such codes, rules and regulations shall establish standards and requirements for the control of air contaminants from motor vehicles manufactured with air pollution control devices, systems or engine modifications consistent with the requirements of the "Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C. 1857) and any amendments and supplements thereto.

L.1966, c. 16, s. 3.

N.J.S.A 26 :2C-8.4 Standards and requirements for control of air contaminants, motor vehicles without air pollution control devices.

4. Except as otherwise required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) or other laws, codes, rules, and regulations concerning motor vehicles registered in the State, the codes, rules and regulations shall establish standards and requirements for control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any air pollution control devices, systems, or engine modifications provided such vehicles were not manufactured with pollution control devices, systems or engine modifications in accordance with the "Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C. s.1857), the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent federal laws controlling air contaminants from motor vehicles.

L.1966,c.16,s.4; amended 2005, c.219, s.32.

N.J.S.A 26 :2C-8.5. Manner of formulation and promulgation of codes, rules and regulations

All codes, rules and regulations shall be formulated and promulgated in the manner provided for in section 8 of the act to which this act is a supplement.

L.1966, c. 16, s. 5.

N.J.S.A 26 :2C-8.10. Sale, use of reformulated gasoline; program expiration

5. The department shall not adopt rules and regulations requiring, for gasoline-fueled motor vehicles, the sale and use of reformulated gasoline other than that certified therefor by the United States Environmental Protection Agency pursuant to subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California. If the sale and use of reformulated gasoline other than that so

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certified is required by federal law, rule, regulation, agency ruling, order, opinion, or other action or court order to be sold for use, and used, in gasoline-fueled motor vehicles in New Jersey because the State has implemented the California Low Emission Vehicle program pursuant to subsection a. of section 3 of P.L.2003, c.266 (C.26:2C-8.17), the California Low Emission Vehicle program implemented in New Jersey pursuant to P.L.2003, c.266 (C.26:2C-8.15 et al.) shall expire 180 days from the date of enactment of the federal law, adoption of the federal rule or regulation, issuance of the agency ruling, order, opinion, or other action, or issuance of the court order, as the case may be.

L.1993,c.69,s.5; amended 2003, c.266, s.8.

N.J.S.A 26 :2C-8.11 Air pollution control rules, regulations.

6. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing the following mandated air pollution control measures identified in the federal Clean Air Act and consistent with any rules, regulations, or guidelines that may be promulgated therefor by the United States Environmental Protection Agency:

- (1) Enhanced vehicle inspection and maintenance program;
- (2) Correction of reasonably available control technology rules for volatile organic compounds;
- (3) Reasonably available control technology rules for volatile organic compounds;
- (4) Reasonably available control technology rules for oxides of nitrogen;
- (5) New source review regulations for volatile organic compounds, oxides of nitrogen, and carbon monoxide;
- (6) Criteria and procedures for determining conformity between the State implementation plan and transportation plans; and
- (7) Use in ozone nonattainment areas of federal reformulated gasoline that meets the requirements of subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California.

b. As used in this section:

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"Department" means the Department of Environmental Protection;

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

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

L.1993,c.69,s.6; amended 2003, c.266, s.9.

N.J.S.A 26 :2C-8.14 Written report, list, inventory.

10. a. The Department of Environmental Protection, in consultation with the Commissioner of Transportation and the Chief Administrator of the New Jersey Motor Vehicle Commission, shall prepare and submit on a semi-annual basis to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly, a written report that shall:

(1) summarize the State implementation plan and any amendments, alterations, or supplements to that plan that have been made or proposed since the last semi-annual report was issued; and

(2) analyze the progress and effectiveness of the State implementation plan with respect to ensuring that the State shall be, and shall remain, in compliance with all applicable requirements, standards, and deadlines set forth in the federal Clean Air Act.

As used in this subsection: "federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act; and "State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

b. (Deleted by amendment, P.L.2003, c.266).

c. (Deleted by amendment, P.L.2003, c.266).

L.1993,c.69,s.10; amended 2003, c.266, s.10.

N.J.S.A 26 :2C-8.15 Findings, declarations relative to California Low Emission Vehicle program.

1. The Legislature finds and declares that the implementation of the National Low Emission Vehicle program is a key component of the State's efforts to achieve on-time emissions reductions and to attain compliance with the national ambient air quality standards, as required pursuant to the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq.; that the State's attainment of the national ambient air quality standards will require further, more stringent reductions in emissions of pollutants; that the California Low Emission Vehicle program provides for greater reductions in pollutants than the National Low Emission Vehicle program; and that the State has committed to implementing the National Low Emission Vehicle program until 2006 but can implement the California Low Emission Vehicle program after that year.

The Legislature further finds and declares that in the summer of 2002, New Jersey had the highest number of smog violations per monitoring station in the nation; that in December 2003, the United States Environmental Protection Agency announced its intention to designate the entire State as out-of-compliance with the agency's health-based standard for ozone; and that this designation by the United States Environmental Protection Agency would require the State to adopt a stronger, more comprehensive clean air plan for the State.

The Legislature further finds and declares that a significant percentage of particulate emissions, smog-forming emissions, and airborne cancer risk comes from vehicle emissions; that pollution from automobiles is expected to increase with the projected population increase estimate of an additional 1,200,000 people in the State in the next decade; and that mobile sources of emissions have received less regulatory attention than industrial facilities and area sources of pollution.

The Legislature further finds and declares that ground-level ozone, or smog, is formed when automobile, industrial and other pollutants chemically react with bright sunshine and high temperatures; that ground-level ozone irritates the respiratory system and can cause coughing, wheezing, chest pain and headaches; that ozone especially aggravates chronic respiratory diseases such as asthma and bronchitis; that ground-level ozone and other air toxics have a substantial negative impact on the health and quality of life of residents of the State; and that reducing ground-level ozone pollution will help reduce these negative health effects.

The Legislature therefore determines that it is in the public interest to: implement the California Low Emission Vehicle program beginning January 1, 2009; establish a zero emission vehicle credit bank for manufacturers; establish a Low Emission Vehicle Review Commission charged with reviewing the implementation of the program, the availability and success of the incentive, and the technology of zero emission vehicles; and provide an incentive for the purchase or lease of zero emission vehicles.

L.2003,c.266,s.1.

N.J.S.A 26 :2C-8.16 Definitions relative to low emission vehicles.

2. As used in sections 1 through 7 of P.L.2003, c.266 (C.2C:2C-8.15 et seq.):

"Advanced technology partial zero emission vehicle" means a vehicle certified as an advanced technology partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"California Low Emission Vehicle program" means the second phase of the low emission vehicle program being implemented in the State of California, pursuant to the provisions of the Federal Clean Air Act and the California Code of Regulations;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

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

"Low Emission Vehicle Review Commission" means the commission established by subsection a. of section 5 of P.L.2003, c.266 (C.26:2C-8.19);

"Partial zero emission vehicle" means a vehicle certified as a partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act;

"Zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include an advanced technology partial zero emission vehicle or a partial zero emission vehicle; and

"Zero emission vehicle requirement" means the percentage or number of those vehicles certified as zero emission vehicles pursuant to the California Air Resources Board vehicle standards and required to be delivered by a manufacturer for sale or lease for the applicable model year, and any additional percentages or numbers of advanced technology partial zero emission vehicles or partial zero emission

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vehicles that may be delivered by a manufacturer for sale or lease to satisfy the zero emission vehicle requirement established by the California Air Resources Board in lieu of vehicles that meet the pure zero emission vehicle standard.

L.2003,c.266,s.2.

N.J.S.A 26 :2C-8.17 Implementation of California Low Emission Vehicle program; substantive changes.

3. a. Notwithstanding any provision of a State implementation plan submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the requirements of the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq., to the contrary, the department shall implement the California Low Emission Vehicle program in the State beginning on January 1, 2009, except as provided pursuant to sections 6 and 7 of P.L.2003, c.266 (C.26:2C-8.20 and C.26:2C-8.21).

b. The Commissioner of Environmental Protection, within 30 days after a proposed major substantive change to the California Low Emission Vehicle program that, if adopted, would necessitate a corresponding substantive change to the program in New Jersey adopted pursuant to subsection a. of this section, shall provide written notice and a summary of the proposed substantive change to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly.

c. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement the California Low Emission Vehicle program in the State beginning on January 1, 2009.

L.2003,c.266,s.3.

N.J.S.A 26 :2C-8.18 Zero emission vehicle credit bank.

4. a. The Commissioner of Environmental Protection shall establish a zero emission vehicle credit bank to allow manufacturers to earn and bank vehicle equivalent credits for any advanced technology partial zero emission vehicle or partial zero emission vehicle produced and delivered for sale or lease in the State on or after January 1, 1999 and through December 31, 2008.

(1) In establishing the credit bank required by this section, the commissioner shall use the highest multiplier used by the California Air Resources Board for determining the allowable vehicle equivalent credits for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for sale or lease in the State by a manufacturer on or after January 1, 1999 until the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.).

(2) Beginning on the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall use the multiplier used by the California Air Resources Board for the applicable model year for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for sale or lease in the State by a manufacturer on or after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.) and through December 31, 2008.

b. (1) Within 180 days after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall publish a list in the New Jersey Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for the 1999 through 2003 model years.

(2) Annually thereafter, the commissioner shall publish a list in the New Jersey Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for that respective model year.

(3) The commissioner may revise any list published pursuant to this subsection as necessary to comply with the California Air Resources Board vehicle standards for the applicable model year.

c. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to establish a zero emission vehicle credit bank pursuant to subsection a. of this section. These rules and regulations may include, but need not be limited to, the documentation to be submitted by a manufacturer to determine eligibility and participation in the credit bank established pursuant to subsection a. of this section, and fees for administrative services provided to implement the zero emission vehicle credit bank to be assessed to those manufacturers seeking to earn and bank

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credits. The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing, except that in no case shall the temporary rules and regulations be in effect one year after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.). The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

d. The provisions of this section shall expire upon the passage of a concurrent resolution by the Legislature directing the department to implement the National Low Emission Vehicle program pursuant to subsection a. of section 6 of P.L.2003, c.266 (C.26:2C-8.20).

L.2003,c.266,s.4.

N.J.S.A 26 :2C-8.22 Findings, declarations relative to MTBE.

1. The Legislature finds and declares that methyl tertiary butyl ether, more commonly referred to as MTBE, may threaten drinking water supplies in the State and nationwide due to the properties of MTBE that make it highly soluble and rapidly transported into groundwater; that, although MTBE has become the most commonly used additive to fulfill the State's requirements pursuant to the federal "Clean Air Act Amendments of 1990," 42 U.S.C.s.7403 et seq., it is not the only additive available to meet the federal requirements; that the Department of Environmental Protection began detecting trace amounts of MTBE in drinking water around the State in 1990 and, in 1996, the Department of Environmental Protection began requiring the testing of levels of MTBE in drinking water, even though it was not a federal requirement; and that, after serious study, in July 1999, the United States Environmental Protection Agency proposed that Congress authorize the reduction or elimination of the use of MTBE as a component of gasoline because it is found as a contaminant in drinking water supplies nationwide.

The Legislature therefore determines that in addition to the water testing currently conducted in the State and the investigation of remediation methods for existing contamination, it is of vital importance that contamination of drinking water from MTBE not occur in the State, and that the sale of gasoline containing MTBE must be prohibited in the State.

L.2005,c.192,s.1.

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N.J.S.A 26 :2C-8.23 Definitions relative to MTBE.

2. As used in this act:

"Department" means the Department of Environmental Protection;

"MTBE" means methyl tertiary butyl ether.

L.2005,c.192,s.2.

N.J.S.A 26 :2C-8.24 Prohibitions against sale in State of gasoline containing MTBE.

3. a. No person shall distribute in commerce for sale in the State, gasoline which contains more than 0.5% MTBE by volume.

b. Any person who violates this act, or any rule or regulation adopted pursuant thereto, shall be subject to the provisions of section 10 of P.L.1977, c.74 (C.58:10A-10).

c. Nothing in this act shall prohibit the manufacture, processing, or importation within the State of gasoline that contains more than 0.5% MTBE by volume for distribution in commerce outside the State.

L.2005,c.192,s.3.

N.J.S.A 26 :2C-8.25 Rules, regulations.

4. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act.

L.2005,c.192,s.4.

N.J.S.A 26 :2C-8.26 Findings, declarations relative to regulation of fine particle emissions from diesel engines.

1. The Legislature finds and declares that the emissions of fine particles into the air pose an extraordinary health risk to the people of the State; that the Department of Environmental Protection has determined that 1,000 deaths and 68,000 cases of asthma in the State each year are attributed to the exceedance of the federal 2.5 micron fine particle standard in the State; that exhaust emissions from diesel-powered vehicles and equipment contribute substantially to the fine particle problem, and pose both cardiovascular and cancer risks; that the United States Environmental Protection Agency has classified diesel exhaust as likely to be carcinogenic to humans by inhalation at environmental exposures; that the United States Environmental Protection Agency has also identified diesel particle matter and diesel exhaust organic gases as a mobile source air toxic; that studies repeatedly have found links between exposure to fine particles and health effects, including premature death and increased incidents of asthma, allergies, and other breathing disorders; and that these studies include the examination of the health impacts of the exposure to diesel emissions for school children riding diesel-powered school buses.

The Legislature further finds and declares that, although some new diesel-powered vehicles and equipment operate more cleanly and may contribute less to air quality problems than their predecessors, diesel-powered trucks, buses, and off-road equipment tend to remain in service as long as 20 years or more; that, among these types of vehicles and equipment, diesel commercial buses and diesel solid waste vehicles operate in significant numbers in urban areas of the State where the reduction of fine particle diesel emissions should be prioritized because fine particle diesel emissions are at the highest concentrations in these areas; that the emissions from diesel school buses directly impact the health of school children throughout the State; that unless emissions from some on-road diesel-powered vehicles and off-road diesel-powered equipment currently operating in the State are controlled, all on-road diesel-powered vehicles and off-road diesel-powered equipment will continue to emit high levels of fine particles and contribute to air pollution in the State for many years to come; that filters and other devices and cleaner burning fuels are available to reduce emissions from older diesel vehicles and equipment; that retrofitting certain diesel-powered vehicles and equipment with emissions reducing devices, operating these vehicles and equipment on cleaner burning fuel, or both, could significantly improve air quality; that although such requirements impose costs, the costs are relatively small when compared with the costs of the vehicles or equipment they update or the cost of the impact on the public health from the air pollution that the requirements abate; that by exercising discretion in the types of vehicles and equipment and the matching of technologies to vehicles and equipment, the cost of installing and using pollution-reducing devices and fuels can be minimized and the air pollution reduction and public health benefits can be maximized; and that the Department of Environmental Protection has estimated that targeting reductions of fine particles from these vehicles and equipment could remove 315 tons per year from the ambient air in the State and could prevent more than 150 premature deaths.

The Legislature therefore determines that it is of vital importance to the health of the people of the State to begin to reduce significantly fine particle emissions and exposure of school children to these emissions; and that this start can be most effectively and economically accomplished by requiring the

use of the best available retrofit technologies for the reduction of fine particle emissions in diesel-powered commercial buses, school buses, solid waste vehicles, and publicly owned on-road vehicles and off-road equipment.

L.2005,c.219,s.1.

N.J.S.A 26 :2C-8.27 Definitions relative to regulation of fine particle emissions from diesel engines.

2. As used in sections 1 through 31 of P.L.2005, c.219 (C.26:2C-8.26 et seq.):

"Best available retrofit technology" means the equipment, retrofit device, or fuel, or any combination thereof, designated by the United States Environmental Protection Agency as a verified technology for diesel retrofit programs, or by the California Air Resources Board as a verified technology for diesel emissions control, for use on or in specific makes, model years, types, and classes of on-road diesel vehicles or off-road diesel equipment, and that, as determined by the Department of Environmental Protection, may be used on or in regulated vehicles or regulated equipment, at a reasonable cost, to achieve substantial reduction of fine particle diesel emissions. "Best available retrofit technology" may include, but is not limited to, particle filters, diesel oxidation catalysts, flow through filters, and modified diesel fuel, provided that these diesel retrofit devices and diesel emissions control strategies are verified technologies according to the United States Environmental Protection Agency or the California Air Resources Board. "Best available retrofit technology" shall include only those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer agrees, in a manner determined appropriate by the department, that the installation and use of the retrofit device or the use of the special fuel would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and for which the retrofit device manufacturer or fuel manufacturer has provided a warranty pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). "Best available retrofit technology" shall not include repowering of any vehicle or piece of equipment, or the use of ultra-low sulfur diesel fuel;

"Commission" means the New Jersey Motor Vehicle Commission;

"Compliance form" means a form used for ascertaining compliance with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) or eligibility for reimbursement of costs associated therewith, and issued pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42);

"Constitutionally dedicated moneys" mean moneys dedicated pursuant to Article VIII, Section II, paragraph 6, subparagraph (d) of the State Constitution;

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"Department" means the Department of Environmental Protection;

"Diesel commercial bus" means a diesel bus as defined pursuant to section 2 of P.L. 1995, c.157 (C.39:8-60), except that "diesel commercial bus" shall include only diesel commercial buses with a gross vehicle weight rating in excess of 14,000 pounds, and shall not include school buses;

"Diesel engine" means an internal combustion engine with compression ignition using diesel fuel, including the fuel injection system but excluding the exhaust system;

"Diesel Risk Mitigation Fund" or **"fund"** means the fund established pursuant to section 28 of P.L.2005, c.219 (C.26:2C-8.53);

"Diesel solid waste vehicle" means any on-road diesel vehicle with a gross vehicle weight rating in excess of 14,000 pounds that is used for the purposes of collecting or transporting residential or commercial solid waste, including vehicles powered by a diesel engine used for transporting waste containers, including, but not necessarily limited to, open boxes, dumpsters or compactors, which may be removed from the tractor. "Diesel solid waste vehicle" shall include solid waste cabs and solid waste single-unit vehicles;

"Fine particle" means a particle emitted directly into the atmosphere from exhaust produced by the combustion of diesel fuel and having an aerodynamic diameter of 2.5 micrometers or less;

"Fine particle diesel emissions" means emissions of fine particles from an on-road diesel vehicle or from off-road diesel equipment;

"Fleet" means one or more on-road diesel vehicles or pieces of off-road diesel equipment;

"Off-road diesel equipment" means any equipment or vehicle, other than a diesel construction truck, powered by a diesel engine that is used primarily for construction, loading, and other off-road purposes and, when in use, is not commonly operated on a roadway except when used for roadway construction and repair, including, but not necessarily limited to, rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and off-highway trucks. "Off-road diesel equipment" shall include equipment and vehicles that are not used primarily for transportation and are considered off-road equipment and vehicles but, for the purposes of moving the equipment and vehicles from place to place on the roadways of the State, are required to have "in-transit" plates issued by the New Jersey Motor Vehicle Commission. "Off-road diesel equipment" shall not include any non-mobile equipment, such as a generator or pump, and shall not include boats or trains;

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"On-road diesel vehicle" means any vehicle, other than a private passenger automobile, that is powered by a diesel engine and operated on the roadways of the State, and shall include, but need not be limited to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel trucks as defined pursuant to section 2 of P.L.1995, c.157 (C.39:8-60);

"Owner" means any person, the State, or any political subdivision thereof, that owns any on-road diesel vehicle or off-road diesel equipment subject to the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.);

"Private regulated commercial bus" means any diesel commercial bus not owned by the New Jersey Transit Corporation, and any diesel commercial bus owned by the New Jersey Transit Corporation but leased or operated by a provider of diesel commercial bus service other than the New Jersey Transit Corporation;

"Public regulated commercial bus" means any diesel commercial bus owned and operated by the New Jersey Transit Corporation;

"Regulated commercial bus" means any diesel commercial bus registered and operating in the State;

"Regulated equipment" means any regulated off-road diesel equipment or any piece of off-road diesel equipment that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Regulated off-road diesel equipment" means any off-road diesel equipment operating in the State that is owned by the State or any political subdivision thereof, or a county or municipality, or any political subdivision thereof;

"Regulated on-road diesel vehicle" means any on-road diesel vehicle registered in the State that is owned by the State or any political subdivision thereof, a county or municipality, or any political subdivision thereof;

"Regulated school bus" means a school bus powered by a diesel engine, and owned by a school district, nonpublic school, or school bus contractor who has entered into a contract with a school district or a nonpublic school to transport children to and from a primary or secondary school in the State, that was originally designed to carry 10 or more passengers, and is in service on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.);

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"Regulated solid waste vehicle" means any diesel solid waste vehicle registered in the State that is owned by the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, or that is owned by a person who has entered into a contract in effect on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), with the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, to provide solid waste services;

"Regulated vehicle" means any regulated commercial bus, regulated on-road diesel vehicle, regulated solid waste vehicle, or any regulated school bus required to comply with any requirements pursuant to subsection b. of section 7 of P.L.2005, c.219 (C.26:2C-8.32) from model year 2006 or a preceding model year and registered in the State, or any on-road diesel vehicle registered in the State that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Retrofit device" means a best available retrofit technology that is an after-market apparatus installed on an on-road diesel vehicle or on a piece of off-road diesel equipment;

"School bus" means a school bus as defined under R.S.39:1-1;

"Technology" means any equipment, device, or fuel used alone or in combination to achieve the reductions in emissions required for best available retrofit technology; and

"Ultra-low sulfur diesel fuel" means diesel fuel that the United States Environmental Protection Agency designates or defines as ultra-low sulfur diesel fuel.

L.2005,c.219,s.2.

N.J.S.A 26 :2C-8.28 DEP rules, regulations.

3. a. The Department of Environmental Protection, no later than 270 days after the effective date of this section, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The rules and regulations adopted pursuant to subsection a. of this section shall include, but not need not be limited to:

(1) the designation of the required reduction in fine particle diesel emissions and choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment to meet the required reduction for each make, model or type of regulated vehicles or regulated equipment, including, but not limited to, the description of the hierarchy and levels of best available retrofit technologies as they correspond to the emissions reductions anticipated from the use of each best available retrofit technology, and the requirements for implementing the use of best available retrofit technologies by any owner of regulated vehicles or regulated equipment who elects not to submit a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34);

(2) guidelines and requirements for developing fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans, and any supplements or modifications thereto, including, but not limited to:

(a) a description of the components that, at a minimum, are to be included in a fleet retrofit plan;

(b) guidelines for use by owners of regulated vehicles or regulated equipment concerning how to develop an inventory of regulated vehicles or regulated equipment, prepare the required fleet retrofit plan, and determine the technology required for each vehicle or piece of equipment;

(c) the choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment for each make, model or type of regulated vehicle or regulated equipment to achieve reductions in fine particle emissions;

(d) information on how to select the specific best available retrofit technologies and ensure the fleet retrofit plan, combined fleet plan, or fleet averaging plan requirements are met;

(e) procedures and provisions for the review and approval, and enforcement of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans for regulated vehicles or regulated equipment; and

(f) provisions ensuring, in the implementation requirements for fleet retrofit plans, combined fleet plans, or fleet averaging plans, due consideration of the efforts of owners of regulated vehicles or regulated equipment who voluntarily retrofit regulated vehicles or regulated equipment prior to the required submittal of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(3) the procedures for contacting the department with questions about the requirements of, and compliance with, the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), and for obtaining any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans;

(4) in consultation with the Department of Education, the Department of Health and Human Services, the New Jersey Motor Vehicle Commission, and the Department of Law and Public Safety, provisions concerning the idling and queuing of school buses and enforcement of violations thereof, in accordance with section 8 of P.L.2005, c.219 (C.26:2C-8.33) and no less stringent than restrictions on idling pursuant to department rules and regulations in effect on the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.); and

(5) any requirements or guidelines concerning the installation of closed crankcase technology in regulated school buses or compliance with the provisions of section 6 of P.L.2005, c.219 (C.26:2C-8.31);

(6) warranty provisions for best available retrofit technologies and their installation and use on regulated vehicles or regulated equipment; and

(7) any other provisions the department determines necessary for the implementation of P.L.2005, c.219 (C.26:2C-8.26 et al.).

c. No provision of the rules and regulations adopted pursuant to subsection a. of this section may:

(1) designate any other types, makes, models, or classes of vehicles or equipment as regulated vehicles or regulated equipment other than regulated vehicles and regulated equipment as defined in section 2 of P.L.2005, c.219 (C.26:2C-8.27);

(2) require the installation and use of a retrofit device on a private regulated commercial bus earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun to use best available retrofit technologies that are retrofit devices on public regulated commercial buses;

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(3) require the installation or use of a retrofit device on a regulated vehicle or piece of regulated equipment unless:

(a) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(b) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be installed or used in that given year, by rule or regulation or by a provision of a plan submitted pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34).

Provided that the State Treasurer has issued the certification required under subparagraph (a) of paragraph (3) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

d. The rules and regulations adopted pursuant to paragraph (6) of subsection b. of this section shall at a minimum require that:

(1) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment the full repair and replacement cost of the best available retrofit technology, including parts and labor, if the best available retrofit technology fails to perform as verified;

(2) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment, if the installation or use of the best available retrofit technology damages the engine or the engine components of the regulated vehicle or piece of regulated equipment, the repair or replacement of engine components to return the engine components of the regulated vehicle or piece of regulated equipment to the condition they were in prior to damage caused by the best available retrofit technology;

(3) the manufacturers of best available retrofit technology authorize installers of best available retrofit technology other than fuel as authorized installers of the best available retrofit technology; and

(4) only authorized installers of best available retrofit technology install best available retrofit technology other than fuel.

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The specific provisions of these requirements and the specific provisions of any warranty may be established by the department through rules and regulations adopted pursuant to this section or under separate rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), including but not limited to, the period of time during which a warranty would be in effect.

L.2005,c.219,s.3.

N.J.S.A 26 :2C-8.29 DEP to consult when developing rules, regulations concerning diesel commercial buses.

4. The Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the New Jersey Transit Corporation when developing the provisions of the rules and regulations to be adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) concerning diesel commercial buses. No later than 60 days before any proposed rules or regulations are filed for publication in the New Jersey Register, the Department of Environmental Protection shall submit for comment to the New Jersey Transit Corporation any rules or regulations concerning diesel commercial buses proposed for adoption pursuant to section 3, section 19, or section 20 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.44, or C.26:2C-8.45). The Department of Environmental Protection, wherever possible, shall incorporate into requirements imposed on the New Jersey Transit Corporation the use of improved pollution control or fuels other than conventional diesel fuel used by the New Jersey Transit Corporation pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22), but may require additional controls or fuel use for diesel commercial buses operated by, or under contract to, the New Jersey Transit Corporation. No provision of section 22 of P.L.1984, c.73 (C.27:1B-22) shall be construed to supersede, or exempt the New Jersey Transit Corporation from, any requirements the Department of Environmental Protection may establish pursuant to this section. The Department of Environmental Protection shall give due consideration to the efforts and actions of the New Jersey Transit Corporation for any reduction of fine particle diesel emissions that it has achieved by the installation of retrofit equipment on on-road diesel vehicles in its fleet or the use of special fuels by its fleet to use prior to the submittal of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.4.

N.J.S.A 26 :2C-8.30 Public outreach program to owners of affected vehicles, equipment.

5. The Department of Environmental Protection shall develop and implement, in consultation with the New Jersey Motor Vehicle Commission, a public outreach program to notify and inform the owners of regulated vehicles or regulated equipment affected by the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) of the provisions of the law. In developing and implementing the public outreach program, the department shall make every effort to reach those owners that can be identified with the information that is available to the department and through other State agencies or departments, but the department shall not be responsible for notifying and informing owners that could not be identified, and not the New Jersey Motor Vehicle Commission nor any other State agency or department shall be required to identify every owner.

L.2005,c.219,s.5.

N.J.S.A 26 :2C-8.31 Closed crankcase technology for regulated school buses.

6. a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), or two years after the date on or by which both certifications required in this subsection have been made, whichever is later, every owner of a regulated school bus shall have installed on the regulated school bus closed crankcase technology as specified by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

No owner of a regulated school bus shall be required to install closed crankcase technology pursuant to this subsection unless:

(1) the State Treasurer certifies in each of the two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.) that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the closed crankcase technology required pursuant to this subsection in that two-year period.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

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b. The Department of Environmental Protection shall provide, and each owner of a regulated school bus shall obtain from the department, a compliance form for each regulated school bus. The owner of the regulated school bus shall submit a cost estimate to the department detailing the cost of any retrofit device to be installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology prior to its purchase or installation. The department may determine whether the estimated costs are unreasonable, based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner of the regulated school bus to resolve the discrepancy.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of the closed crankcase technology to verify compliance with the requirements of subsection a. of this section and to seek reimbursement for the cost of the closed crankcase technology. The compliance form shall include the cost of any retrofit device installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology. After the installation of the closed crankcase technology on a regulated school bus, a copy of the completed compliance form shall be kept on each regulated school bus at all times.

c. The department shall review the compliance forms submitted pursuant to subsection b. of this section and forward them to the State Treasurer. The State Treasurer shall reimburse each owner of a regulated school bus the cost of any retrofit device installed as part of the closed crankcase technology requirement and any cost associated with the installation of the closed crankcase technology indicated on the compliance form, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of subsection d. of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the installation of the crankcase technology required pursuant to this section and establishing the inspection requirements and procedures for verification of compliance with the crankcase technology requirement established pursuant to this section, the use of the compliance form in any inspection or as part of the inspection procedures and verification of compliance, any training necessary for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, and the extent of that training to be provided by the Department of Environmental Protection, and in what manner that training shall be provided.

f. If for any reason, the owner of the regulated school bus is unable to comply with the requirements specified in this section, the owner shall notify the department, as soon as practicable, of the inability to

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comply. The department shall resolve the situation with the owner as soon as practicable, and the department shall issue any necessary documentation and other information to the owner of the regulated school bus.

L.2005,c.219,s.6; amended 2006, c.94, s.1.

N.J.S.A 26 :2C-8.32 Study to identify, quantify sources of fine particles in cabin of regulated school buses.

7. a. Within two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the Department of Environmental Protection shall complete a study to identify and quantify the sources of fine particles present in the cabin of a regulated school bus. The study shall:

(1) evaluate the relative contribution of emissions from both the crankcase and the tailpipe to in-cabin levels of fine particles; and

(2) evaluate the feasibility of requiring, and the environmental and health benefits of the reduction of fine particle levels from school bus tailpipe emissions through the use of additional retrofit devices.

b. If the Department of Environmental Protection finds as a result of the study conducted pursuant to subsection a. of this section that technologically feasible reductions in tailpipe emissions would significantly reduce the health risks associated with exposure of children to fine particles in the cabin of a standard school bus, the department may require the use of additional best available retrofit technologies in or on regulated school buses. If the department makes such a finding pursuant to the study, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing:

(1) the best available retrofit technologies that regulated school buses shall be required to use, according to type, class, and other identifying vehicle information as designated by the department in these rules and regulations; and

(2) the requirements for submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan that are consistent with the requirements and provisions of section 9 and section 10 of P.L.2005, c.219 (C.26:2C-8.34 and C.26:2C-8.35) and the requirements for implementing the use of best available retrofit technologies for any owner who elects not to submit such a plan.

No use of additional best available retrofit technologies in or on regulated school buses may be required pursuant to this subsection for regulated school buses scheduled to be in service for less than two years on or after the date of notification pursuant to subsection d. of this section. No provision of

the rules and regulations may require an owner of a regulated school bus to make a submittal to the department except as provided by this section.

c. No owner of a regulated school bus shall be required to install or use a retrofit device on a regulated school bus as required pursuant to the rules and regulations adopted pursuant to subsection b. of this section or pursuant to any part of a plan submitted pursuant to subsection e. of this section unless:

(1) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be used by rule or regulation or by a provision of a plan submitted pursuant to subsection e. of this section in that given year.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated school buses for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated school buses.

d. The Department of Environmental Protection shall notify each owner of a regulated school bus of the adoption of the rules and regulations pursuant to subsection b. of this section and the provisions of those rules and regulations. In establishing additional requirements pursuant to subsection b. of this section, the department shall require the compliance of regulated school buses before the compliance of other vehicles and equipment required to use best available retrofit technologies pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.). The State Treasurer shall prioritize the use of dedicated moneys in the Diesel Risk Mitigation Fund to allow for regulated school bus compliance with the provisions of this section, and shall prioritize payments made from the fund for regulated school buses complying with these additional requirements.

e. If rules and regulations are adopted pursuant to subsection b. of this section, each owner of a regulated school bus shall submit to the Department of Environmental Protection:

(1) an inventory of the diesel-powered school buses that are owned by the owner;

(2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to subsection b. of this section, or that the

owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), if the owner has elected to do so.

The owner shall make these submittals no later than 180 days after the effective date of the rules and regulations adopted pursuant to subsection b. of this section, or the date on or by which both certifications required pursuant to subsection c. of this section have been made, whichever is later.

f. No later than 180 days after the date of the submittals and notice pursuant to subsection e. of this section, the Department of Environmental Protection shall review, approve, and resolve any discrepancies concerning any submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and shall issue final approval of the submitted plan. Any supplements or modifications to the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to this subsection shall be made pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. The department shall provide a one-page compliance form to each owner of a regulated school bus that submits a notice to comply pursuant to paragraph (2) of subsection e. of this section for each regulated school bus required to use best available retrofit technologies. The compliance form shall be similar to the compliance form issued pursuant to section 17 of P.L.2005, c.219 (C.26:2C-8.42) and shall be consistent with the provisions of subsection b. of that section. The department shall issue with the compliance form a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or other vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of, or commencement of the use of, the best available retrofit technologies required pursuant to the rules and regulations adopted pursuant to subsection b. of this section. The department shall review the compliance forms submitted and shall forward them to the State Treasurer, who shall reimburse each owner of a regulated school bus the cost of any retrofit device and the costs associated with the installation thereof, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

L.2005,c.219,s.7.

N.J.S.A 26 :2C-8.33 Rules and regulations relative to idling school buses, consistency with "Air Pollution Control Act (1954)."

8. a. The rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28), shall be consistent with any rules and regulations adopted pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) concerning the idling of vehicles powered by diesel engines, shall be no less stringent than the restrictions on idling pursuant to department rules and regulations in effect on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and shall provide for the same penalties to be enforced for school bus idling as are enforced for the idling of other motor vehicles pursuant to section 2 of P.L.1966, c.15 (C.39:3-70.2), except that:

(1) a warning shall be issued to the driver of the school bus operated in violation of these provisions, to the school district if the school district is not the owner of the school bus, and the principal or administrator of the school serviced by the school bus operated in violation of these provisions, for the first violation;

(2) for a first violation, a notice of violation shall be issued to, and the appropriate penalty imposed on, the owner of the school bus operated in violation of these provisions; and

(3) subsequent violations shall be enforced against the owner of the school bus operated in violation of these provisions, if other than the school district, and the school district serviced by the school bus operated in violation of these provisions.

No penalties may be assessed against any driver of any school bus that is operated in violation of the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The Department of Environmental Protection shall consult with the Department of Education, individual school districts and school administrators concerning the issue of school bus idling, and develop and assist with the implementation of policies and procedures to achieve compliance with the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. The Department of Law and Public Safety, in consultation with local law enforcement, the Department of Education, the Department of Environmental Protection, and the New Jersey Motor Vehicle Commission, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to facilitate and ensure the enforcement of the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

L.2005,c.219,s.8.

N.J.S.A 26 :2C-8.34 Submissions to DEP by owner of regulated vehicle, equipment.

9. a. Except as otherwise provided for in this section, any owner of a regulated vehicle or regulated equipment shall submit to the Department of Environmental Protection:

(1) an inventory of all on-road diesel vehicles and off-road diesel equipment owned, operated, or leased by the owner;

(2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has elected to do so; and

(4) an estimate of the cost of any retrofit device and any cost associated with the installation of that retrofit device, in accordance with the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

The department may disapprove any notice submitted pursuant to paragraph (2) of this subsection by an owner complying with the requirements as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the department determines that the costs or cost estimates, submitted pursuant to paragraph (4) of this subsection, for the best available retrofit technology described in the notice, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy. For owners complying by submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to this subsection, the department shall review any notice, plan, cost, or cost estimate in accordance with the provisions of section 10 of P.L.2005, c.219 (C.26:2C-8.35).

b. Each owner of a regulated vehicle or regulated equipment shall make the submittals required pursuant to subsection a. in accordance with the following schedule:

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- (1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);
 - (2) for public regulated commercial buses, no later than one year after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);
 - (3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28); and
 - (4) for regulated on-road diesel vehicles and regulated equipment other than regulated solid waste vehicles and regulated commercial buses, no later than four years after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).
- c. No owner of a private regulated commercial bus shall be required to make any submittal pursuant to subsection b. of this section until the owners of public regulated commercial buses have made their submittals required pursuant to that subsection, and no installation and use of a retrofit device on a private regulated commercial bus may be required earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun the use of retrofit devices on public regulated commercial buses.
- d. The owner of regulated vehicles or regulated equipment who commences operation of a fleet after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) shall make the submittals required pursuant to subsection a. of this section within 180 days after the date on which they began operations, or the date provided in subsection b. of this section, whichever is later.
- e. The owner of regulated vehicles or regulated equipment may coordinate or combine the development of a fleet retrofit plan with the development of a fleet retrofit plan of any other owner, or a group of owners, of regulated vehicles or regulated equipment, and with the guidance of the Department of Environmental Protection submit a combined fleet retrofit plan.
- f. The fleet retrofit plan submitted pursuant to subsection a. of this section shall include a description by the owner of the best available retrofit technology and the specific regulated vehicle or piece of regulated equipment on which the specific best available retrofit technology would be used, as determined by the owner pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).
- g. If the owner of regulated vehicles or regulated equipment determines that the best available retrofit technology as required under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific regulated vehicle or pieces of regulated equipment, the

owner may document this determination in the fleet retrofit plan and request the use of another level of best available retrofit technology to meet the requirement for that specific regulated vehicle or piece of regulated equipment, or provide documentation as to why the owner cannot use the best available retrofit technology that is required. The owner may also propose and negotiate an enforceable commitment to:

(1) retire the regulated vehicle or piece of regulated equipment and replace it with a vehicle or piece of equipment certified to fine particle emission levels at or below the emission levels that would have been achieved by the use of the required best available retrofit technology; or

(2) replace the engine of the vehicle or the equipment with an engine certified to that fine particle emissions level.

h. The owner of 75 or more regulated vehicles or pieces of regulated equipment, or any group of owners who elect to develop a combined fleet retrofit plan pursuant to subsection e. of this section under which 75 or more regulated vehicles or pieces of regulated equipment would be regulated, may propose to the Department of Environmental Protection a fleet averaging plan, in lieu of a fleet retrofit plan or a combined fleet retrofit plan, for the fleet or fleets affected. The owner or owners may propose a fleet averaging plan provided that the total net percent reductions in fine particle emissions under the proposed fleet averaging plan are equivalent to the estimated reductions in fine particle emissions that would have been achieved by the owner if a fleet retrofit plan were submitted and implemented for the regulated vehicles or regulated equipment, or both, or by the owners if the owners had submitted and implemented a combined fleet retrofit plan for their regulated vehicles or regulated equipment, or both, as calculated pursuant to the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group of owners may propose achieving fine particle emissions reductions from any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment owned by the owner or group of owners, or the retirement of any of those vehicles or equipment, and shall submit the proposed fleet averaging plan to the department as required by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

i. A fleet averaging plan proposed pursuant to subsection h. of this section that proposes the use of retrofit devices on any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment shall include: (1) a description by the owner of the best available retrofit technology and the specific vehicle or equipment on which the specific best available retrofit technology would be used, the specific vehicle or equipment to be retired, and how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on the specific vehicles or equipment; and (2) other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

j. The Department of Environmental Protection shall give due consideration in the application of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan requirements to any efforts or actions by owners of regulated vehicles or regulated equipment who voluntarily retrofit, retire, or

repower vehicles or equipment prior to the adoption of rules and regulations pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any of the requirements of this section for such an owner in order to provide such due consideration.

k. The Department of Environmental Protection shall provide any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

l. No owner of regulated vehicles or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or regulated equipment as required pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) or under a plan submitted pursuant to this section in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by rule and regulation or under an approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan or supplement or modification thereto, as applicable, by an owner in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

L.2005,c.219,s.9; amended 2006, c.94, s.2.

N.J.S.A 26 :2C-8.35 Approval of fleet retrofit plans.

10. a. The department shall review, and approve or disapprove all parts of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). The department may approve or disapprove any fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan in part, and:

(1) may direct the owner to comply with the approved part or parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan, as applicable, prior to final approval of other parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan; or

(2) in the case of a fleet averaging plan, may determine that the owner or the group of owners cannot comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) by implementing the proposed

fleet averaging plan, and may require the owner to submit a fleet retrofit plan, or the group of owners of the fleets to submit a combined fleet retrofit plan or individual fleet retrofit plans.

Any determination made, or requirement established, pursuant to paragraph (2) of this subsection shall be made in writing and shall be provided in writing to each owner affected by the determination or requirement.

The department may disapprove any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, submitted pursuant to paragraph (3) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), if the department determines that the costs or cost estimates, submitted pursuant to paragraph (4) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) for retrofit devices described in the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as appropriate, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy.

b. If the department exercises its authority under paragraph (2) of subsection a. of this section, the department shall issue a modified timetable for submittal of a fleet retrofit plan for the regulated vehicles or regulated equipment, a combined fleet retrofit plan for the group of owners, or individual fleet retrofit plans for the owners in the group. The department may require the submittal of these plans no earlier than 180 days after the date of the determination pursuant to paragraph (2) of subsection a. of this section, or the date on or by which both of the certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later. The department shall review, approve or disapprove any fleet retrofit plan or combined fleet retrofit plan submitted in accordance with this modified timetable.

c. Whenever the department disapproves a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner indicating the deficiencies of the disapproved fleet retrofit plan, disapproved combined fleet retrofit plan, or the disapproved fleet averaging plan, or part thereof, and the recommendations of the department to correct the deficiencies.

d. During the review process or prior to final approval of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part thereof in question, the department may contact and enter into negotiations with the owner to resolve discrepancies between the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), the submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and any requests by the owner for alternatives pursuant to subsection g. of section 9 of P.L.2005, c.219 (C.26:2C-8.34).

e. The owner or a group of owners whose fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, is disapproved by the department shall make the recommended revisions to the disapproved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or

the disapproved part thereof, within 60 days after the receipt of the disapproval notification from the department, and shall submit to the department the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, or the final revised part thereof that had been disapproved and revised. If the department does not take further action within 30 days after receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, the final fleet averaging plan, or the final revised part that had been disapproved, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part that had been disapproved and revised, shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the plan shall be in effect as of the date of the close of the 30-day period following the submittal of the final revised plan, or part thereof.

f. Upon the date of final approval of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, the owner shall be subject to the provisions of the fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan, or that part thereof, and shall be required to comply with these provisions on or after the final approval date or the date on or by which both certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later.

L.2005,c.219,s.10; amended 2006, c.94, s.3.

N.J.S.A 26 :2C-8.36 Anniversary date of plans, submissions required from owner.

11. a. The date on which all parts of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan have been approved and are in effect shall serve as the anniversary date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval for the purposes of this subsection. On each annual anniversary of the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or 90 days after the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or the approval of the most recent supplement or modification thereto, as applicable, whichever is later, each owner of regulated vehicles or regulated equipment shall submit a supplement to the fleet retrofit plan or combined fleet retrofit plan, or a modification of the fleet averaging plan, as applicable, indicating any changes to the fleet that have been made.

b. A supplement submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner added or removed from the fleet since the submission of the fleet retrofit plan or combined fleet retrofit plan, or the last supplement thereto; and

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(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used.

c. A modification to a fleet averaging plan submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner or removed from the fleet since the submission of the fleet averaging plan or the last modification, thereto;

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used that was not described in the fleet averaging plan or the last modification thereto; and

(3) a description of how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on specific regulated vehicles and other on-road diesel vehicles, or on specific regulated equipment and other off-road diesel equipment, and other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

d. The department shall review, and approve or disapprove all parts of the supplement or the modification no later than one year after its submittal date. The department may approve or disapprove any supplement or modification to any plan in part, and require the owner of the regulated vehicles or regulated equipment to comply with the approved part or parts of the supplement or modification prior to final approval of other parts of the supplement or the modification.

e. Whenever the department disapproves a supplement to a fleet retrofit plan, combined fleet retrofit plan, or a modification to a fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner or operator of the fleet indicating the deficiencies of the disapproved supplement or modification, or part thereof, and the recommendations of the department to correct the deficiencies. The owner or a group of owners who receive disapproval of a supplement to a fleet retrofit plan or combined fleet retrofit plan, or of a modification to a fleet averaging plan, or a part thereof, shall make the recommended revisions to the supplement or the modification within 60 days after the receipt of the disapproval notification from the department, and submit the final revised supplement or modification, or the revised part that had been disapproved, to the department. If the department does not take further action within 30 days after receipt of the final revised supplement or modification, or the revised part that had been disapproved, the revised supplement to the fleet retrofit plan or combined fleet retrofit plan, or modification to the fleet averaging plan, or the revised part that had been disapproved shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised supplement or modification or the final revised part that had been disapproved, that the

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owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the supplement or modification shall be in effect as of the date of the close of the 30-day period after the receipt of the final revised supplement or modification.

f. Upon the date of final approval of the applicable part, and the date the final supplement or modification is in effect, the owner shall be subject to the provisions of the fleet retrofit plan or combined fleet retrofit plan, and the supplement thereto, or the fleet averaging plan and the modification thereto, except as may otherwise be provided pursuant to subsection e. of section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. No owner of a regulated vehicle or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or piece of regulated equipment as required pursuant to a supplement to a fleet retrofit plan or combined fleet retrofit plan, or a modification to a fleet averaging plan or, any part of such a supplement or a modification, in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund, and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by an owner by rule or regulation or by the supplement to a fleet retrofit plan or combined fleet retrofit plan or the modification to a fleet averaging plan in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

L.2005,c.219,s.11.

N.J.S.A 26 :2C-8.37 Inapplicability relative to vehicles, equipment meeting federal standard.

12. Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no best available retrofit technology shall be required by the department to be used on any regulated on-road diesel vehicle manufactured and certified to meet a federal standard of 0.01 grams per brake-horsepower-hour of fine particle emissions, or on any regulated off-road diesel equipment manufactured and certified to meet a federal standard of 0.015 grams per brake-horsepower-hour of fine particle emissions.

L.2005,c.219,s.12.

N.J.S.A 26 :2C-8.38 Voluntary repowering, replacing, or rebuilding of equipment.

13. Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no owner of any on-road diesel vehicle or piece of off-road diesel equipment may be required by the department to repower any on-road diesel vehicle or piece of off-road diesel equipment, or to replace or rebuild an engine in any on-road diesel vehicle or piece of off-road diesel equipment, unless the owner has voluntarily agreed to do so. The owner of any on-road diesel vehicle or piece of off-road diesel equipment may repower the on-road diesel vehicle or piece of off-road diesel equipment, or replace or rebuild its engine, to comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.13.

N.J.S.A 26 :2C-8.39 Record listing for each regulated vehicle, piece of equipment.

14. a. Each owner of regulated vehicles or regulated equipment shall keep, at the place of business of the owner a record listing for each regulated vehicle or piece of regulated equipment the following identifying information and records for the regulated vehicle or piece of regulated equipment: (1) the compliance form issued for each regulated vehicle or piece of regulated equipment provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42) or any other document for the verification of compliance that may be issued or required pursuant to section 20 of P.L.2005, c.219 (C.26:2C-8.45); (2) maintenance records for the emissions control system or best available retrofit technology; (3) the records of the two most recent calendar years of fuel purchases for each vehicle or piece of regulated equipment required to use modified fuel or fuel additives pursuant to rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or approved supplement or approved modification thereto, as applicable; (4) the original, approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, any exemption requests, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable; and (5) any other documentation pertinent to fleet averaging plans that may be otherwise required under rules or regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The Department of Environmental Protection shall have the authority to inspect these records upon request. The Department of Environmental Protection may call upon the Superintendent of State Police and the State Police to assist with inspections pursuant to this subsection if necessary.

b. The owner of the fleet shall keep on each regulated vehicle or piece of regulated equipment, and on each vehicle or piece of equipment that is required to use best available retrofit technologies pursuant to an approved fleet averaging plan, or modification thereto, the current, updated compliance form issued pursuant to section 6, section 7, section 16 or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41 or C.26:2C-8.42), and a copy thereof with the records required pursuant to subsection a. of this section.

L.2005,c.219,s.14.

N.J.S.A 26 :2C-8.40 Labeling of retrofit devices.

15. Each retrofit device that is installed in the State shall be labeled with a legible and durable label affixed to the device. The label shall provide a unique identification number to be matched to the specific retrofit device and the specific vehicle required to use the retrofit device. No retrofit device may be sold or installed for use in the State unless it complies with the requirements of this section.

L.2005,c.219,s.15.

N.J.S.A 26 :2C-8.41 Compliance forms for regulated equipment.

16. a. The Department of Environmental Protection shall develop and issue to each owner of regulated equipment compliance forms for the regulated equipment no later than 180 days after the submittal of a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), or 180 days after the date of the final approval of the fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable. The compliance form shall include a section for providing the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment.

b. As soon as practicable after the required best available retrofit technologies have been installed on the regulated equipment, the owner of regulated equipment shall complete the compliance form, retain a copy of the owner's records, and return it to the Department of Environmental Protection. Thereafter, a current copy of the completed compliance form shall be kept on each piece of regulated equipment at all times.

c. Each owner of regulated equipment seeking reimbursement for the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment shall submit a copy of the completed compliance form to the Department of Environmental Protection. The department shall review the submitted compliance form and forward it to the State Treasurer, who shall reimburse the owner the costs indicated on the completed compliance form.

L.2005,c.219,s.16.

N.J.S.A 26 :2C-8.42 Issuance of one-page compliance forms.

17. a. No later than 180 days after the date on which the owner of regulated vehicles or regulated equipment submits a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 7 of P.L.2005 , c.219 (C.26:2C-8.32), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35), or the date on which any supplement to the fleet retrofit plan or the combined fleet retrofit plan, or modification to the fleet averaging plan is in effect pursuant to section 11 of P.L.2005, c.219 (C.26:2C-8.36), the department shall issue to the owner of a regulated vehicle or piece of regulated equipment a one-page compliance form for each regulated vehicle or piece of regulated equipment required to use best available retrofit technologies pursuant to the approved fleet retrofit plan or combined fleet retrofit plan, or the approved supplement thereto. In the case of an approved fleet averaging plan, the department shall also issue a one-page compliance form for each regulated vehicle, piece of regulated equipment, and other on-road diesel vehicle or piece of off-road diesel equipment that is required to use best available retrofit technologies pursuant to the approved fleet averaging plan, or the approved modification thereto.

b. The compliance form issued by the Department of Environmental Protection pursuant to subsection a. of this section shall be no longer than one page and shall have printed on the form: (1) the name and business address of the owner of the regulated vehicle or piece of regulated equipment; (2) the vehicle identification number for the regulated vehicle or the serial number for the piece of regulated equipment that is required to use best available retrofit technologies pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan; (3) a description of the best available retrofit technologies that may be used by the specific regulated vehicle or piece of regulated equipment and the requirement under the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; (4) a description of the best available retrofit technology required for the vehicle or piece of equipment pursuant to the rules and regulations, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as the case may be; (5) an identified space for the label number for a required retrofit device to be entered into the form; (6) an identified space for the owner responsible for the submittal of the notice to comply by rules and regulations or the submittal and update of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan to certify that any required retrofit devices have been installed, and the date of that compliance; (7) an identified space for the examiner of the regulated vehicle to certify that the vehicle identification number that appears on the form corresponds to the vehicle on which the required retrofit device has been installed, and that the label identification number on the required retrofit device corresponds to the label identification number entered on the form of the regulated on-road diesel vehicle or other on-road diesel vehicle on which the required retrofit device has been installed; and (8) an identified space for the owner to record the cost of the retrofit device and its installation.

c. The Department of Environmental Protection shall issue with the forms sent to the owner of the fleet a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or another vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

L.2005,c.219,s.17.

N.J.S.A 26 :2C-8.43 Retaining form on vehicle, piece of equipment; record copies.

18. a. Upon receipt of the compliance form for a vehicle or piece of equipment required to use best available retrofit technology pursuant to department rules and regulations, an approved fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable, the owner of the vehicle or piece of equipment shall retain the form on the vehicle or piece of equipment for which it was issued, and a copy of the current form in the business records of the owner, at all times.

b. As soon as practicable after the requirement to implement the use of best available retrofit technologies for a specific vehicle or piece of equipment as provided in department rules and regulations, the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, or supplement or modification thereto, as applicable, has been complied with, the owner shall complete the appropriate portion of the form provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42). The owner, shall: (1) indicate the choice of best available retrofit technology that has been used to fulfill the requirement; (2) enter into the identified space on the compliance form the label identification number for any retrofit device that has been installed on the regulated vehicle or regulated equipment; (3) certify that the requirement on the form has been met for the regulated vehicle or piece of regulated equipment whose vehicle identification number or serial number, as applicable is printed on the form; and (4) provide and certify the date that the installation was done or compliance began on the compliance form.

c. For any regulated vehicle that is not required to be inspected under the periodic inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et seq.), the owner shall have the regulated vehicle inspected by a diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) for the presence of the required retrofit device and compliance with the requirement described on the compliance form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42), as soon as practicable after the requirements of subsection b. of this section have been met for the regulated vehicle.

d. For any regulated vehicle that is subject to inspection under the periodic inspection program pursuant to P.L. 1995, c.157 (C.39:8-59 et seq.), the owner, after complying with the provisions of subsection b. of this section, shall have the regulated vehicle inspected for compliance with the requirement printed on the form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42) at the next annual periodic inspection scheduled for the vehicle, or as soon as practicable after complying with the provisions of subsection b. of this section. No provision of this subsection shall be construed as requiring the owner to have any vehicle subject to a periodic inspection to have that vehicle registered at any scheduled periodic inspection.

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e. A diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) shall inspect any regulated vehicle presented to it for inspection for compliance with the requirement on the form issued for the regulated vehicle pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42). The person performing the inspection shall verify the presence of the required retrofit device, the match of the label identification number on the form with the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number on the form to the label identification number on the retrofit device on the vehicle, and the correct vehicle identification number on the form. No provision of this subsection shall be construed to require the diesel emissions inspection center to verify the functioning or the correct installation of the retrofit device, or to test for the level of emissions reduction attributed to the use of the retrofit device.

f. If the owner of the regulated vehicle is a licensed diesel inspection center or is otherwise authorized to self-inspect the vehicles owned by the owner, the owner may perform the inspection and provide the certification required pursuant to subsections d. and e. of this section.

g. Only one inspection per vehicle is required pursuant to this section.

L.2005,c.219,s.18.

N.J.S.A 26 :2C-8.44 MVC rules, regulations relative to one-time confirmation of compliance with plans.

19. a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the New Jersey Motor Vehicle Commission shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary for the provision of a one-time confirmation of compliance with approved regulated fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans, or supplements or modifications thereto, as applicable. As necessary, the New Jersey Motor Vehicle Commission shall provide for the inspection of regulated vehicles, including, but not limited to, the inspection of regulated vehicles that were not required to be inspected on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and the verification of compliance and completion of the compliance form by examiners, mechanics, technicians, or other knowledgeable persons involved in the maintenance and repair of the regulated vehicles.

b. The commission shall include, in its inspection of a diesel commercial bus pursuant to P.L.1995, c.157 (C.39:8-59 et al.), an inspection of any regulated commercial bus required to install a retrofit device pursuant to a regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, after the retrofit device has been installed, to determine that the installation of the required best available retrofit technology has occurred as required pursuant to the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan for the diesel

commercial bus being inspected, or shall provide for such an inspection at a separate time requested by the owner, operator, or lessee of the regulated fleet of which the diesel commercial bus is a part. This inspection is required to be performed only once and after the required retrofit device has been installed. The owner, operator, or lessee of the regulated fleet containing the diesel commercial buses shall notify the New Jersey Motor Vehicle Commission that the required installation has been done for the diesel commercial bus being inspected as required pursuant to this subsection.

c. The owner of a regulated vehicle subject to inspection pursuant to subsection a. or subsection b. of this section shall present to the person performing the inspection the form for the regulated vehicle issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42). The person performing the inspection pursuant to subsection a. or subsection b. of this section shall check for the presence of the required retrofit device, the match of the label identification number in the form and or the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number to the form for the vehicle with the vehicle identification number on the form.

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. No provision of this section shall be construed to require the New Jersey Motor Vehicle Commission to verify the functioning of the retrofit device, or its correct installation, or to test the function of the retrofit device for any level of emissions reduction attributed to the use of the retrofit device.

L.2005,c.219,s.19.

N.J.S.A 26 :2C-8.45 Alternative approach for reimbursement of cost for retrofit devices.

20. a. The provisions of section 6, section 7, section 14, sections 16 through 19, inclusive, and sections 29 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.39, C.26:2C-8.41 through C.26:2C-8.44, and C.26:2C-8.54 through C.26:2C-8.56) affecting the reimbursement of owners of regulated vehicles or regulated equipment for the costs associated with the purchase and installation of retrofit devices, to the contrary notwithstanding, the Department of Environmental Protection may develop an alternative approach for reimbursement of these costs to the owners if the department determines that an alternative approach is feasible, cost-effective, and efficient. The alternative approach may include, but shall not be limited to, directly reimbursing the entity performing the actual installation of the retrofit device in lieu of reimbursing the owner of the regulated vehicle or regulated equipment. If the department determines that an alternative approach is feasible, cost-effective, and efficient and chooses to implement the alternative approach, the department shall establish and

implement the alternative approach pursuant to rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). No such rule or regulation may modify any procedure performed by, or any responsibility or requirement imposed on, the New Jersey Motor Vehicle Commission, its employees, or any persons licensed or contracted by the New Jersey Motor Vehicle Commission, unless the rule or regulation is adopted jointly by the New Jersey Motor Vehicle Commission and the Department of Environmental Protection pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. No provision of subsection a. of this section or any other rule or regulation adopted pursuant thereto, shall be construed to supersede or modify, the provisions of section 3, section 4, subsection a. or subsections d. through f., inclusive, of section 6, subsections a. through c. or subsections e. through f., inclusive, of section 7, sections 8 through 13, inclusive, subsection d. or e. of section 19, section 21, section 26, section 27, section 28, subsection a. of section 29, or subsection b. of section 30 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.29, C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.33 through C.26:2C-8.38, C.26:2C-8.44, C.26:2C-8.46, C.26:2C-8.51, C.26:2C-8.52, C.26:2C-8.53, C.26:2C-8.54, or C.26:2C-8.55).

c. No entity performing the actual installation of a retrofit device who is reimbursed for the costs associated with the purchase and installation of retrofit devices pursuant to rules and regulations adopted pursuant to subsection a. of this section may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.). No State agency, department, or political subdivision thereof may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) if entities performing the actual installation of a retrofit device are reimbursed for the costs pursuant to rules and regulations adopted pursuant to subsection a. of this section.

L.2005,c.219,s.20.

N.J.S.A 26 :2C-8.46 Joint rules, regulations relative to training.

21. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations providing for the training with respect to emissions testing and inspection required for persons who inspect or reinspect a vehicle pursuant to the periodic inspection program or the roadside inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et al.), or who repair any vehicle because of its failure of emissions testing under the periodic inspection program or roadside inspection program, including, but not limited to, the extent of the training, standards with respect to emissions testing and inspection for the training and certification of mechanics employed for the purposes of inspecting vehicles under the periodic inspection program or the roadside inspection program, or for the repair of vehicles that fail inspections under the periodic inspection program and the roadside enforcement program, and the training to meet these standards, including but not limited to, the length, convenience and affordability to the trainee, and the cost, if any of that training.

L.2005,c.219,s.21.

N.J.S.A 26 :2C-8.47 Consultation when adopting rules, regulations.

22. Except as may otherwise be provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the New Jersey Motor Vehicle Commission shall consult with the Department of Environmental Protection and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.22.

N.J.S.A 26 :2C-8.48 Coordination of programs by DEP with MVC and DLPS.

23. Except as otherwise provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.23.

N.J.S.A 26 :2C-8.49 Coordination of programs by DLPS with DEP and MVC.

24. The Department of Law and Public Safety shall consult with the Department of Environmental Protection and the New Jersey Motor Vehicle Commission when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

L.2005,c.219,s.24.

N.J.S.A 26 :2C-8.50 Percentage of ultra-low sulfur diesel fuel required on-road.

25. a. (Deleted by amendment, P.L.2006, c.94).

b. No sooner than July 15, 2006, and following a public hearing held by the Department of Environmental Protection on the availability of ultra-low sulfur diesel fuel in the State for use in on-road diesel vehicles and off-road diesel equipment, the department shall determine and issue a written notice of its determination as to whether sufficient supplies of ultra-low sulfur diesel fuel are available in the State to require a minimum of 80 percent of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on and after January 15, 2007, without significant disruption of, or significant price increases in, the wholesale and retail fuel market. If the department determines that supplies would be sufficient, the department shall require a certain percentage, to be determined by the department, of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on or after the 180th day after the date on which the department issues a written determination that supplies would be sufficient, provided that this percentage shall be the highest percentage that can practicably be required without significant disruption of, or significant price increases in, the wholesale and retail fuel market, but shall be no less than 80 percent of all diesel fuel annually sold, distributed, or used in the State.

c. If the department determines that sufficient supplies are not available pursuant to subsection b. of this section, the requirement to sell, distribute, or use only ultra-low sulfur diesel fuel in the State shall take effect only 180 days after the department issues a written determination that the supplies are sufficient to sell, distribute, or use only ultra-low sulfur diesel fuel in the State.

d. The Department of Environmental Protection, in consultation with the Department of Law and Public Safety, the Department of Labor and Workforce Development, and the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section.

L.2005,c.219,s.25; amended 2006, c.94, s.4.

N.J.S.A 26 :2C-8.51 Inapplicability relative to farm vehicles, equipment.

26 . No provision of P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be construed to apply to any vehicle or equipment used on, or in the course of the operation of, a farm or to any vehicle or equipment used for any agricultural purposes.

L.2005,c.219,s.26.

N.J.S.A 26 :2C-8.52 Violations, penalties.

27. a. Whenever the Commissioner of Environmental Protection finds that a person has violated a provision of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, the commissioner may:

- (1) Levy a civil administrative penalty in accordance with subsection b. of this section; or
- (2) Bring an action for a civil penalty in accordance with subsection c. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. The commissioner is authorized to assess a civil administrative penalty of not more than \$5,000 for each violation of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto. In adopting rules and regulations establishing the amount of any penalty to be assessed, the commissioner may take into account the type, seriousness, and duration of the violation and the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation, approval, or authorization violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the

posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

c. A person who violates any provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section, shall be subject, upon order of a court, to a civil penalty for such violation of not more than \$5,000. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in connection with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

d. Any person who knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be in violation of P.L.2005, c.219 (C.26:2C-8.26 et al.) and shall be subject to the penalties assessed pursuant to subsections b. and c. of this section.

L.2005,c.219,s.27.

N.J.S.A 26 :2C-8.53 "Diesel Risk Mitigation Fund"; money credited, use.

28. a. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Diesel Risk Mitigation Fund." The fund shall be administered by the State Treasurer and shall be credited with:

- (1) constitutionally dedicated moneys;
- (2) such moneys as are appropriated by the Legislature; and
- (3) any return on investment of moneys deposited in the fund.

b. Moneys in the fund may be used by the Department of the Treasury solely for:

- (1) reimbursements to owners of regulated vehicles or regulated equipment to reimburse the cost of required retrofit devices and the installation thereof;

(2) the administrative costs incurred by the Department of Environmental Protection to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$900,000 per year; and

(3) the administrative costs incurred by the New Jersey Motor Vehicle Commission to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$250,000 per year.

c. No moneys in the fund may be made available for any costs associated with requirements imposed by P.L.2005, c.219 (C.26:2C-8.26 et al.), unless the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the fund in that year.

If the moneys provided for the administrative costs of the New Jersey Motor Vehicle Commission are not required by the commission in a given year because they exceed the amount of the administrative costs of the commission in that year, the State Treasurer shall provide those moneys unexpended for that purpose to the Department of Environmental Protection for administrative costs, provided that the administrative costs paid from the constitutionally dedicated moneys deposited in the fund do not exceed \$1,150,000.

d. Any owner of a regulated vehicle or piece of regulated equipment is eligible for reimbursement from the fund. Notwithstanding the provisions of the "Local Budget Law" (N.J.S.40A:4-1 et seq.) to the contrary, a county, municipality, or an authority as defined in section 3 of P.L.1983, c.313 (C.40A:5A-3) required to comply with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) may anticipate in its annual budget or any amendments or supplements thereto those sums to be reimbursed from the fund for the costs of retrofit devices and their installation that are required to be used in or on any regulated vehicle or piece of regulated equipment in a given year in which the county, municipality, or authority incurs the cost. For the purposes of subsection 1. of section 3 of P.L.1976, c.68 (C.40A:4-45.3) and subsection g. of section 4 of P.L.1976, c.68 (C.40A:4-45.4), the costs of retrofit devices and their installation shall be considered an amount to be received from State funds in reimbursement for local expenditures and therefore exempt from the limitation on local budgets imposed pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2).

L.2005,c.219,s.28.

N.J.S.A 26 :2C-8.54 Allocation of moneys in fund, application for reimbursement.

29. a. Moneys in the fund shall be allocated and used to provide reimbursement to the owners of regulated vehicles or regulated equipment for 100% of the costs of the purchase and installation of the retrofit device pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), other than fuel.

b. The owner or operator of a regulated vehicle or piece of regulated equipment seeking the reimbursement authorized in subsection a. of this section shall file an application on a form to be developed by the State Treasurer and the Department of Environmental Protection, with the department, with the documentation required by the department and the State Treasurer pursuant to section 30 of P.L.2005, c.219 (C.26:2C-8.55). Neither the State Treasurer nor the Department of Environmental Protection may charge an application fee.

c. Upon a determination that an application for reimbursement meets all established criteria for an award from the fund, the Department of Environmental Protection and the State Treasurer shall approve the application. Upon the department approval of an application for reimbursement from the fund, the State Treasurer shall award the reimbursement to an owner upon the availability of sufficient moneys in the fund. If moneys in the fund are not sufficient at any point to fund all applications for reimbursement that have been approved by the State Treasurer, the State Treasurer shall award reimbursement to approved owners based upon the date of approval of the application.

L.2005,c.219,s.29.

N.J.S.A 26 :2C-8.55 Rules, regulations relative to filing requirements for reimbursement.

30. a. The State Treasurer shall adopt, in consultation with the Department of Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations:

(1) establishing the filing requirements for a complete application for reimbursement from the fund;
and

(2) to require an owner:

(a) to submit documentation or other information demonstrating that the retrofit device has been purchased and installed on a regulated vehicle, which shall include the vehicle identification number of the vehicle, or on regulated equipment the serial number;

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(b) to submit documentation of the actual costs incurred for the purchase of the retrofit device required to be installed, the nature and scope of work performed to install the retrofit device, and the actual costs incurred to install the technology;

(c) to submit a certification that the owner has not engaged in any of the conduct described in subsection a. of section 31 of P.L.2005, c.219 (C.26:2C-8.56);

(d) to submit a certification that the retrofit device installed on a regulated vehicle or regulated equipment is in conformance with rules and regulations of the Department of Environmental Protection; and

(e) to provide access at reasonable times to the regulated vehicles or regulated equipment to determine compliance with the terms and conditions of the reimbursement award.

b. In establishing requirements for applications for reimbursement, the State Treasurer:

(1) may not impose conditions that interfere with the everyday normal operations of an owner's business activities, except to the extent necessary to ensure the owner has complied with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.);

(2) shall strive to minimize the complexity and costs to owners of complying with such requirements; and

(3) shall expeditiously process all applications in accordance with a schedule established, in consultation with the Department of Environmental Protection, for the review and the taking of final action within 30 days after the receipt of the completed application.

L.2005,c.219,s.30.

N.J.S.A 26 :2C-8.56 Denial of application for reimbursement.

31. a. The State Treasurer may deny an application for reimbursement from the fund, and any reimbursement from the fund may be recoverable by the State Treasurer, upon a finding that:

(1) the owner of a regulated vehicle or regulated equipment failed to commence or complete the purchase or installation of best available retrofit technology on the vehicle or equipment for which an application for reimbursement was filed in accordance with the applicable rules and regulations; or

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(2) the owner of a regulated vehicle or regulated equipment provided false information or withheld information on an application that would render the owner ineligible for reimbursement from the fund, that resulted in the owner receiving a larger reimbursement than the owner would otherwise be eligible, or that resulted in payments from the fund in excess of the actual costs incurred by the owner or the amount to which the owner is legally eligible.

b. Nothing in this section shall be construed to require the State Treasurer, the Department of Environmental Protection, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in subsection a. of this section.

L.2005,c.219,s.31.

N.J.S.A 26 :2C-8.57 Prohibitions relative to certain retrofitting of diesel-powered vehicles.

1. No person shall retrofit any diesel-powered vehicle with any device, smoke stack, or other equipment which enhances the vehicle's capacity to emit soot, smoke, or other particulate emissions, or shall purposely release significant quantities of soot, smoke, or other particulate emissions into the air and onto roadways and other vehicles while operating the vehicle, colloquially referred to as "coal rolling." Any person who violates this section shall be subject to the penalties established pursuant to section 27 of P.L.2005, c.219 (C.26:2C-8.52) and any other applicable law.

L.2015, c.43, s.1.

N.J.S.A 26 :2C-9. Department's duties relative to air pollution control; fees

9. a. The department shall conduct ambient air quality tests, on at least a monthly basis and wherever possible in conjunction with the county college or other county facility, which are representative of every county of the State. The department shall report the results of these tests to the county health officers, the Legislature, and the news media.

b. The department shall control air pollution in accordance with the provisions of any applicable code, rule, or regulation promulgated by the department and for this purpose shall have power to:

(1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of air pollution;

(2) Conduct and supervise Statewide programs of air pollution control education including the preparation and distribution of information relating to air pollution control;

(3) Require the registration of persons engaged in operations that may result in air pollution and the filing of reports, including but not limited to emission statements, by them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of effluent, and such other information as the department shall prescribe to be filed relative to air pollution, all in accordance with applicable codes, rules, or regulations established by the department;

(4) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or noncompliance with any codes, rules, or regulations of the department. Any information, other than actual or allowable air contaminant emissions, relating to secret processes or methods of manufacture or production obtained in the course of an inspection, investigation, or determination, shall be kept confidential and shall not be admissible in evidence in any court or in any other proceeding except before the department. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution;

(5) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution, and institute legal proceedings for the prevention of air pollution and for the recovery of penalties, in accordance with P.L.1954, c.212 (C.26:2C-1 et seq.);

(6) With the approval of the Governor, cooperate with, and receive funds or other assistance from, the federal government, the State government, any interstate body, or any county or municipal government, or from private sources, for the study and control of air pollution;

(7) Charge, in accordance with a fee schedule that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), (a) reasonable annual emission fees for major facilities as provided in section 5 of P.L.1995, c.188 (C.26:2C-9.5), and (b) administrative fees for any of the services the department performs or provides in connection with administering P.L.1954, c.212 (C.26:2C-1 et seq.). The administrative fees charged by the department pursuant to this subsection shall not exceed \$25,000 per application based on criteria contained in the fee schedule;

(8) Issue, renew, reopen, and revise operating permits, and require any person who is required to obtain an operating permit under the provisions of the federal Clean Air Act to obtain an operating permit and to certify compliance therewith for all air pollution sources; and

(9) Establish, implement, and operate a small business stationary source technical and environmental compliance assistance program as required pursuant to 42 U.S.C. 7661f of the federal Clean Air Act.

L.1954,c.212,s.9; amended 1962,c.215,s.3; 1967,c.106,s.7; 1971,c.155,s.1; 1993,c.257; 1995,c.112,s.39; 1995,c.188,s.3.

N.J.S.A 26 :2C-9.1. Interference with performance of duties; entrance to premises

No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or of the act of which this act is amendatory and supplementary, or refuse to permit such personnel to perform their duties by refusing them, upon proper identification or presentation of a written order of the department, entrance to any premises at reasonable hours.

L.1962, c. 215, s. 5.

N.J.S.A 26 :2C-9.2. Regulation of equipment, control apparatus

13. a. No person shall construct, reconstruct, install, or modify equipment or control apparatus and then use or cause to be used that equipment or control apparatus except in accordance with P.L.1954, c.212 (C.26:2C-1 et seq.) and the rules and regulations adopted pursuant thereto.

b. No operating permit, operating permit revision, or operating certificate or renewal thereof shall be issued unless the applicant demonstrates that the equipment or control apparatus will operate, or operates, in accordance with the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) and the rules and regulations adopted pursuant thereto.

c. Newly constructed, reconstructed, or modified equipment and control apparatus shall incorporate advances in the art of air pollution control as developed for the kind and amount of air contaminant emitted by the applicant's equipment and control apparatus as provided in this subsection.

(1) For equipment and control apparatus with a potential to emit any hazardous air pollutant equal to or greater than the de minimis levels specified by the EPA pursuant to subsection (g) of section 112 of the federal Clean Air Act (42 U.S.C. 7412) or with a potential to emit five tons per year or more of any other air contaminant, the applicant shall document advances in the art of air pollution control in accordance with the following criteria, as applicable:

(a) For an air contaminant subject to the prevention of significant deterioration technology requirement, advances in the art of air pollution control shall be the best available control technology (BACT) as set forth by the EPA at 40 CFR 52.21 (b)(12) or any subsequent amendments thereto;

(b) For an air contaminant subject to a significant emissions increase of a non-attainment air contaminant in a non-attainment area, advances in the art of air pollution control shall be the lowest

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achievable emission rate (LAER) as set forth by the EPA at 40 CFR 51.165(a)(1)(xiii) or any subsequent amendments thereto;

(c) For a hazardous air pollutant technology requirement, advances in the art of air pollution control shall be the maximum achievable control technology (MACT) as set forth at 42 U.S.C. 7412 or any subsequent amendments thereto; and

(d) For other air contaminants, advances in the art of air pollution control means up-to-date technology and methods, reflected in equipment, control apparatus, and procedures, that when applied to an emission source shall reasonably minimize air contaminant emissions. The technology shall have been demonstrated for similar air contaminant discharge parameters to be reliable and shall be available at reasonable cost commensurate with the reduction in air contaminant emissions.

(2) For equipment and control apparatus with a potential to emit hazardous air pollutants at less than the de minimis levels specified by the EPA pursuant to subsection (g) of section 112 of the federal Clean Air Act (42 U.S.C. 7412) and with a potential to emit less than five tons per year of any other air contaminant, the applicant need not document advances in the art of air pollution control, but shall document compliance with:

(a) reasonably available control technology as defined in rules and regulations that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

(b) applicable new source performance standards; and

(c) any other applicable State or federal standard, code, rule, or regulation.

(3) (a) In order to promote greater emissions reductions than would otherwise be achieved, the department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that offer a person the option of establishing in an operating permit a 15-year plan for reducing facility emissions beyond minimum air pollution control requirements in lieu of adhering to strict permit review schedules and complying with less effective State requirements. Such a plan shall include schedules setting forth milestones for reducing emissions at the facility. Milestones may be met by reducing emissions at the facility and by providing emissions reduction credits from non-facility sources pursuant to an emissions trading and banking program adopted pursuant to section 8 of P.L.1995, c.188 (C.26:2C-9.8).

(b) The department shall review the achievement of the milestones in the plan no less frequently than every five years when the operating permit is renewed. The department may require the person to submit, as part of the application for renewal of the operating permit, a summary and trend of the actual

air contaminant emissions data reported in the facility's annual emission statements for the previous five years. If the department determines during the approval process for an operating permit renewal that the milestones in the plan have not been met at a facility and that there is no reasonable likelihood that the milestones can or will be met, the department may withdraw the opportunity for the facility to continue pursuant to the plan and shall require instead that the facility comply with the promulgated schedules for all applicable requirements.

(c) The department shall allow a person entering a 15-year plan the option of establishing in that person's operating permit reduced administrative application requirements for de minimis modifications of equipment and control apparatus at the facility, provided that: any increase in allowable emissions for any individual equipment and control apparatus is below de minimis levels defined by rule or regulation adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and, as part of the five-year achievement review set forth in subparagraph (b) of paragraph (3) of this subsection, the person includes a demonstration that confirms no net emissions increases have occurred at the facility over the previous five years.

(d) The department shall involve in the development of the rules and regulations for the 15-year plan program adopted pursuant to this paragraph representatives of the affected industry, environmental, and public interest groups as well as impacted governmental entities.

(4) Consistent with the provisions of P.L.1991, c.422 (C.13:1D-111 et seq.), the department shall periodically publish, with an opportunity provided for public comment, technology, methods, and performance levels with respect to air pollution control for use by applicants for demonstrating advances in the art of air pollution control.

(a) The department shall, within 18 months after the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.), publish the first technical manual containing technology, methods, and performance levels that can be used by applicants for demonstrating advances in the art of air pollution control. Public notice of the availability of each draft technical manual shall be published in the New Jersey Register, and each final technical manual shall consider any public comments thereon that are received by the department.

(b) Once the department has published a technical manual for advances in the art of air pollution pursuant to subparagraph (a) of paragraph (4) of this subsection, any application submitted that demonstrates compliance with that technical manual shall be considered to incorporate advances in the art of air pollution control for the source operations covered by the technical manual. The department shall periodically review and update each technical manual as necessary, after providing public notice and opportunity for public comment. If the department amends a technical manual, the new standard shall apply only to applications submitted after the final publication of the amended technical manual.

(c) Instead of relying on a technical manual for advances in the art of air pollution control, an applicant may propose "case-by-case" advances in the art of air pollution control applicable to a specific source operation. If the department determines that the proposal is consistent with the provisions of this

subsection, the proposal shall be deemed to constitute advances in the art of air pollution control for that specific source operation.

(d) Advances in the art of air pollution control shall include new source performance standards adopted by the EPA on or after the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.) and those new source performance standards published as advances in the art of air pollution control pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.).

(5) Before an operating permit, operating permit revision or operating certificate or any renewal thereof is issued, or as a condition of issuance, the department may require the applicant to conduct such tests as are necessary to determine the kind or amount of the air contaminant emitted from the equipment or whether the equipment or fuel or the operation of the equipment is in violation of any of the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) or of any codes, rules, or regulations adopted pursuant thereto . The tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the department, and the test results shall be reviewed and professionally certified.

(6) Grandfathered equipment or control apparatus shall not be subject to a demonstration of advances in the art of air pollution control.

(7) An operating permit and operating certificate or any renewal thereof shall be valid for a period of five years from the date of issuance, unless sooner revoked for cause by order of the department, and may be renewed upon application to the department.

(8) Upon receipt of an application for the issuance of an operating certificate or any renewal thereof, the department, in its discretion, may issue a temporary operating certificate valid for 90 days or until a five-year operating certificate has been issued or denied .

d. The following are exempt from the provisions of subsections a. and b. of this section:

(1) One or two family dwellings;

(2) A dwelling of six or less family units, one of which is owner occupied;

(3) Equipment or control apparatus that is subject to a general permit issued pursuant to subsection h. of this section; and

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(4) Equipment and control apparatus that is de minimis in terms of size or emissions as prescribed in rules and regulations that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Except as otherwise prohibited by the EPA pursuant to the federal Clean Air Act, any person who has received or receives a facility-wide permit issued pursuant to the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.) shall be deemed to satisfy the requirement for an operating permit issued pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.).

f. The department may establish policies and procedures for categories of operations that specify the procedures to be followed for obtaining any permit required pursuant to this section.

g. Any requirement solely related to an air contaminant regulated by the department that is not a federally regulated air pollutant or contaminant shall be identified in an operating permit as a State-only requirement that would not be federally enforceable.

h. Notwithstanding the provisions of any other law, rule, or regulation to the contrary, the department may issue a general permit in lieu of any permit issued pursuant to this section. Prior to issuing a general permit, the department shall provide public notice and opportunity for public comment.

i. The department may require the reporting and evaluation of emissions information for any air contaminant. However, prior to requiring that such information be included on a permit or regulating any air contaminant not regulated by the EPA pursuant to the federal Clean Air Act, the department shall first make a determination and advise the public of its conclusion that regulating that air contaminant is in the best interest of human health, welfare and the environment, and publish that determination and justification in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

j. Except as otherwise prohibited by federal law, any person who has submitted to the department an application for a permit to construct, reconstruct, install, or modify equipment or control apparatus may place that equipment or control apparatus on the footings or foundation where it is intended to be used during the pendency of the permit application review process. A person intending to take action authorized pursuant to this subsection shall notify the department, via certified mail, of the intent to undertake the action at least seven days prior to the commencement of the action.

A person who constructs equipment or control apparatus in accordance with this subsection that the department determines is not consistent with applicable State laws, codes, rules, or regulations shall not be subject to civil or criminal penalties for that inconsistent action provided that the person's actions do not result in the emission of any air contaminants. Any costs incurred by the applicant in connection with such construction may not be used by the applicant as grounds for an appeal of the department's decision on the permit application.

k. For the purposes of P.L.1954, c.212 (C.26:2C-1 et seq.), the use of VOCs not otherwise listed by the EPA as hazardous air pollutants, or specified by the department pursuant to subsection i. of this section, shall be considered as a single pollutant. These VOCs may be used interchangeably and such use shall not be considered new installation or modification of equipment or control apparatus.

L.1967,c.106,s.13; amended 1995,c.188,s.4.

N.J.S.A 26 :2C-9.3. Findings, declarations, determinations

1. The Legislature finds and declares that to enhance and improve the quality of the environment and to protect and foster the public health of the citizens of New Jersey it is altogether fitting and proper to allow private entities who, pursuant to law, have applied for a permit for the purpose of constructing, installing, maintaining or operating pollution control equipment or devices or for the purpose of implementing pollution prevention process modifications to commence with that construction, installation, maintenance or operation or to implement those modifications while the Department of Environmental Protection is reviewing the permit application; and that authorizing such pre-approval actions will lead to the environmental benefits that would result from the timely construction, installation, maintenance and operation of pollution control equipment or devices and the prompt implementation of pollution prevention process modifications.

The Legislature therefore determines that it is within the public interest to allow private entities who have applied for permits to construct, install, maintain or operate pollution control equipment or devices or for permits to implement pollution prevention process modifications to undertake such construction, installation, maintenance or operation or to implement such process modifications while the department is reviewing their permit application, but with the clear and full understanding that they assume all risks for their actions.

L.1994,c.101,s.1.

N.J.S.A 26 :2C-9.4. Construction, etc., of air pollution control equipment during pendency of permit application

2. Except where specifically prohibited under the federal "Clean Air Act" (42 U.S.C. s.7401 et seq.) pursuant to (a) 42 U.S.C. s.7502 for new or modified major stationary sources; (b) 42 U.S.C. s.7475 for major emitting facilities; (c) 42 U.S.C. s.7411 for new or modified stationary sources; (d) 42 U.S.C. s.7412 for the construction, reconstruction, or modification of any major source of hazardous air pollutants; or (e) any other such federal requirement, any private entity who has submitted to the Department of Environmental Protection, pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), an application for a permit to construct, install, maintain or operate pollution control equipment or devices or to implement pollution prevention process modifications may construct, install, maintain and operate such equipment or devices or implement such pollution prevention process modifications during the pendency of the permit application review process. A private entity intending to take action authorized pursuant to this section during the pendency of the permit application review process shall notify the department of the intent to undertake the action seven days prior to the commencement of the action. The prior notification may be made by certified mail or in a manner acceptable to the department.

Nothing in this section shall be construed to limit the department's discretion in establishing construction, installation, maintenance, and operating standards for such equipment or devices, or in otherwise reviewing the permit application, nor shall the costs incurred by the applicant for the construction, installation, maintenance or operation of such equipment or devices or the implementation of pollution prevention process modifications during the pendency of the permit application review process be used by an applicant as grounds for an appeal of the department's decision on the permit application. If the department determines that any pollution control equipment or devices or pollution prevention process modifications constructed, installed, maintained or implemented during the pendency of the permit application review process are not consistent with applicable federal and State laws, rules, or regulations, the department and the applicant shall enter into an agreement containing a schedule setting forth a date certain on which the applicant shall modify, replace or cease the operation of the pollution control equipment or devices or implementation of the pollution prevention process modifications. If the department and the applicant shall fail to enter into an agreement, the department may issue a schedule setting forth a date certain on which the applicant shall comply.

Failure of the applicant to comply with the schedule setting forth a date for compliance shall constitute a violation of P.L.1954, c.212 (C.26:2C-1 et seq.), and shall subject the applicant to penalties as prescribed by that act. A person who constructs, installs, maintains, or operates pollution control equipment or devices or who implements pollution prevention process modifications that the department determines are not consistent with applicable federal or State laws, rules, or regulations, shall not be subject to civil or criminal penalties for that inconsistent action as long as the person's actions do not result in (1) the emission of an air contaminant that was not previously being emitted or that was not authorized to be emitted by the person's permit or certificate; or (2) an exceedance of any applicable air contaminant emission level in the permit or certificate.

Nothing in this section shall be construed to authorize the emission of an air contaminant not otherwise authorized to be emitted under a permit or certificate or the emission of an air contaminant at a level in excess of the air contaminant emission limitations contained in the permit or certificate. The provisions of this section shall not be construed to authorize or permit any construction, installation, maintenance, or operation which would result in any new air contaminant emissions but shall only apply to existing sources of air contaminant emissions.

As used in this section:

(1) "private entity" means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include, and the provisions of this section shall not apply to, any municipal, county, or State agency or authority or to any agency, authority or subdivision created by one or more municipal, county or State governments;

(2) "pollution prevention process modifications" means any physical or operational change to a process which reduces air contaminant emissions to the environment.

L.1994,c.101,s.2.

N.J.S.A 26 :2C-9.5 Emission fees.

5. a. (1) Each major facility shall pay to the department a fee or fees as calculated pursuant to this subsection and subsection d. of this section. The per-ton emission fees shall be based on the actual annual emissions of each regulated air contaminant, reported in the emission statement for that major facility, or, in the absence of such information, on permitted emissions, or where a permit has not been issued, on the potential to emit.

(2) Emission fees for each State fiscal year shall be based on the information reported in the emission statement year two years prior thereto.

(3) The amount of any emission fee payable pursuant to this section shall be adjusted for each State fiscal year by the percentage, if any, by which the CPI exceeds the CPI for calendar year 1989.

b. (Deleted by amendment, P.L.2002, c.34).

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c. (Deleted by amendment, P.L.2002, c.34).

d. (1) For the State fiscal year 2003 and each fiscal year thereafter, each major facility shall pay the following fees:

(a) An emission fee of \$60 (in 1989 dollars adjusted by the CPI) per ton of each regulated air contaminant;

(b) An initial and renewal operating permit application fee per facility not to exceed \$50,000. For the purpose of calculating the initial and renewal operating permit application fee, the significant equipment listed in the operating permit application shall be assessed at \$125 per piece of equipment. The operating permit application fee shall be submitted at the time of submission of the operating permit application; and

(c) A fee for any significant modification in an amount calculated using a fee schedule therefor to be set forth in rules and regulations to be adopted by the department, except that no fee for a significant modification review shall exceed \$50,000.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, no major facility shall pay an emission fee less than \$3,000 for each of the State fiscal years 2003 and thereafter.

e. (Deleted by amendment, P.L.2002, c.34).

f. (Deleted by amendment, P.L.2002, c.34).

g. The provisions of P.L.1993, c.361 (C.13:1D-120 et seq.) shall not apply to the assessment or payment of emission fees required pursuant to this section.

h. (Deleted by amendment, P.L.2002, c.34).

L.1995,c.188,s.5; amended 2002, c.34, s.46.

N.J.S.A 26 :2C-9.6. Dedication, appropriation of revenues

6. Pursuant to the mandate of the federal Clean Air Act, all revenues collected pursuant to section 5 of P.L.1995, c.188 (C.26:2C-9.5) shall be dedicated and appropriated annually solely for use by the department in administering the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) with regard to major facilities. Except as provided otherwise for the supplemental surcharge assessed pursuant to section 5 of P.L.1995, c.188 (C.26:2C-9.5), those monies shall be used only to hire personnel and fund positions, procure necessary equipment, and fund the functions of the department prescribed pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) with regard to major facilities and to fund implementation and operation of the small business stationary source technical and environmental compliance assistance program required pursuant to 42 U.S.C. 7661f of the federal Clean Air Act. Such program costs may also include, but need not be limited to, costs connected to or associated with: program planning; data collection; investigations; rule and regulation development; reviewing, issuing, and administering operating permits; monitoring and administratively enforcing compliance with laws, codes, rules, regulations, and permits; and any other activities with regard to major facilities required for State compliance with the federal Clean Air Act.

L.1995,c.188,s.6.

N.J.S.A 26 :2C-9.7. Annual report on air quality

7. On or before March 1, 1996, and annually thereafter, the department shall prepare and submit to the Governor and the Legislature an annual report on the status of New Jersey's air quality, New Jersey's progress toward attainment with the federal Clean Air Act, and the operating permit program created pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.). Notice of the preparation and submission of this report shall be published in the New Jersey Register. The report shall include:

a. An accounting of all direct and indirect costs incurred by the operating permit program; the revenues received from fees; a list of all fees still due; and the amount of penalties imposed and collected during the previous year; and

b. A staff and workload analysis of all components of the program to regulate, monitor, and control or prevent emissions of air contaminants.

The report shall also identify any need for legislative action to adjust the emission fee prescribed pursuant to section 5 of P.L.1995, c.188 (C.26:2C-9.5) to ensure that the fee is adequate to fund the air pollution control program in accordance with the mandates of the federal Clean Air Act, and discuss the advantages and disadvantages of setting higher emission fees for hazardous air pollutants.

L.1995,c.188,s.7.

N.J.S.A 26 :2C-9.8 Rules, regulations; fees.

8. a. Within 90 days after the effective date of this act, the department shall propose, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that establish emissions trading and banking programs that use economic incentives to make progress toward the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), reduce or prevent emissions of air contaminants, ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution. The department shall adopt those rules and regulations within 90 days after proposal.

b. The emissions trading rules and regulations shall be designed so that emissions reductions shall be realized earlier or at a more accelerated rate than would otherwise be achieved in accordance with applicable air quality mandates, and so that compliance with air quality mandates can be achieved with greater flexibility or at lower cost. The rules and regulations shall establish criteria for the generation and use of emissions reduction credits, including the use of emissions reduction credits in lieu of granting exemptions or waivers from compliance with emissions reduction requirements, and shall require that 10% of the emissions reduction credits gained shall be permanently retired for the public benefit when a trade occurs. The rules and regulations may include, but need not be limited to, provisions designating the pollutants to be involved in the program, designating the persons who may participate in the program, establishing emissions limitations and methods for projecting and verifying emissions, and establishing enforcement mechanisms, including emissions tracking, periodic program audits, and penalties.

For any emissions trading program adopted for the purpose of making progress toward attaining the National Ambient Air Quality Standard (NAAQS) for ozone, the department may allow reductions of volatile organic compounds (VOCs) to be substituted for required reductions of oxides of nitrogen (NO_x) or reductions of oxides of nitrogen (NO_x) to be substituted for required reductions of volatile organic compounds (VOCs). Any such substitution shall occur at a ratio established by the department by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which shall be developed in recognition of the role of each pollutant in the formation of ground level ozone.

c. The emissions trading rules and regulations adopted by the department shall not conflict with applicable federal law and shall constitute, contribute to, or be consistent with one or more strategies that result in quantifiable emissions reductions and are creditable under the State Implementation Plan (SIP) required pursuant to the federal Clean Air Act. These may be emission limiting or market-response strategies for mobile, stationary, or area sources, and shall include the creation, trading, and use of emissions reduction credits.

d. The department may establish the emissions trading programs as State, multi-state, or regional programs as long as the programs contribute to the goal of improving the air quality in New Jersey.

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e. The department shall involve in the development of the rules and regulations for emissions trading programs representatives of the affected industry, environmental, and public interest groups as well as governmental entities with affected or related jurisdictions.

f. The department shall consider the role of a third party in the banking, verification, validation of use, enforcement, and program audits associated with emissions reduction credits, and, to the maximum extent possible, create and preserve opportunities for private sector participation in any emissions trading program established by the department.

g. The Department of Environmental Protection may establish by rule fees for administrative services provided to implement emission trading programs.

L.1995,c.188,s.8; amended 2002, c.34, s.47.

N.J.S.A 26 :2C-14. Order to cease

Whenever the department has cause to believe that any person is violating any code, rule or regulation promulgated by the department, the department shall cause a prompt investigation to be made in connection therewith.

If upon inspection the department discovers a condition which is in violation of the provisions of this act or any code, rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order. The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, regulation, order, or permit condition violated; the amount of the fine which shall be imposed; a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing.

The person responsible shall make the corrections necessary to comply with the requirements of this act or code, rule or regulation promulgated pursuant thereto within the time specified in the order.

Nothing herein shall be deemed to prevent the department from prosecuting any violation of this act or any code, rule or regulation promulgated pursuant thereto, notwithstanding that such violation is corrected in accordance with its order.

L. 1954, c. 212, p. 785, s. 14. Amended by L. 1962, c. 215, s. 6; L. 1967, c. 106, s. 8, eff. June 15, 1967; L. .1985, c. 12, s. 2, eff. Jan. 22, 1985.

N.J.S.A 26 :2C-14.1. Hearing on request; final order

Any person aggrieved by an order of the department has 20 days from receipt of the order within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing, if requested, and upon a finding that a violation has occurred, the commissioner may issue a final order to cease the violation and assessing the amount of the fine specified in the order. If no hearing is requested, the order is a final order upon the expiration of the 20 day period. Payment of the penalty is due when a final order is issued or when the order becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in P.L. 1954, c. 212 (C. 26 :2C-1 et seq.), and the payment of a civil administrative penalty does not affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. Pending the determination by the department and upon application therefor the department may stay the operation of such order upon such terms and conditions as it may deem proper.

L. 1962, c. 215, s. 9. Amended by L. 1985, c. 12, s. 3, eff. Jan. 22, 1985.

N.J.S.A 26 :2C-16. Evidence at hearing; transcript

The testimony taken at any hearing shall be under oath and recorded stenographically, but the parties shall not be bound by the strict rules of evidence prevailing in the courts of law and equity. True copies of any transcript and of any other record made of or at such hearing shall be furnished to any party thereto upon request and at his expense.

L.1954, c. 212, p. 785, s. 16. Amended by L.1962, c. 215, s. 8.

N.J.S.A 26 :2C-17. Hearings before department

Any hearing required by this act to be held before the department shall be held before the State Commission of Health, or a member of the department designated by him, who shall have power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter under investigation in any such hearing. The department, at the request of any respondent to a complaint made by it, or to it, pursuant to this act, shall subpoena and compel the attendance of such witnesses as the respondent may designate and require the production for examination of any books or papers relating to any matter under investigation in any such hearing.

L.1954, c. 212, p. 785, s. 17.

N.J.S.A 26 :2C-19. Actions to prohibit and prevent violations; civil administrative penalty; civil penalty; notice of release of air contaminants; penalties; alternative dispute resolution

19. a. If any person violates any of the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation or order adopted or issued pursuant thereto, the department may institute a civil action in a court of competent jurisdiction for injunctive or any other appropriate relief to prohibit and prevent such violation or violations and the court may proceed in the action in a summary manner.

b. Any person who violates the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation or order adopted or issued pursuant thereto shall be liable to a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. No civil administrative penalty shall be levied except upon an administrative order issued pursuant to section 14 of P.L.1954, c.212 (C.26:2C-14).

c. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

d. Any person who violates the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation, or order adopted or issued pursuant thereto, or a court order issued pursuant to subsection a. of this section, or who fails to pay a civil administrative penalty in full pursuant to section 9 of P.L.1962, c.215 (C.26:2C-14.1), is subject, upon order of the court, to a civil penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day during which the violation continues, or each day in which the civil administrative penalty is not paid in full, constitutes an additional, separate and distinct offense. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law Division of the Superior Court has jurisdiction to enforce "the penalty enforcement law."

e. A person who causes a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately notify the department. A person who fails to so notify the department is liable to the penalties and procedures prescribed in this section.

f. Any person who:

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(1) purposely or knowingly violates the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.), or any code, rule, regulation, administrative order, or court order adopted or issued pursuant thereto, is guilty of a crime of the third degree;

(2) purposely or knowingly violates any federally mandated air pollution control requirement, any operating permit condition, or any fee or filing requirement imposed in connection with an operating permit is guilty of a crime of the third degree, the sentence for which may include, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, an enhanced fine of \$10,000 per day per violation;

(3) purposely or knowingly makes any false material statement, representation, or certification in any form, notice, statement, or report required in connection with an operating permit, or who purposely or knowingly renders inaccurate any monitoring device or method required by an operating permit, is guilty of a crime of the third degree, the sentence for which may include, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, an enhanced fine of \$10,000 per day per violation;

(4) recklessly violates the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.), or any code, rule, regulation, administrative order, or court order adopted or issued pursuant thereto, is guilty of a crime of the fourth degree.

g. In determining whether an odor unreasonably interferes with the enjoyment of life or property in violation of P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation or order adopted or issued pursuant thereto, the department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances.

The department shall publish in the New Jersey Register the guidelines and procedures utilized by the department for the investigation of citizen complaints regarding odors.

h. The department shall establish procedures for alternative dispute resolution as an option for settlement of contested cases. Alternative dispute resolution shall be voluntary and shall not be mandated by the department.

L.1954,c.212,s.19; amended 1962,c.215,s.11; 1967,c.105,s.1; 1985,c.12,s.1; 1989,c.333; 1995,c.188,s.9.

N.J.S.A 26 :2C-19.1. Findings, declaration

1. The Legislature finds that equipment in facilities regulated by the "Air Pollution Control Act (1954)," P.L.1954, c.212, may malfunction or fail to perform optimally, even when carefully maintained and operated; that violations of the act may occur due to an unforeseeable and unavoidable malfunction, during equipment start-up or shut-down, or during necessary equipment maintenance due to the inherently intricate nature of mechanical equipment; and that these violations should not be accorded penalties as long as any resulting air emission causes no potential threat to the public health, welfare or the environment. The Legislature therefore finds and declares that it is the policy of this State to protect the public health, welfare and the environment, to promote the careful operation and maintenance of equipment in facilities regulated by the "Air Pollution Control Act (1954)," and to reduce the unnecessary burden of monetary penalties for violations caused by a non-recurring equipment malfunction, equipment start-up, or equipment shut-down or during necessary equipment maintenance by providing an affirmative defense to liability for penalties when a facility is operated and maintained carefully, when all reasonable steps are taken to minimize emission levels caused by a violation, and when the emissions do not cause a potential threat to the public health, welfare or the environment.

L.1993,c.89,s.1.

N.J.S.A 26 :2C-19.2. Entitlement to affirmative defense

2. a. A person shall be entitled to an affirmative defense to liability for penalties for a violation of a condition, emission rate, limit, or standard, required pursuant to a permit issued pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) or a violation of any rule or regulation adopted pursuant to P.L.1954, c.212, when the violation occurs as a result of an equipment malfunction, an equipment start-up, or an equipment shut-down, or during the performance of necessary equipment maintenance. A person shall be entitled to this affirmative defense only if the person complies with the provisions of subsection b. of this section.

b. A person asserting an affirmative defense pursuant to subsection a. of this section shall notify the department of the violation by 5:00 p.m. of the second full calendar day following the occurrence, or if due diligence was exercised to discover the violation, by 5:00 p.m. of the second full calendar day after becoming aware of the occurrence, and, within 30 days thereof, shall submit written documentation on the circumstances of the violation and demonstrating as applicable, that:

(1) the violation occurred, and was caused by an equipment malfunction, an equipment start-up, or an equipment shut-down, or during the performance of necessary equipment maintenance, as applicable;

(2) the facility was being operated with due care;

- (3) the violation did not result from operator error or failure to maintain the equipment with due care;
- (4) the person has taken all reasonable steps to minimize levels of emissions caused by the violation;
and
- (5) with respect to violations caused by a malfunction, the malfunction is not a part of a recurrent pattern.

L.1993,c.89,s.2.

N.J.S.A 26 :2C-19.3. No entitlement to affirmative defense

3. A person shall not be entitled to an affirmative defense to liability pursuant to section 2 of P.L.1993, c.89 (C.26:2C-19.2) for any violation that causes the presence in the outdoor atmosphere of one or more air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment.

L.1993,c.89,s.3.

N.J.S.A 26 :2C-19.4. Construction of act

4. Nothing in P.L.1993, c.89 (C.26:2C-19.1 et seq.) shall be construed to limit or alter the responsibility of a person who causes a release of air contaminants to notify the department immediately as required pursuant to subsection e. of section 19 of P.L.1954, c.212 (C.26:2C-19).

L.1993,c.89,s.4.

N.J.S.A 26 :2C-19.5. Rules, regulations; unavailability of affirmative defense

5. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that establish limitations upon the maximum frequency and duration of violations resulting from equipment malfunctions, equipment start-ups, equipment shut-downs, and the performance of necessary equipment maintenance operations for which an affirmative defense may be asserted pursuant to section 2 of P.L.1993, c.89 (C.26:2C-19.2). The limitations shall be based upon the operating history of similar sources on an industry basis.

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b. The affirmative defense established pursuant to section 2 of P.L.1993, c.89 (C.26:2C-19.2), shall not be available with respect to violations arising from equipment malfunctions, equipment start-ups, or equipment shut-downs, or during necessary equipment maintenance operations, that occur more frequently or persist for a longer duration than the maximum limitations established pursuant to subsection a. of this section.

L.1993,c.89,s.5.

N.J.S.A 26 :2C-20. Review

Review of any final decision or action by the department shall be by procedure in lieu of prerogative writs. Review of the validity of any code, rule or regulation promulgated by the department shall likewise be by procedure in lieu of prerogative writs.

L.1954, c. 212, p. 787, s. 20. Amended by L.1967, c. 106, s. 9, eff. June 15, 1967.

N.J.S.A 26 :2C-21. Existing remedies not impaired

No existing civil or criminal remedy for any wrongful action which is a violation of any code, rule or regulation of the commission shall be excluded or impaired by this act.

L.1954, c. 212, p. 787, s. 21.

N.J.S.A 26 :2C-22. Relation of local ordinances or regulations to State law

22. a. (1) No ordinances of any governing body of a municipality or county or board of health more stringent than P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rules or regulations adopted pursuant thereto shall be superseded by P.L.1954, c.212 (C.26:2C-1 et seq.). After the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.), no municipality, county, local board of health, local health agency, regional health commission, or any other political subdivision of the State may enact any ordinance, pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.), section 9 of P.L.1977, c.443 (C.26:3A2-27), or any other authority, concerning the subject matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.), except as provided in subsection b. of this section, whether that subject matter is expressed by inclusion in or exclusion from that act.

Penalties for violations of ordinances of a governing body of a municipality or county or board of health shall not exceed \$2,500.

Nothing set forth in the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et al.), or any codes, rules or regulations adopted pursuant thereto, shall affect the validity of local ordinances adopted pursuant to this section prior to the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.) or amendments thereto adopted as authorized pursuant to subsection b. of this section.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, no fee imposed upon any facility by the governing body of a municipality or county or board of health relating to the control of air pollution, which fee was imposed pursuant to this section, section 7 of P.L.1991, c.99 (C.26:3A2-34), or any other law, may be increased above the amount imposed upon that facility as of June 15, 1995. In no event may any such fee imposed upon any facility exceed a total of \$1,000 per year over a given fee cycle and any such fee that exceeds that amount shall be reduced to \$1,000 after the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.). Ordinances adopted prior to the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.) that impose fees exceeding the \$1,000 limit shall be amended to conform to the provisions of this subsection at or before the end of the present ordinance fee cycle. In order to prevent the pass through of fees capped by this section onto any facility engaging in activities not related to the control of air pollution, no fee imposed pursuant to section 7 of P.L.1991, c.99 (C.26:3A2-34) for such activities may be increased above the amount imposed upon that facility as of June 15, 1995.

c. Notwithstanding the provisions of subsection a. or b. of this section to the contrary, nothing in this section or in the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et al.) shall be construed to authorize ordinances providing for the local regulation of, or collection of fees from, any facility required to obtain an operating permit pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2) or any research and development facility. However, local inspections of such facilities or research and development facilities delegated pursuant to the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et al.) may be conducted as necessary in response to citizen complaints.

L.1954,c.212,s.22; amended 1967,c.106,s.10; 1985,c.12,s.4; 1995,c.188,s.10.

N.J.S.A 26 :2C-23. Functions of Department of Health not impaired

The powers, duties and functions vested in the State Department of Health under the provisions of this act shall not be construed to affect in any manner the powers, duties and functions vested in the State Department of Health under any other provisions of law.

L.1954, c. 212, p. 785, s. 23.

N.J.S.A 26 :2C-24. Clean air scholarship intern program

(a) There is hereby established a Clean Air Scholarship Intern Program.

(b) The Commissioner of the Department of Environmental Protection may provide for the payment of room, board, tuition and fees for eligible persons to attend any accredited college or university authorized by the commissioner as a regular student to receive an engineering degree or a degree with a major in the biological, physical or environmental sciences satisfactory to the commissioner until the eligible person satisfactorily completes 4 scholastic years.

(c) To be eligible for the Clean Air Scholarship Intern Program a person must:

(1) Be a citizen of the United States and the State of New Jersey;

(2) Be a high school graduate or have an equivalent education;

(3) Have been accepted for admission to the accredited college or university authorized by the commissioner as a regular student and accepted in said college or university to pursue a course of instruction satisfactory to the commissioner;

(4) Contract, with the consent of his parent or legal guardian if he is a minor, with the commissioner or his designated representative, to serve with the Department of Environmental Protection for a period of 3 years following graduation and further, to serve with the Department of Environmental Protection during the regular periods of summer vacation except for such vacation periods as the commissioner shall establish by regulation and provided further that the department shall not be liable to pay wages to said student during said vacation periods.

(d) The appointments made by the commissioner hereunder shall be subject to available appropriations and shall be awarded on a competitive basis.

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(e) The Scholarship Intern Program shall be administered by the commissioner under such regulations as the commissioner shall prescribe.

L.1967, c. 106, s. 14, eff. June 15, 1967. Amended by L.1970, c. 274, s. 1, eff. Nov. 5, 1970.

N.J.S.A 26 :2C-25. Graduate study program

The commissioner, subject to available appropriations and grants from other sources, may provide within the Department of Health for a program of graduate study for eligible persons to attend any accredited graduate program at a college or university in order to further the training of personnel for the purposes of administering this act. Said graduate program shall be administered by the commissioner under such regulations as the commissioner shall prescribe.

L.1967, c. 106, s. 15, eff. June 15, 1967.

N.J.S.A 26 :2C-25.1. Small Business Compliance Advisory Panel

11. For the purposes of complying with the federal Clean Air Act, there is created in the Department of Environmental Protection a Small Business Compliance Advisory Panel.

a. The Small Business Compliance Advisory Panel shall consist of seven members, as follows:

(1) two members, appointed by the Governor, who shall represent the general public and shall not be owners, or representatives of owners, of small business stationary sources;

(2) four members who shall own a small business stationary source or represent owners of small business stationary sources, of whom one each shall be appointed respectively by the President of the Senate, the Speaker of the General Assembly, the Senate Minority Leader, and the Assembly Minority Leader; and

(3) one member who shall be appointed by the Commissioner of Environmental Protection as the commissioner's representative.

b. (1) Members of the panel shall:

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- (a) serve for two-year terms;
 - (b) annually elect, by majority vote of the full membership of the panel, a chairperson and a vice-chairperson; and
 - (c) serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.
- (2) The panel shall meet at least four times per year.
- c. It shall be the responsibility of the panel to:
- (1) render advisory opinions to the Commissioner of Environmental Protection concerning the effectiveness of the department's program for assisting small business stationary sources with technical and environmental compliance issues with respect to air pollution control, as required pursuant to 42 U.S.C. 7661f of the federal Clean Air Act, and concerning air pollution control requirements, permitting, and enforcement pertaining to small business;
 - (2) make periodic reports to the Commissioner of Environmental Protection and the Administrator of the United States Environmental Protection Agency concerning compliance of the State's air pollution control program with the requirements of the federal "Paperwork Reduction Act" (44 U.S.C. 3501 et seq.), the federal "Regulatory Flexibility Act" (5 U.S.C. 601 et seq.), and the federal "Equal Access to Justice Act" (5 U.S.C. 504 et seq. and 28 U.S.C. 2412 et seq.) as they relate to small business;
 - (3) review information and air pollution control permit applications provided to small business stationary sources to assure that the information and applications are understandable to the layperson; and
 - (4) determine if the department provides for the development and dissemination of those advisory opinions and reports issued in accordance with the provisions of this section.

L.1995,c.188,s.11.

N.J.S.A 26 :2C-25.2. Industry, environmental work groups

12. The department shall establish industry and environmental work groups as appropriate to consult on matters relating to the regulation of air pollution sources. The work groups shall consist of members

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of industry, environmental, and other interested and affected parties as may be deemed appropriate by the department.

Within 90 days after the effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.), the department shall also establish an industry and environmental work group to evaluate the effects of emissions reductions on emission fee revenues and the resultant impact on the department's air pollution control program. As part of the 1997 annual report required pursuant to section 7 of P.L.1995, c.188 (C.26:2C-9.7), the fee work group shall present its evaluation and a recommendation on alternatives to funding the department's air pollution control program other than through an increase in emission fees.

The fee work group shall also make such evaluations and recommendations concerning fee revenues and supplemental surcharge revenues as required pursuant to section 5 of P.L.1995, c.188 (C.26:2C-9.5).

L.1995,c.188,s.12.

N.J.S.A 26 :2C-26. Short title

This act shall be known and may be cited as the "Air Pollution Emergency Control Act (1967)."

L.1967, c. 108, s. 1, eff. June 15, 1967.

N.J.S.A 26 :2C-27. Legislative findings

The Legislature finds and declares that air pollution may at certain times and in certain places so seriously affect the health of the public and so directly threaten the lives of large portions of the population as to warrant the provision of emergency powers as in this act provided to prevent or minimize disasters of unforeseeable proportions.

L.1967, c. 108, s. 2, eff. June 15, 1967.

N.J.S.A 26 :2C-28. "Area" defined

As used in this act "area" means and refers not only to that portion or portions of the State as shall be described in the air pollution emergency declaration of the Governor but also to any other portion or portions of the State where activities are carried on which contribute or may contribute to the air pollution emergency in the portion or portions of the State described in the Governor's declaration.

L.1967, c. 108, s. 3, eff. June 15, 1967.

N.J.S.A 26 :2C-29. Air pollution emergency; determination

If the State Commissioner of Health determines at any time that air pollution, in any county, locality, place or other area in the State constitutes an unreasonable and emergency risk to the health of those present within said area of the State, such determination shall be communicated in writing, with the factual findings on which such determination is based, to the Governor; the commissioner may delegate in writing to any employee of the department the power to make such determination and deliver the same to the Governor in the absence of the commissioner from the State. Upon being so advised the Governor may by proclamation declare, as to all or any part of said area mentioned in the aforesaid determination, that an air pollution emergency exists, and upon making such declaration the Governor shall have the following powers which he may exercise in whole or in part by the issuance of an order or orders:

- (a) To prohibit, restrict or condition motor vehicle travel of every kind, including trucks and buses, in the area;
- (b) To prohibit, restrict or condition the operation of retail, commercial, manufacturing, industrial, or similar activity in the area;
- (c) To prohibit, restrict or condition operation of incinerators in the area;
- (d) To prohibit, restrict or condition the burning or other consumption of any type of fuel in the area;
- (e) To prohibit, restrict or condition the burning of any materials whatsoever in the area;
- (f) To prohibit, restrict or condition any and all other activity in the area which contributes or may contribute to the air pollution emergency.

L.1967, c. 108, s. 4, eff. June 15, 1967.

N.J.S.A 26 :2C-30. Proclamation by Governor

The declaration by proclamation of the Governor of an air pollution emergency and any order issued by the Governor pursuant to such declaration shall be given maximum publicity throughout the State.

L.1967, c. 108, s. 5, eff. June 15, 1967.

N.J.S.A 26 :2C-31. Gubernatorial order; duration

Any gubernatorial order may be amended or modified by further gubernatorial orders. Said order or orders shall not require any judicial or other order or confirmation of any type in order to become immediately effective as the legal obligation of all persons, firms, corporations and other entities within the State. Said order shall remain in effect for the duration of time set forth in same, and if no time limit is specified in said order, same shall remain in effect until the Governor declares by further proclamation that the emergency has terminated.

L.1967, c. 108, s. 6, eff. June 15, 1967.

N.J.S.A 26 :2C-32. Enforcement of orders

The aforesaid orders of the Governor shall be enforced by the Departments of Health, Defense, and the State and local police and air pollution enforcement personnel forces. Those enforcing any Governor's order shall require no further authority or warrant in executing same than the issuance of the order itself. Those authorized to enforce said orders may use such reasonable force as is required in the enforcement thereof, and may take such reasonable steps as are required to assure compliance therewith including, but without limiting the generality of the foregoing, the following:

(a) Entering any property or establishment whatsoever, commercial, industrial, or residential, believed to be violating said order (excepting single or double family homes or any dwelling unit within a multiple dwelling unit larger than a double family home) and, if a request does not produce compliance, causing compliance with said order;

(b) Stopping, detouring, rerouting, and prohibiting motor vehicle travel and traffic;

(c) Disconnecting incinerator or other types of combustion facilities;

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(d) Terminating all burning activities;

(e) Closing down or restricting the use of any business, commercial, retail, manufacturing, industrial or other establishment.

Where any person authorized to enforce such an order believes or suspects that same is being violated in a single or double family residence or within the dwelling portion of a large multiple dwelling unit, said residence or dwelling portion thereof may be entered only upon obtaining a search warrant from any judge having power to issue same.

L.1967, c. 108, s. 7, eff. June 15, 1967.

N.J.S.A 26 :2C-33. Violation of order; penalty

Any person, firm, corporation or other entity within this State which violates any Governor's order with knowledge of same, or knowingly fails to comply with the directions of those authorized by the Governor to enforce said order, or knowingly interferes with the enforcement of such an order or such directions, shall be guilty of a high misdemeanor and shall be punished by a fine of not more than \$100,000.00 or by imprisonment for not more than 10 years, or both.

L.1967, c. 108, s. 8, eff. June 15, 1967.

N.J.S.A 26 :2C-34. Liability for torts in enforcement of order

No cause of action against the State or any person authorized by the Governor to enforce any order issued pursuant to this act for false arrests, false imprisonment, or other tort shall arise out of the good faith attempt of such person to enforce such order.

L.1967, c. 108, s. 9, eff. June 15, 1967.

N.J.S.A 26 :2C-35. Aggrieved persons; hearing; notice

Any aggrieved person, firm or corporation or other entity upon application to the commissioner shall be granted a public hearing on the question of whether or not the continuance of any such order in whole or in part is unreasonable in the light of the then prevailing conditions of air pollution, the contribution to the same of any particular activity, and the purposes of this act. Said public hearing shall be conducted as quickly as possible by said commissioner who shall give public notice of same. The

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commissioner shall have the power to compel attendance, testimony, and the production of documents by the use of subpoena powers. The number of witnesses and the extent of testimony shall be within his control. If the commissioner, upon conclusion of such hearing, determines that any such order should be terminated, or modified in any way whatsoever, he shall report such findings and recommendations to the Governor for such action as he deems appropriate.

L.1967, c. 108, s. 10, eff. June 15, 1967.

N.J.S.A 26 :2C-36. Stand-by orders

The commissioner shall promulgate a set of proposed stand-by orders which might be appropriate for use by the Governor upon declaration of the emergency contemplated by this act. Such stand-by control proposals, when approved by the Governor, shall be distributed to the appropriate agencies and to all commercial and industrial concerns throughout this State concerned with enforcement or impact of this act, and notice of their contents shall be given to the public. The commissioner shall promulgate arrangements for the enforcement of said stand-by orders and, upon approval by the Governor, notice of said arrangements shall also be distributed to said authorities, commercial and industrial concerns, and to the general public. Said proposed stand-by orders and arrangements shall not, however, become operative except when directed by the Governor in any order issued by him pursuant to a declaration of emergency under this act.

L.1967, c. 108, s. 11, eff. June 15, 1967.

N.J.S.A 26 :2C-37 Short title.

1. This act shall be known and may be cited as the "Global Warming Response Act."

L.2007, c.112, s.1.

N.J.S.A 26 :2C-38 Findings, declarations relative to greenhouse gas emissions.

2. The Legislature finds and declares that internationally the issue of global warming has caused alarm, awareness, and action concerning climate changes occurring around the globe attributed to the high level of certain gases called "greenhouse gases" - gases that increase temperatures in the atmosphere and the risk of catastrophic changes to the Earth's ecosystems and environment; that, while this global warming may be a theory to some, the effects of increasing levels of greenhouse gases in the atmosphere are accepted by many respected scientists and members of the international community as seriously detrimental to the ecosystems and environment of the world; that, ultimately, if steps are not

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taken to reverse these trends, the effects on human, animal and plant life on Earth may be catastrophic; that solutions exist to halt the increasing of greenhouse gases in the atmosphere and reduce these emissions; that, as a global issue, each country and region within a country must do its part to reduce these greenhouse gases that threaten the globe; and that, as a State, there are specific actions that can be taken to attack the problem of global warming, through reductions of greenhouse gas emissions in the State and participation in regional and interstate initiatives to reduce these emissions regionally, nationally, and internationally.

The Legislature therefore finds and declares that it is in the public interest to establish a greenhouse gas emissions reduction program to limit the level of Statewide greenhouse gas emissions, and greenhouse gas emissions from electricity generated outside the State but consumed in the State, to the 1990 level or below, of those emissions by the year 2020, and to reduce those emissions to 80% below the 2006 level by the year 2050.

L.2007, c.112, s.2.

N.J.S.A 26 :2C-39 Definitions relative to greenhouse gas emissions.

3. For the purposes of this act:

"Department" means the Department of Environmental Protection.

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or substance determined by the Department of Environmental Protection to be a significant contributor to the problem of global warming.

"Statewide greenhouse gas emissions" means the sum of calendar year emissions of greenhouse gases from all sources within the State, and from electricity generated outside the State but consumed in the State, as determined by the department pursuant to subsection c. of section 5 of this act.

"2020 limit" means the level of greenhouse gas emissions equal to the 1990 level of Statewide greenhouse gas emissions.

"2050 limit" means the level of greenhouse gas emissions equal to 80 percent less than the 2006 level of Statewide greenhouse gas emissions.

L.2007, c.112, s.3.

N.J.S.A 26 :2C-40 Limit on Statewide greenhouse gas emissions mandated for 2020, 2050.

4. a. No later than January 1, 2020, the level of Statewide greenhouse gas emissions shall be reduced to, or below, the 2020 limit. No later than January 1, 2050, the greenhouse gas emissions in the State shall be stabilized at or below the 2050 limit and shall not exceed that level thereafter. The department shall consider the economic impact upon the State and upon the emitters of a greenhouse gas for any measure imposed to meet the 2020 limit and the 2050 limit.

b. No later than one year after the date of enactment of this act, the department shall establish:

(1) an inventory of the current and 2006 Statewide greenhouse gas emissions; and

(2) an inventory of the 1990 level of Statewide greenhouse gas emissions.

L.2007, c.112, s.4.

N.J.S.A 26 :2C-41 Rules, regulations for monitoring, reporting emissions.

5. a. No later than January 1, 2009, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing a greenhouse gas emissions monitoring and reporting program to monitor and report Statewide greenhouse gas emissions.

b. The rules and regulations adopted pursuant to subsection a. of this section shall identify all significant sources of Statewide greenhouse gas emissions and shall provide for, but need not be limited to, the following:

(1) monitoring and reporting of existing emissions and changes in emissions over time from the sources identified by the department;

(2) reporting the levels of those emissions and changes in those emissions levels annually, commencing on January 1, 2009; and

(3) monitoring progress toward the 2020 limit and the 2050 limit.

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c. Pursuant to the rules and regulations adopted pursuant to subsection a. of this section, the department shall require reporting of the greenhouse gas emissions:

(1) associated with fossil fuels used in the State, as reported by entities that are manufacturers and distributors of fossil fuels, which may include, but need not be limited to, oil refineries, oil storage facilities, natural gas pipelines, and fuel wholesale and retail distributors;

(2) from any entity generating electricity in the State and from any entity that generates electricity outside the State that is delivered for end use in the State. With respect to electricity generated outside the State and imported into the State, the department shall determine the emissions from that generation by subtracting the kilowatt-hours of electricity generated in the State from the kilowatt-hours of electricity consumed in the State, and multiplying the difference by a default emissions rate determined by the department;

(3) from any gas public utility as defined in section 3 of P.L.1999, c.23 (C.48:3-51); and

(4) from any additional entities that are significant emitters of greenhouse gases, as determined by the department, and as appropriate to enable the department to monitor compliance with progress toward the 2020 limit and the 2050 limit.

L.2007, c.112, s.5.

N.J.S.A 26 :2C-42 Evaluation of policies, measures for achievement of 2020 limit, 2050 limit; reports.

6. a. The department, in consultation with the Board of Public Utilities, the Department of Agriculture, the Department of Transportation, and the Department of Community Affairs, shall evaluate policies and measures that will enable the State to achieve the 2020 limit, shall make specific recommendations on how to achieve the emission reduction targets, including measures that reduce emissions in all sectors of the economy including transportation, housing, and consumer products, and shall evaluate the economic benefits and costs of implementing these recommendations. The department shall coordinate its evaluation of greenhouse gas emission reduction policies and measures with the work of the Energy Master Plan Committee established pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14).

b. No later than June 30, 2008, the department, and any other State agencies, as appropriate, shall prepare a report recommending the measures necessary to reduce greenhouse gas emissions to achieve the 2020 limit. The report shall include specific recommendations for legislative and regulatory action that will be necessary to achieve the 2020 limit. The report shall be transmitted to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) and to the

members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

c. No later than June 30, 2010, the department, and any other State agencies, as appropriate, shall prepare a report recommending the measures necessary to reduce greenhouse gas emissions to achieve the 2050 limit. The report shall include specific recommendations for legislative and regulatory action that will be necessary to achieve the 2050 limit. The report shall also include recommendations for additional policies and measures that will be required if the State is otherwise expected to exceed the 2020 limit and any additional measures that will be required to meet the 2050 limit. The report shall be transmitted to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

d. The Energy Master Plan Committee shall include in its adoption of the first update of the energy master plan completed after the date of enactment of this act, a list of recommended policies and measures to reduce the emission of greenhouse gases from the production, processing, distribution, transmission, storage, or use of energy that will contribute to achieving the 2020 limit.

e. Nothing in this act shall impose any limit on the existing authority of the department, the Board of Public Utilities, or any other State department or agency to limit or regulate greenhouse gas emissions pursuant to law.

L.2007, c.112, s.6.

N.J.S.A 26 :2C-43 Transmission of biennial report on greenhouse gas emission statistics; 2015 evaluation.

7. a. No later than January 1, 2009, and biennially thereafter, the department shall prepare and transmit, in writing, a report to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, on the status of the greenhouse gas emissions monitoring and reporting program established pursuant to this act, the current level of greenhouse gas emissions in the State and the progress made toward compliance with the 2020 limit and the 2050 limit established pursuant to this act. The report shall also include updated and comparative inventories of Statewide greenhouse gas emissions.

b. No later than January 1, 2015, the department shall evaluate the ecological, economic, and environmental factors and the technological capability affecting the attainment or maintenance of the 2020 limit and the 2050 limit established pursuant to this act.

L.2007, c.112, s.7.

N.J.S.A 26 :2C-44 Designation of independent research panel to review agency reports.

9. a. No later than June 30, 2008, the department shall designate an independent research review panel consisting of economists, business managers, nonprofit environmental organization representatives, and public officials, and scientists from academia, industry and the government, to review the recommendations and evaluations submitted by the department and any other State agencies, as appropriate, in the reports required pursuant to section 6 of this act.

b. The independent research review panel shall review the recommendations and evaluations of the department and any other State agencies, as appropriate, and shall, within 12 months of the date of transmittal of the reports required pursuant to section 6 of this act, prepare and transmit a report evaluating the ecological, economic and social impact of the proposed recommendations submitted by the department and any other State agencies, as appropriate, to the Governor, to the State Treasurer, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) and to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee.

c. This section shall not be construed to affect the requirements of the greenhouse gas emissions monitoring and reporting program or the department's administration of the program established pursuant to this act.

L.2007, c.112, s.9.

N.J.S.A 26 :2C-45 Findings, declarations relative to reduction of greenhouse gas emissions.

1. The Legislature finds and declares that New Jersey should implement cost-effective measures to reduce emissions of greenhouse gases, and that emissions trading and the auction of allowances can be an effective mechanism to accomplish that objective.

The Legislature further finds and declares that entering into agreements or arrangements with appropriate representatives of other states may further the purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.).

The Legislature further finds and declares that any carbon dioxide emissions allowance trading program established in the State to reduce emissions of greenhouse gases should provide both incentives to reduce emissions at their sources and funding or other consumer benefit incentives to reduce the demand for energy, which in turn would reduce the generation and emission of greenhouse gases.

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The Legislature further finds and declares that funding consumer benefit purposes will result in reduced costs to New Jersey consumers, decreased energy use, decreased greenhouse gas emissions, and substantial and tangible benefits to the energy-using business sector.

The Legislature further finds and declares that efforts to reduce greenhouse gas emissions in New Jersey must include complementary programs to reduce greenhouse gas emissions from electricity generated outside of the State but consumed in New Jersey, and that one measure that may be most effective in doing so is the adoption of a greenhouse gas emissions portfolio standard as authorized pursuant to the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) and section 38 of P.L.1999, c.23 (C.48:3-87).

The Legislature further finds and declares that energy efficiency and conservation measures and increased use of renewable energy resources must be essential elements of the State's energy future and that greater reliance on energy efficiency, conservation, and renewable energy resources will provide significant benefits to the citizens of this State.

The Legislature further finds and declares that public utility involvement and competition in the renewable energy, conservation and energy efficiency industries are essential to maximize efficiencies and the use of renewable energy and that the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) should be implemented to further competition.

The Legislature further finds and declares that any emissions allowance trading program established in the State to reduce emissions of greenhouse gases should transition to any federal program enacted by the federal government that is comparable to the emissions allowance trading program established in New Jersey.

The Legislature therefore determines that it is in the public interest to establish a program that authorizes the State to dedicate to consumer benefit purposes up to 100 percent of the revenues derived from the auction or other sale of allowances pursuant to an emissions allowance trading program and to authorize the Commissioner of Environmental Protection and the President of the Board of Public Utilities to further the purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), by participating with other states in the formation and activity of a separate legal entity established for the purpose of furthering the Regional Greenhouse Gas Initiative.

L.2007, c.340, s.1.

N.J.S.A 26 :2C-46 Definitions relative to reduction of greenhouse gas emissions.

2. As used in sections 1 through 11 and sections 14 and 15 of P.L.2007, c.340 (C.26:2C-45 et seq.):

"Allowance" means a limited authorization, as defined by the department, to emit up to one ton of carbon dioxide or its equivalent.

"Board" means the Board of Public Utilities.

"Compliance entity" means an owner or operator of an electric generating unit, with a nameplate capacity equal to or greater than 25 megawatts of electrical output, in New Jersey that is required to obtain allowances in order to operate an electric generating unit that holds an operating permit from the department issued pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.), whether that unit is in operation or in development. "Compliance entity" shall not include any cogeneration facility or combined heat and power facility that is an "on-site generation facility" as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51) and sells less than 10 percent of its annual gross electrical generation.

"Consumer benefit" means any action or measure to: promote energy efficiency; directly mitigate electricity ratepayer impacts; develop and deliver renewable or non-carbon-emitting energy technologies; stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction potential; fund programs that promote measurable electricity end-use energy efficiency in the commercial, institutional, and industrial sectors; or fund the administration of greenhouse gas emissions allowance trading and consumer benefit programs.

"Department" means the Department of Environmental Protection.

"Dispatch agreement facility" means a facility that is a compliance entity that is a cogeneration facility or has a heat rate below 8,100 BTU per kilowatt-hour, and has entered into a power agreement: (1) with a duration of more than 15 years from its effective date; (2) that provides that the entity's counterpart to the agreement controls the electric dispatch of the facility; (3) which was executed prior to January 1, 2002; and (4) which does not allow for the entity to pass the cost of allowances on to the counterpart to the agreement.

"Global Warming Solutions Fund" or "fund" means the "Global Warming Solutions Fund" established pursuant to section 6 of P.L.2007, c.340 (C.26:2C-50).

"Greenhouse gas" means the same as the term is defined in section 3 of P.L.2007, c.112 (C.26:2C-39).

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"Qualified participant" means a compliance entity or other entity that meets financial assurance and any other requirements to participate in an auction, as determined by the department in consultation with other entities participating in a regional, national or international program.

"Regional Greenhouse Gas Initiative" means the cooperative effort to reduce carbon dioxide emissions entered into by the governors of seven states through a Memorandum of Understanding signed on December 20, 2005, as amended.

L.2007, c.340, s.2.

N.J.S.A 26 :2C-47 Actions of department relative to allowances; report to Governor, Legislature.

3. a. (1) The department, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall take any measures necessary to sell, exchange, retire, assign, allocate, or auction any or all allowances that are created by, budgeted to, or otherwise obtained by the State in furtherance of any greenhouse gas emissions allowance trading program implemented to reduce or prevent emissions of greenhouse gases. The department shall take into consideration the principles and goals of the New Jersey Energy Master Plan in the rule making process. The department may exercise this authority in cooperation and coordination with other states or countries that are participating in regional, national or international carbon dioxide emissions trading programs with the same or similar purpose. In exercising this authority, the department shall exclude from the requirement to purchase or acquire any allowances under any greenhouse gas emissions trading program any cogeneration facility or combined heat and power facility that is an "on-site generation facility" as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51) and sells less than 10 percent of its annual gross electrical generation.

(2) Approval and notice by the department of specific procedures and requirements for any auction or other sale of allowances which are formulated by a for-profit or non-profit corporation, association or organization which the department and the board are authorized to participate in pursuant to section 11 of P.L.2007, c.340 (C.26:2C-55) shall not be subject to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), provided that the specific procedures and requirements are consistent with the process and general requirements outlined in regulations adopted by the department, and the public is afforded an opportunity for review and comment on such specific procedures and requirements.

b. If the rules or regulations adopted by the department pursuant to subsection a. of this section convey allowances utilizing an auction, then any auction:

(1) shall be conducted based on the schedule and frequency adopted by the department in consultation with other entities participating in a regional program;

(2) shall include the sale of allowances for current and future compliance periods to promote transparency and price stability;

(3) shall include auction design elements that minimize allowance price volatility, guard against bidder collusion, and mitigate the potential for market manipulation;

(4) shall include provisions to address, and to the extent practicable minimize, the potential for allowance market price volatility during the initial control period of a greenhouse gas emissions allowance trading program;

(5) shall include provisions to ensure the continued market availability of allowances to entities regulated under a greenhouse gas emissions allowance trading program, taking into account the outcomes of auctions and monitoring of the allowance market, which may include the adoption of a flexible process that allows for ongoing modification of auction design and procedures in response to allowance market conditions and allowance market monitoring data, provided that the process allows for public comment and input; and

(6) may be open to all qualified participants, and all qualified participants may sell or otherwise agree to transfer any or all allowances to any eligible entity.

c. The department shall review its position with any regional auction on an annual basis, including the amount of allowances that should be included in a regional auction. This annual review shall include consideration of the environmental and economic impact of the auction, leakage impacts, and the impact on electric generation facilities and ratepayers in the State. The department shall submit a written report of this review to the Governor and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report shall also be posted on the department's website.

L.2007, c.340, s.3.

N.J.S.A 26 :2C-48 Certified dispatch agreement facility eligible to purchase allowances, price.

4. A dispatch agreement facility that has been certified pursuant to section 5 of P.L.2007, c.340 (C.26:2C-49) shall be eligible to purchase allowances at the price of \$2 per allowance, pursuant to subsection a. of this section.

a. At least once each year, the department shall notify the owners and operators of dispatch agreement facilities of the opportunity to purchase allowances at the price of \$2 per allowance. Any

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offer by the department to sell allowances shall be for the quantity of allowances equal to the average annual carbon dioxide emissions for the dispatch agreement facility for the prior three-year period as determined by the department.

b. Within 30 days after receiving the notice required pursuant to subsection a. of this section, an owner or operator of a dispatch agreement facility shall notify the department whether it will accept the offer to purchase allowances and specify the quantity of allowances to be purchased up to the quantity determined pursuant to subsection a. of this section.

c. For any allowances not purchased by an owner or operator of a dispatch agreement facility pursuant to subsections a. and b. of this section, an owner or operator of a dispatch agreement facility shall purchase such allowances in accordance with the rules and regulations adopted by the department pursuant to section 3 of P.L.2007, c.340 (C.26:2C-47).

d. Any allowances purchased from the department pursuant to subsections a. and b. of this section and that are unused by a dispatch agreement facility for compliance at the end of a compliance period shall be assigned thereafter to the department.

e. The opportunity to purchase allowances pursuant to this section shall be limited to dispatch agreement facilities with power agreements that were executed prior to January 1, 2002, and the offer to purchase allowances shall expire upon termination or expiration of such agreement or when the services under a new contract become effective, whichever occurs earlier.

L.2007, c.340, s.4.

N.J.S.A 26 :2C-49 Certification that dispatch agreement facility qualifies for purchase of allowances.

5. a. The owner or operator of a dispatch agreement facility may certify to the department that the dispatch agreement facility qualifies to purchase allowances pursuant to section 4 of P.L. 2007, c.340 (C.26:2C-48).

b. The certification submitted to the department pursuant to subsection a. of this section shall be through a sworn affidavit with supporting documentation from an independent entity that attests to the facility's adherence to the definition of dispatch agreement facility as set forth in section 2 of P.L.2007, c.340 (C.26:2C-46). The affidavit shall be signed by both an official representative of the independent entity and by the chief financial officer or their equivalent of the owner or operator of the dispatch agreement facility. If there are any material changes to the sworn affidavit or supporting documentation filed with the department, the independent entity and representative of the owner or operator of the

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dispatch agreement facility shall resubmit an affidavit pursuant to this section within 30 days after the change occurs.

c. The certification shall be received by the department at least 30 days prior to the department making a notification, pursuant to subsection a. of section 4 of P.L.2007, c.340 (C.26:2C-48), of an offer to sell allowances to dispatch agreement facilities in order for the dispatch agreement facility to be deemed eligible to participate in the sale.

d. The owner or operator of a dispatch agreement facility claiming certification pursuant to this section shall provide on site, upon the request of the department, any information the department requires to determine the validity and extent of the certification.

e. Any signatory to the sworn affidavit in subsection b. of this section who knowingly gives or causes to be given any false or misleading information or who knowingly makes any false or misleading statement in complying with the provisions of this section shall be subject to a civil penalty of not more than \$500,000 for each offense and shall not be eligible to be certified as a dispatch agreement facility. Civil penalties imposed pursuant to this section shall be collected in a civil action by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, the court may assess against the violator the amount of any economic benefit accruing to the violator from the violation of the provisions of this section.

f. All penalties collected pursuant to this section shall be deposited in the "Global Warming Solutions Fund," established pursuant to section 6 of P.L.2007, c.340 (C.26:2C-50), and kept separate from other receipts deposited therein, and appropriated for the purposes of that fund.

L.2007, c.340, s.5.

N.J.S.A 26 :2C-50 "Global Warming Solutions Fund."

6. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Global Warming Solutions Fund." The fund shall be administered by the State Treasurer and shall be credited with:

a. moneys received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program;

b. such moneys as are appropriated by the Legislature; and

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c. any return on investment of moneys deposited in the fund.

L.2007, c.340, s.6.

N.J.S.A 26 :2C-51 Coordination in administration of programs; use of moneys.

7. a. The agencies administering programs established pursuant to this section shall maximize coordination in the administration of the programs to avoid overlap between the uses of the fund prescribed in this section.

b. Moneys in the fund, after appropriation annually for payment of administrative costs authorized pursuant to subsection c. of this section, shall be annually appropriated and used for the following purposes:

(1) Sixty percent shall be allocated to the New Jersey Economic Development Authority to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects and new, efficient electric generation facilities that are state of the art, as determined by the department, including but not limited to energy efficiency and renewable energy applications, to develop combined heat and power production and other high efficiency electric generation facilities, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential, to develop qualified offshore wind projects pursuant to section 3 of P.L.2010, c.57 (C.48:3-87.1), and to provide financial assistance to manufacturers of equipment associated with qualified offshore wind projects. The authority, in consultation with the board and the department, shall determine: (a) the appropriate level of grants or other forms of financial assistance to be awarded to individual commercial, institutional, and industrial sectors and to individual projects within each of these sectors; (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance, which criteria shall include the ability of the project to result in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand, provided, however, that neither the development of a new combined heat and power production facility, nor an increase in the electrical and thermal output of an existing combined heat and power production facility, shall be subject to the requirement to demonstrate such a measurable reduction; and (c) the process by which grants or other forms of financial assistance can be applied for and awarded including, if applicable, the payment terms and conditions for authority investments in certain projects with commercial viability;

(2) Twenty percent shall be allocated to the board to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector with a focus on urban areas, including efforts to address heat island effect and reduce impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.). For the purposes of this paragraph, the board, in consultation with the authority and the department, shall determine the

types of programs to be supported and the mechanism by which to quantify benefits to ensure that the supported programs result in a measurable reduction in energy demand;

(3) Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. For the purpose of conducting any program pursuant to this paragraph, the department, in consultation with the authority and the board, shall determine: (a) the appropriate level of grants or other forms of financial assistance to be awarded to local governments; (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance; (c) the process by which grants or other forms of financial assistance can be applied for and awarded; and (d) a mechanism by which to quantify benefits; and

(4) Ten percent shall be allocated to the department to support programs that enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

c. (1) The department may use up to four percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the department in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(2) The board may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the board in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(3) The New Jersey Economic Development Authority may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the authority in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases.

d. The State Comptroller shall conduct or supervise independent audit and fiscal oversight functions of the fund and its uses.

N.J.S.A 26 :2C-52 Guidelines, priority ranking system for allocation of funds.

8. a. Within one year after the date of enactment of P.L.2007, c.340 (C.26:2C-45 et al.), the department, in consultation with the New Jersey Economic Development Authority and the board, shall adopt, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), guidelines and a priority ranking system to be used to assist in annually allocating funds to eligible projects or programs pursuant to subsection b. of section 7 of P.L.2007, c.340 (C.26:2C-51).

b. The guidelines and the priority ranking system developed pursuant to this section for selecting projects or programs to be awarded grants or other forms of financial assistance from the fund shall include but need not be limited to an evaluation of each eligible project or program as to its predicted ability to:

(1) result in a net reduction in greenhouse gas emissions in the State or in greenhouse gas emissions from electricity produced out of the State but consumed in the State or net sequestration of carbon;

(2) result in significant reductions in greenhouse gases relative to the cost of the project or program and the reduction of impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.), and the ability of the project or program to significantly contribute to achievement of the State's 2020 limit and 2050 limit established pursuant to the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), relative to the cost of the project or program;

(3) reduce energy use;

(4) provide co-benefits to the State, including but not limited to creating job opportunities, reducing other air pollutants, reducing costs to electricity and natural gas consumers, improving local electric system reliability, and contributing to regional initiatives to reduce greenhouse gas emissions; and

(5) be directly responsive to the recommendations when submitted by the department to the Legislature pursuant to section 6 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-42).

L.2007, c.340, s.8.

N.J.S.A 26 :2C-53 Annual appropriation of moneys in fund.

9. a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions, appropriate the moneys in the Global Warming Solutions Fund for the purposes set forth in subsections b. and c. of section 7 of P.L.2007, c.340 (C.26:2C-51).

b. If the provisions of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Commissioner of Environmental Protection that the requirements of subsection a. of this section have not been met.

c. Sections 1 through 8 of P.L.2007, c.340 (C.26:2C-45 through C.26:2C-52) shall be without effect on and after the 10th day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of this section.

L.2007, c.340, s.9.

N.J.S.A 26 :2C-54 Interim decision as to comparability of national program; rules, regulations; final decision; disposition of allowances.

10. a. Within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the Commissioner of Environmental Protection shall render an interim decision as to whether the national program is substantially comparable to the greenhouse gas emissions allowance trading program in which the State is participating at that time. If the commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, then the department shall take such anticipatory administrative action in advance of the adoption of rules and regulations providing for implementation of a national emissions allowance trading program in order to minimize any delay in the State's participation in the national program.

b. Within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the Commissioner of Environmental Protection shall render a final decision as to whether the national program is substantially comparable to the greenhouse

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gas emissions allowance trading program in which the State is participating at that time. If the commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, the department shall thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.

c. The commissioner shall notify, in writing, the Governor and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) of the decisions made pursuant to this section.

d. The determination of the comparability of the programs, pursuant to subsections a. and b. of this section, shall be based upon the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the greenhouse gas emissions allowance trading program being implemented in the State at the time as compared to the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the national program and may consider the value of allowances or allowance auction proceeds directed to the State or other entity to benefit New Jersey energy consumers. Reductions anticipated through the implementation of other State regulated carbon reduction initiatives, including but not limited to a renewable energy portfolio standard or any energy efficiency portfolio standard adopted pursuant to section 38 of P.L.1999, c.23 (C.48:3-87), shall not be considered in determining the comparability of the programs.

L.2007, c.340, s.10.

N.J.S.A 26 :2C-55 Authority of commissioner, board president.

11. a. Notwithstanding the provisions of any other law, rule or regulation to the contrary, to further the purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), the commissioner and the board president, or their respective designees, are authorized to:

(1) enter any agreement or arrangement with the appropriate representatives of other states, including the formation of a for-profit or non-profit corporation, any form of association, or any other form of organization, in this or another state; and

(2) participate in any such corporation, association, or organization, and in any activity in furtherance of the purposes thereof, in any capacity including, but not limited to, as directors or officers.

b. Any actions that are consistent with, and that further the purposes of, P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) taken by the commissioner or the board president, or any employee of the department or the board authorized to take

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such actions by the commissioner or the board president, to form such corporation, association or organization, to participate in its activities, or to enter an agreement or arrangement prior to the date of enactment of P.L.2007, c.340 (C.26:2C-45 et al.), are hereby validated.

c. Nothing in P.L.2007, c.340 (C.26:2C-45 et al.) shall be deemed to constitute a waiver of sovereign immunity. By entering any agreement or arrangement authorized pursuant to this section, neither the commissioner nor the board president, nor their respective designees, nor the State consents to suit outside of New Jersey or consents to the governance of such suit under any law other than that of New Jersey.

L.2007, c.340, s.11.

N.J.S.A 26 :2C-56 Action plan for ratepayer relief, certain circumstances.

14. a. If the price of allowances at two consecutive regional auctions in which the State of New Jersey is a participant exceeds \$7 per allowance, the department and the board shall, within 90 days after the second auction, develop an action plan for immediate ratepayer relief and hold a joint public hearing or hearings regarding the allowance price.

b. No later than 90 days after the final hearing is held, the department and the board shall jointly issue a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with their findings and recommendations.

L.2007, c.340, s.14.

N.J.S.A 26 :2C-57 Severability.

15. If any provision of P.L.2007, c.340 (C.26:2C-45 et al.) or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

L.2007, c.340, s.15.