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## **ENVIRONMENTAL PROTECTION AIR QUALITY PERMITTING ELEMENT**

### **Air Pollution Control**

#### **Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit); Operating Permits**

**Adopted Amendments:** N.J.A.C. 7:27-8.1, 8.2, 8.4, 8.6 through 8.9, 8.17, 8.20 through 8.22, 8.26, Appendix 1, 20.1, 20.3, 22.1, 22.3, 22.4, 22.6, 22.10, 22.31 and Appendix

Proposed: December 19, 2005 at 37 N.J.R. 4728(a).

Adopted: May 1, 2006 by Lisa P. Jackson, Commissioner, Department of Environmental Protection.

Filed: May 12, 2006, as R.2006 d. , **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9 and 26:2C-1 et seq., in particular 26:2C-9b(7)(b) and 9.5.

DEP Docket Number: 41-05-11/385

Effective Date: June 19, 2006

Operative Date: July 1, 2006

Expiration Date: Exempt.

This adoption primarily amends base fees and supplementary fees for facilities permitted under, applying for a permit under, or registering under N.J.A.C. 7:27-8. The new fee amounts are intended to make up the revenue shortfall (approximately \$9,350,000 in FY 06) and will be more equitably spread by basing the amounts on the Department's average level of effort to perform the activity for which the fee will be charged. Since there are approximately 16,000 non-major facilities with air permits, the average fee increase will be less than \$600.00 per non-major facility per year. Fees will be adjusted every five years based on the Consumer Price Index.

First, the Department is adopting amendments to its base fee tables and supplementary fee schedule at N.J.A.C. 7:27-8.6 to raise its application processing fees to cover the preconstruction permitting program's operating costs for non-major facilities. N.J.S.A 26:2C-9b(7)(b) gives the Department the authority to charge administrative fees, in accordance with a fee schedule, for any of the services the Department performs or provides in connection with administering the Air Pollution Control Act.

Second, the Department is adopting amendments to its base and supplementary fee schedules for significant modification applications at N.J.A.C. 7:27-22.31(r) and (s), respectively, to cover the cost of reviewing those applications for major facilities. Fees for significant modifications will be adjusted every five years based on the Consumer Price Index. Annual emission fees cover most of the Department's compliance and enforcement costs associated with regulating existing major facilities, including conducting periodic inspections.

The emission fees do not, however, cover the cost of permitting or reviewing significant modifications.

In 1995 the Legislature passed an amendment to the New Jersey Air Pollution Control Act (see N.J.S.A. 26:2C-9.5d(1)(c)) that required major facilities to pay fees for significant modifications. In these adopted amendments, the Department's intention is to base these fees on the cost of the Department's level of effort to review those applications. By charging a fee to those major sources that apply for significant modifications, which fee the Department has established at a level sufficient to cover its cost to review those applications, the Department is imposing the fee on the entities that generate the cost to the Department.

Third, the Department is adopting amendments to N.J.A.C. 7:27-22.31 to conform the fee provisions to the mandated fees in the Omnibus Fee Legislation of 2002 (OFL) (P.L. 2002, c.34), as follows: deleting the CO exemption from emission fees; increasing from \$25.00 to \$60.00 in 1989 dollars, adjusted by the CPI, the per-ton annual emission fee for regulated air contaminants; increasing the minimum annual emission fee per facility from \$1,000 to \$3,000; increasing the cap on an initial operating permit application fee from \$25,000 to \$50,000; increasing the cap for a significant modification application from \$25,000 to \$50,000 per modification; subjecting renewal operating permit applications to fees capped at \$50,000 per facility; and establishing the effective date for the increased fees as fiscal year 2003. As required by the OFL, the Department has already implemented these mandated fee increases starting with Fiscal Year 2003. The mandated fees affect only major facilities.

Fourth, the Department is adopting amendments that change the application, registration, notice and renewal submission process. Beginning January 1, 2008, a preconstruction permit (PCP) application, a PCP application for an environmental improvement pilot test, an application for a PCP revision, an application for a compliance plan change, a notice of a seven-day-notice change, or a notice of an amendment will be required to be submitted via the Department's non-Internet-based electronic system, currently RADIUS, which creates these documents on an electronic medium, such as a diskette or compact disk; a registration of equipment under a general operating permit, which is for a major facility, will be required to be submitted via the Department's Internet-based system, currently e-NJEMS; a renewal of a registration of a used oil space heater may be submitted via e-NJEMS as well as on paper; and any application (except a renewal) or notice regarding a major facility with an operating permit will be required to be submitted via a non-Internet-based electronic system, currently RADIUS.

Beginning January 1, 2010, a registration of equipment under a general permit (N.J.A.C. 7:27-8.8(c)), or a registration of a used oil space heater will be required to be submitted via the Department's Internet-based system. Furthermore, to encourage Internet registrations and because a paper registration requires more Department effort to process, starting on the operative date of these amendments, the Department will charge a higher fee for a paper registration under a general permit or a general operating permit, if the facility submits its registration on paper (provided submission through e-NJEMS is available).

Fifth, the Department is adopting amendments to exempt from the permitting requirements at N.J.A.C. 7:27-8 and N.J.A.C. 7:27-22 dry cleaning equipment that uses liquid

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carbon dioxide as the cleaning agent. The Department wants to encourage dry cleaners to use liquid CO<sub>2</sub> instead of perchloroethylene, a known carcinogen and "toxic substance," and believes this exemption will foster this goal.

Sixth, the Department is adopting additional amendments to N.J.A.C. 7:27-8 and N.J.A.C. 7:27-22 to make technical corrections, delete outdated provisions, change payment and filing methods, update the Department's contact information and reduce from 60 to 30 days the time for payment of Department invoices.

Last, the Department is adopting amendments to make typographical and grammatical corrections to N.J.A.C. 7:27-8, 20 and 22.

#### Summary of Hearing Officer's Recommendations and Agency Responses:

William O'Sullivan, PE, Director of the Department's Division of Air Quality, served as the Hearing Officer at the January 23, 2006 public hearing held at the Department Headquarters Building, 401 E. State Street, Trenton, New Jersey. The Department held this public hearing to provide interested parties the opportunity to present comments on the Department's proposed rulemaking and SIP revision. The comment period for the proposal closed on February 17, 2006. One commenter presented comments at the public hearing. The Hearing Officer recommended that the Department adopt the amendments as proposed, with the changes described in the response to comments below. The Department has accepted the Hearing Officer's recommendations. A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection  
Office of Legal Affairs  
ATTN: Docket No. 41-05-11/385  
401 East State Street  
PO Box 402  
Trenton, New Jersey 08625-0402

This adoption document can also be viewed or downloaded from the Department's website at [www.nj.gov/dep/aqm](http://www.nj.gov/dep/aqm), where the Department has posted Air Quality Permitting Element rules, proposals, adoptions and SIP revisions.

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

The following people submitted written and/or oral comments on the proposal:

1. David Brogan, New Jersey Business and Industry Association
2. Scott M. Conklin, Ocean County Utilities Authority
3. Daniel Cunningham, PSEG Services Corp.
4. Eric DeGesero, Fuel Merchants Association of New Jersey
5. William G. Dressel, Jr., New Jersey State League of Municipalities
6. Michael A. Egenton, New Jersey State Chamber of Commerce
7. Cara Fox, DuPont Chambers Works

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8. Ellen Gulbinsky, Association of Environmental Authorities
9. Yun Han, Korean-American Cleaners Association of New Jersey
10. Mayda P. Martinez, Merck & Co., Inc.
11. John Maxwell, New Jersey Petroleum Council
12. Cynthia N. McManus, Dupont Chambers Works
13. Michael Pasquarelli, Union Carbide Corporation
14. Michael E. Pisack, Reckitt Benckiser Inc.
15. Robert Rowe, Air Products and Chemicals, Inc.
16. Anthony Russo, Chemistry Council of New Jersey
17. Barbara Sachau
18. Janet Wojtowicz, Schering-Plough Corporation

The written comments and agency responses are summarized below. The number(s) in parentheses after each comment correspond to the number identifying the commenter(s) above.

### **General**

1. COMMENT: How long has it been since other fees in the Department have been increased, causing taxpayers to pay increased taxes to cover the Department's costs, when these costs should be borne mainly by fees. (17)

2. COMMENT: This fee increase comes on the heels of other significant fee increases within the Department. Other regulatory programs, such as land use, water supply and hazardous waste, have all increased their fees. Couple that with the rise in energy costs and healthcare costs results in a situation where conducting business in New Jersey continues getting more and more expensive. (1, 6, 10, 11, 13, 14, 15, 16)

RESPONSE TO COMMENTS 1 AND 2: Beginning in 2002, the Department undertook rulemaking to increase fees in several programs to bring the fees more in line with the costs to administer the programs. See, for example, 35 N.J.R. 3354(a) (Freshwater Wetlands Protection Act Rules), 35 N.J.R. 3648(b) (Water Supply Allocation Permits), 35 N.J.R. 5268(b) (Solid Waste, Recycling and Hazardous Waste Fees). The adopted amendments are part of this initiative.

3. COMMENT: The proposed fee increases are low and should be raised up to 50 percent higher. (17)

RESPONSE: The Department based the adopted fee amounts on the total cost to run the program and the projected number of hours to perform each task. The Department determined that the new fee structure would meet its current expenses and, therefore, it did not need to increase its fees beyond what it is adopting.

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4. COMMENT: The publication of the proposal should have been delayed. The combination of the proposal's being published during a lame duck administration and one week before the holiday season resulted in many emission sources not becoming aware of it until after the New Year. (1, 6, 10, 11, 13, 14, 15, 16)

RESPONSE: The proposal was published on December 19, 2005. The end of the public comment period was February 17, 2006, which is the required 60-day comment period, ending more than six weeks after the New Year. Notice was provided on the Department's website, in the New Jersey Register, by publication in newspapers throughout the State, and by mail to those people who have requested notice of Department rulemaking, as required by the Department's rules. These means of notice, and time available for comment, comply with the Administrative Procedure Act, and have been Legislatively determined to constitute sufficient notice to regulated entities of pending rulemaking.

#### **Justification**

5. COMMENT: The Department's cost justification for fees for non-major facilities (those regulated under N.J.A.C. 7:27-8) appears not to offset the proposed fees with Federal funds received per the Federal Clean Air Act, State funds, or funds collected through fines or enforcement. The fee increase constitutes a 70 percent increase in the fees to be collected. That amount seems unnecessarily high, and those municipal agencies subject to these increases can ill afford such an augmentation of expenses at this time. (5)

RESPONSE: The Department receives a grant from the United States Environmental Protection Agency; however, most of these funds are used to support air program activities that are not directly related to air permitting, including policy development, planning, ambient air monitoring and motor vehicle-related activities. The Department included all air permitting fees collected in its analysis of fees needed to support the air permitting and enforcement programs relating to non-major facilities. The air program believes that penalties should not be used to support the program; therefore, they were not considered in the development of the proposed fees. Under the existing rules, the fees that the Department collects are significantly less than the cost to operate the non-major facility program. See 37 N.J.R. 4730 of the proposal for an analysis of this shortfall.

6. COMMENT: All fees and penalties collected by the Department are turned over to the General Treasury, as required by State law. During its budget process the Department must request the Legislature to appropriate funds from the Department of Treasury. The New Jersey Legislature then approves a budget for each State agency. The Legislature might not appropriate the increased permitting fees back to the Department. Given the budget deficit that New Jersey

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is faced with, it is likely that these fees will be used to balance the State budget. (1, 4, 6, 7, 10, 11, 12, 13, 14, 15, 16)

RESPONSE: It is true that the Department must request the Legislature to appropriate the funds it needs to perform its function, and that the Legislature might not approve returning to the Department all of the fees that it collects as a result of the adopted rules; however, this is a function of the budget process. To change this process would require legislation, if not a constitutional amendment. In the Department's experience, during the budget process the Legislature has usually appropriated to the Department an amount equal to the Department's fees collected, plus additional funds to make up any shortfall.

Whether or not the Legislature returns the fees to the Department, emission fees and application fees for major facilities are required by statute. See N.J.S.A. 26:2C-9.5. Accordingly, the Department lacks discretion in charging these fees.

7. COMMENT: The fees are being increased by a large amount. In some instances, fees are being tripled. This is grossly unfair to the regulated community. While some air permitting fees have not increased in 15 years, the annual air emissions fees that support permitting of major sources more than tripled only a few years ago. The magnitude of the increases could make expansion or upgrade/modification projects cost-prohibitive. The proposed increases will have a greater impact if the facility changes its process to stay competitive, introduces new products, or expands production. (1, 6, 7, 11, 12, 13, 14, 15, 16, 18)

RESPONSE: Fees for major sources increased in 2003 as a result of the Omnibus Fee Legislation of 2002, P.L.2002, c.34, §46. All of the adopted amendments to the fee provisions of N.J.A.C. 7:27-22, except those for significant modifications to sources at N.J.A.C. 7:27-22.31(r) and (s), conform the fees in subchapter 22 to the specific mandates of the Omnibus Fee Legislation. The Department has no discretion in raising those fees, since the increase was a Legislative mandate. With regard to those amended subchapter 22 fees for which the Department does have discretion, the Department estimates that annually only approximately 10 of the 335 major facilities in the State will apply for a significant modification, at a cost of approximately \$10,000 per facility. (See 37 N.J.R. 4742.)

The emission fees assessed under N.J.A.C. 7:27-22.31(b) cover most of the Department's compliance and enforcement costs associated with major facilities. However, emission fees do not cover the Department's costs associated with permitting and reviewing significant modification applications. The Legislature requires the Department to charge major facilities for significant modifications. (See N.J.S.A. 26:2C-9.5d(1)(c).) Also, the Omnibus Fee Legislation increased the cap on significant modifications in recognition of increasing costs to the Department to review. As discussed in the proposal (37 N.J.R. 4745), the amended fees at N.J.A.C. 7:27-22.31(r) and (s) are based upon the Department's cost to review significant modifications. Accordingly, the Department's adopted fee for significant modifications places the burden of covering the Department's costs associated with reviewing significant

modifications onto those entities that generate the costs. The Department believes this to be an equitable allocation of fees consistent with N.J.S.A 26:2C-9.

The remainder of the adopted rules relate to permitting non-major facilities, regulated under N.J.A.C. 7:27-8, the fees for which have not increased for 15 years. (See 37 N.J.R. 4729.) As the Department discussed in the proposal, the shortfall between the permit fees collected and the air program's cost has become larger and larger over the years. (See 37 N.J.R. 4730.) Instead of the permitted facilities' paying for the shortfall, for years the Department has shifted funds from other Department programs and relied on funds from the State's taxpayers to pay for its activities under subchapter 8. The Department's streamlining the air permitting process, including allowing applicants to combine multiple pieces of equipment on one application (making the filing requirement more convenient for emission sources), reduced permit fees for these sources, which resulted in an equal reduction in fees paid to the General Treasury, and thereafter appropriated to the Department. (See 37 N.J.R. 4730.) Consistent with legislation, these fees are to be borne by emission sources and not individual taxpayers, and so the Department has based the amended fees in subchapter 8 on the Department's cost to perform the various activities.

8. COMMENT: In the proposal, the Department lists certain expenses, such as \$600,000 for outside consultants to conduct permit evaluations, \$300,000 for additional enforcement operating expenses, \$1,000,000 for County Environmental Health Act (CEHA) (N.J.S.A. 26:3A2-21 et seq.) agency inspections, \$250,000 for the Department's Division of Science, Research and Technology and \$350,000 for enhancements to the New Jersey Environmental Management System (NJEMS), the Department's database. These are expenses that should be eliminated and streamlined or better justified. (1, 6, 10, 11, 13, 14, 15, 16)

RESPONSE: The Department has reviewed all of its expenses related to air permitting, and determined that the itemized expenses cannot be eliminated. Each provides a vital function to the Department to carry out its mission to protect public health, welfare and the environment. Reductions in these expenses would likely increase the Department's air permit review time, a consequence to which permit applicants and the public would object. The Department has taken steps, including the implementation and upgrade of NJEMS, to streamline the permitting process. (See 37 N.J.R. 4730.) All of the air program's streamlining efforts have allowed the Division of Air Quality to decrease the number of outside consultants it employs to conduct permit evaluations. The use of CEHA agencies is, in itself, a streamlining activity, in that the CEHA agencies conduct the more routine less complicated inspections and respond to citizen complaints. Without CEHA agencies, the Department's enforcement staff would undertake the tasks. Use of CEHA agencies allows the Department's enforcement staff to focus on the more complicated inspections. Also, the Department has an obligation to provide funds to CEHA agencies. Finally, the air program needs the scientific input provided by the Division of Science, Research, and Technology to assist the air program in developing sound policies. Accordingly, the air program contributes a portion of the costs to operate the Division.

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9. COMMENT: Since the Department is giving \$1,000,000 to CEHA agencies, in those instances where CEHA agencies charge the same permittees, why is CEHA receiving money twice? Levels of government should work out an agreement for the CEHA agencies to do the Department's inspections within the parameters of a \$3.5 million budget. (4)

RESPONSE: The 1995 New Jersey Air Pollution Control Act, at N.J.S.A. 26:2C-22b, allows municipal or county boards of health that were already charging facilities fees relating to the control of air pollution at the time the Air Pollution Control Act was amended in 1995 to continue charging those fees, up to a monetary limit. It prohibits those entities from imposing any new air pollution control fees on the regulated community, or increasing the amount that it already imposed. N.J.S.A. 26:2C-22a. When it determines that amount of funding to provide to CEHA agencies, the Department factors in the fees that municipal and county boards of health collect for air pollution control. In that way, the CEHA agencies do not receive double funding.

10. COMMENT: Since the Department received \$2 million for underground storage tank (UST) enforcement, and since these UST inspections are being done by CEHA agencies that also inspect Stage II systems, there seems to be more funding for air compliance than the Department is acknowledging. (4)

RESPONSE: Article VIII, Section II, paragraph 6 of the State Constitution requires the Department to dedicate UST funds to support UST program activities. In fiscal year 2006, the Department allocated \$628,210 from the UST bond funds to support CEHA agencies conducting UST inspections and enforcement. Although a CEHA inspector may conduct the Stage II portion of the air inspection while also performing the UST inspection, the Stage II portion of the inspection would be billed to the general CEHA grant award, and not to the UST fund.

11. COMMENT: If CEHA agencies are inspecting many non-major facilities, are 37 full-time equivalents (FTEs) needed for the Department's air compliance and enforcement program? (4)

RESPONSE: There is no overlap between the work that CEHA performs for the Department's air program and the work performed by the Department's air inspectors. CEHA agencies inspect more than 13,000 facilities in the State, which are primarily the smaller sources, such as gas stations, dry cleaners, autobody shops and small boilers. Furthermore, the Department refers the majority of air pollution complaints to CEHA agencies to investigate, which is a significant workload. There are an additional 5,200 non-major facilities not delegated to the CEHA agencies, including the larger minor facilities and all of the synthetic minor facilities, for which the Department's inspectors are responsible. The additional \$1,000,000 to support CEHA air pollution control activities will allow the Department to shift additional compliance workload responsibilities to the CEHA agency staff.



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12. COMMENT: Any fee increase during these tough uncertain economic times can tilt the balance against growth and prosperity in New Jersey. New Jersey companies compete globally and the pressures to minimize costs are ever present. (1, 6, 7, 10, 11, 12, 13, 14, 15, 16)

RESPONSE: The Department considered carefully each of the adopted fees, and set them at levels calculated to cover the Department's costs. The Department has also made every effort to limit the amount of these fees. For example, the Department does not plan to increase the number of air program staff in the near future, and plans to further streamline the permitting process by enhancing the Remote AIMS Data Input User System (RADIUS) and e-NJEMS, and by developing more general permits.

A 2004 New Jersey Business and Industry Association survey of manufacturers found that fees for environmental compliance are not a major obstacle to the success of their manufacturing operations in New Jersey. See the proposal at 37 N.J.R. 4752 for further information. Similarly, the Department estimates that the average annual increase to the more than 16,000 facilities the Department regulates is approximately \$600.00, which the Department anticipates should not significantly affect a facility's ability to grow and prosper. (See 37 N.J.R. 4746.)

13. COMMENT: The Department should change the applicability of N.J.A.C. 7:27-8.2, which imposes an overwhelming permit application requirement with little or no environmental benefit from the review of many applications. For example, under the Department's rule, a person mixing a 25 kilogram bag of sugar in a 55-gallon drum of water would be required to submit a lengthy and complex RADIUS application and pay \$1,500 so that the Department can review it. The Department should consider a *de minimis* emission threshold below which no application is required. This must be considered before the Department increases fees to cover situations as the one illustrated here. The Department must optimize its permit review processes before it asks the regulated community for any more money. Furthermore, successes in workload reduction, such as the increased use of general permits, justify a decrease in fees, not an increase. (1, 6, 7, 10, 11, 12, 13, 14, 15, 16)

14. COMMENT: The implementation of general permits at N.J.A.C. 7:27-8.8 streamlined the permitting process, and should have resulted in less for the Department to review and, therefore, fewer staff being needed. Why can't the Department's streamlined program operate on \$3.5 million, which would allow for 40 FTEs instead of operating on 88 FTEs? (4)

RESPONSE TO COMMENTS 13 AND 14: The Department has successfully streamlined the air permitting program over the past decade. The streamlining commenced in 1995 as part of the Legislative reengineering effort. A workload analysis ("The 1997 Air Program's Workload Analysis," January 13, 1998, available from the Department's Bureau of Preconstruction Permits) conducted as part of that effort showed a significant increase in staff was necessary to conduct

the preconstruction permitting program as well as implementing the new Title V Operating Permit Program. Notwithstanding this showing, only a moderate increase in staff resulted, due to budgetary constraints and the success of streamlining activities. Streamlining activities include the implementation of the new computer system (RADIUS/NJEMS); and development of State of the Art Manuals, a permit conditions library, general permits at N.J.A.C. 7:27-8.8 and general operating permits at N.J.A.C. 7:27-22.14. These activities allowed the air permitting program to function adequately with an undersized staff. However, all of the above activities require periodic maintenance and revisions. This maintenance, plus additional workload in air toxics, public outreach and environmental justice, require staff at the current level.

In two major revisions to N.J.A.C 7:27-8.2(d) and (e) since 1995, the Department added exemptions from permit requirements for equipment or source operations with little or no environmental affect. As a result many types of equipment and source operations no longer require air permits, including the example of mixing sugar in a 55 gallon drum of water. The Department determined that *de minimis* emission thresholds are not an appropriate method for determining applicability of an air permit application. *De minimis* emission thresholds are difficult to initially determine and are also difficult to ensure that they remain *de minimis* for enforcement purposes.

15. COMMENT: With the large number of facilities closing and leaving New Jersey, and the lack of new projects, there should be a decrease in required air program resources, justifying a fee decrease, not an increase. (6)

RESPONSE: The Department has not experienced a reduction in the total number of facilities in New Jersey or the number of air permit applications being received. In fact, the number of applications the Department receives has remained constant. Therefore it would be inappropriate to decrease the air program's resources. Furthermore, the Department's services have been increasing (see response to comments 13 and 14) and the Department intends to avoid future shortfalls (see response to comment 7). Accordingly, the Department has adopted the within fees to maintain a stable program, and to ensure that air permit applications are processed in a timely manner.

16. COMMENT: Fees on the New Jersey electric utility sector to support the Title V (major source permitting under N.J.A.C. 7:27-22) program in New Jersey are much higher than in surrounding states. The Department should take this into account when considering any fees increase. (3)

RESPONSE: Fees for major sources increased in 2003 as a result of the Omnibus Fee Legislation of 2002, P.L.2002, c.34, §46. All of the adopted amendments to fee provisions of N.J.A.C. 7:27-22, except those for significant modifications to sources at N.J.A.C. 7:27-31(r) and (s), conform the fees in subchapter 22 to the specifically mandated fees set forth in the Omnibus Fee Legislation. The Omnibus Fee Legislation did however increase the cap on

significant modifications from \$25,000 to \$50,000 reflecting the concern of the Legislature with the Department's inability to assess fees commensurate with its costs of reviewing significant modification applications. Accordingly, with the exception of the fees for significant modifications, the Department did not have discretion in adopting fees. The Department estimates that annually approximately 10 of 335 major facilities will apply for a significant modification. (37 N.J.R. 4742), the fee for which is based upon the Department's cost to review the applications. (See the Economic Impact at 37 N.J.R. 4750.)

17. COMMENT: For those facilities that have bulk petroleum storage and are not eligible for the general permit program under N.J.C.A. 7:27-8.8, the proposed fee increase of 50 percent is dramatic. (4)

RESPONSE: The Department is aware that many facilities, including operators of bulk petroleum storage, will see a significant increase in fees. The reasons for such increases are discussed in the proposal at 37 N.J.R. 4730, where the Department presented the shortfall resulting from the difference between its costs and revenue. Bulk facilities have large pieces of equipment that make them ineligible for general permits. The per piece of equipment fee will result in higher fees for bulk facilities.

### **Legal Authority**

18. COMMENT: The Department does not have statutory authority to raise fees without Legislative oversight and input. (1, 6, 10, 11, 13, 14, 15, 16)

19. COMMENT: At N.J.A.C. 7:27-8.6(l), the Department proposed to increase the base and supplementary fees every fifth year beginning in January 2010 to compensate for anticipated increases in the program's operating costs. The costs would increase by the inflation factor calculated from the Consumer Price Index (CPI). Increases in fees should be driven by Legislation and not through regulation. This amendment should be withdrawn. (1, 6, 10, 11, 13, 14, 15, 16)

RESPONSE TO COMMENTS 18 AND 19: N.J.S.A. 26:2C-9b(7) gives the Department statutory authority to charge, in accordance with a fee schedule that shall be adopted by the Department pursuant to the Administration Procedure Act, administrative fees for any of the services the Department performs or provides in connection with administering the New Jersey Air Pollution Control Act (APCA). In addition, a 1995 amendment to the APCA (N.J.S.A. 26:2C-9.5d(1)(c)) required major facilities to pay for significant modifications and gave the Department the authority to set fees according to an adopted fee schedule. (See 37 N.J.R. 4742.) This is consistent with the legislative method for adjusting nondiscretionary annual emission fees. These statutory authorities allow the Department to propose and adopt rules that adjust fees in relation to the CPI. Since the Department believes that future program costs will increase

according to the CPI, basing future fees on the CPI is a reasonable method for covering future program costs. See response to comment 28 for further discussion.

### **General Permits and Small Businesses**

20. COMMENT: The majority of the 1,200 professional dry-cleaner members of the Korean-American Dry Cleaners Association of New Jersey (KCANJ) are mom and pop businesses. The fees increase is very burdensome to their business and results in their financial difficulties. The Department should consider small businesses' financial situation before increasing the fee schedules at N.J.A.C. 7:27-8.6. (9)

RESPONSE: In 2004 the Department considered small businesses' financial situation and developed the dry cleaner general permit. As a result of this general permit, and the within adopted amendments to N.J.A.C. 7:27-8.6, A. Base Fee Tables, the cost to a dry cleaner using perchloroethylene decreased from \$1,350 for a preconstruction permit and operating certificate to \$500.00 or \$750.00, depending on whether the filing is made electronically or on paper.

For a dry cleaner using a non-hazardous air pollutant unit, the cost decreased from \$1,350 to the proposed fee of \$350.00 (for an electronic filing) or \$500.00 (for a paper filing).. Additionally, adopted N.J.A.C. 7:27-8.2(d)14 eliminates the permit requirement for dry cleaning machines that use liquid carbon dioxide as the cleaning agent, eliminating the air permit costs for these machines.

Also, the Department has determined that professional wet cleaners, which are alternatives to dry cleaners in some situations, do not require an air pollution permit and, therefore, are not subject to fees.

Accordingly, the Department has made substantial efforts to limit the economic impact on the dry cleaning industry.

21. COMMENT: Why have costs for general permit development continued to increase? After a general permit is developed, what substantial changes need to be made? Are these changes for every general permit category, and are the changes annual? The Department is not accurate in stating that general permit registrants saved \$1,540,000, since the Department combined the Stage I and II permits into one general permit. N.J.A.C. 7:27-16.3 requires each of the 1,400 facilities to pay about \$1,100 per year in testing fees, or \$1,540,000 annually. Therefore, the general permit savings not paid to the Department is instead paid for testing fees in the first year of the general permit cycle. Also, the 1,400 facilities mentioned in the proposal are only those facilities that renewed their permits in FY2003. Since there are more facilities than 1,400, the net cost to industry of the fee increase will be substantial. (4)

RESPONSE: The Department has revised or is revising most of its general permits, especially those that have been in place for a number of years. These revisions are the result of comments made by industry, consultants and the Department's enforcement program, as well as

amendments to reasonably available control technology (RACT) rules for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs).

The Department is in the process of revising combustion general permits GP-005 (Emergency Generators), GP-006 (Boilers Less Than 10 Million BTU/Hr Combusting Natural Gas, Propane, No. 2 Fuel Oil, Diesel, Kerosene, or A Combination Of These Fuels), GP-006a (Boilers and Heaters [Individually Less Than 10 MMBTU/HR]) and GP-009 (Boilers and Other Indirect Fired External Combustion Equipment [ $\geq$ 10 MMBTU per hour and  $<$  50MMBTU per hour]). The Stage I and II general permit (GP-004, Storage and Transfer of Service Station Fuels at Gasoline Dispensing Facilities) was revised in 2004 due to a revision to Subchapter 16, Control and Prohibition of Air Pollution by Volatile Organic Compounds. (See 35 N.J.R. 2509(a); 36 N.J.R. 184(a).) Most gasoline facilities are eligible for the Stage I and II general permit and can apply for the general permit at renewal at a total savings that the Department estimates was as high as \$1,540,000 Statewide. The Department developed a Stage I general permit (GP-014, (Storage and Transfer of Service Station Fuels Using Only Stage I Vapor Recovery) in October 2004 (36 N.J.R. 4315(a)) after operators of Stage I facilities notified permitting and enforcement staff that they were not eligible for GP-004.

Gasoline retailers may be required to pay an annual testing fee, but this fee is the result of N.J.A.C. 7:27-16.3 and is required of all affected gasoline retailers, whether or not they possess a Stage I and II general permit. It is unrelated to the existence of a general permit, or the fee charged for the general permit. Accordingly, the increase in testing fees and the decrease in permitting fees are unrelated.

22. COMMENT: Since most dry cleaner owners are immigrants who have some problems communicating in English, they may misunderstand the proposed regulations. Also, since they are not used to accessing the Internet to register their equipment, they may not obtain the proper permit through the Internet, resulting in a violation. Paper registrations should be allowed after January 1, 2008. (9)

23. COMMENT: The method in the existing rules for registering equipment under a general permit is to submit a registration form and fee payment online or via the postal service. It is standard procedure for government entities to pay bills via a voucher and check. The Department should allow online submission of registrations and their renewals, but allow payment of fees through the postal service. (2)

24. COMMENT: As of January 1, 2008 all new permits will be applied for on line and paid for via the Internet. This creates a huge problem for local public entities that are required by the Local Public Contracts Law to submit vouchers for payment of goods and services. The Department's payment on line does not allow for payment by voucher by a governmental unit. Authorities and municipalities are forbidden to have credit cards. The Department must provide an opportunity for governmental permittees to submit applications for renewals on line and to also submit vouchers for payment. (8)

RESPONSE TO COMMENTS 22 THROUGH 24: The Department recognizes the difficulty immigrants may have communicating in English, especially understanding environmental regulations. The Department also recognizes the value to the community that immigrants provide owning and operating dry cleaners and other small businesses. If an owner of a dry cleaner or other small business has difficulty understanding the proposed rules, he or she may call the Department's Small Business Assistance Program (SBAP) at 609-292-3600 or toll free at 877-753-1151 for assistance. SBAP guidance documents, including those written in Korean, are at the Department's website, <http://www.nj.gov/dep/opppc/figdoc.htm>.

Not all permits must be applied for and paid by electronic methods. As proposed, the rules would have required non-Internet based electronic submission of applications and notices on diskette, compact disk or some other removable electronic medium starting January 1, 2008. The proposed rules also required that, starting January 1, 2008, all registrations (which includes registering equipment under a general permit and registering a used oil space heater) to be submitted via the Department's Internet based electronic system, e-NJEMS. The Department has modified these requirements on adoption.

Because the proposed mandatory Internet submission (using e-NJEMS) of registrations starting January 1, 2008 could be a hardship for local government entities and some dry cleaners, the Department has modified N.J.A.C. 7:27-8.4(c) and N.J.A.C. 7:27-8.6 A. BASE FEE TABLES, Table 1, "Registration fees," on adoption to extend the electronic registration requirement to January 1, 2010. N.J.A.C. 7:27-8.4(c), as adopted, allows the Department to accept registrations (which includes registering equipment under a general permit and registering a used oil space heater) on paper until January 1, 2010. On and after January 1, 2010 the Department will accept registrations only through the Department's Internet-based registration system, currently e-NJEMS. The January 1, 2008 cutoff remains for registering equipment under a general operating permit under N.J.A.C. 7:27-22.14, and for registering a used oil space heater under N.J.A.C. 7:27-22.3(t) which is equipment included in an operating permit for two reasons. First, the Department expects major facilities to register equipment under a general operating permit infrequently. As of this adoption, there is only one general operating permit - GOP-002 Small Emitter General Air Permit. Second, major facilities, the potential users of a general operating permit, are generally well equipped with computer technology, have Internet access and are experienced Internet users; therefore, they can easily access e-NJEMS.

Under the existing rules, many local government entities submit applications and notices via removable electronic media, such as diskettes and compact discs, and pay by voucher and check. As adopted, the rules allow this practice to continue.

The existing registration process does not allow a combination of Internet and non-Internet submissions for a single registration. If a person submits a registration via the Internet, the fee payment must be via the Internet. If a person submits a registration on paper the fee payment must be via the postal service. However, the adopted rules allow the Department to modify the registration process to allow a person to submit a registration via e-NJEMS while

allowing the fee to be paid by voucher and check via the postal service. The Department anticipates this modification will be available for public use by late summer 2006.

25. COMMENT: The Department proposed a higher fee for a completed general permit registration form submitted on paper. This proposed amendment does not consider most dry cleaner owners' situations. Most dry cleaner owners are immigrants who have some problems communicating in English, and who are not used to accessing the Internet to register equipment under a general permit. The fees for registrations submitted on paper or via the Internet should be the same. (9)

26. COMMENT: The Department proposes to charge a higher fee prior to January 1, 2008 for paper versions of the general permit application. The Department should not raise the general permit fee for general permit paper applications until the issues related to payment methods for electronic submissions are made. (2)

27. COMMENT: The Department proposes to assess a \$750.00 fee for paper registrations of General Permits compared to a \$500.00 fee for electronic registrations. While the intent on trying to get all applications in electronically is noble, applicants should not be penalized just because they submit on paper. The fees should be comparable. (1, 6, 10, 11, 13, 14, 15, 16)

RESPONSE TO COMMENTS 25 THROUGH 27: Registering equipment under a general permit on paper requires significantly more time for the Department to process than an online registration. Paper registration includes processing mail, a completeness determination, fee collection and processing, data input, out-processing and document mailing. The Department incurs costs for each of these tasks, in the form of employee time. These activities are not needed in an online registration; therefore, it costs the Department less to process Internet submissions, thereby justifying a difference in fees.

Also, as stated above in response to comments 22 through 24, the Department is modifying the registration process to allow a registrant to submit a registration online while submitting payment via voucher. This modification, anticipated to be available by late summer 2006, would allow a registrant that pays a fee via the postal service, to have access to the Internet-based registration system and pay the lower electronic fee.

### **Automatic Fee Increases**

28. COMMENT: The proposal provides for further increases to be based on the Consumer Price Index (CPI), thereby automatically increasing the fees without the necessity of republishing and asking for public input. This automatic method of increasing fees will soon have the fees well out of line with the associated costs. (5)

RESPONSE: In compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the proposal represented the opportunity for the public to comment on the proposed fee increases, including the automatic increases in the future. Since the Department believes that future program costs will increase consistent with the CPI, the Department believes basing future fees on the CPI is a reasonable method for covering future program costs. In the event that any automatic future increase in fees renders these fees unreasonable, such that fees in the aggregate significantly exceed actual program costs, the Department would undertake rulemaking to reduce fees. Similarly, rulemaking would be appropriate if the fees collected significantly fail to cover the Department's costs. Based upon the history of the air permitting program, the Department does not anticipate that the former situation is likely.

As the proposal states, the last major fee increase was in 1991. Ever since, the program costs have consistently exceeded the fees collected. Future fee increases will be for five year periods, with the increase figured for the first year and maintained over five years. The Department determined that a fee increase every five years would be less burdensome on the regulated community than an annual increase.

### **Base Fee Schedules**

29. COMMENT: The Department proposes a \$500.00 fee for a notice of a seven-day notice change at N.J.A.C. 7:27-8.6 A. Base Fee Tables. Seven-day notice changes are intended to be a very streamlined and simplified permit change mechanism. They do not require significant Department resources to review. The changes are compiled and then incorporated into the permit upon renewal. These changes are also, by definition, very minor in nature and, as such, do not require significant Department resources to review. The fee for seven-day notice changes is excessive and should be eliminated. (1, 6, 10, 11, 13, 14, 15, 16, 18)

RESPONSE: A seven-day-notice change is a simplified preconstruction permit change; therefore, the Department assessed this activity a \$500.00 fee, rather the \$1,500 fee that it assesses for a new or a revised permit application. The fee is per application, regardless of the number of pieces of equipment associated with the notice.

It is the Department's experience that many of the items that the permitted facilities submit as notices of a seven-day-notice change do not qualify as seven-day-notice changes. The Department screens each of the notices that it receives to be sure that the changes qualify as seven-day-notice changes, in order to avoid future enforcement issues. When the Department accepts a notice of a seven-day-notice change, the Department adds the information in the notice to the existing permit, so enforcement has current information to conduct a thorough inspection of the equipment. Therefore, the notices do require Department resources to review and process, justifying a fee, albeit in an amount below the fee for a new or revised permit application.

30. COMMENT: Under the existing rules at N.J.A.C. 7:27-8.6(j) and N.J.A.C. 7:27-8.6 A. Base Fee Tables, Tables 2 and 6, an applicant can combine similar equipment in a group and not



be charged a fee per piece of equipment. That helps to make fees more equitable, considering that the Department does not expend resources reviewing every piece of equipment, but rather reviews the first source of an identical set of emission sources and applies that review to all other sources within that application. By imposing a fee on every piece of equipment, the renewal costs will be significant and the resultant value for the money spent not justified. This fee should be eliminated. One commenter said this strategy should be reconsidered. (1, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18)

31. COMMENT: The renewal fee for a permit with 67 pieces of equipment will go from \$500.00 under the existing rules at N.J.A.C. 7:27-8.6 A. Base Fee Tables, Table 10, to almost \$14,000 under the adopted rules, simply because the Department will now charge a \$200.00 per piece of equipment renewal fee. This fee increase affects all facilities in the State, or all of the 4,500 renewals each year.

Revenue from this single new renewal fee is estimated to be \$2,700,000 out of \$11,343,000 budget, or about 24 percent of the revenue budget. The increase in per permit certificate renewal of an additional \$250.00 per permit x 4,500 = \$1,125,000. Therefore, the total renewal fee increase is \$2,700,000 + \$1,125,000 = \$3,825,000 out of \$11,343,000 budget or about one-third of the proposed budget revenue. All this revenue is being taken from industry with no additional expenditures, since RADIUS automatically changes the expiration dates when renewal fees are paid online.

Under the existing rules, an applicant can renew an existing permit certificate for \$500.00 regardless of the number of pieces of equipment included in the permit. That convention has existed for a long time and reflects that the Department does not expend resources reviewing existing permits that are not being changed. Additionally, increasing the per-certificate renewal fee is not justified, considering that the certificate expiration date is changed automatically by NJEMS upon a facility's paying the renewal fee every five years. By imposing a fee on every piece of equipment and increasing the per certificate fee, the renewal costs will be significant and the resultant value for the money spent not justified.

This is clearly an attempt to add revenue to the General Treasury, and not to fund the Department's operations. None of this fee increase is justified, since half of the Department's expenditures do not go towards changing certificate expiration dates in NJEMS. This is an astronomical fee to change a certificate expiration date. These fees should be eliminated. (14)

RESPONSE TO COMMENTS 30 AND 31: The Department has taken steps over the last 10 years to simplify and make more flexible the permitting process for applicants. The most significant changes were the implementation of the electronic filing and processing system RADIUS/NJEMS and the development of general permits. These processes revised permit application forms and allowed applicants to file electronically. These changes were the basis for allowing an applicant to combine multiple pieces of equipment into one permit, instead of submitting separate applications for each piece of equipment; therefore, applicants paid reduced

application fees and lower fees upon renewal, since fewer permits and certificates had to be renewed. This procedural change significantly reduced the Department's revenue.

Although the adopted amendments allow the Department to charge a fee for each piece of equipment in a preconstruction permit application, companies may not have to file preconstruction permit applications for multiple identical pieces of equipment. In many instances an applicant may be able to file a single general permit registration that allows for the inclusion of multiple pieces of identical and non-identical pieces of equipment. Those sources with multiple pieces of identical or non-identical pieces of equipment subject to a preconstruction permit may experience fee increases under this proposal; however the Department intends to continue developing new general permits that will result in significant fee reductions for many of those sources. The Department's analysis of incoming applications shows a steady decrease in applications with identical sources, which is a direct result of the greater use of general permits by applicants. The Department is also adopting, as proposed, the elimination of fees for all control devices, which also results in a reduction of fees for many applicants. See the proposed elimination of N.J.A.C. 7:27-8.6(j) and N.J.A.C. 7:27-8.6 A. Base Fee Tables, Table 6 at 37 N.J.R. 4756.

The NJEMS processing system simplified the administrative aspects of the renewal process; however, the majority of certificate renewals fees are intended primarily to support the Air Compliance and Enforcement portions of the air program. Air Compliance and Enforcement's main functions include ensuring that each piece of equipment is in compliance with the approved permit and all applicable rules and regulations. Although the permit review process is performed once, compliance determinations for each piece of equipment must be made periodically for the life of the certificate to operate and each of its renewals. Compliance determinations include file reviews, processing of periodic compliance reports, and on site inspections. As part of the renewal process, Air Compliance and Enforcement determines if the certificate should be renewed or if additional compliance determinations are needed as part of the certificate renewal, such as adding a requirement to perform a stack emission test. Air Compliance and Enforcement is also responsible for responding to citizen complaints, many of which are referred to CEHA agencies. The renewal fees are also used to fund the CEHA program that supports the Department's Air Compliance and Enforcement program.

### **Supplementary Fee Schedules**

32. COMMENT: What was the basis for determining the fees for the new supplementary activity categories identified in the Supplementary Fee Schedules? (16)

RESPONSE: The fees for the new supplementary activity categories at N.J.A.C. 7:27-22.31(s) and B. Supplementary Fee Schedule at N.J.A.C. 7:27-8.6 were determined by an evaluation of the current review process. Staff experience in conducting these supplementary activities provided the estimated level of effort needed to complete these tasks. An hourly rate based on a mid-level staff salary was used to calculate the per activity cost. See 37 N.J.R. 4730.

33. COMMENT: The Department proposes to add a new \$5,000 fee for preparing a “response to comments” document whenever it receives comments from the public on a permit. The proposal fails to identify how many comments received will trigger the fee. Would the fee be assessed if one set of comments is received, or 10 sets, or 20 sets? It seems unfair to assess a fee of \$5,000 if only one or two comments are received on a permit. An applicant should not be held accountable for paying the Department’s time and costs for responding to comments by the public. This should be considered part of doing business. The Department should better define when the Department will charge this fee or delete this requirement. (1, 3, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18)

RESPONSE: In response to comment, the Department is modifying N.J.A.C. 7:27-8.6 B. Supplementary Fee Schedule, Activity 7c and N.J.A.C. 7:27-22.31(s)7c on adoption to more directly correlate the fee to the service the Department provides.

During the public comment period on a permit application, the public may submit comments to the Department verbally at a public meeting or public hearing, and/or in writing. As adopted, the Department will charge a fee for preparing responses to written comments received during the public comment period, and for preparing responses to verbal comments received at a public hearing. It will not charge a fee for preparing responses to verbal comments received at a public meeting. This is the same as the Department proposed.

As modified on adoption, however, under N.J.A.C. 7:27-8.6 B. Supplementary Fee Schedule, Activity 7c and N.J.A.C. 7:27-22.31(s)7c the Department will charge a permit applicant \$250.00 for each response the Department prepares to the comments the Department receives on an application for prevention of significant deterioration (PSD), new source review (NSR), or a significant modification. The \$250.00 fee is based upon the Department’s experience in responding to comments on PSD, NSR and significant modification applications. On average, for each application the public raises approximately 20 individual issues to which the Department must respond in writing. Each response requires approximately four to five hours to prepare. Using the air program’s mid-range salary of \$60.00 per hour as the salary cost, the Department’s per response estimated cost is between \$240.00 to \$300.00. Since four to five hours of effort is a general estimate, the Department believes it is reasonable to charge a fee at the lower end of this range, or \$250.00 per response.

In preparing a response to comments document, the Department will decide, as it currently does, how many responses are appropriate. For example, several similar comments may warrant a single response; whereas, different comments within the same submission may warrant separate responses. The modification is consistent with the Department’s statement in the proposal (37 N.J.R. 4740) that the Department’s goal in assessing the fee is to cover its costs associated with responding to public comments. Although the Department is not adopting the proposed footnote 1 to Table B at N.J.A.C. 7:27-8.6, and Table B at N.J.A.C. 7:27-22.31(s), the fact remains that if there are no public comments to which the Department must respond in writing, the Department will not charge a fee.

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The maximum charge per response to comment document will remain \$5,000 as proposed. Accordingly, the fees as adopted will cover the Department's anticipated costs, but will not result in a fee to the applicant that is greater than the Department proposed.

34. COMMENT: The Department seeks to add several new categories of fees. These fees include a Prevention of Significant Deterioration (PSD) applicability fee of \$5,000, a Subchapter 18 (Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules), N.J.A.C. 7:27-18), Emission Offsets applicability fee of \$5,000, a RACT review fee of \$5,000 and a State of the Art (SOTA) evaluation fee of \$5,000. See N.J.A.C. 7:27-8.6 B. Supplementary Fee Schedule and N.J.A.C. 7:27-22.31(s). There are other fees listed in the proposal that are significant. The fees can add up significantly. These categories have been part of nearly every permit evaluation. The already very high fees that are paid per ton of emissions, per permit and per source operation cover these reviews. If the per permit and per source fees increase, the Department does not need to add these fees. (1, 3, 6, 11, 13, 15, 16)

35. COMMENT: A facility with a Facility-Wide/Title V permit has, under the existing rules, had to pay minimal or no fees to make permit modifications or revisions in the past. In the past, under the existing rules, if the facility applied for a permit for two new source performance standards (NSPS) Subpart D applicable boilers, it paid \$500.00 to have its permit application reviewed and approved. Under the proposed fee system, to complete the entire process of obtaining a permit (including modeling and public comment), conduct stack testing, and other tasks, the fee would be \$27,350.00. This increase of over 5,000 percent seems incredibly excessive. (18)

RESPONSE TO COMMENTS 34 AND 35: The adopted supplementary fees at N.J.A.C. 7:27-22.31(s) are for significant modifications to existing major facilities and some minor sources subject to these regulations. The Department's workload analysis indicated that the Department's greatest level of effort is spent during an evaluation of these applications. See "Proposed Supplementary Fees" at 37 N.J.R. 4732 of the proposal for a detailed analysis of how the Department determined each supplementary fee. These activities (for example, PSD review and Reasonably Available Control Technology - Alternative Emission Limit (RACT-AEL) review) are among the most complicated applications and, therefore, take more time to review. Based on the average time it takes to review these applications, the Department developed the new supplementary fees. Annual emission fees cover most of the Department's compliance and enforcement costs associated with regulating existing major facilities, including conducting periodic inspections. The emission fees do not, however, cover the cost of permitting or reviewing significant modifications.

36. COMMENT: The Department should attempt to streamline the amount of time that is needed to complete its reviews of the new categories of supplementary activities at N.J.A.C.

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7:27-8.6, B. Supplementary Fee Schedule, and N.J.A.C. 7:27-22.31(s). (1, 3, 6, 7, 11, 12, 13, 15, 16)

RESPONSE: As discussed in the responses to comments 8, 13 and 14, the Department has undertaken more than a decade of restructuring its air program to make it more efficient. In addition to those measures previously discussed, in 2000 the Department started implementing an internal application review procedure, which the Department computerized in 2001, to allow each permit evaluator immediate access to application information. The Department frequently evaluates this permit review procedure and updates it as appropriate. For consistency in evaluating these applications, the Department assigns each new modification application to an evaluator with the most experience in reviewing the types of emission sources listed in the application. Currently, the Department is reassigning these personnel to the Bureau of Operating Permits, which will soon be assigned all these review activities.

37. COMMENT: It is not clear in the rule proposal when these review fees would be assessed. For instance, the Department currently requires all Title V modification applications to include a Subchapter 18 (Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules), N.J.A.C. 7:27-18) applicability assessment. Does this mean that every Title V modification application will automatically be assessed a \$5,000 Subchapter 18 applicability review fee? Imposing “flat fees” across the board is unfair and is unjustified. Two commenters recommended that these flat fees be withdrawn. (1, 3, 6, 7, 11, 12, 13, 15, 16)

RESPONSE: Not all Title V modification applications are required to include a Subchapter 18 applicability assessment. Such an assessment is a necessary part of a modification application when the criteria at N.J.A.C. 7:27-18.2(a) and (b) are met. If the criteria are met, the application must include an applicability analysis as described at N.J.A.C. 7:27-18.7. The Department must review any applicability analysis required to be submitted by an applicant, who would incur a \$5,000 fee. Imposing such a fee is not unfair or unjustified, as the fee is charged only for those modification applications that require a “determination of a net emission increase or a significant net emission increase,” pursuant to N.J.A.C. 7:27-18.7.

38. COMMENT: To create transparency and efficiency, the Department should consider tracking the review time for each category designated in the proposal. The tracking of permit writer time allows for the reduction of duplicated efforts and non-efficient processes. (7, 12)

RESPONSE: The air permitting program has a complete tracking system built into NJEMS for all permit applications received by the program. The start date of each step of the evaluation is logged into the tracking system and a detailed schedule of the permit is maintained until the permit application is completed. However, the air permitting program does not track the time

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spent on each step. At this time, the Department's system does not support such time-related tracking.

39. COMMENT: When will the fees for the new supplementary activities at N.J.A.C. 7:27-8.6, B. Supplementary Fee Schedule, and N.J.A.C. 7:27-22.31(s) be invoiced? Would the applicant be invoiced after the fact, or would that be money that the Department will seek up front? (16)

RESPONSE: The Department will assess a supplementary fee when each activity at N.J.A.C. 7:27-8.6, B. Supplementary Fee Schedule, and N.J.A.C. 7:27-22.31(s) has been completed. For example, the fee for reviewing the results of a stack test, N.J.A.C. 7:27-8.6, B. Supplementary Fee Schedule, 12a<sup>iii</sup> and N.J.A.C. 7:27-22.31(s)12a<sup>iii</sup>, would be assessed, and the applicant invoiced, when the stack test is complete.

### **Omnibus Fee Legislation**

40. COMMENT: The rule proposal states that the exemption from air emissions fees for carbon monoxide (CO) will be removed and major facilities will be required to pay fees for CO at \$60.00 a ton going back to FY 2003. This is a retroactive fee. The Department has been billing facilities for CO emissions for the past two years. Under the New Jersey Air Pollution Control Act (APCA), the Department cannot assess emissions fees until after it has proposed and adopted regulations. This rule proposal satisfies that obligation of the Department, but it is coming after the Department has already assessed fees. At a minimum we believe that, because the Department failed to comply with the requirements of the APCA when it previously assessed CO emissions fees, that facilities should receive credit for the CO emission fees previously paid or for the interest on those fees. Alternatively, the Department should return the CO fees that were collected in violation of the APCA, until such CO emission fee assessments are properly made under rules adopted pursuant to the APCA. (1, 3, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18)

RESPONSE: The Omnibus Fee Legislation of 2002, the most recent statute affecting carbon monoxide emission fees, mandated a fee to be paid to the Department without the exercise of any discretion by the Department, effective July 1, 2002. Accordingly, the prior adoption of rules is not legally required. Furthermore, failure to assess these fees, beginning on July 1, 2002, would be contrary to the statute.

### **Federal Standards Statement**

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

#### N.J.A.C. 7:27-8

The proposed amendments to N.J.A.C. 7:27-8 are not promulgated under the authority of, or in order to implement, comply with or participate in, any program established under Federal law, or under a State statute that incorporates or refers to a Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for the proposed amendments to subchapter 8.

#### N.J.A.C. 7:27-22

##### Signification Modification Fee Increases

Annual emission fees cover the normal costs of regulating existing major facilities. Section 502 of the Clean Air Act (42 U.S.C. §7661a(b)(3)(A)) requires New Jersey to enact legislation that would require permitted sources to pay a fee "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program..." As a matter of fairness to those major facilities that do not submit significant modification applications, the New Jersey Legislature required fees for the Department's review of applications for significant modifications. The Air Pollution Control Act at N.J.S.A 26:2C-9.5d(1)(c) requires each major facility to pay a fee for any significant modification in accordance with a fee schedule. Also, N.J.S.A 26:2C-9b(7) gives the Department the authority to charge administrative fees, in accordance with a fee schedule, for any of the services the Department performs or provides in connection with administering the Air Pollution Control Act. The Department initially adopted the Supplementary Fee Schedule for significant modifications in August 1995. The existing fee schedule for significant modification applications is at N.J.A.C. 7:27-22.31(s).

Because the proposed amendments to the fees for significant modifications have been established to cover all reasonable costs required to administer the program, the proposed amendments are consistent with, and do not exceed, Federal law. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for the proposed amendments to the fees for significant modifications.

##### Mandated Fees

The proposed amendments conform the provisions of N.J.A.C. 7:27-22 to the mandatory fee increases legislated by New Jersey's Omnibus Fee Legislation of 2002 and are consistent with the fee collection provisions of the Federal Clean Air Act, Title V at section 502(b)(3)(B). This Federal provision requires the operating permit program collect fees equal to the reasonable costs of the operating permit program. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

#### REQUIRED ELECTRONIC SUBMISSIONS AND DRY CLEANER EXEMPTION

The proposed amendments to N.J.A.C. 7:27-8 and 22 regarding electronic submission of applications, registrations, notices, and renewal application stubs and renewal fee payments, and

that exempt from the air permitting regulations those dry cleaners that use liquid CO<sub>2</sub>, are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to a Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

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

7:27-8.4 How to apply, register, submit a notice, or renew

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

(c) A completed electronic or paper application form, registration form, notice or renewal application stub and renewal fee payment shall be submitted as follows:

1. Prior to January 1, 2008, a completed application form\*[, registration form]\* or notice shall be submitted to the Department on paper in accordance with **\*[(c)4]\* (c)6\*** below, electronically other than via the Internet in accordance with **\*[(c)4]\* (c)6\*** below, or electronically via the Internet, if available, in accordance with **\*[(c)5]\* (c)7\*** below.

2. On or after January 1, 2008, a completed application form\*[, registration form]\* or notice shall be submitted to the Department electronically other than via the Internet in accordance with **\*[(c)4]\* (c)6\*** below, or electronically via the Internet, if available, in accordance with **\*[(c)5]\* (c)7\*** below.

**\*3. Prior to January 1, 2010, a completed registration form shall be submitted to the Department on paper in accordance with (c)6 below, electronically other than via the Internet in accordance with (c)6 below, or electronically via the Internet, if available, in accordance with (c)7 below.**

**4. On or after January 1, 2010, a completed registration form shall be submitted to the Department electronically via the Internet, if available, in accordance with (c)7 below.\***

**\*[3.]\* \*5.\***A completed renewal application stub and renewal fee payment shall be submitted on paper in accordance with **\*[(c)4]\* (c)6\*** below, electronically other than via the Internet in accordance with **\*[(c)4]\* (c)6\*** below, or electronically via the Internet in accordance with **\*[(c)5]\* (c)7\*** below, and in accordance with all other rules in this subchapter regarding renewals including, but not limited to,



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N.J.A.C. 7:27-8.4(a), (f) and (n); 8.7(e) and (f); 8.13(b)1 and 2; 8.14(d); and 8.16(a)5.

\*[4.]\* **\*6.\***A submission on paper, or on a removable electronic medium using one of the non-Internet-based electronic methods listed at <http://www.state.nj.us/dep/aqpp>, shall be sent via the postal service, a delivery service, or otherwise delivered, to the address listed on the application form, registration form, renewal application stub or listed in the non-internet-based electronic method. If a person wishes to document the date upon which a completed application form, registration form, notice or renewal application stub and renewal fee payment is submitted, the person may submit the application form, registration form, notice or renewal application stub and renewal fee payment in a way that will provide documentation of the submittal date, such as by certified mail.

\*[5.]\* **\*7.\***An Internet-based electronic submission shall be through an Internet-based electronic method listed at <http://www.state.nj.us/dep/aqpp>. If a person wishes to document the date of the Internet-based electronic submission, the person may print the appropriate website confirmation screen.

(d)-(s) (No change from proposal.)

7:27-8.6 Service fees

(a)-(l) (No change from proposal.)

#### A. BASE FEE TABLES

Table 1

##### Registration fees

Activity	Basis	
	Electronic Registration <sup>1</sup>	Paper Registration <sup>1</sup>

Note: The Department will not accept paper registrations on or after January 1, \*[2008]\*  
**\*2010\***

Registration for initial authorization, or renewal of authorization, to act under a General Permit:

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Listed at N.J.A.C. 7:27-8.8(c), other than (c)12	\$350.00	\$500.00
Listed at N.J.A.C. 7:27-8.8(c)12	\$500.00	\$750.00
Registration for initial authorization, or renewal of authorization, to operate a used oil space heater under N.J.A.C. 7:27-20.3	\$250.00	\$250.00

<sup>1</sup> If the Department has not configured e-NJEMS to accept an electronic registration, thereby forcing the registrant to submit a paper registration, the registrant shall pay the electronic registration fee.

Table 2  
Permit fees  
(No change from proposal.)

Table 3  
Notice of amendment fees  
(No change from proposal.)

**B. SUPPLEMENTARY FEE SCHEDULE**

Activity	Basis	Amount
1.-6. (No change from proposal.)		
7. Public Comment		
a.-b. (No change from proposal.)		
c. Prepare Response to Comments Document	Per Response [ <b>Document</b> ]	*[\$5,000 <sup>1</sup> ]*
		<b>*250.00*</b>
	<b><u>*Maximum Per Document*</u></b>	<b><u>*\$5,000*</u></b>
8.-13. (No change from proposal.)		

\*[<sup>1</sup>The Department will waive this fee if the public does not submit any comments to the Department.]\*

**SUBCHAPTER 22. OPERATING PERMITS**

7:27-22.31 Fees

(a)-(r) (No change from proposal.)

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- (s) Through December 31, 2009, the Supplementary Fee Schedule for significant modification applications shall be (s)1 through 12 below. On and after January 1, 2010, the Supplementary Fee Schedule shall be as determined by (u) below.

Activity	Basis	Amount
1.-6. (No change from proposal.)		
7. Public Comment		
a.-b. (No change from proposal.)		
c. Prepare Response to Comments Document	Per Response [ <b>Document</b> ]	*[\$5,000 <sup>1</sup> ]*
		<b>*250.00*</b>
	<b><u>*Maximum Per Document*</u></b>	<b><u>*\$5,000*</u></b>
8.-12. (No change from proposal.)		

\*<sup>1</sup>The Department will waive this fee if the public does not submit any comments to the Department.]\*

- (t)-(u) (No change from proposal.)