

How Enforcement Works

May 8, 2024





Statutory & Regulatory Authority

**Air Pollution Control Act:
N.J.S.A.26:2C-1 et seq. & N.J.A.C. 7:27-1.1 et seq.
Clean Air Act 1970 & 1990 Amendments
42 U.S.C. 7401 et seq.**

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NJDEP Air Quality

- Emissions Measurement: stack testing
- Diesel/Idling Enforcement: tampering, idling

Division Of Air Enforcement Activities

- Oversight to stack emission testing
- Provide compliance assistance
- Investigate complaints
- Conduct inspections
- Compliance report submittal review
- Sample collection and gather evidence
- Issues enforcement documents and assesses penalties
- Negotiate compliance schedule and penalty settlements
- Assists the Attorney General in developing enforcement cases and testifies in court



County Environmental Health Act (CEHA)

- Gives county authority to conduct State activities
- Investigating complaints
- Conducting minor inspections
- Mandatory Programs: Air, Water, Solid Waste, Noise, Hazardous Waste
 - Elective: Pesticides, Right to Know, UST

Permits

Applicability determined by Permitting

Preconstruction Permit	General Permit	Operating Permit
Valid after processed by permitter	Valid after registration	Valid after processed by permitter
Subchapter 8	Subchapter 8	Subchapter 22
Apply BEFORE construction/installation		
Case-by-case	Pre-existing options	Case-by-case
Minor /area sources	Minor /area sources	Major sources
Cost depends on # units	Fixed cost	

Permits

- Compliance plan/Requirements (Reference #)
 - Read horizontally
 - Applicable requirement, monitoring, recordkeeping, submittal/action
- Description of equipment, operating scenarios, control devices

Facility Name Air Permit Facility ID

SAMPLE FACILITY (12345)

Date: 11/26/2001

PCP010001

Activity Number

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

NJID Subject Item

Subject Item:

U101 25 MMBTU/Hour Dual Fuel Boiler

Subject Item Description

Method of Monitoring

Frequency of Monitoring

Method of Recordkeeping

Operating Scenario:

OS Summary

Operating Scenario

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
2	Natural Gas Usage <= 100 MMft ³ /yr. N.J.A.C. 7:27-8.13(h)	Natural Gas Usage: Monitored by fuel flow/firing rate instrument continuously based on no averaging period. The permittee shall install, calibrate and maintain an in-line fuel flow meter in accordance with the manufacturer's specifications. [N.J.A.C. 7:27-8.13(d)2]	Natural Gas Usage: Recordkeeping by manual logging of parameter each month during operation. The permittee shall record the amount of fuel combusted for each calendar month and sum that amount with the previous eleven (11) calendar months to determine the amount of fuel combusted for the consecutive 12 month period. Records shall be maintained on-site for five years and made available to the Department upon request. [N.J.A.C. 7:27-8.13(d)3]	None.

Citation of Requirement

Limit or Requirement

Frequency of Recordkeeping

Submittal Requirement

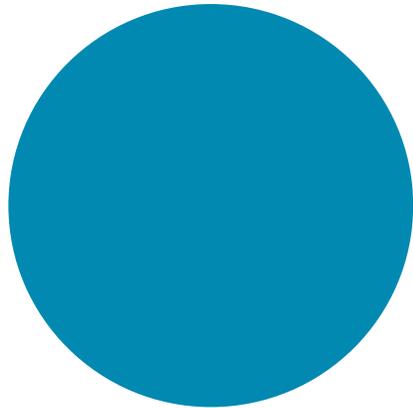
Reference Number for that Subject Item

Inspections

- Comprehensive compliance assessment of facility
- Includes permit requirements, state regulations, & federal regulations
- Most are routine compliance checks to ensure permit is followed
- Inspector is usually first NJDEP representative seeing equipment. Their job is to determine if equipment on-site is accurately described in permit.
- Inspector can refer “cross-media” concerns to proper bureau (RCRA, Solid Waste, Water, etc.)

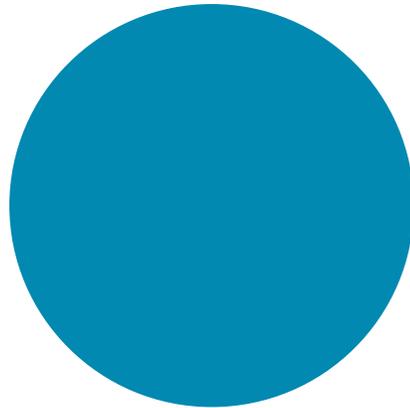
Process of Inspection: Site Visit

After prepping in office:



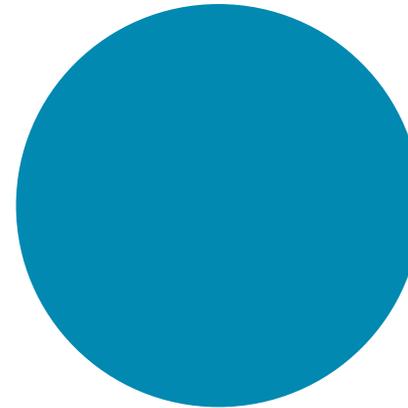
Pre-Inspection Conference

- Sit down at facility with representative



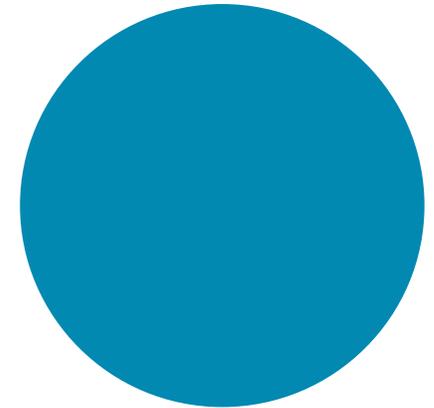
Inspection & Tour

- Viewing permitted equipment
- Facility walk-through
- Reviewing records



Post-Inspection Conference

- Recap findings
- Request further information if necessary



Follow-Up

- case-by-case basis
- Phone calls, emails, etc. for further info
- Processing violations

How to Prepare For an Inspection

- Maintain good housekeeping
- Prevent odors or visible emissions (smoke)

Familiarize yourself with your permit(s)

- Know what records are required to be kept on-site
- **Complete monitoring requirements**
- **Be aware of emission or production limits**
- **Stay current with frequency of monitoring/recordkeeping requirements**

Designate who will accompany Inspector

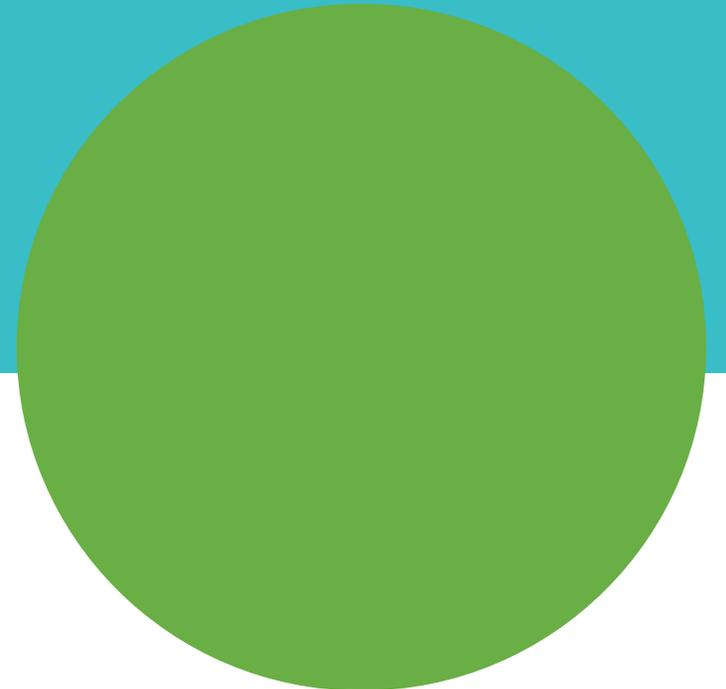
- Someone who will conference
- **Could be Responsible Official or any Individual with Direct Knowledge**
- **Usually an employee in operations or maintenance**

Inspection Expectations

- Unannounced inspections to see typical day-to-day operations
- Routine compliance inspection
 - Approx. 1 per permit cycle
 - With violations, could be more frequent
- 2-3 hours for Minor facilities
- Full day for Major facilities
 - Could be multiple days for very large Majors (refinery, chemical manufacturing, etc.)
- Refusal of Inspector's Entry fine= \$8,000

Records

- Process information
- Material or fuel purchasing information
- Air emissions data or calculations
- Logbooks
- Maintenance books
- Operation details



Certification of Information

- Air Pollution Control N.J.A.C. 7:27-1.39
- Pertains to applications, reports, & other documents submitted to Department
- Two parts: needs statement + signature from Responsible Official & from Individual with Direct Knowledge



<https://dep.nj.gov/aqm/rules/rules27/>

“I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”

Other Inspections

- Follow-up inspections: verify compliance regarding prior violations
- Complaint investigation: citizen complaint or other info which leads Department to believe a violation occurred

Violations

A determination of non-compliance will result in the issuance of an enforcement action.

Common violations:

- Failure to obtain permit (unpermitted equipment/process)
- Failure to fulfill all conditions/provisions in permit
- Failure to keep adequate records
- Releasing odors or particulate that qualify as air pollution
- Failure to submit emission statement
- Idling a diesel-powered motor for >3 min

Enforcement Documents for Violations

Typical enforcement action documents include:

- Notice of Violation (NOV)
- Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA)
- Administrative Order (AO)

Notice of Violation (NOV)

An NOV is issued to informally notify a facility of a violation(s), to comply with statutory and regulatory requirements and penalty liability. A NOV has no penalty assessment, and the document provides the facility with a specified time period to achieve compliance. If the facility does not achieve compliance by the compliance date, a penalty may be issued from the date of the violation.

Grace Period: Department may suspend issuance of a penalty for violations designated as Minor in accordance with Civil Administrative Penalty Schedule if the violation is corrected within prescribed period, as included in an NOV.

AONOCAPA

Administrative Order and Notice of Civil
Administrative Penalty Assessment

An AONOCAPA is issued to mandate compliance with statutory and regulatory requirements and the assessment of a civil administrative penalty.

Penalty assessments are calculated based on the Civil Administrative Penalty Schedule found in N.J.A.C. 7:27A-3 et seq.

An AONOCAPA is a formal document that can be appealed. This document includes a request form for an Adjudicatory Hearing. This formal hearing request must be submitted to the Department's Office of Legal Affairs (OLA) within 20 days of receiving the document. A copy of the hearing request should be submitted to the appropriate Regional Office

Administrative Order (AO)

An AO is issued to mandate compliance with statutory and regulatory requirements, without the assessment of a civil administrative penalty.

If the facility does not achieve compliance with the provisions of the AO, a penalty may be assessed.

An AO is a formal document that can be appealed. This document includes a request form for an Adjudicatory Hearing. This formal hearing request must be submitted to the Department's Office of Legal Affairs (OLA) within 20 days of receiving the document. A copy of the hearing request should be submitted to the appropriate Regional Office

Achieving Compliance

If additional time is necessary to achieve compliance with an enforcement action, a written extension request must be sent to the Regional Office.

Settlements

In some cases, Enforcement and facilities may work together to settle a violation at a reduced penalty amount.

To discuss possible settlement options, contact your inspector.

Settlement may occur before or after an enforcement action is issued.

Administrative Consent Order (ACO)

An Administrative Consent Order (ACO) is created to mandate compliance with statutory and regulatory requirements wherein a long-term compliance schedule has been agreed upon by the Department and the violator. This document may or may not include the assessment of civil administrative and/or stipulated penalties.

Affirmative Defense (AD)

Affirmative Defense (AD) to penalty liability may be provided for air pollution violations which result from:

- non-recurring equipment malfunction
- equipment start-up
- equipment shut-down
- necessary equipment maintenance

AD entitlement criteria:

- facility was being operated with due care
- violation was not caused by operator error
- violation was not caused by failure to maintain equipment with due care
- reasonable steps were taken to minimize emissions.
- If malfunction, not part of a recurrent pattern

Note: AD applies only to NJ regulations.
Federal regulations do not qualify for AD.

Affirmative Defense

Reporting Requirements:

- Notification to the Department Hotline (1-877-WARNDEP) by 5:00 pm of the second full day following the occurrence/discovery.
- Submit written documentation demonstrating that the criteria for the Affirmative Defense entitlement have been met, to the Regional Office, within 30 days of the occurrence.

Supplemental Environmental Projects (SEPs)



- Policy: “Standard Operating Procedures for Incorporating Supplemental Environmental Projects into Settlement Agreements and Administrative Consent Orders”
- Requirements:
 - Projects related to underlying violation and benefiting local community through concrete & measurable environmental benefits
 - Encourages community input to support Environmental Justice and includes benefits to responsible party for a detailed Community Needs Assessment
 - Stipulated penalties for failure to complete project

Compliance Advisory

Way for NJDEP to communicate to public

Forms of outreach:

- Updates
- Warnings
- Alerts

Examples: rule changes, upcoming events, address common mistakes, FAQs, other requirements



Small Business Assistance

- Guidance documents
- Referrals to professionals
- Consultation
- Education & outreach
- Fostering innovation

- Created by Clean Air Act Amendments of 1990
- Topics for specific industries
- Includes sustainability & pollution prevention info
- Pages of contacts

<https://dep.nj.gov/sustainability/sbap/>



Contact

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