

Legislative History Checklist
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Synopsis: Revises "Air Pollution Control Act (1954)," establishes federally mandated operating permit program, and reforms air pollution control permit program.

Bill No.: A2664

P.L. 1995, c. 188

Identical to: S1918 (1R)
Substituted for: S1918 (1R)
Combined with:
Last Session Bill No.:

See Above Bill(s) for Additional History

NJSA: 26:2C-1 et seq.

Sponsor(s): Ogden/Imprevcduto+3

Date Introduced: 03/13/95

Committee Reference:

Statement:

Public Hearing:

Assembly:

Environment and Energy
Appropriations

Yes
Yes

No
No

Senate:

(Without reference)

Sponsor Statement: Yes

Fiscal Note: Yes

Dates of Passage:

Assembly:

06/26/95 (75-1)

Senate:

06/26/95 (37-0)

Amended During Passage: Yes

Governor's Action:

Veto: No

Date of Veto:

Date of Approval: 08/02/95

Message on Signing: Yes

Additional Information:



A2664

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TRENTON, N.J. 08625
Release: AUGUST 2, 1995

Gov. Christie Whitman today signed legislation that reforms the current Air Pollution Control Act and sets up a new permitting program supported by fees based on emissions. The legislation provides industry with financial incentives to reduce emissions and opens the doors to emissions trading.

"This legislation shows our commitment to protecting the environment while remaining corporate-friendly," said Gov. Whitman. "We are streamlining our efforts to reduce air pollution, while reducing costs to industry."

The legislation, A2664/S1918, sponsored by Assemblywoman Maureen Ogden (R-Essex/Union) and Senator Henry McNamara (R-Bergen/Passaic), also establishes a small business stationary source technical and environmental compliance assistance program.

The bill was passed last month following months of negotiations by the DEP, business and environmental interests. Among the negotiated issues was a funding mechanism for the program, which includes a federal Clean Air Act requirement to impose permit fees at major facilities, based on the amount of their emissions.

"This legislation provides for an emission based fee structure, comparable to those in other states. It will provide sufficient revenue to fund the operating permit program, and is a major step toward complying with the Clean Air Act," said DEP Commissioner Robert C. Shinn.

The bill establishes a two part fee system. It includes an application fee for initial permits and subsequent permit modifications, and a \$25 per ton fee on a facility's emissions.

"Governor Whitman is fulfilling her promise to make New Jersey more competitive by signing this bill and by pledging \$2 million in state funds towards the program, ensuring that DEP reduces reliance on fees for the support of its programs," said Shinn, who noted that most other states fund a portion of the air pollution control programs with state appropriations.

The Chemical Industry Council, Public Service Electric & Gas Co., Business and Industry Association, State Chamber of Commerce, Health Products Council and Pharmaceutical Manufacturers Association representatives, along with Assemblywoman Ogden, the Public Interest Research Group and DEP staff, were among those who helped develop the compromise legislation.

Operating permits consolidate into a single, facility-wide permit all the multiple permits previously issued for each one of a facility's existing smokestacks. This streamlining will help reduce paperwork requirements at as many as 900 major facilities in the state, while improving environmental and regulatory oversight. The streamlining will focus regulatory efforts on major polluters, while simplifying reviews for minor polluters.

"About 10 percent of the new or modified equipment that we permit releases over 90 percent of our air emissions. This is where we will concentrate our efforts," said DEP Assistant Commissioner for Environmental Regulation Catherine Cowan.

***NOTE: The \$25 figure is in 1989 dollars and amounts to about \$30 per ton in 1995 dollars, adjusted for the consumer Price Index as specified by the federal Clean Air Act.

§§5.6,7,8
C.26:2C-9.5 to
26:2C-9.8
§§11,12
C.26:2C-25.1 &
26:2C-25.2
§13-T&E

P.L.1995, CHAPTER 188, approved August 2, 1995
1995 Assembly No. 2664 (Second Reprint)

1 AN ACT concerning air pollution, revising and reforming the air
2 pollution control permit program, creating the Small Business
3 Compliance Advisory Panel, amending P.L.1967, c.106,
4 amending the title of P.L.1954, c.212, and amending and
5 supplementing P.L.1954, c.212.

6
7 BE IT ENACTED by the Senate and General Assembly of the
8 State of New Jersey:

9 1. The title of P.L.1954, c.212 (C.26:2C-1 et seq.) is amended
10 to read as follows:

11 An act [relating to] concerning the control [and suspension] of
12 air pollution [, creating a Clean Air Council in the State
13 Department of Health and prescribing its functions, powers and
14 duties] and supplementing Title 26 of the Revised Statutes .

15 (cf. P.L.1967, c.106, s.1)

16 2. Section 2 of P.L.1954, c.212 (C.26:2C-2) is amended to read
17 as follows:

18 2. [The following words shall have the following meanings.

19 "Council" means the Clean Air Council created under this act.

20 "Department" means the State Department of Health.]

21 As used in this act:

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

25 "Air pollution" [as used in this act shall mean] means the
26 presence in the outdoor atmosphere of one or more air
27 contaminants in such quantities and duration as are, or tend to
28 be, injurious to human health or welfare, animal or plant life, or
29 property, or would unreasonably interfere with the enjoyment of
30 life or property throughout the State and in [such territories]
31 those areas of the State as shall be affected thereby, and
32 excludes all aspects of an employer-employee relationship as to
33 health and safety hazards.

34 "Commissioner" means the Commissioner of [Health in the
35 State Department of Health] Environmental Protection .

36 "Construct" or "construction" means to fabricate or erect
37 equipment or control apparatus at a facility where it is intended
38 to be used, but shall not include the dismantling of existing
39 equipment or control apparatus, site preparation, or the ordering,
40 receiving, temporary storage, or installation of equipment or
41 control apparatus. Unless otherwise prohibited by federal law,
42 "construct" or "construction" shall also not include the pouring

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

1. Assembly AEN committee amendments adopted June 19, 1995.
2. Assembly ASF committee amendments adopted June 22, 1995.

1 of footings or placement of a foundation where equipment or
2 control apparatus is intended to be used.

3 "Consumer Price Index" or "CPI" means the annual
4 Consumer Price Index for a calendar year as determined year to
5 year using the decimal increase in the September through August,
6 12-month average for the previous year of the Consumer Price
7 Index for All Urban Consumers (CPI-U), as published by the
8 United States Department of Labor.

9 "Control apparatus" means any device [which] ~~that~~ prevents or
10 controls the emission of any air contaminant.

11 "Council" means the Clean Air Council created pursuant to
12 section 3 of P.L.1967, c.106 [C.26:2C-3.2].

13 "Department" means the Department of Environmental
14 Protection.

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

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

22 "EPA" means the United States Environmental Protection
23 Agency.

24 "Equipment" means any device capable of causing the emission
25 of an air contaminant [into the open air] either directly or
26 indirectly into the outdoor atmosphere, and any stack, chimney,
27 conduit, flue, duct, vent, or similar device connected or attached
28 to, or serving, the equipment [This shall include], and shall
29 include, but need not be limited to, any equipment in which the
30 preponderance of the air [contaminant] contaminants emitted is
31 caused by [the] a manufacturing process.

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

42 "Federal Clean Air Act" means the federal "Clean Air Act"
43 [42 U.S.C. §7401 et seq.] and any subsequent amendments or
44 supplements to that act.

45 "Grandfathered" means construction, reconstruction, or
46 modification of equipment or control apparatus prior to the date
47 of enactment of section 13 of P.L.1967, c.106 [C.26:2C-9.2] on
48 June 15, 1967, or prior to the subsequent applicable revisions to
49 rules and regulations codified at N.J.A.C. 7:27-8.1 et seq. that
50 occurred March 5, 1973, June 1, 1976, April 5, 1985, and October
51 31, 1994.¹

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

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

9 "Major facility" means a major source, as that term is defined
 10 by the EPA in rules and regulations adopted pursuant to the
 11 federal Clean Air Act at 40 CFR §70.2 or any subsequent
 12 amendments thereto, that has the potential to emit any of the air
 13 contaminants listed below in an amount that is equal to or
 14 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 ¹

28
 29 "Modify" or "modification" means any physical change in, or
 30 change in the method of operation of, existing equipment or
 31 control apparatus that increases the amount of any air
 32 contaminant emitted by that equipment or control apparatus or
 33 that results in the emission of any air contaminant not previously
 34 emitted, but shall not include normal repair and maintenance.

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

37 "Person" means (and shall include corporations, companies,
 38 associations, societies, firms, partnerships and joint stock
 39 companies as well as individuals, and shall also include all
 40 political subdivisions of this State or any agencies or
 41 instrumentalities thereof) an individual, public or private
 42 corporation, company, partnership, firm, association, society,
 43 joint stock company, international entity, institution, county,
 44 municipality, state, interstate body, the United States of
 45 America, or any agency, board, commission, employee, agent,
 46 officer, or political subdivision of a state, an interstate body, or
 47 the United States of America.

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

52 "Process unit" means equipment assembled to produce
 53 intermediate or final products. A process unit can operate
 54 independently if supplied with sufficient feed or raw materials

1 and sufficient storage facilities for the product. The storage and
2 transfer of product or raw materials to and from the process unit
3 shall be considered separate from the process unit for the
4 purposes of making reconstruction determinations. Product
5 recovery equipment shall be considered to be part of the process
6 unit, not part of the control apparatus.

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

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

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

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

29 (cf: P.L.1967, c.106, s.5)

30 3. Section 9 of P.L.1954, c.212 (C.26:2C-9) is amended to read
31 as follows:

32 9. The department shall control air pollution in accordance
33 with the provisions of any applicable code, rule, or regulation
34 promulgated by the department and for this purpose shall have
35 power to [---]:

36 [(a)] a. Conduct and supervise research programs for the
37 purpose of determining the causes, effects, and hazards of air
38 pollution;

39 [(b)] b. Conduct and supervise Statewide programs of air
40 pollution control education including the preparation and filing
41 distribution of information relating to air pollution control;

42 [(c)] c. Require the registration of persons engaged in
43 operations [which] that may result in air pollution and the filing
44 of reports, including but not limited to emission statements, by
45 them containing information relating to location, size of outlet,
46 height of outlet, rate and period of emission and composition of
47 effluent, and such other information as the department shall
48 prescribe to be filed relative to air pollution, all in accordance
49 with applicable codes, rules, or regulations established by the
50 department;

51 [(d)] d. Enter and inspect any building or place, except private
52 residences, for the purpose of investigating an actual or
53 suspected source of air pollution and ascertaining compliance or
54 noncompliance with any [code] codes, rules [and] or regulations

1 of the department. Any information, other than actual or
2 allowable air contaminant emissions, relating to secret processes
3 or methods of manufacture or production obtained in the course
4 of [such] an inspection, investigation, or determination, shall be
5 kept confidential and shall not be admissible in evidence in any
6 court or in any other proceeding except before the department
7 [as herein defined]. If samples are taken for analysis, a duplicate
8 of the analytical report shall be furnished promptly to the person
9 suspected of causing air pollution;

10 [(e)] e. Receive or initiate complaints of air pollution, hold
11 hearings in connection with air pollution, and institute legal
12 proceedings for the prevention of air pollution and for the
13 recovery of penalties, in accordance with [this act] P.L.1954,
14 c.212 [C.26:2C-1 et seq.];

15 [(f)] f. With the approval of the Governor, cooperate with, and
16 receive [money] funds or other assistance from, the federal
17 government, the State government, any interstate body, or any
18 county or municipal government, or from private sources, for
19 the study and control of air pollution;

20 [(g)] The department may in accordance with a fee schedule
21 adopted as a rule or regulation establish and charge g. Charge,
22 in accordance with a fee schedule that shall be adopted by the
23 department pursuant to the "Administrative Procedure Act,"
24 P.L.1968, c.410 (C.52:14B-1 et seq.). (1) reasonable annual
25 emission fees for major facilities as provided in section 5 of
26 P.L. , c. (C.) (now before the Legislature as this bill), and
27 (2) administrative fees for any of the services (it) the department
28 performs [which fees shall be annual or periodic as the
29 department shall determine] or provides in connection with
30 administering P.L.1954, c.212 [C.26:2C-1 et seq.]. The
31 administrative fees charged by the department pursuant to this
32 [section] subsection shall not be less than \$10.00 nor more than
33 \$500.00] exceed \$25,000 per application based on criteria
34 contained in the fee schedule;

35 h. Issue, renew, reopen, and revise operating permits, and
36 require any person who is required to obtain an operating permit
37 under the provisions of the federal Clean Air Act to obtain an
38 operating permit and to certify compliance therewith for all air
39 pollution sources; and

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

44 (cf: P.L.1993, c.257, s.1)

45 4. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to
46 read as follows:

47 13. [(a)] (a) No person shall construct, install or alter any
48 equipment or control apparatus, in other than a one or 2-family
49 dwelling or a dwelling of 6 or less family units one of which is
50 owner-occupied, until an application including plans and
51 specifications has been filed with the department and an
52 installation or alteration permit issued by the department, in
53 accordance with any codes, rules and regulations of the
54 department except that subject to any such codes, rules and

1 regulations the department may dispense with the filing of
2 applications, plans and specifications. Information relating to
3 secret processes or methods of manufacture or production is
4 exempted from the plans and specifications and other pertinent
5 information to which the department is entitled under this
6 section.

7 (b) No person shall use or cause to be used any such new or
8 altered equipment or control apparatus for which an installation
9 or alteration permit is required or issued until an operating
10 certificate has been issued by the department.

11 (c) 1) a. No person at a facility without an operating permit
12 shall construct, reconstruct, install, modify, use or cause to be
13 used any equipment or control apparatus until an application
14 thereof including plans and specifications has been filed with the
15 department and the department issues a construction,
16 reconstruction, installation, or modification permit and operating
17 certificate in accordance with any applicable codes, rules, or
18 regulations of the department. This requirement shall also apply
19 to any facility that requires an operating permit until such time
20 as a final operating permit is issued to the facility.

21 b. No person at a facility with an operating permit shall
22 construct, reconstruct, install, modify, use or cause to be used
23 any equipment or control apparatus until an application thereof
24 including plans and specifications has been filed with the
25 department and the department issues an authorization for
26 construction, reconstruction, installation, or modification by
27 revising the operating permit in accordance with any applicable
28 codes, rules, or regulations of the department.

29 c. No operating permit, operating permit revision, or operating
30 certificate or renewal thereof [.] required [by this act] pursuant
31 to P.L.1954, C.212 (C.26:2C-1 et seq.) [.] shall be issued by the
32 department unless the applicant shows to the satisfaction of the
33 department that the equipment is designed to operate without
34 causing a violation of any provision of [this act] P.L.1954, c.212
35 [C.26:2C-1 et seq.] or of any codes, rules [and] , or regulations
36 [promulgated thereunder] adopted pursuant thereto, and that,
37 except in the case of a renewal operating certificate, initial
38 operating permit, or renewal operating permit, the equipment
39 incorporates advances in the art of air pollution control
40 developed for the kind and amount of air contaminant emitted by
41 the applicant's equipment.]

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

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

53 c. Newly constructed, reconstructed, or modified equipment
54 and control apparatus shall incorporate advances in the art of air

1 pollution control as developed for the kind and amount of air
2 contaminant emitted by the applicant's equipment and control
3 apparatus as provided in this subsection.1

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

12 (a) For an air contaminant subject to the prevention of
13 significant deterioration technology requirement, advances in the
14 art of air pollution control shall be the best available control
15 technology (BACT) as set forth by the EPA at 40 CFR §52.31
16 (b)(12) or any subsequent amendments thereto;

17 (b) For an air contaminant subject to a significant emissions
18 increase of a non-attainment air contaminant in a
19 non-attainment area, advances in the art of air pollution control
20 shall be the lowest achievable emission rate (LAER) as set forth
21 by the EPA at 40 CFR §51.165(a)(1)(xiii) or any subsequent
22 amendments thereto;

23 (c) For a hazardous air pollutant technology requirement,
24 advances in the art of air pollution control shall be the maximum
25 achievable control technology (MACT) as set forth at 42 U.S.C.
26 §7412 or any subsequent amendments thereto; and

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

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

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

47 (b) applicable new source performance standards; and

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

50 (3) (a) In order to promote greater emissions reductions than
51 would otherwise be achieved, the department may adopt,
52 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
53 (C.52:14B-1 et seq.), rules and regulations that offer a person the
54 option of establishing in an operating permit a 15-year plan for

1 reducing facility emissions beyond minimum air pollution control
2 requirements in lieu of adhering to strict permit review
3 schedules and complying with less effective State requirements¹
4 Such a plan shall include schedules setting forth milestones for
5 reducing emissions at the facility. Milestones may be met by
6 reducing emissions at the facility and by providing emissions
7 reduction credits from non-facility sources pursuant to an
8 emissions trading and banking program adopted pursuant to
9 section 8 of P.L. , c. (C.) (now before the Legislature as
10 this bill).

11 (b) The department shall review the achievement of the
12 milestones in the plan no less frequently than every five years
13 when the operating permit is renewed. The department may
14 require the person to submit, as part of the application for
15 renewal of the operating permit, a summary and trend of the
16 actual air contaminant emissions data reported in the facility's
17 annual emission statements for the previous five years. If the
18 department determines during the approval process for an
19 operating permit renewal that the milestones in the plan have not
20 been met at a facility and that there is no reasonable likelihood
21 that the milestones can or will be met, the department may
22 withdraw the opportunity for the facility to continue pursuant to
23 the plan and shall require instead that the facility comply with
24 the promulgated schedules for all applicable requirements.

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

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

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

49 ¹(a) The department shall, within 18 months after the effective
50 date of P.L. , c. (C.) (now before the Legislature as this
51 bill), publish the first technical manual containing technology,
52 methods, and performance levels that can be used by applicants
53 for demonstrating advances in the art of air pollution control.
54 Public notice of the availability of each draft technical manual

1 shall be published in the New Jersey Register, and each final
2 technical manual shall consider any public comments thereon that
3 are received by the department.

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

16 (c) Instead of relying on a technical manual for advances in the
17 art of air pollution control, an applicant may propose
18 "case-by-case" advances in the art of air pollution control
19 applicable to a specific source operation. If the department
20 determines that the proposal is consistent with the provisions of
21 this subsection, the proposal shall be deemed to constitute
22 advances in the art of air pollution control for that specific
23 source operation.

24 (d) Advances in the art of air pollution control shall include
25 new source performance standards adopted by the EPA on or
26 after the effective date of P.L. 1954, c. 212 (C. 26:26-1) (now before the
27 Legislature as this bill) and those new source performance
28 standards published as advances in the art of air pollution control
29 pursuant to P.L. 1954, c. 212 (C. 26:26-1 et seq.).¹

30 (1) (5) Before an operating permit, operating permit revision
31 or operating certificate or any renewal thereof is issued, or as a
32 condition of issuance, the department may require the applicant
33 to conduct such tests as are necessary [in the opinion of the
34 department] to determine the kind or amount of the air
35 contaminant emitted from the equipment or whether the
36 equipment or fuel or the operation of the equipment is in
37 violation of any of the provisions of [this act] P.L. 1954, c. 212
38 [C. 26:26-1 et seq.] or of any codes, rules [and] or regulations
39 [promulgated thereunder] adopted pursuant thereto. [Such] The
40 tests shall be made at the expense of the applicant and shall be
41 conducted in a manner approved by the department, and the test
42 results shall be reviewed and professionally certified.

43 (2) (6) [Equipment or control apparatus identified by the
44 department as not] Grandfathered equipment or control apparatus
45 shall not be¹ subject to a demonstration of advances in the art of
46 air pollution control. [shall not be subjected to such a
47 demonstration upon inclusion in the initial operating permit
48 application, provided that the equipment or control apparatus is
49 not modified or reconstructed]¹

50 (7) An operating permit and operating certificate or any
51 renewal thereof shall be valid for a period of [5] five years from
52 the date of issuance, unless sooner revoked for cause by order of
53 the department, and may be renewed upon application to the
54 department.

1 (3) (b) Upon receipt of an application for the issuance of an
2 operating certificate or any renewal thereof, the department, in
3 its discretion, may issue a temporary operating certificate valid
4 for [a period not to exceed] 90 days or until a five year operating
5 certificate has been issued or denied.

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

8 (1) One or two family dwellings;

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

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

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

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

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

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

33 h. Notwithstanding the provisions of any other law, rule, or
34 regulation to the contrary, the department may issue a general
35 permit in lieu of any permit issued pursuant to this section. Prior
36 to issuing a general permit, the department shall provide ¹public¹
37 notice ¹[of an] and ¹opportunity for public comment.

38 i. The department may require the reporting and evaluation of
39 emissions information for any air contaminant. However, prior to
40 ¹requiring that such information be included on a permit or¹
41 ¹regulating any air contaminant not regulated by the EPA pursuant
42 to the federal Clean Air Act, the department shall first make a
43 determination and advise the public of its conclusion that
44 regulating that air contaminant is in the best interest of human
45 health, welfare and the environment, and publish that
46 determination and justification in accordance with the provisions
47 of the "Administrative Procedure Act," P.L.1968, c.410
48 (C.52:14B-1 et seq.).

49 j. Except as otherwise prohibited by federal law, any person
50 who has submitted to the department an application for a permit
51 to construct, reconstruct, install, or modify equipment or control
52 apparatus may place that equipment or control apparatus on the
53 footings or foundation where it is intended to be used during the
54 pendency of the permit application review process. A person

1 intending to take action authorized pursuant to this subsection
2 shall notify the department, via certified mail, of the intent to
3 undertake the action at least seven days prior to the
4 commencement of the action.

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

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

21 (cf: P.L.1967, c.106, s.13)

22 [§. (New section) a. Every major facility shall remit to the
23 State an annual emission fee of \$27.50 per ton (in 1989 dollars) of
24 the actual annual emissions of each regulated air contaminant
25 reported in the emission statement for that facility, or in the
26 absence of such information, on permitted emissions, or where
27 there is not a permit, on potential to emit.

28 The emission fee required pursuant to this subsection for each
29 State fiscal year shall be adjusted each year by the percentage, if
30 any, by which the Consumer Price Index exceeds the Consumer
31 Price Index for the calendar year 1989.

32 b. As part of the adopted fee schedule for major facilities, the
33 department:

34 (1) shall not require a major facility to remit an emission fee
35 if the total actual emissions of all regulated air contaminants
36 from that major facility does not exceed 10 tons per year;

37 (2) shall begin collecting emission fees in fiscal year 1995 for
38 air contaminants reported in a calendar year 1993 emission
39 statement, including carbon monoxide, particulates, sulfur
40 dioxide, oxides of nitrogen, and VOCs, but not including lead,
41 HAPs, and any other air contaminants; and

42 (3) may begin collecting emission fees in fiscal year 1998 for
43 lead, HAPs, and any other air contaminant categories as reported
44 in a calendar year 1996 emission statement.

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

48 d. As used in this section, "major facility" means a facility
49 that has the potential to emit any of the air contaminants listed
50 below in an amount that is equal to or exceeds the applicable
51 major facility threshold levels as follows:

1 Air Contaminant	Threshold level
2 Carbon monoxide	100 tons per year
3 Particulate matter (PM-10)	100 tons per year
4 Total suspended particulates	100 tons per year
5 Sulfur dioxide	100 tons per year
6 Oxides of nitrogen	25 tons per year
7 VOC	25 tons per year
8 Lead	10 tons per year
9 Any HAP	10 tons per year
10 All HAPs collectively	25 tons per year
11 Any other air contaminant	100 tons per year

12
13 5. (New section) a. (1) Each major facility shall pay to the
14 department a fee or fees as calculated pursuant to this subsection
15 and subsections b., c., or d. of this section, as appropriate. The
16 per-ton emission fees shall be based on the actual annual
17 emissions of each regulated air contaminant, except as set forth
18 for carbon monoxide in subsections b., c., and d. of this section,
19 reported in the emission statement for that major facility, or, in
20 the absence of such information, on permitted emissions, or
21 where a permit has not been issued, on the potential to emit.

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

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

29 b. For the State fiscal year, 1995, each major facility shall pay
30 the following fees:

31 (1) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
32 per ton only on the first 4,000 tons of each regulated air
33 contaminant, excluding carbon monoxide, and an emission fee of
34 \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first
35 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

36 (2) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
37 per ton on one-half of the total tons of carbon monoxide;

38 (3) An initial operating permit application fee ²per facility²
39 not to exceed \$25,000. For the purpose of calculating the initial
40 operating permit application fee, the significant equipment listed
41 in the operating permit application shall be assessed at \$125 per
42 piece of equipment. The operating permit application fee shall
43 be submitted prior to the deadline for submittal of the operating
44 permit application;

45 (4) A fee for any facility modification in an amount calculated
46 using the fee schedule therefor set forth in rules and regulations
47 adopted by the department, except that no fee for a modification
48 review shall exceed \$25,000; and

49 (5) Certificate fees assessed and collected in a manner
50 established in rules and regulations adopted by the department.

51 c. (1) For the State fiscal years 1996 and 1997, each major
52 facility shall pay the following fees:

53 (a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
54 per ton only on the first 4,000 tons of each regulated air

1 contaminant, excluding carbon monoxide, and an emission fee of
2 \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first
3 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

4 (b) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
5 per ton on one-half of the total tons of carbon monoxide;

6 (c) An initial operating permit application fee ²per facility²
7 not to exceed \$25,000. For the purpose of calculating the initial
8 operating permit application fee, the significant equipment listed
9 in the operating permit application shall be assessed at \$125 per
10 piece of equipment. The operating permit application fee shall
11 be submitted at the time of submission of the operating permit
12 application; and

13 (d) / fee for any facility modification in an amount calculated
14 using the fee schedule therefor set forth in rules and regulations
15 adopted by the department ², except that no fee for a
16 modification review shall exceed \$25,000. The fee for a
17 significant modification review for source operations such as
18 solid or hazardous waste treatment and disposal, reciprocating
19 engines, and fuel combustion processes with heat input greater
20 than 100 million BTU/hour or that burn solid fuel shall not exceed
21 \$25,000. All other modification fees shall be assessed based upon
22 the amount of equipment modified and shall not exceed \$500 per
23 piece of equipment and \$25,000 for an entire modification
24 review².

25 (2) Notwithstanding the provisions of paragraph (1) of this
26 subsection to the contrary, no major facility shall pay an emission
27 fee less than \$1,000 for each of the State fiscal years 1996 and
28 1997.

29 (3) Of the amount assessed and collected in fees pursuant to
30 this subsection, not more than \$9,510,000 shall be appropriated as
31 provided in section 6 of P.L. , c. (C.) (now before the
32 Legislature as this bill). If the amount of fees collected pursuant
33 to this subsection exceeds \$9,510,000, the amount in excess of
34 \$9,510,000 shall be deposited into the Air Surcharge
35 Reengineering Fund established pursuant to subsection f. of this
36 section. If the amount of fees collected pursuant to this
37 subsection is less than \$9,510,000, the department, in
38 consultation with the fee work group established pursuant to
39 section 12 of P.L. , c. (C.) (now before the Legislature as
40 this bill), shall evaluate the reasons for the deficiency and make
41 recommendations accordingly to the Governor, the Legislature,
42 and the State Treasurer concerning any measures necessary to
43 ensure that the operating permit program is adequately funded.

44 d. (1) For the State fiscal year 1998 and each fiscal year
45 thereafter, each major facility shall pay the following fees:

46 (a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
47 per ton of each regulated air contaminant, excluding carbon
48 monoxide;

49 (b) An initial operating permit application fee ²per facility²
50 not to exceed \$25,000. For the purpose of calculating the initial
51 operating permit application fee, the significant equipment listed
52 in the operating permit application shall be assessed at \$125 per
53 piece of equipment. The operating permit application fee shall
54 be submitted at the time of submission of the operating permit
55 application; and

1 (c) A fee for any significant modification in an amount
2 calculated using a fee schedule therefor to be set forth in rules
3 and regulations to be adopted by the department, except that
4 no fee for a significant modification review shall exceed \$25,000².

5 (2) Notwithstanding the provisions of paragraph (1) of this
6 subsection to the contrary, no major facility shall pay an emission
7 fee less than \$1,000 for each of the State fiscal years 1998 and
8 thereafter.

9 e. (1) In addition to the fees assessed of major facilities
10 pursuant to subsections b. and c. of this section, each major
11 facility shall be assessed a supplemental surcharge for each of
12 the State fiscal years 1995 and 1996 that shall be sufficient to
13 raise \$.5 million per fiscal year in revenue. The supplemental
14 surcharge shall be based on actual annual emissions of each
15 regulated air contaminant, excluding carbon monoxide, reported
16 in the emission statement for that major facility, or, in the
17 absence of such information, on permitted emissions, or where a
18 permit has not been issued, on the potential to emit, but in no
19 case shall a supplemental surcharge assessed of a major facility
20 exceed \$20,000 per year per major facility.

21 (2) If the amount of revenue raised by the assessment of the
22 supplemental surcharge pursuant to paragraph (1) of this
23 subsection is less than \$1,500,000 for either State fiscal years
24 1995 or 1996, the department, in consultation with the fee work
25 group established pursuant to section 12 of P.L. 1993, c. [C.]
26 (now before the Legislature as this bill), shall evaluate the
27 reasons for the deficiency and the need for adjusting the
28 supplemental surcharge to make up the difference.

29 (3) The supplemental surcharge assessed pursuant to this
30 subsection shall not be collected after State fiscal year 1996.
31 Any monies remaining in the Air Surcharge Reengineering Fund
32 at the conclusion of State fiscal year 1997 shall be used by the
33 department to reduce fees assessed of major facilities in State
34 fiscal year 1998, whereupon the fund shall expire.

35 f. There is established in the department a dedicated fund to
36 be known as the "Air Surcharge Reengineering Fund." All
37 supplemental surcharges collected pursuant to paragraph (1) of
38 subsection e. of this section shall be deposited into that fund.
39 Monies in the fund shall be dedicated solely for use by the
40 department in developing and implementing the air permit
41 computerization system, publication of requirements for
42 advances in the art of air pollution control, establishment of
43 general permits, and establishment of standard permit
44 conditions. No monies from this fund shall be allocated,
45 appropriated, or used for any purpose other than as set forth in
46 this subsection. The department, in consultation with the fee
47 work group established pursuant to section 12 of P.L. 1993, c. [C.]
48 (now before the Legislature as this bill), shall develop a
49 plan for the expenditure of monies in the fund, and shall maintain
50 a detailed record of the expenditures and disbursements from the
51 fund and publish it annually in the New Jersey Register.

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

1 h. The department may not assess a major facility any fee to
2 implement the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.)
3 other than the fees authorized pursuant to this section.¹

4 6. (New section) Pursuant to the mandate of the federal Clean
5 Air Act, all revenues collected pursuant to section 5 of P.L. , c.
6 c. (C.) (now before the Legislature as this bill) shall be
7 dedicated and appropriated annually solely for use by the
8 department in administering the provisions of P.L.1954, ¹(C.212
9 c.212¹ (C.26:2C-1 et seq.) with regard to major facilities ¹ ,
10 defined pursuant to subsection d. of section 5 of P.L. , c.
11 (C.) (now before the Legislature as this bill)¹ . ¹[Those]
12 Except as provided otherwise for the supplemental surcharge
13 assessed pursuant to section 5 of P.L. . c. (C.) (now before
14 the Legislature as this bill), those¹ monies shall be used only to
15 hire personnel and fund positions, procure necessary equipment,
16 and fund the functions of the department prescribed pursuant to
17 P.L.1954, C.212 (C.26:2C-1 et seq.) with regard to major
18 facilities ¹and to fund implementation and operation of the small
19 business stationary source technical and environmental
20 compliance assistance program required pursuant to 42 U.S.C.
21 §7661f of the federal Clean Air Act¹ . Such program costs may
22 also include, but need not be limited to, costs connected to or
23 associated with: program planning; data collection;
24 investigations; rule and regulation development; reviewing,
25 issuing, and administering operating permits; monitoring and
26 administratively enforcing compliance with laws, codes, rules,
27 regulations, and permits; ¹implementing and operating the small
28 business stationary source technical and environmental
29 compliance assistance program required pursuant to 42 U.S.C.
30 §7661f of the federal Clean Air Act;]¹ and any other activities
31 with regard to major facilities required for State compliance with
32 the federal Clean Air Act.

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

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

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

49 The report shall also identify any need for legislative action to
50 adjust the emission fee ¹[cap¹] prescribed pursuant to
51 ¹[subsection a. of] section 5 of P.L. . c. (C.) (now before
52 the Legislature as this bill) to ensure that the ¹[cap fee¹] is
53 adequate to fund the air pollution control program in accordance
54 with the mandates of the federal Clean Air Act, and discuss the

1 advantages and disadvantages of setting higher emission fees for
2 hazardous air pollutants.

3 8. (New section) a. 1[The] Within 90 days after the effective
4 date of this act, the¹ department shall 1[adopt] propose¹,
5 pursuant to the provisions of the "Administrative Procedure
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
7 that establish emissions trading and banking programs that use
8 economic incentives to make progress toward the attainment o
9 maintenance of the National Ambient Air Quality Standar s
10 (NAAQS), reduce or prevent emissions of 1[HAPs] or
11 contaminants¹, ensure healthful air quality, or otherwise
12 contribute to the protection of human health, welfare and the
13 environment from air pollution. 1The department shall adopt
14 those rules and regulations within 90 days after proposal.¹

15 b. The emissions trading rules and regulations shall be designed
16 so that 1[emission] emissions¹ reductions shall be realized earlier
17 or at a more accelerated rate than would otherwise be achieved
18 in accordance with applicable air quality mandates, and so that
19 compliance with air quality mandates can be achieved with
20 greater flexibility or at lower cost. 1The rules and regulations
21 shall establish criteria for the generation and use of emissions
22 reduction credits, including the use of emissions reduction credits
23 in lieu of granting exemptions or waivers from compliance with
24 emissions reduction requirements, and shall require that 10% of
25 the emissions reduction credits gained shall be permanently
26 retired for the public benefit when a trade occurs.¹ The rules
27 and regulations may include, but need not be limited to,
28 provisions designating the pollutants to be involved in the
29 program, designating the persons who may participate in the
30 program, establishing 1[emission] emissions¹ limitations and
31 methods for projecting and verifying emissions, and establishing
32 enforcement mechanisms, including emissions tracking, periodic
33 program audits, and penalties.

34 For any emissions trading program adopted for the purpose of
35 making progress toward attaining the National Ambient Air
36 Quality Standard (NAAQS) for ozone, the department may allow
37 reductions of volatile organic compounds (VOCs) to be
38 substituted for required reductions of oxides of nitrogen (NOx) or
39 reductions of oxides of nitrogen (NOx) to be substituted for
40 required reductions of volatile organic compounds (VOCs). Any
41 such substitution shall occur at a ratio established by the
42 department by rule or regulation adopted pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), 1which shall be¹ developed in recognition of the role of
45 each pollutant in the formation of ground level ozone.

46 c. The emissions trading rules and regulations adopted by the
47 department shall not conflict with applicable federal law and
48 shall constitute, contribute to, or be consistent with one or more
49 strategies that result in quantifiable emissions reductions and are
50 creditable under the State Implementation Plan (SIP) required
51 pursuant to the federal Clean Air Act. These may be emission
52 limiting or market-response strategies for mobile 1[or] 1,
53 stationary 1, or area¹ sources. 1[or both] and shall include the
54 creation, trading, and use of emissions reduction credits¹.

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

5 e. The department shall involve in the development of the
6 rules and regulations for [emission] emissions¹ trading programs
7 representatives of the affected industry, environmental, and
8 public interest groups as well as governmental entities with
9 affected or related jurisdictions.

10 f. The department shall consider the role of a third party in
11 the banking, verification, validation of use, enforcement, and
12 program audits associated with emissions reduction credits, and
13 to the maximum extent possible, create and preserve
14 opportunities for private sector participation in any emissions
15 trading program established by the department.¹

16 g. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to
17 read as follows:

18 19. a. If any person violates any of the provisions of [this act]
19 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
20 or order ¹[promulgated] adopted¹ or issued pursuant [to the
21 provisions of this act] thereto, the department may institute a
22 civil action in a court of competent jurisdiction for injunctive or
23 any other appropriate relief to prohibit and prevent such violation
24 or violations and the [said] court may proceed in the action in a
25 summary manner.

26 b. Any person who violates the provisions of [this act]
27 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
28 or order ¹[promulgated] adopted¹ or issued pursuant [to this act]
29 thereto shall be liable to a civil administrative penalty of not
30 more than [\$10,000.00] \$10,000 for the first offense, not more
31 than [\$25,000.00] \$25,000 for the second offense, and not more
32 than [\$50,000.00] \$50,000 for the third and each subsequent
33 offense. If the violation is of a continuing nature, each day
34 during which it continues shall constitute an additional, separate
35 and distinct offense. No civil administrative penalty shall be
36 levied except upon an administrative order issued pursuant to
37 section 14 of P.L.1954, c.212 (C.26:2C-14).

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

42 d. Any person who violates the provisions of P.L.1954, c.212
43 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
44 ¹[promulgated] adopted¹ or issued pursuant [to that act] thereto,
45 or a court order issued pursuant to subsection a. of this section,
46 or who fails to pay a civil administrative penalty in full pursuant
47 to section 9 of P.L.1962, c.215 (C.26:2C-14.1), is subject, upon
48 order of the court, to a civil penalty of not more than
49 [\$10,000.00] \$10,000 for the first offense, not more than
50 [\$25,000.00] \$25,000 for the second offense, and not more than
51 [\$50,000.00] \$50,000 for the third and each subsequent offense. If
52 the violation is of a continuing nature, each day during which the
53 violation continues, or each day in which the civil administrative
54 penalty is not paid in full, constitutes an additional, separate and

1 distinct offense. Any penalty imposed under this subsection may
2 be recovered with costs in a summary proceeding pursuant to
3 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law
4 Division of the Superior Court has jurisdiction to enforce "the
5 penalty enforcement law."

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

12 f. Any person, who:

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

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

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

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

36 g. In determining whether an odor unreasonably interferes with
37 the enjoyment of life or property in violation of P.L.1954, c.212
38 (C.26:2C-1 et seq.) or any code, rule, regulation or order
39 [promulgated] adopted¹ or issued pursuant thereto, the
40 department shall consider all of the relevant facts and
41 circumstances, including, but not limited to, the character,
42 severity, frequency, and duration of the odor, and the number of
43 persons affected thereby. In considering these and other relevant
44 facts and circumstances, no one factor shall be dispositive, but
45 each shall be considered relevant in determining whether an odor
46 interferes with the enjoyment of life or property, and, if so,
47 whether such interference is unreasonable considering all of the
48 circumstances.

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

52 h. The department shall establish procedures for alternative
53 dispute resolution as an option for settlement of contested cases.
54 Alternative dispute resolution shall be voluntary and shall not be

1 mandated by the department.

2 (cf: P.L.1989, c.333, s.1)

3 10. Section 22 of P.L.1954, c.212 (C.26:2C-22) is amended to
4 read as follows:

5 22. [No ordinances of any governing body of a municipality or
6 county or board of health more stringent than this act or any
7 code, rules or regulations promulgated pursuant thereto shall be
8 superseded by this act. Nothing in this act or in any code, rules
9 or regulations promulgated pursuant thereto shall preclude the
10 right of any governing body of a municipality or county or board
11 of health, subject to the approval of the department, to adopt
12 ordinances or regulations more stringent than this act or any
13 code, rules or regulations promulgated pursuant thereto.
14 Penalties for violations of ordinances of a governing body of a
15 municipality, county or board of health shall not exceed
16 \$2,500.00.]

17 1a. To ensure Statewide uniform treatment of air pollution
18 regulation and control, and eliminate conflicting and inconsistent
19 policies and standards in connection therewith, the pervasive and
20 comprehensive regulatory and enforcement program established
21 pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute
22 the exclusive program of the State concerning the subject matter
23 covered by that act, whether that subject matter be expressed by
24 inclusion in or exclusion from that act.

25 b. No municipality, county, local board of health, local health
26 agency, regional health commission, or any other political
27 subdivision of the State may enact any ordinance, pursuant to
28 section 9 of P.L.1977, c.443 (C.26:3A2-27) or any other authority,
29 concerning the subject matter covered by P.L.1954, c.212
30 (C.26:2C-1 et seq.). This section shall not affect the authority of
31 a certified local health agency to enact ordinances for the
32 limited purposes authorized by section 7 of P.L.1991, c.99
33 (C.26:3A2-34), provided that no such fee shall be assessed against
34 any source or facility required to obtain an operating permit
35 pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2).

36 c. Any ordinance adopted by a municipality, county, local
37 board of health, local health agency, regional health commission,
38 or other political subdivision of the State concerning the subject
39 matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted
40 prior to the effective date of P.L. , c. (C.) [now before the
41 Legislature as this bill] shall become null and void on the 180th
42 day after the effective date of P.L. , c. (C.) [now before
43 the Legislature as this bill].

44 d. Nothing in this section shall be construed to limit or impair
45 the authority of the department to delegate authority to a
46 certified local health agency in accordance with the provisions of
47 the "County Environmental Health Act," P.L.1977, c.443
48 (C.26:3A2-21 et seq.).

49 a. [1] No ordinances of any governing body of a municipality or
50 county or board of health more stringent than P.L.1954, c.212
51 (C.26:2C-1 et seq.) or any code, rules or regulations adopted
52 pursuant thereto shall be superseded by P.L.1954, c.212
53 (C.26:2C-1 et seq.) After the effective date of P.L. , c. [
54 (C.) [now before the Legislature as this bill], no municipality,

1 county, local board of health, local health agency, regional health
2 commission, or any other political subdivision of the State may
3 enact any ordinance, pursuant to P.L.1954, c.212 (C.26:2C-1 et
4 seq.), section 9 of P.L.1977, c.443 (C.26:3A2-27), or any other
5 authority, concerning the subject matter covered by P.L.1954,
6 c.212 (C.26:2C-1 et seq.), except as provided in subsection b. of
7 this section, whether that subject matter is expressed by
8 inclusion in or exclusion from that act.

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

11 Nothing set forth in the "County Environmental Health Act,"
12 P.L.1977, c.443 (C.26:3A2-21 et seq.), or any codes, rules or
13 regulations adopted pursuant thereto, shall affect the validity of
14 local ordinances adopted pursuant to this section prior to the
15 effective date of P.L. . c. (C.) (now before the Legislature
16 as this bill) or amendments thereto adopted as authorized
17 pursuant to subsection b. of this section.

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

39 c. Notwithstanding the provisions of subsections a. or b. of this
40 section to the contrary, nothing in this section or in the "County
41 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
42 seq.) shall be construed to authorize ordinances providing for the
43 local regulation of, or collection of fees from, any facility
44 required to obtain an operating permit pursuant to section 13 of
45 P.L.1987, c.106 (C.26:2C-9.2) or any research and development
46 facility. However, local inspections of such facilities or research
47 and development facilities delegated pursuant to the "County
48 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
49 seq.) may be conducted as necessary in response to citizen
50 complaints.¹

51 (cf: P.L.1985, c.12, s.4)

52 11. (New section) For the purposes of complying with the
53 federal Clean Air Act, there is created in the Department of
54 Environmental Protection a Small Business Compliance Advisory
55 Panel.

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

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

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

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

14 b. (1) Members of the panel shall:

15 (a) serve for two year terms;

16 (b) annually elect, by majority vote of the full membership of
17 the panel, a chairperson and a vice-chairperson; and

18 (c) serve without compensation but shall be reimbursed for
19 necessary expenses incurred in the performance of their duties.

20 (2) The panel shall meet at least four times per year.

21 c. It shall be the responsibility of the panel to:

22 (1) render advisory opinions to the Commissioner of
23 Environmental Protection concerning the effectiveness of the
24 department's program for assisting small business stationary
25 sources with technical and environmental compliance issues with
26 respect to air pollution control, as required pursuant to 42 U.S.C.
27 §7661f of the federal Clean Air Act, and concerning air pollution
28 control requirements, permitting, and enforcement pertaining to
29 small business;

30 (2) make periodic reports to the Commissioner of
31 Environmental Protection and the Administrator of the United
32 States Environmental Protection Agency concerning compliance
33 of the State's air pollution control program with the
34 requirements of the federal "Paperwork Reduction Act"
35 (44 U.S.C. §3501 et seq.), the federal "Regulatory Flexibility
36 Act" (5 U.S.C. §601 et seq.), and the federal "Equal Access to
37 Justice Act" (5 U.S.C. §504 et seq. and 28 U.S.C. §2412 et seq.)
38 as they relate to small business;

39 (3) review information and air pollution control permit
40 applications provided to small business stationary sources to
41 assure that the information and applications are understandable
42 to the layperson; and

43 (4) determine if the department provides for the development
44 and dissemination of those advisory opinions and reports issued in
45 accordance with the provisions of this section.

46 12. (New section) The department shall establish industry
47 and environmental work groups as appropriate to consult on
48 matters relating to the regulation of air pollution sources. The
49 work groups shall consist of members of industry, environmental,
50 and other interested and affected parties as may be deemed
51 appropriate by the department.

52 Within 90 days after the effective date of P.L. , c. (C.)
53 (now before the Legislature as this bill), the department shall also
54 establish an industry and environmental work group to evaluate

1 the effects of emissions reductions on emission fee revenues and
2 the resultant impact on the department's air pollution control
3 program. As part of the 1997 annual report required pursuant to
4 section 7 of P.L. , c. (C.) (now before the Legislature as
5 this bill), the fee work group shall present its evaluation and a
6 recommendation on alternatives to funding the department's air
7 pollution control program other than through an increase in
8 emission fees.

9 The fee work group shall also make such evaluations and
10 recommendations concerning fee revenues and supplemental
11 surcharge revenues as required pursuant to section 5 of P.L. ,
12 c. (C.) (now before the Legislature as this bill).¹

13 ¹[12.] ¹13. (New section) Within 90 days of the effective date
14 of P.L. , c. (C.) (now before the Legislature as this bill),
15 the commissioner shall establish a Privatization Review Task
16 Force. The task force shall include representatives of the
17 department, business and industry, the environmental community,
18 and other members the commissioner may deem appropriate. The
19 task force shall review privatization opportunities within the air
20 pollution control program and issue a report to the commissioner
21 within 180 days of its establishment, whereupon the task force
22 shall dissolve.

23 ¹[13.] ¹14. This act shall take effect immediately.

24
25
26
27
28 Revises "Air Pollution Control Act (1954)," establishes federally
29 mandated operating permit program, and reforms air pollution
30 control permit program.

LEGISLATIVE FISCAL ESTIMATE TO

[SECOND REPRINT]

ASSEMBLY, No. 2664

STATE OF NEW JERSEY

DATED: July 7, 1995

Assembly Bill No. 2664 (2R) of 1995 amends and revises the Air Pollution Control Act of 1954 to reform and streamline the current air pollution control permitting program, establish an operating permit program in the Department of Environmental Protection (DEP), establish a small business stationary source technical and environmental compliance assistance program, establish an emissions trading and banking program, and assess a federally mandated operating permit program emission fee.

Currently, the DEP primarily controls air pollution emissions at stationary sources by issuing pre-construction permits, which are required before equipment that emits air pollutants may be installed or altered, and operating certificates, which authorize the operation of that equipment once it is built. In accordance with the 1990 amendments to the federal Clean Air Act (CAAA), the State must now adopt a new operating permit program that would consolidate the existing operating certificates for any major source of air pollution into a single operating permit. The operating permit program would apply only to major sources of air pollution.

The federal CAAA specifies that a minimum fee of \$25 per ton per year (in 1989 dollars, adjusted by the Consumer Price Index) of certain emissions must be charged unless a workload analysis indicates a different fee is required. Pursuant to this bill as amended, major facilities would be assessed an annual emission fee of \$25 per ton of pollutants per year (in 1989 dollars, adjusted by the Consumer Price Index).

The bill as amended also revises and reforms the current pre-construction permit program for air pollution sources not subject to the operating permit program. It also authorizes the department to issue new operating permits to major facilities pursuant to new fee criteria.

Last, the bill establishes a supplemental surcharge assessed to major facilities for the purpose of collecting up to \$1.50 million from both FY 1995 and FY 1996 emissions criteria. These funds would be used by the department solely to develop and implement an air permit computerization system to help streamline its operations. The bill also provides that any new fees collected in excess of \$9.51 million in FY 1996 or FY 1997 shall be deposited in the Air Surcharge Reengineering Fund, (as created by the bill to collect the surcharge described above). This provision is intended to limit the department's operating budget for the Major Source portion of its air program.

Although the department did not submit a fiscal note worksheet on the amended bill, it did informally provide the Office of Legislative Services (OLS) with the following data that compare revenues projected to be generated under the Major Source portion of the air program with this activity's operating budget level in FY

1996 (which is used for future estimating purposes in lieu of anticipated operating reductions encouraged by the bill, as explained below) (\$000):

<u>Major Source Program</u>	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>
Operating Budget	\$11.65	\$11.65	\$11.65
Revenues	9.51	9.51	10
Balance	(\$2.14)	(\$2.14)	(\$1.65)

The department also projects that \$6.1 million in fees will be generated pursuant to the bill's provision requiring each major facility to pay FY 1995 assessments for emission and operating permit application fees. This amount would be used to offset the department's \$6.2 million deficit in its FY 1995 air permit budget caused by the premature anticipation of the passage of this bill and the ensuing generation of revenues.

According to the department, the \$2.14 million deficit projected in FY 1996 would be offset by \$2.0 million in additional General Fund monies; the deficit balance would be addressed through budget reductions in the department's Policy and Planning office. The FY 1997 and FY 1998 deficit balances are intended to be offset by streamlining measures resulting from the bill's surcharge monies and fee revenue cap levels (of \$9.51 million). The lower revenue level in FY 1998 is due to certain emission criteria being eliminated from fee charges pursuant to the bill.

The Office of Legislative Services cannot compare the department's revenue estimates under the bill with past and present revenue levels from the air program because the latter amounts are not displayed according to major and non-major program sources. Also, while the FY 1995 and FY 1996 (as currently drafted) Appropriations Acts contain revenue anticipations from combined (i.e. major and non-major sources) air revenues of \$21.0 million and \$18.5 million respectively, both these amounts have been calculated using revenue levels affected by the passage of this bill. However, it is the bill's objectives, and the intentions of the affected State, industry and environmental group officials involved in negotiating an agreement on the current version of the bill, that both fee costs and departmental operating costs would be significantly reduced (and made fairer) if the bill's provisions are successfully implemented. The OLS notes that the availability of future General Fund appropriations to the department, as well as federal funding allotments, will also affect the operating budget of the air program.

As previously explained, the bill primarily affects the Major Source portion of the air program. The non-major portion is largely funded from General Fund and federal monies. With respect to the department's revenue and operating estimates, the OLS concurs with these amounts. The remaining provisions of the bill generally affect the regulated industries and will therefore have little effect on the State Budget or on the operating budget of the air program.

This fiscal estimate has been prepared pursuant to P.L. 1980, c. 67.

[SECOND REPRINT]
ASSEMBLY, No. 2664

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblywoman OGDEN, Assemblymen Felice, Rooney
and Assemblywoman Wright

1 AN ACT concerning air pollution, revising and reforming the air
2 pollution control permit program, creating the Small Business
3 Compliance Advisory Panel, amending P.L.1967, c.106,
4 amending the title of P.L.1954, c.212, and amending and
5 supplementing P.L.1954, c.212.

6
7 BE IT ENACTED by the Senate and General Assembly of the
8 State of New Jersey:

9 1. The title of P.L.1954, c.212 (C.26:2C-1 et seq.) is amended
10 to read as follows:

11 An act [relating to] concerning the control [and suspension] of
12 air pollution [, creating a Clean Air Council in the State
13 Department of Health and prescribing its functions, powers and
14 duties] and supplementing Title 26 of the Revised Statutes .
15 (cf. P.L.1967, c.106, s.1)

16 2. Section 2 of P.L.1954, c.212 (C.26:2C-2) is amended to read
17 as follows:

18 2. [The following words shall have the following meanings.
19 "Council" means the Clean Air Council created under this act.

20 "Department" means the State Department of Health.]

21 As used in this act:

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

25 "Air pollution" [as used in this act shall mean] means the
26 presence in the outdoor atmosphere of one or more air
27 contaminants in such quantities and duration as are, or tend to
28 be, injurious to human health or welfare, animal or plant life, or
29 property, or would unreasonably interfere with the enjoyment of
30 life or property throughout the State and in [such territories]
31 those areas of the State as shall be affected thereby, and
32 excludes all aspects of an employer-employee relationship as to
33 health and safety hazards.

34 "Commissioner" means the Commissioner of [Health in the
35 State Department of Health] Environmental Protection .

36 "Construct" or "construction" means to fabricate or erect
37 equipment or control apparatus at a facility where it is intended
38 to be used, but shall not include the dismantling of existing
39 equipment or control apparatus, site preparation, or the ordering,
40 receiving, temporary storage, or installation of equipment or
41 control apparatus. Unless otherwise prohibited by federal law,
42 "construct" or "construction" shall also not include the pouring

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AEN committee amendments adopted June 19, 1995.

² Assembly AAP committee amendments adopted June 22, 1995.

1 of footings or placement of a foundation where equipment or
2 control apparatus is intended to be used.

3 "Consumer Price Index"¹ or "CPI"¹ means the annual
4 Consumer Price Index for a calendar year as determined year to
5 year using the decimal increase in the September through August,
6 12-month average for the previous year of the Consumer Price
7 Index for All Urban Consumers (CPI-U), as published by the
8 United States Department of Labor.

9 "Control apparatus" means any device [which] that prevents or
10 controls the emission of any air contaminant.

11 "Council" means the Clean Air Council created pursuant to
12 section 3 of P.L.1967, c.106 [C.26:2C-3.2].

13 "Department" means the Department of Environmental
14 Protection.

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

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

22 "EPA" means the United States Environmental Protection
23 Agency.

24 "Equipment" means any device capable of causing the emission
25 of an air contaminant [into the open air] either directly or
26 indirectly into the outdoor atmosphere, and any stack, chimney,
27 conduit, flue, duct, vent, or similar device connected or attached
28 to, or serving, the equipment [This shall include] and shall
29 include, but need not be limited to, any equipment in which the
30 preponderance of the air [contaminant] contaminants emitted is
31 caused by [the] a manufacturing process.

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

42 "Federal Clean Air Act" means the federal "Clean Air Act"
43 [42 U.S.C. §7401 et seq.] and any subsequent amendments or
44 supplements to that act.

45 "¹Grandfathered" means construction, reconstruction, or
46 modification of equipment or control apparatus prior to the date
47 of enactment of section 13 of P.L.1967, c.106 [C.26:2C-9.2] on
48 June 15, 1967, or prior to the subsequent applicable revisions to
49 rules and regulations codified at N.J.A.C. 7:27-8.1 et seq. that
50 occurred March 5, 1973, June 1, 1976, April 5, 1985, and October
51 31, 1994.¹

52 "HAP" or hazardous air pollutant" means any air pollutant
53 listed in or pursuant to subsection (b) of section 112 of the
54 federal Clean Air Act [42 U.S.C. §7412].

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

9 "Major facility" means a major source, as that term is defined
 10 by the EPA in rules and regulations adopted pursuant to the
 11 federal Clean Air Act at 40 CFR §70.2 or any subsequent
 12 amendments thereto, that has the potential to emit any of the air
 13 contaminants listed below in an amount that is equal to or
 14 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 ¹

28
 29 "Modify" or "modification" means any physical change in, or
 30 change in the method of operation of, existing equipment or
 31 control apparatus that increases the amount of any air
 32 contaminant emitted by that equipment or control apparatus or
 33 that results in the emission of any air contaminant not previously
 34 emitted, but shall not include normal repair and maintenance.

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

37 "Person" means [and shall include corporations, companies,
 38 associations, societies, firms, partnerships and joint stock
 39 companies as well as individuals, and shall also include all
 40 political subdivisions of this State or any agencies or
 41 instrumentalities thereof] an individual, public or private
 42 corporation, company, partnership, firm, association, society,
 43 joint stock company, international entity, institution, county,
 44 municipality, state, interstate body, the United States of
 45 America, or any agency, board, commission, employee, agent,
 46 officer, or political subdivision of a state, an interstate body, or
 47 the United States of America.

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

52 "Process unit" means equipment assembled to produce
 53 intermediate or final products. A process unit can operate
 54 independently if supplied with sufficient feed or raw materials

1 of the department. Any information, other than actual or
2 allowable air contaminant emissions, relating to secret processes
3 or methods of manufacture or production obtained in the course
4 of [such] an inspection, investigation, or determination, shall be
5 kept confidential and shall not be admissible in evidence in any
6 court or in any other proceeding except before the department
7 [as herein defined]. If samples are taken for analysis, a duplicate
8 of the analytical report shall be furnished promptly to the person
9 suspected of causing air pollution;

10 [(e)] e. Receive or initiate complaints of air pollution, hold
11 hearings in connection with air pollution, and institute legal
12 proceedings for the prevention of air pollution and for the
13 recovery of penalties, in accordance with [this act] P.L.1954,
14 c.212 [C.26:2C-1 et seq.];

15 [(f)] f. With the approval of the Governor, cooperate with, and
16 receive [money] funds or other assistance from, the federal
17 government, the State government, any interstate body, or any
18 county or municipal government, or from private sources, for
19 the study and control of air pollution;

20 [(g)] g. The department may in accordance with a fee schedule
21 adopted as a rule or regulation establish and charge a
22 charge, in accordance with a fee schedule that shall be adopted by the
23 department pursuant to the "Administrative Procedure Act,"
24 P.L.1968, c.410 [C.52:14B-1 et seq.], (1) reasonable annual
25 emission fees for major facilities as provided in section 5 of
26 P.L., c. [C.] (now before the Legislature as this bill), and
27 (2) administrative fees for any of the services [it] the department
28 performs [, which fees shall be annual or periodic as the
29 department shall determine] or provides in connection with
30 administering P.L.1954, c.212 [C.26:2C-1 et seq.]. The
31 administrative fees charged by the department pursuant to this
32 [section] subsection shall not be less than \$10.00 nor more than
33 \$500.00 exceed \$25,000 per application based on criteria
34 contained in the fee schedule;

35 h. Issue, renew, reopen, and revise operating permits, and
36 require any person who is required to obtain an operating permit
37 under the provisions of the federal Clean Air Act to obtain an
38 operating permit and to certify compliance therewith for all air
39 pollution sources; and

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

44 (cf: P.L.1993, c.257, s.1)

45 4. Section 13 of P.L.1967, c.106 [C.26:2C-9.2] is amended to
46 read as follows:

47 13. [(a)] (a) No person shall construct, install or alter any
48 equipment or control apparatus, in other than a one or 2-family
49 dwelling or a dwelling of 6 or less family units one of which is
50 owner-occupied, until an application including plans and
51 specifications has been filed with the department and an
52 installation or alteration permit issued by the department, in
53 accordance with any codes, rules and regulations of the
54 department except that subject to any such codes, rules and

1 regulations the department may dispense with the filing of
2 applications, plans and specifications. Information relating to
3 secret processes or methods of manufacture or production is
4 exempted from the plans and specifications and other pertinent
5 information to which the department is entitled under this
6 section.

7 (b) No person shall use or cause to be used any such new or
8 altered equipment or control apparatus for which an installation
9 or alteration permit is required or issued until an operating
10 certificate has been issued by the department.

11 (c) 1a. No person at a facility without an operating permit
12 shall construct, reconstruct, install, modify, use or cause to be
13 used any equipment or control apparatus until an application
14 thereof including plans and specifications has been filed with the
15 department and the department issues a construction,
16 reconstruction, installation, or modification permit and operating
17 certificate in accordance with any applicable codes, rules, or
18 regulations of the department. This requirement shall also apply
19 to any facility that requires an operating permit until such time
20 as a final operating permit is issued to the facility.

21 b. No person at a facility with an operating permit shall
22 construct, reconstruct, install, modify, use or cause to be used
23 any equipment or control apparatus until an application thereof
24 including plans and specifications has been filed with the
25 department and the department issues an authorization for
26 construction, reconstruction, installation, or modification by
27 revising the operating permit in accordance with any applicable
28 codes, rules, or regulations of the department.

29 c. No operating permit, operating permit revision, or operating
30 certificate or renewal thereof [.] required [by this act] pursuant
31 to P.L.1954, C.212 [C.26:2C-1 et seq.] [.] shall be issued by the
32 department unless the applicant shows to the satisfaction of the
33 department that the equipment is designed to operate without
34 causing a violation of any provision of [this act] P.L.1954, c.212
35 [C.26:2C-1 et seq.] or of any codes, rules [and] or regulations
36 [promulgated thereunder] adopted pursuant thereto, and that,
37 except in the case of a renewal operating certificate, initial
38 operating permit, or renewal operating permit, the equipment
39 incorporates advances in the art of air pollution control
40 developed for the kind and amount of air contaminant emitted by
41 the applicant's equipment.]

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

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

53 c. Newly constructed, reconstructed, or modified equipment
54 and control apparatus shall incorporate advances in the art of air

1 pollution control as developed for the kind and amount of air
2 contaminant emitted by the applicant's equipment and control
3 apparatus as provided in this subsection.¹

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

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

17 (b) For an air contaminant subject to a significant emissions
18 increase of a non-attainment air contaminant in a
19 non-attainment area, advances in the art of air pollution control
20 shall be the lowest achievable emission rate (LAER) as set forth
21 by the EPA at 40 C.F.R. §51.165(a)(1)(xiii) or any subsequent
22 amendments thereto;

23 (c) For a hazardous air pollutant technology requirement,
24 advances in the art of air pollution control shall be the maximum
25 achievable control technology (MACT) as set forth at 42 U.S.C.
26 §7412 or any subsequent amendments thereto; and

27 (d) For other air contaminants, advances in the art of air
28 pollution control means up-to-date technology and methods,
29 reflected in equipment¹, control apparatus,¹ and procedures,
30 that when applied to an emission source shall reasonably
31 minimize air contaminant emissions. The technology shall have
32 been demonstrated for similar air contaminant discharge
33 parameters to be reliable and shall be available at reasonable
34 cost commensurate with the reduction in air contaminant
35 emissions.

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

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

47 (b) applicable new source performance standards; and
48 (c) any other applicable State or federal standard, code, rule,
49 or regulation.

50 (3) [a] In order to promote greater emissions reductions than
51 would otherwise be achieved, the department may adopt,
52 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
53 (C.52:14B-1 et seq.), rules and regulations that offer a person the
54 option of establishing in an operating permit a 15-year plan for

1 reducing facility emissions beyond minimum air pollution control
2 requirements ¹ in lieu of adhering to strict permit review
3 schedules and complying with less effective State requirements¹

4 ² Such a plan shall include schedules setting forth milestones for
5 reducing emissions at the facility. Milestones may be met by
6 reducing emissions at the facility and by providing emissions
7 reduction credits from non-facility sources pursuant to an
8 emissions trading and banking program adopted pursuant to
9 section 8 of P.L. , c. (C.) (now before the Legislature as
10 this bill).

11 (b) The department shall review the achievement of the
12 milestones in the plan no less frequently than every five years
13 when the operating permit is renewed. The department may
14 require the person to submit, as part of the application for
15 renewal of the operating permit, a summary and trend of the
16 actual air contaminant emissions data reported in the facility's
17 annual emission statements for the previous five years. If the
18 department determines during the approval process for an
19 operating permit renewal that the milestones in the plan have not
20 been met at a facility and that there is no reasonable likelihood
21 that the milestones can or will be met, the department may
22 withdraw the opportunity for the facility to continue pursuant to
23 the plan and shall require instead that the facility comply with
24 the promulgated schedules for all applicable requirements.

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

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

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

49 ⁵(a) The department shall, within 18 months after the effective
50 date of P.L. , c. (C.) (now before the Legislature as this
51 bill), publish the first technical manual containing technology,
52 methods, and performance levels that can be used by applicants
53 for demonstrating advances in the art of air pollution control.
54 Public notice of the availability of each draft technical manual

1 shall be published in the New Jersey Register, and each final
2 technical manual shall consider any public comments thereon that
3 are received by the department.

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

16 (c) Instead of relying on a technical manual for advances in the
17 art of air pollution control, an applicant may propose
18 "case-by-case" advances in the art of air pollution control
19 applicable to a specific source operation. If the department
20 determines that the proposal is consistent with the provisions of
21 this subsection, the proposal shall be deemed to constitute
22 advances in the art of air pollution control for that specific
23 source operation.

24 (d) Advances in the art of air pollution control shall include
25 new source performance standards adopted by the EPA on or
26 after the effective date of P.L. , c. (C.) (now before the
27 Legislature as this bill) and those new source performance
28 standards published as advances in the art of air pollution control
29 pursuant to P.L. 1954, c. 212 [C. 26:2C-1 et seq.].¹

30 [(1) (5) Before an operating permit, operating permit revision
31 or operating certificate or any renewal thereof is issued, or as a
32 condition of issuance, the department may require the applicant
33 to conduct such tests as are necessary (in the opinion of the
34 department) to determine the kind or amount of the air
35 contaminant emitted from the equipment or whether the
36 equipment or fuel or the operation of the equipment is in
37 violation of any of the provisions of [this act] P.L. 1954, c. 212
38 [C. 26:2C-1 et seq.] or of any codes, rules [and] or regulations
39 [promulgated thereunder] adopted pursuant thereto. [Such] The
40 tests shall be made at the expense of the applicant and shall be
41 conducted in a manner approved by the department, and the test
42 results shall be reviewed and professionally certified.

43 [(2) (6) ~~Equipment or control apparatus identified by the~~
44 department as not] Grandfathered equipment or control apparatus
45 shall not be¹ subject to a demonstration of advances in the art of
46 air pollution control ~~shall not be subjected to such a~~
47 demonstration upon inclusion in the initial operating permit
48 application, provided that the equipment or control apparatus is
49 not modified or reconstructed].¹

50 (7) An operating permit and operating certificate or any
51 renewal thereof shall be valid for a period of [5] five years from
52 the date of issuance, unless sooner revoked for cause by order of
53 the department, and may be renewed upon application to the
54 department.

1 [(3)] (g) Upon receipt of an application for the issuance of an
2 operating certificate or any renewal thereof, the department, in
3 its discretion, may issue a temporary operating certificate valid
4 for [a period not to exceed] 90 days or until a five year operating
5 certificate has been issued or denied.

6 d. The following are exempt from the provisions of s^b sections
7 a. and b. of this section:

8 (1) One or two family dwellings;

9 (2) A dwelling of six or less family units, one of wh^{ch} is owner
10 occupied;

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

13 (4) Equipment ¹[or] and¹ control apparatus that is de minimis
14 in terms of size or emissions as prescribed in rules and
15 regulations that shall be adopted by the department pursuant to
16 the "Administrative Procedure Act," P.L.1968, c.410 [C.52:14B-1
17 et seq.].

18 e. Except as otherwise prohibited by the EPA pursuant to the
19 federal Clean Air Act, any person who has received or receives a
20 facility-wide permit issued pursuant to the "Pollution Prevention
21 Act," P.L.1991, c.235 [C.13:1D-35 et seq.] shall be deemed to
22 satisfy the requirement for an operating permit issued pursuant
23 to P.L.1964, c.212 [C.26:2C-1 et seq.].

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

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

33 h. Notwithstanding the provisions of any other law, rule, or
34 regulation to the contrary, the department may issue a general
35 permit in lieu of any permit issued pursuant to this section. Prior
36 to issuing a general permit, the department shall provide ¹public¹
37 notice ¹[of an] and¹ opportunity for public comment.

38 i. The department may require the reporting and evaluation of
39 emissions information for any air contaminant. However, prior to
40 ¹requiring that such information be included on a permit or¹
41 regulating any air contaminant not regulated by the EPA pursuant
42 to the federal Clean Air Act, the department shall first make a
43 determination and advise the public of its conclusion that
44 regulating that air contaminant is in the best interest of human
45 health, welfare and the environment, and publish that
46 determination and justification in accordance with the provisions
47 of the "Administrative Procedure Act," P.L.1968, c.410
48 [C.52:14B-1 et seq.].

49 j. Except as otherwise prohibited by federal law, any person
50 who has submitted to the department an application for a permit
51 to construct, reconstruct, install, or modify equipment or control
52 apparatus may place that equipment or control apparatus on the
53 footings or foundation where it is intended to be used during the
54 pendency of the permit application review process. A person

1 intending to take action authorized pursuant to this subsection
2 shall notify the department, via certified mail, of the intent to
3 undertake the action at least seven days prior to the
4 commencement of the action.

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

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

21 (cf. P.L.1967, c.106, s.13)

22 ¹l. (New section) a. Every major facility shall remit to the
23 State an annual emission fee of \$27.50 per ton (in 1989 dollars) of
24 the actual annual emissions of each regulated air contaminant
25 reported in the emission statement for that facility, or in the
26 absence of such information, on permitted emissions, or where
27 there is not a permit, on potential to emit.

28 The emission fee required pursuant to this subsection for each
29 State fiscal year shall be adjusted each year by the percentage, if
30 any, by which the Consumer Price Index exceeds the Consumer
31 Price Index for the calendar year 1989.

32 b. As part of the adopted fee schedule for major facilities, the
33 department:

34 (1) shall not require a major facility to remit an emission fee
35 if the total actual emissions of all regulated air contaminants
36 from that major facility does not exceed 10 tons per year;

37 (2) shall begin collecting emission fees in fiscal year 1995 for
38 air contaminants reported in a calendar year 1993 emission
39 statement, including carbon monoxide, particulates, sulfur
40 dioxide, oxides of nitrogen, and VOCs, but not including lead,
41 HAPs, and any other air contaminants, and

42 (3) may begin collecting emission fees in fiscal year 1998 for
43 lead, HAPs, and any other air contaminant categories as reported
44 in a calendar year 1996 emission statement.

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

48 d. As used in this section, "major facility" means a facility
49 that has the potential to emit any of the air contaminants listed
50 below in an amount that is equal to or exceeds the applicable
51 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

b. (New section) a. (1) Each major facility shall pay to the department a fee or fees as calculated pursuant to this subsection and subsections b., c., or d. of this section, as appropriate. The per-ton emission fees shall be based on the actual annual emissions of each regulated air contaminant, except as set forth for carbon monoxide in subsections b., c., and d. of this section, 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. For the State fiscal year 1995, each major facility shall pay the following fees:

(1) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air contaminant, excluding carbon monoxide, and an emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

(2) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton on one-half of the total tons of carbon monoxide;

(3) An initial operating permit application fee ²per facility² not to exceed \$25,000. For the purpose of calculating the initial 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 prior to the deadline for submittal of the operating permit application;

(4) A fee for any facility modification in an amount calculated using the fee schedule therefor set forth in rules and regulations adopted by the department, except that no fee for a modification review shall exceed \$25,000; and

(5) Certificate fees assessed and collected in a manner established in rules and regulations adopted by the department.

c. (1) For the State fiscal years 1996 and 1997, each major facility shall pay the following fees:

(a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air

1 contaminant, excluding carbon monoxide, and an emission fee of
2 \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first
3 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

4 (b) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
5 per ton on one-half of the total tons of carbon monoxide;

6 (c) An initial operating permit application fee ²per facility²
7 not to exceed \$25,000. For the purpose of calculating the initial
8 operating permit application fee, the significant equipment listed
9 in the operating permit application shall be assessed at \$125 per
10 piece of equipment. The operating permit application fee shall
11 be submitted at the time of submission of the operating permit
12 application, and

13 (d) A fee for any facility modification in an amount calculated
14 using the fee schedule therof set forth in rules and regulations
15 adopted by the department ², except that no fee for a
16 modification review shall exceed \$25,000. The fee for a
17 significant modification review for source operations such as
18 solid or hazardous waste treatment and disposal, reciprocating
19 engines, and fuel combustion processes with heat input greater
20 than 100 million BTU/hour or that burn solid fuel shall not exceed
21 \$25,000. All other modification fees shall be assessed based upon
22 the amount of equipment modified and shall not exceed \$500 per
23 piece of equipment and \$25,000 for an entire modification
24 review²;

25 (2) Notwithstanding the provisions of paragraph (1) of this
26 subsection to the contrary, no major facility shall pay an emission
27 fee less than \$1,000 for each of the State fiscal years 1996 and
28 1997.

29 (3) Of the amount assessed and collected in fees pursuant to
30 this subsection, not more than \$9,510,000 shall be appropriated as
31 provided in section 6 of P.L. , c. (C.) (now before the
32 Legislature as this bill). If the amount of fees collected pursuant
33 to this subsection exceeds \$9,510,000, the amount in excess of
34 \$9,510,000 shall be deposited into the Air Surcharge
35 Reengineering Fund established pursuant to subsection f. of this
36 section. If the amount of fees collected pursuant to this
37 subsection is less than \$9,510,000, the department, in
38 consultation with the fee work group established pursuant to
39 section 12 of P.L. , c. (C.) (now before the Legislature as
40 this bill), shall evaluate the reasons for the deficiency and make
41 recommendations accordingly to the Governor, the Legislature,
42 and the State Treasurer concerning any measures necessary to
43 ensure that the operating permit program is adequately funded.

44 d. (1) For the State fiscal year 1998 and each fiscal year
45 thereafter, each major facility shall pay the following fees:

46 (a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
47 per ton of each regulated air contaminant, excluding carbon
48 monoxide;

49 (b) An initial operating permit application fee ²per facility²
50 not to exceed \$25,000. For the purpose of calculating the initial
51 operating permit application fee, the significant equipment listed
52 in the operating permit application shall be assessed at \$125 per
53 piece of equipment. The operating permit application fee shall
54 be submitted at the time of submission of the operating permit
55 application, and

1 (c) A fee for any significant modification in an amount
2 calculated using a fee schedule therefore to be set forth in rules
3 and regulations to be adopted by the department ², except that
4 no fee for a significant modification review shall exceed \$25,000².

5 (2) Notwithstanding the provisions of paragraph (1) of this
6 subsection to the contrary, no major facility shall pay an emission
7 fee less than \$1,000 for each of the State fiscal years 1998 and
8 thereafter.

9 e. (1) In addition to the fees assessed of major facilities
10 pursuant to subsections b. and c. of this section, each major
11 facility shall be assessed a supplemental surcharge for each of
12 the State fiscal years 1995 and 1996 that shall be sufficient to
13 raise \$1.5 million per fiscal year in revenue. The supplemental
14 surcharge shall be based on actual annual emissions of each
15 regulated air contaminant, excluding carbon monoxide, reported
16 in the emission statement for that major facility, or, in the
17 absence of such information, on permitted emissions, or where a
18 permit has not been issued, on the potential to emit, but in no
19 case shall a supplemental surcharge assessed of a major facility
20 exceed \$20,000 per year per major facility.

21 (2) If the amount of revenue raised by the assessment of the
22 supplemental surcharge pursuant to paragraph (1) of this
23 subsection is less than \$1,500,000 for either State fiscal years
24 1995 or 1996, the department, in consultation with the fee work
25 group established pursuant to section 12 of P.L. , c. (C.)
26 (now before the Legislature as this bill), shall evaluate the
27 reasons for the deficiency and the need for adjusting the
28 supplemental surcharge to make up the difference.

29 (3) The supplemental surcharge assessed pursuant to this
30 subsection shall not be collected after State fiscal year 1996.
31 Any monies remaining in the Air Surcharge Reengineering Fund
32 at the conclusion of State fiscal year 1997 shall be used by the
33 department to reduce fees assessed of major facilities in State
34 fiscal year 1998, whereupon the fund shall expire.

35 f. There is established in the department a dedicated fund to
36 be known as the "Air Surcharge Reengineering Fund." All
37 supplemental surcharges collected pursuant to paragraph (1) of
38 subsection e. of this section shall be deposited into that fund.
39 Monies in the fund shall be dedicated solely for use by the
40 department in developing and implementing the air permit
41 computerization system, publication of requirements for
42 advances in the art of air pollution control, establishment of
43 general permits, and establishment of standard permit
44 conditions. No monies from this fund shall be allocated,
45 appropriated, or used for any purpose other than as set forth in
46 this subsection. The department, in consultation with the fee
47 work group established pursuant to section 12 of P.L. , c.
48 (C.) (now before the Legislature as this bill), shall develop a
49 plan for the expenditure of monies in the fund, and shall maintain
50 a detailed record of the expenditures and disbursements from the
51 fund and publish it annually in the New Jersey Register.

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

1 h. The department may not assess a major facility any fee to
2 implement the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.)
3 other than the fees authorized pursuant to this section.¹

4 6. (New section) Pursuant to the mandate of the federal Clean
5 Air Act, all revenues collected pursuant to section 5 of P.L. . . .
6 c. (C.) (now before the Legislature as this bill) shall be
7 dedicated and appropriated annually solely for use by the
8 department in administering the provisions of P.L.1954, ¹[C.2]
9 c.212¹ (C.26:2C-1 et seq.) with regard to major facilities ¹(as
10 defined pursuant to subsection d. of section 5 of P.L. . . .
11 (C.) (now before the Legislature as this bill))¹ . ¹[Those]
12 Except as provided otherwise for the supplemental surcharge
13 assessed pursuant to section 5 of P.L. . . . c. (C.) (now before
14 the Legislature as this bill), those¹ monies shall be used only to
15 hire personnel and fund positions, procure necessary equipment,
16 and fund the functions of the department prescribed pursuant to
17 P.L.1954, C.212 (C.26:2C-1 et seq.) with regard to major
18 facilities¹ and to fund implementation and operation of the small
19 business stationary source technical and environmental
20 compliance assistance program required pursuant to 42 U.S.C.
21 §7661f of the federal Clean Air Act.¹ . Such program costs may
22 also include, but need not be limited to, costs connected to or
23 associated with: program planning; data collection;
24 investigations; rule and regulation development; reviewing,
25 issuing, and administering operating permits; monitoring and
26 administratively enforcing compliance with laws, codes, rules,
27 regulations, and permits; ¹implementing and operating the small
28 business stationary source technical and environmental
29 compliance assistance program required pursuant to 42 U.S.C.
30 §7661f of the federal Clean Air Act;]¹ and any other activities
31 with regard to major facilities required for State compliance with
32 the federal Clean Air Act.

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

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

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

49 The report shall also identify any need for legislative action to
50 adjust the emission fee ¹[cap]¹ prescribed pursuant to
51 ¹[subsection a. of] section 5 of P.L. . . . c. (C.) (now before
52 the Legislature as this bill) to ensure that the ¹[cap fee]¹ is
53 adequate to fund the air pollution control program in accordance
54 with the mandates of the federal Clean Air Act, and discuss the

1 advantages and disadvantages of setting higher emission fees for
2 hazardous air pollutants.

3 b. (New section) a. 1[The] Within 90 days after the effective
4 date of this act, the¹ department shall 1[adopt] propose¹ .
5 pursuant to the provisions of the "Administrative Procedure
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
7 that establish emissions trading and banking program that use
8 economic incentives to make progress toward the attainment or
9 maintenance of the National Ambient Air Quality Standards
10 (NAAQS), reduce or prevent emissions of 1[HAPs] air
11 contaminants¹ , ensure healthful air quality, or otherwise
12 contribute to the protection of human health, welfare and the
13 environment from air pollution. 1The department shall adopt
14 those rules and regulations within 90 days after proposal.¹

15 b. The emissions trading rules and regulations shall be designed
16 so that 1[emission] emissions¹ reductions shall be realized earlier
17 or at a more accelerated rate than would otherwise be achieved
18 in accordance with applicable air quality mandates, and so that
19 compliance with air quality mandates can be achieved with
20 greater flexibility or at lower cost. 1The rules and regulations
21 shall establish criteria for the generation and use of emissions
22 reduction credits, including the use of emissions reduction credits
23 in lieu of granting exemptions or waivers from compliance with
24 emissions reduction requirements, and shall require that 10% of
25 the emissions reduction credits gained shall be permanently
26 retired for the public benefit when a trade occurs.¹ The rules
27 and regulations may include, but need not be limited to,
28 provisions designating the pollutants to be involved in the
29 program, designating the persons who may participate in the
30 program, establishing 1[emission] emissions¹ limitations and
31 methods for projecting and verifying emissions, and establishing
32 enforcement mechanisms, including emissions tracking, periodic
33 program audits, and penalties.

34 For any emissions trading program adopted for the purpose of
35 making progress toward attaining the National Ambient Air
36 Quality Standard (NAAQS) for ozone, the department may allow
37 reductions of volatile organic compounds (VOCs) to be
38 substituted for required reductions of oxides of nitrogen (NOx) or
39 reductions of oxides of nitrogen (NOx) to be substituted for
40 required reductions of volatile organic compounds (VOCs). Any
41 such substitution shall occur at a ratio established by the
42 department by rule or regulation adopted pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), 1which shall be¹ developed in recognition of the role of
45 each pollutant in the formation of ground level ozone.

46 c. The emissions trading rules and regulations adopted by the
47 department shall not conflict with applicable federal law and
48 shall constitute, contribute to, or be consistent with one or more
49 strategies that result in quantifiable emissions reductions and are
50 creditable under the State Implementation Plan (SIP) required
51 pursuant to the federal Clean Air Act. These may be emission
52 limiting or market-response strategies for mobile 1[or] 1
53 stationary 1, or area¹ sources, 1[or both] and shall include the
54 creation, trading, and use of emissions reduction credits¹ .

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

5 e. The department shall involve in the development of the
6 rules and regulations for [emission] emissions¹ trading programs
7 representatives of the affected industry, environmental, and
8 public interest groups as well as governmental entities with
9 affected or related jurisdictions.

10 If the department shall consider the role of a third party in
11 the banking, verification, validation of use, enforcement, and
12 program audits associated with emissions reduction credits, and,
13 to the maximum extent possible, create and preserve
14 opportunities for private sector participation in any emissions
15 trading program established by the department.¹

16 9. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to
17 read as follows:

18 19. a. If any person violates any of the provisions of [this act]
19 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
20 or order [promulgated] adopted¹ or issued pursuant [to the
21 provisions of this act] thereto, the department may institute a
22 civil action in a court of competent jurisdiction for injunctive or
23 any other appropriate relief to prohibit and prevent such violation
24 or violations and the [said] court may proceed in the action in a
25 summary manner.

26 b. Any person who violates the provisions of [this act]
27 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
28 or order [promulgated] adopted¹ or issued pursuant [to this act]
29 thereto shall be liable to a civil administrative penalty of not
30 more than [\$10,000.00] \$10,000 for the first offense, and not more
31 than [\$25,000.00] \$25,000 for the second offense, and not more
32 than [\$50,000.00] \$50,000 for the third and each subsequent
33 offense. If the violation is of a continuing nature, each day
34 during which it continues shall constitute an additional, separate
35 and distinct offense. No civil administrative penalty shall be
36 levied except upon an administrative order issued pursuant to
37 section 14 of P.L.1954, c.212 (C.26:2C-14).

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

42 d. Any person who violates the provisions of P.L.1954, c.212
43 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
44 [promulgated] adopted¹ or issued pursuant [to that act] thereto,
45 or a court order issued pursuant to subsection a. of this section,
46 or who fails to pay a civil administrative penalty in full pursuant
47 to section 9 of P.L.1962, c.215 (C.26:2C-14.1), is subject, upon
48 order of the court, to a civil penalty of not more than
49 [\$10,000.00] \$10,000 for the first offense, not more than
50 [\$25,000.00] \$25,000 for the second offense, and not more than
51 [\$50,000.00] \$50,000 for the third and each subsequent offense. If
52 the violation is of a continuing nature, each day during which the
53 violation continues, or each day in which the civil administrative
54 penalty is not paid in full, constitutes an additional, separate and

1 distinct offense. Any penalty imposed under this subsection may
2 be recovered with costs in a summary proceeding pursuant to
3 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law
4 Division of the Superior Court has jurisdiction to enforce "the
5 penalty enforcement law."

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

12 f. Any person who:

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

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

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

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

36 g. In determining whether an odor unreasonably interferes with
37 the enjoyment of life or property in violation of P.L.1954, c.212
38 (C.26:2C-1 et seq.) or any code, rule, regulation or order
39 [promulgated] adopted¹ or issued pursuant thereto, the
40 department shall consider all of the relevant facts and
41 circumstances, including, but not limited to, the character,
42 severity, frequency, and duration of the odor, and the number of
43 persons affected thereby. In considering these and other relevant
44 facts and circumstances, no one factor shall be dispositive, but
45 each shall be considered relevant in determining whether an odor
46 interferes with the enjoyment of life or property, and, if so,
47 whether such interference is unreasonable considering all of the
48 circumstances.

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

52 h. The department shall establish procedures for alternative
53 dispute resolution as an option for settlement of contested cases.
54 Alternative dispute resolution shall be voluntary and shall not be

1 mandated by the department.

2 (cf. P.L.1989, c.333, s.1)

3 10. Section 22 of P.L.1954, c.212 (C.26:2C-22) is amended to
4 read as follows:

5 22. [No ordinances of any governing body of a municipality or
6 county or board of health more stringent than this act or any
7 code, rules or regulations promulgated pursuant thereto shall be
8 superseded by this act. Nothing in this act or in any code, rules
9 or regulations promulgated pursuant thereto shall preclude the
10 right of any governing body of a municipality or county or board
11 of health, subject to the approval of the department, to adopt
12 ordinances or regulations more stringent than this act or any
13 code, rules or regulations promulgated pursuant thereto.
14 Penalties for violations of ordinances of a governing body of a
15 municipality, county or board of health shall not exceed
16 \$2,500.00.]

17 1[a. To ensure Statewide uniform treatment of air pollution
18 regulation and control, and eliminate conflicting and inconsistent
19 policies and standards in connection therewith, the pervasive and
20 comprehensive regulatory and enforcement program established
21 pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute
22 the exclusive program of the State concerning the subject matter
23 covered by that act, whether that subject matter be expressed by
24 inclusion in or exclusion from that act.

25 b. No municipality, county, local board of health, local health
26 agency, regional health commission, or any other political
27 subdivision of the State may enact any ordinance, pursuant to
28 section 9 of P.L.1977, c.443 (C.26:3A2-27) or any other authority,
29 concerning the subject matter covered by P.L.1954, c.212
30 (C.26:2C-1 et seq.). This section shall not affect the authority of
31 a certified local health agency to enact ordinances for the
32 limited purposes authorized by section 7 of P.L.1991, c.99
33 (C.26:3A2-34), provided that no such fee shall be assessed against
34 any source or facility required to obtain an operating permit
35 pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2).

36 c. Any ordinance adopted by a municipality, county, local
37 board of health, local health agency, regional health commission,
38 or other political subdivision of the State concerning the subject
39 matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted
40 prior to the effective date of P.L. , c. (C.) (now before the
41 Legislature as this bill) shall become null and void on the 180th
42 day after the effective date of P.L. , c. (C.) (now before
43 the Legislature as this bill).

44 d. Nothing in this section shall be construed to limit or impair
45 the authority of the department to delegate authority to a
46 certified local health agency in accordance with the provisions of
47 the "County Environmental Health Act," P.L.1977, c.443
48 (C.26:3A2-21 et seq.).

49 a. (1) No ordinances of any governing body of a municipality or
50 county or board of health more stringent than P.L.1954, c.212
51 (C.26:2C-1 et seq.) or any code, rules or regulations adopted
52 pursuant thereto shall be superseded by P.L.1954, c.212
53 (C.26:2C-1 et seq.). After the effective date of P.L. , c. (C.) (now before the Legislature as this bill), no municipality,
54

1 county, local board of health, local health agency, regional health
2 commission, or any other political subdivision of the State may
3 enact any ordinance, pursuant to P.L.1954, c.212 (C.26:2C-1 et
4 seq.), section 9 of P.L.1977, c.443 (C.26:3A2-27), or any other
5 authority, concerning the subject matter covered by P.L.1954,
6 c.212 (C.26:2C-1 et seq.), except as provided in subsection b. of
7 this section, whether that subject matter is expressed by
8 inclusion in or exclusion from that act.

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

11 Nothing set forth in the "County Environmental Health Act,"
12 P.L.1977, c.443 (C.26:3A2-21 et seq.), or any codes, rules or
13 regulations adopted pursuant thereto, shall affect the validity of
14 local ordinances adopted pursuant to this section prior to the
15 effective date of P.L. , c. (C.) (now before the Legislature
16 as this bill) or amendments thereto adopted as authorized
17 pursuant to subsection b. of this section.

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

39 c. Notwithstanding the provisions of subsections a. or b. of this
40 section to the contrary, nothing in this section or in the "County
41 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
42 seq.) shall be construed to authorize ordinances providing for the
43 local regulation of, or collection of fees from, any facility
44 required to obtain an operating permit pursuant to section 13 of
45 P.L.1987, c.106 (C.26:2C-9.2) or any research and development
46 facility. However, local inspections of such facilities or research
47 and development facilities delegated pursuant to the "County
48 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
49 seq.) may be conducted as necessary in response to citizen
50 complaints.¹

51 (cf. P.L.1985, c.12, s.4)

52 11. (New section) For the purposes of complying with the
53 Federal Clean Air Act, there is created in the Department of
54 Environmental Protection a Small Business Compliance Advisory
55 Panel.

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

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

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

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

14 b. (1) Members of the panel shall:

15 (a) serve for two year terms;

16 (b) annually elect, by majority vote of the full membership of
17 the panel, a chairperson and a vice-chairperson; and

18 (c) serve without compensation but shall be reimbursed for
19 necessary expenses incurred in the performance of their duties.

20 (2) The panel shall meet at least four times per year.

21 c. It shall be the responsibility of the panel to:

22 (1) render advisory opinions to the Commissioner of
23 Environmental Protection concerning the effectiveness of the
24 department's program for assisting small business stationary
25 sources with technical and environmental compliance issues with
26 respect to air pollution control, as required pursuant to 42 U.S.C.
27 §7661f of the federal Clean Air Act, and concerning air pollution
28 control requirements, permitting, and enforcement pertaining to
29 small business;

30 (2) make periodic reports to the Commissioner of
31 Environmental Protection and the Administrator of the United
32 States Environmental Protection Agency concerning compliance
33 of the State's air pollution control program with the
34 requirements of the federal "Paperwork Reduction Act"
35 (44 U.S.C. §3501 et seq.), the federal "Regulatory Flexibility
36 Act" (5 U.S.C. §601 et seq.), and the federal "Equal Access to
37 Justice Act" (5 U.S.C. §504 et seq. and 28 U.S.C. §2412 et seq.)
38 as they relate to small business;

39 (3) review information and air pollution control permit
40 applications provided to small business stationary sources to
41 assure that the information and applications are understandable
42 to the layperson; and

43 (4) determine if the department provides for the development
44 and dissemination of those advisory opinions and reports issued in
45 accordance with the provisions of this section.

46 112. (New section) The department shall establish industry
47 and environmental work groups as appropriate to consult on
48 matters relating to the regulation of air pollution sources. The
49 work groups shall consist of members of industry, environmental,
50 and other interested and affected parties as may be deemed
51 appropriate by the department.

52 (Within 90 days after the effective date of P.L. , c. [C.]
53 (now before the Legislature as this bill), the department shall also
54 establish an industry and environmental work group to evaluate

1 the effects of emissions reductions on emission fee revenues and
2 the resultant impact on the department's air pollution control
3 program. As part of the 1997 annual report required pursuant to
4 section 7 of P.L. . c. (C.) (now before the Legislature as
5 this bill), the fee work group shall present its evaluation and a
6 recommendation on alternatives to funding the department's air
7 pollution control program other than through an increase in
8 emission fees.

9 The fee work group shall also make such evaluations and
10 recommendations concerning fee revenues and supplemental
11 surcharge revenues as required pursuant to section 5 of P.L. ,
12 c. (C.) (now before the Legislature as this bill).¹

13 ¹[12.] ¹ (New section) Within 90 days of the effective date
14 of P.L. . c. (C.) (now before the Legislature as this bill),
15 the commissioner shall establish a Privatization Review Task
16 Force. The task force shall include representatives of the
17 department, business and industry, the environmental community,
18 and other members the commissioner may deem appropriate. The
19 task force shall review privatization opportunities within the air
20 pollution control program and issue a report to the commissioner
21 within 180 days of its establishment, whereupon the task force
22 shall dissolve.

23 ¹[13.] ¹ This act shall take effect immediately.

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28 Revises "Air Pollution Control Act (1954)," establishes federally
29 mandated operating permit program, and reforms air pollution
30 control permit program.

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ASSEMBLY AAP COMMITTEE

AMENDMENTS

to

Assembly Bill No. 2664 (1R)

(Sponsored by Assemblywoman OGDEN)

ADOPTED

JUN 2 1995

REPLACE SECTION 5 TO READ:

1[5. (New section) a. Every major facility shall remit to the State an annual emission fee of \$27.50 per ton (in 1985 dollars) of the actual annual emissions of each regulated air contaminant reported in the emission statement for that facility, or in the absence of such information, on permitted emissions, or where there is not a permit, on potential to emit.

The emission fee required pursuant to this subsection for each State fiscal year shall be adjusted each year by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index for the calendar year 1989.

b. As part of the adopted fee ~~schedule~~ for major facilities, the department:

(1) shall not require a major facility to remit an emission fee if the total actual emissions of all regulated air contaminants from that major facility does not exceed 10 tons per year;

(2) shall begin collecting emission fees in fiscal year 1995 for air contaminants reported in a calendar year 1993 emission statement, including carbon monoxide, particulates, sulfur dioxide, oxides of nitrogen, and VOCs, but not including lead, HAPs, and any other air contaminants; and

(3) may begin collecting emission fees in fiscal year 1998 for lead, HAPs, and any other air contaminant categories as reported in a calendar year 1996 emission statement.

c. 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 authorized pursuant to this section.

d. As used in this section, "major facility" means a facility 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:

<u>Air Contaminant</u>	<u>Threshold level</u>
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

5. [New section] a. (1) Each major facility shall pay to the department a fee or fees as calculated pursuant to this subsection and subsections b., c., or d. of this section, as appropriate. The per-ton emission fees shall be based on the actual annual emissions of each regulated air contaminant, except as set forth for carbon monoxide in subsections b., c., and d. of this section, 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. For the State fiscal year 1995, each major facility shall pay the following fees:

(1) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air contaminant, excluding carbon monoxide, and an emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs.

(2) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton on one-half of the total tons of carbon monoxide;

(3) An initial operating permit application fee ²per facility² not to exceed \$25,000. For the purpose of calculating the initial 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 prior to the deadline for submittal of the operating permit application;

(4) A fee for any facility modification in an amount calculated using the fee schedule therefor set forth in rules and regulations adopted by the department, except that no fee for a modification review shall exceed \$25,000; and

(5) Certificate fees assessed and collected in a manner established in rules and regulations adopted by the department.

c. (1) For the State fiscal years 1996 and 1997, each major facility shall pay the following fees:

(a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air contaminant, excluding carbon monoxide, and an emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs.

(b) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton on one-half of the total tons of carbon monoxide;

(c) An initial operating permit application fee ²per facility² not to exceed \$25,000. For the purpose of calculating the initial 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

(d) A fee for any facility modification in an amount calculated using the fee schedule therefor set forth in rules and regulations adopted by the department ², except that no fee for a modification review shall exceed \$25,000. The fee for a significant modification review for source operations such as solid or hazardous waste treatment and disposal, recycling engines, and fuel combustion processes with heat input greater than 100 million BTU/hour or that burn solid fuel shall not exceed \$25,000. All other modification fees shall be assessed based upon the amount of equipment modified and shall not exceed \$500 per piece of equipment and \$25,000 for an entire modification review².

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, no major facility shall pay an emission fee less than \$1,000 for each of the State fiscal years 1996 and 1997.

(3) Of the amount assessed and collected in fees pursuant to this subsection, not more than \$9,510,000 shall be appropriated as provided in section 6 of P.L. . c. (C.) (now before the Legislature as this bill). If the amount of fees collected pursuant to this subsection exceeds \$9,510,000, the amount in excess of \$9,510,000 shall be deposited into the Air Surcharge Reengineering Fund established pursuant to subsection f. of this section. If the amount of fees collected pursuant to this subsection is less than \$9,510,000, the department, in consultation with the fee work group established pursuant to section 12 of P.L. . c. (C.) (now before the Legislature as this bill), shall evaluate the reasons for the deficiency and make recommendations accordingly to the Governor, the Legislature, and the State Treasurer concerning any measures necessary to ensure that the operating permit program is adequately funded.

d (1) For the State fiscal year 1998 and each fiscal year thereafter, each major facility shall pay the following fees:

(a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton of each regulated air contaminant, excluding carbon monoxide;

(b) An initial operating permit application fee ²per facility² not to exceed \$25,000. For the purpose of calculating the initial 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 ², except that no fee for a significant modification review shall exceed \$25,000²

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, no major facility shall pay an emission fee less than \$1,000 for each of the State fiscal years 1998 and thereafter.

e. (1) In addition to the fees assessed of major facilities pursuant to subsections b. and c. of this section, each major facility shall be assessed a supplemental surcharge for each of the State fiscal years 1995 and 1996 that shall be sufficient to raise \$1.5 million per fiscal year in revenue. The supplemental surcharge shall be based on actual annual emissions of each regulated air contaminant, excluding carbon monoxide, 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, but in no case shall a supplemental surcharge assessed of a major facility exceed \$20,000 per year per major facility.

(2) If the amount of revenue raised by the assessment of the supplemental surcharge pursuant to paragraph (1) of this subsection is less than \$1,500,000 for either State fiscal years 1995 or 1996, the department, in consultation with the fee work group established pursuant to section 12 of P.L. 1994, c. 107 (now before the Legislature as this bill), shall evaluate the reasons for the deficiency and the need for adjusting the supplemental surcharge to make up the difference.

(3) The supplemental surcharge assessed pursuant to this subsection shall not be collected after State fiscal year 1996. Any monies remaining in the Air Surcharge Reengineering Fund at the conclusion of State fiscal year 1997 shall be used by the department to reduce fees assessed of major facilities in State fiscal year 1998, whereupon the fund shall expire.

f. There is established in the department a dedicated fund to be known as the "Air Surcharge Reengineering Fund." All supplemental surcharges collected pursuant to paragraph (1) of subsection e. of this section shall be deposited into that fund. Monies in the fund shall be dedicated solely for use by the department in developing and implementing the air permit computerization system, publication of requirements for advances in the art of air pollution control, establishment of general permits, and establishment of standard permit conditions. No monies from this fund shall be allocated, appropriated, or used for any purpose other than as set forth in this subsection. The department, in consultation with the fee work group established pursuant to section 12 of P.L. 1994, c. 107 (now before the Legislature as this bill), shall develop a plan for the expenditure of monies in the fund, and shall maintain a detailed record of the expenditures and disbursements from the fund and publish it annually in the New Jersey Register.

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. The department may not assess a major facility any fee to implement the provisions of P.L. 1954, c. 212 (C. 26:2C-1 et seq.) other than the fees authorized pursuant to this section.¹

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2664

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 1995

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2664 (1R), with committee amendments.

Assembly Bill No. 2664 (1R), as amended, revises the "Air Pollution Control Act (1954)" to reform and streamline the current air pollution control permitting program, establishes an operating permit program in the Department of Environmental Protection (DEP), establishes a small business stationary source technical and environmental compliance assistance program, establish an emissions trading and banking program, and assesses a federally mandated operating permit program emission fee.

Currently, the DEP primarily controls air pollution emissions at stationary sources by issuing pre-construction permits, which are required before equipment that emits air pollutants may be installed or altered, and operating certificates, which authorize the operation of that equipment once it is built. In accordance with the 1990 amendments to the federal Clean Air Act (CAA), the State must now adopt a new operating permit program to consolidate the existing operating certificates for any major source of air pollution into a single operating permit. The operating permit program would apply only to major sources of air pollution.

The federal CAA specifies that a minimum fee of \$25 per ton per year (in 1989 dollars) (adjusted by the Consumer Price Index) of certain emissions must be charged unless a workload analysis indicates a different fee is required. Pursuant to this bill as amended, major facilities would be assessed an annual emission fee of \$25 per ton of pollutants per year (in 1989 dollars) (adjusted by the Consumer Price Index).

The DEP would be required to provide annual status reports to the Governor and the Legislature on the progress of the program. The report would include information on program costs and fees collected as well as a staff and workload analysis.

The DEP would be authorized to issue, renew, reopen, and revise operating permits and require major facilities to obtain such a permit. The penalty provisions of the current law would be amended to include the minimum federal criminal penalties for violating federally mandated requirements and to provide guidance with regard to odor-based violations.

A seven-member Small Business Compliance Advisory Panel would be created within the DEP.

The bill also revises and reforms the current pre-construction permit program for air pollution sources not subject to the operating permit program.

The bill allows for implementation of the "Netherlands approach" to environmental regulation in certain circumstances by

allowing facilities the option of establishing in an operating permit a 15-year plan for reducing facility emissions beyond minimum air pollution control requirements, provided there is a demonstration of a downward trend in emissions every five years.

In order to promote consistency and avoid duplicative regulation, the bill provides that nothing in the operative section of the "Air Pollution Control Act (1954)," or in the "County Environmental Health Act," shall be construed to authorize ordinances providing for the local governmental regulation of, or collection of fees from, any facility required to obtain an operating permit pursuant to the bill as amended or any research and development facility. However, that provision would not preclude local inspections of such facilities or research and development facilities, as delegated pursuant to the "County Environmental Health Act," whenever necessary in response to citizen complaints.

The bill also provides for the coordination of "Pollution Prevention Act" facility-wide permits and operating permits, authorize the DEP to issue general permits for common air pollution sources, and authorize the DEP, in consultation with industry, environmental, and public interest groups, to promulgate regulations for emissions trading incentive programs. Emissions trading programs may be State, multi-state, or regional programs and may utilize mobile, stationary, or area sources.

Finally, the bill as amended would provide for the establishment of industry and environmental work groups to study matters relating to the regulation of air pollution sources as well as emission fee revenues.

FISCAL IMPACT:

The Department informally offered the following fiscal information.

Major Source Program

	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>
Operations	\$11.65 mil	\$11.65mil	\$11.65mil
Revenues	-9.51 mil	9.51mil	9.10mil
Balance	(\$2.14)mil	(\$2.14)mil	(\$5.55)mil

The DEP projects \$6.1 million in fees from major facilities to pay FY95 assessments. This would offset DEP's \$6.2 deficit for FY95 air permit budget. The \$2.14 million deficit in FY96 would be offset by \$2.0 in General Fund monies, with remainder made up by budget reductions. FY97 and FY98 deficit balances are intended to be offset by streamlined measures from surcharge monies and fee revenue cap levels.

The bill primarily affects the Major Source portion of the air program. The non-major portion is largely funded from General Fund and federal monies. OLS agrees with the departments revenue and operating estimated amounts.

COMMITTEE AMENDMENTS

These amendments clarify certain provisions of section 5 of the bill concerning the assessment of fees pertaining to major facilities. The amendments would also establish maximums for certain fees assessed pursuant to that section.

(FIRST REPRINT)
ASSEMBLY, No. 2664
STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblywoman OGDEN and Assemblyman Felice

1 AN ACT concerning air pollution, revising and forming the air
2 pollution control permit program, creating the Small Business
3 Compliance Advisory Panel, amending P.L.1967, c.106,
4 amending the title of P.L.1954, c.212, and amending and
5 supplementing P.L.1954, c.212.
6

7 BE IT ENACTED by the Senate and General Assembly of the
8 State of New Jersey:

9 1. The title of P.L.1954, c.212 (C.26:2C-1 et seq.) is amended
10 to read as follows:

11 An act relating to concerning the control [and suspension] of
12 air pollution, creating a Clean Air Council in the State
13 Department of Health and prescribing its functions, powers and
14 duties) and supplementing Title 26 of the Revised Statutes.
15 (cf: P.L.1967, c.106, s.1)

16 2. Section 2 of P.L.1954, c.212 (C.26:2C-2) is amended to read
17 as follows:

18 2. [The following words shall have the following meanings.

19 "Council" means the Clean Air Council created under this act.

20 "Department" means the State Department of Health.]

21 As used in this act:

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

25 "Air pollution" [as used in this act shall mean] means the
26 presence in the outdoor atmosphere of one or more air
27 contaminants in such quantities and duration as are, or tend to
28 be, injurious to human health or welfare, animal or plant life, or
29 property, or would unreasonably interfere with the enjoyment of
30 life or property throughout the State and in [such territories]
31 those areas of the State as shall be affected thereby, and
32 excludes all aspects of an employer-employee relationship as to
33 health and safety hazards.

34 "Commissioner" means the Commissioner of [Health in the
35 State Department of Health] Environmental Protection.

36 "Construct" or "construction" means to fabricate or erect
37 equipment or control apparatus at a facility where it is intended
38 to be used, but shall not include the dismantling of existing
39 equipment or control apparatus, site preparation, or the ordering,
40 receiving, temporary storage, or installation of equipment or
41 control apparatus. Unless otherwise prohibited by federal law,
42 "construct" or "construction" shall also not include the pouring

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Assembly AEG committee amendments adopted June 19, 1995.

1 of footings or placement of a foundation where equipment or
2 control apparatus is intended to be used.

3 "Consumer Price Index" or "CPI"¹ means the annual
4 Consumer Price Index for a calendar year as determined year to
5 year using the decimal increase in the September through August,
6 12-month average for the previous year of the Consumer Price
7 Index for All Urban Consumers (CPI-U), as published by the
8 United States Department of Labor.

9 "Control apparatus" means any device [which] the prevents or
10 controls the emission of any air contaminant.

11 "Council" means the Clean Air Council created pursuant to
12 section 3 of P.L.1967, c.106 [C.26:2C-3.2].

13 "Department" means the Department of Environmental
14 Protection.

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

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

22 "EPA" means the United States Environmental Protection
23 Agency.

24 "Equipment" means any device capable of causing the emission
25 of an air contaminant [into the open air] either directly or
26 indirectly into the outdoor atmosphere, and any stack, chimney,
27 conduit, flue, duct, vent, or similar device connected or attached
28 to, or serving, the equipment [This shall include], and shall
29 include, but need not be limited to, any equipment in which the
30 preponderance of the air [contaminant] contaminants emitted is
31 caused by [the] a manufacturing process.

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

42 "Federal Clean Air Act" means the federal "Clean Air Act"
43 [42 U.S.C. §7401 et seq.] and any subsequent amendments or
44 supplements to that act.

45 "Grandfathered" means construction, reconstruction, or
46 modification of equipment or control apparatus prior to the date
47 of enactment of section 13 of P.L.1967, c.106 [C.26:2C-9.2] on
48 June 15, 1967, or prior to the subsequent applicable revisions to
49 rules and regulations codified at N.J.A.C. 7:27-8.1 et seq. that
50 occurred March 5, 1973, June 1, 1976, April 5, 1985, and October
51 31, 1994.¹

52 "HAP" or "hazardous air pollutant" means any air pollutant
53 listed in or pursuant to subsection (b) of section 112 of the
54 federal Clean Air Act [42 U.S.C. §7412].

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

9 "Major facility" means a major source, as that term is defined
 10 by the EPA in rules and regulations adopted pursuant to the
 11 federal Clean Air Act at 40 CFR §70.2 or any subsequent
 12 amendments thereto, that has the potential to emit any of the air
 13 contaminants listed below in an amount that is equal to or
 14 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 ¹

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

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

37 "Person" means (and shall include corporations, companies,
 38 associations, societies, firms, partnerships and joint stock
 39 companies as well as individuals, and shall also include all
 40 political subdivisions of this State or any agencies or
 41 instrumentalities thereof) an individual, public or private
 42 corporation, company, partnership, firm, association, society,
 43 joint stock company, international entity, institution, county,
 44 municipality, state, interstate body, the United States of
 45 America, or any agency, board, commission, employee, agent,
 46 officer, or political subdivision of a state, an interstate body, or
 47 the United States of America.

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

52 "Process unit" means equipment assembled to produce
 53 intermediate or final products. A process unit can operate
 54 independently if supplied with sufficient feed or raw materials

1 and sufficient storage facilities for the product. The storage and
2 transfer of product or raw materials to and from the process unit
3 shall be considered separate from the process unit for the
4 purposes of making reconstruction determinations. Product
5 recovery equipment shall be considered to be part of the process
6 unit, not part of the control apparatus.

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

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

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

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

29 (cf: P.L. 1967, c. 106, s.5)

30 3. Section 9 of P.L. 1954, c.212 (C.26:2C-9) is amended to read
31 as follows:

32 9. The department shall control air pollution in accordance
33 with the provisions of any applicable code, rule, or regulation
34 promulgated by the department and for this purpose shall have
35 power to [--];

36 [(a)] a. Conduct and supervise research programs for the
37 purpose of determining the causes, effects, and hazards of air
38 pollution;

39 [(b)] b. Conduct and supervise Statewide programs of air
40 pollution control education including the preparation and
41 distribution of information relating to air pollution control;

42 [(c)] c. Require the registration of persons engaged in
43 operations [which] that may result in air pollution and the filing
44 of reports, including but not limited to emission statements, by
45 them containing information relating to location, size of outlet,
46 height of outlet, rate and period of emission and composition of
47 effluent, and such other information as the department shall
48 prescribe to be filed relative to air pollution, all in accordance
49 with applicable codes, rules, or regulations established by the
50 department;

51 [(d)] d. Enter and inspect any building or place, except private
52 residences, for the purpose of investigating an actual or
53 suspected source of air pollution and ascertaining compliance or
54 noncompliance with any [code] codes, rules [and], or regulations

1 of the department. Any information, other than actual or
2 allowable air contaminant emissions, relating to secret processes
3 or methods of manufacture or production obtained in the course
4 of [such] an inspection, investigation, or determination, shall be
5 kept confidential and shall not be admissible in evidence in any
6 court or in any other proceeding except before the department
7 [as herein defined]. If samples are taken for analysis, duplicate
8 of the analytical report shall be furnished promptly to the person
9 suspected of causing air pollution;

10 [(e)] e. Receive or initiate complaints of air pollution, hold
11 hearings in connection with air pollution, and institute legal
12 proceedings for the prevention of air pollution and for the
13 recovery of penalties, in accordance with [this act] P.L.1954,
14 c.212 (C.26:2C-1 et seq.);

15 [(f)] f. With the approval of the Governor, cooperate with, and
16 receive [money] funds or other assistance from, the federal
17 government, the State government, any interstate body, or any
18 county or municipal government, or from private sources, for
19 the study and control of air pollution;

20 [(g)] The department may in accordance with a fee schedule
21 adopted as a rule or regulation establish and charge g. Charge,
22 in accordance with a fee schedule that shall be adopted by the
23 department pursuant to the "Administrative Procedure Act,"
24 P.L.1968, c.410 (C.52:14B-1 et seq.), (1) reasonable annual
25 emission fees for major facilities as provided in section 5 of
26 P.L. . c. (C.) (now before the Legislature as this bill), and
27 (2) administrative fees for any of the services (1) the department
28 performs [which fees shall be annual or periodic as the
29 department sha; determine] or provides in connection with
30 administering P.L.1954, c.212 (C.26:2C-1 et seq.). The
31 administrative fees charged by the department pursuant to this
32 section subsection shall not be less than \$10.00 nor more than
33 \$500.00 exceed \$25,000 per application based on criteria
34 contained in the fee schedule;

35 h. Issue, renew, reopen, and revise operating permits, and
36 require any person who is required to obtain an operating permit
37 under the provisions of the federal Clean Air Act to obtain an
38 operating permit and to certify compliance therewith for all air
39 pollution sources; and

40 i. Establish, implement, and operate a small business
41 stationary source technical and environmental compliance
42 assistance program as required pursuant to 42 U.S.C. §7661f of
43 the federal Clean Air Act.
44 (cf. P.L.1993, c.257, s.1)

45 4. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to
46 read as follows:

47 13. [(a)] No person shall construct, install or alter any
48 equipment or control apparatus, in other than a one or 2-family
49 dwelling or a dwelling of 6 or less family units one of which is
50 owner-occupied, until an application including plans and
51 specifications has been filed with the department and an
52 installation or alteration permit issued by the department, in
53 accordance with any codes, rules and regulations of the
54 department except that subject to any such codes, rules and

1 regulations the department may dispense with the filing of
2 applications, plans and specifications. Information relating to
3 secret processes or methods of manufacture or production is
4 exempted from the plans and specifications and other pertinent
5 information to which the department is entitled under this
6 section.

7 (b) No person shall use or cause to be used any such new or
8 altered equipment or control apparatus for which an installation
9 or alteration permit is required or issued until an operating
10 certificate has been issued by the department.

11 (c) 1a. No person at a facility without an operating permit
12 shall construct, reconstruct, install, modify, use or cause to be
13 used any equipment or control apparatus until an application
14 therefor including plans and specifications has been filed with the
15 department and the department issues a construction,
16 reconstruction, installation, or modification permit and operating
17 certificate in accordance with any applicable codes, rules, or
18 regulations of the department. This requirement shall also apply
19 to any facility that requires an operating permit until such time
20 as a final operating permit is issued to the facility.

21 b. No person at a facility with an operating permit shall
22 construct, reconstruct, install, modify, use or cause to be used
23 any equipment or control apparatus until an application therefor
24 including plans and specifications has been filed with the
25 department and the department issues an authorization for
26 construction, reconstruction, installation, or modification by
27 revising the operating permit in accordance with any applicable
28 codes, rules, or regulations of the department.

29 c. No operating permit, operating permit revision, or operating
30 certificate or renewal thereof [.] required by this act] pursuant
31 to P.L.1954, C.212 [C.26:2C-1 et seq.] [.] shall be issued by the
32 department unless the applicant shows to the satisfaction of the
33 department that the equipment is designed to operate without
34 causing a violation of any provision of [this act] P.L.1954, c.212
35 [C.26:2C-1 et seq.] or of any codes, rules [and] or regulations
36 [promulgated thereunder] adopted pursuant thereto, and that,
37 except in the case of a renewal operating certificate, initial
38 operating permit, or renewal operating permit, the equipment
39 incorporates advances in the art of air pollution control
40 developed for the kind and amount of air contaminant emitted by
41 the applicant's equipment.]

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

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

53 c. Newly constructed, reconstructed, or modified equipment
54 and control apparatus shall incorporate advances in the art of air

1 pollution control as developed for the kind and amount of air
2 contaminant emitted by the applicant's equipment and control
3 apparatus as provided in this subsection.1

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

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

17 (b) For an air contaminant subject to a significant emissions
18 increase of a non-attainment air contaminant in a
19 non-attainment area, advances in the art of air pollution control
20 shall be the lowest achievable emission rate (LAER) as set forth
21 by the EPA at 40 CFR §51.165(a)(1)(xiii) or any subsequent
22 amendments thereto:

23 (c) For a hazardous air pollutant technology requirement,
24 advances in the art of air pollution control shall be the maximum
25 achievable control technology (MACT) as set forth at 42 U.S.C.
26 §7412 or any subsequent amendments thereto; and

27 (d) For other air contaminants, advances in the art of air
28 pollution control means up-to-date technology and methods,
29 reflected in equipment,1 control apparatus,1 and procedures,
30 that when applied to an emission source shall reasonably
31 minimize air contaminant emissions. The technology shall have
32 been demonstrated for similar air contaminant discharge
33 parameters to be reliable and shall be available at reasonable
34 cost commensurate with the reduction in air contaminant
35 emissions.

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

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

47 (b) applicable new source performance standards; and

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

50 (3) (a) In order to promote greater emissions reductions than
51 would otherwise be achieved, the department may adopt,
52 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
53 (C.52:14B-1 et seq.), rules and regulations that offer a person the
54 option of establishing in an operating permit a 15-year plan for

1 reducing facility emissions beyond minimum air pollution control
2 requirements in lieu of adhering to strict permit review
3 schedules and complying with less effective State requirements¹
4 . Such a plan shall include schedules setting forth milestones for
5 reducing emissions at the facility. Milestones may be met by
6 reducing emissions at the facility and by providing emissions
7 reduction credits from non-facility sources pursuant to an
8 emissions trading and banking program adopted pursuant to
9 section 8 of P.L. . c. (C.) (now before the Legislature as
10 this bill).

11 (b) The department shall review the achievement of the
12 milestones in the plan no less frequently than every five years
13 when the operating permit is renewed. The department may
14 require the person to submit, as part of the application for
15 renewal of the operating permit, a summary and trend of the
16 actual air contaminant emissions data reported in the facility's
17 annual emission statements for the previous five years. If the
18 department determines during the approval process for an
19 operating permit renewal that the milestones in the plan have not
20 been met at a facility and that there is no reasonable likelihood
21 that the milestones can or will be met, the department may
22 withdraw the opportunity for the facility to continue pursuant to
23 the plan and shall require instead that the facility comply with
24 the promulgated schedules for all applicable requirements.

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

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

43 (4) Consistent with the provisions of P.L.1991, c.422
44 (C.13:1D-111 et seq.), the department shall periodically publish,
45 with an opportunity provided for public comment, technology,
46 methods, and performance levels with respect to air pollution
47 control for use by applicants¹ [has presumptive norms¹ for
48 demonstrating advances in the art of air pollution control].

49 (1a) The department shall, within 18 months after the effective
50 date of P.L. . c. (C.) (now before the Legislature as this
51 bill), publish the first technical manual containing technology,
52 methods, and performance levels that can be used by applicants
53 for demonstrating advances in the art of air pollution control.
54 Public notice of the availability of each draft technical manual

1 shall be published in the New Jersey Register, and each final
2 technical manual shall consider any public comments thereon that
3 are received by the department.

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

16 (c) Instead of relying on a technical manual for advances in the
17 art of air pollution control, an applicant may propose
18 "case-by-case" advances in the art of air pollution control
19 applicable to a specific source operation. If the department
20 determines that the proposal is consistent with the provisions of
21 this subsection, the proposal shall be deemed to constitute
22 advances in the art of air pollution control for that specific
23 source operation.

24 (d) Advances in the art of air pollution control shall include
25 new source performance standards adopted by the EPA on or
26 after the effective date of P.L. 1954, c. 212 (C. 26:2C-1) (now before the
27 Legislature as this bill) and those new source performance
28 standards published as advances in the art of air pollution control
29 pursuant to P.L. 1954, c. 212 (C. 26:2C-1 et seq.).¹

30 (1) (5) Before an operating permit, operating permit revision
31 or operating certificate or any renewal thereof is issued, or as a
32 condition of issuance, the department may require the applicant
33 to conduct such tests as are necessary [in the opinion of the
34 department] to determine the kind or amount of the air
35 contaminant emitted from the equipment or whether the
36 equipment or fuel or the operation of the equipment is in
37 violation of any of the provisions of [this act] P.L. 1954, c. 212
38 [C. 26:2C-1 et seq.] or of any codes, rules [and] or regulations
39 [promulgated thereunder] adopted pursuant thereto. [Such] The
40 tests shall be made at the expense of the applicant and shall be
41 conducted in a manner approved by the department, and the test
42 results shall be reviewed and professionally certified.

43 (2) (6) ¹Equipment or control apparatus identified by the
44 department as not Grandfathered equipment or control apparatus
45 shall not be ¹subject to a demonstration of advances in the art of
46 air pollution control. ¹It shall not be subjected to such a
47 demonstration upon inclusion in the initial operating permit
48 application, provided that the equipment or control apparatus is
49 not modified or reconstructed.¹

50 (7) An operating permit and operating certificate or any
51 renewal thereof shall be valid for a period of [5] five years from
52 the date of issuance, unless sooner revoked for cause by order of
53 the department, and may be renewed upon application to the
54 department.

1 [(3) (B) Upon receipt of an application for the issuance of an
2 operating certificate or any renewal thereof, the department, in
3 its discretion, may issue a temporary operating certificate valid
4 for [a period not to exceed] 90 days or until a five year operating
5 certificate has been issued or denied.

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

8 (1) One or two family dwellings;

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

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

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

18 e. Except as otherwise prohibited by the EPA pursuant to the
19 federal Clean Air Act, any person who has received or receives a
20 facility-wide permit issued pursuant to the "Pollution Prevention
21 Act," P.L.1991, c.235 (C.13:1D-35 et seq.) shall be deemed to
22 satisfy the requirement for an operating permit issued pursuant
23 to P.L.1953, c.212 (C.26:2C-1 et seq.).

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

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

33 h. Notwithstanding the provisions of any other law, rule, or
34 regulation to the contrary, the department may issue a general
35 permit in lieu of any permit issued pursuant to this section. Prior
36 to issuing a general permit, the department shall provide ¹public
37 notice ¹of and ¹opportunity for public comment.

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

49 j. Except as otherwise prohibited by federal law, any person
50 who has submitted to the department an application for a permit
51 to construct, reconstruct, install, or modify equipment or control
52 apparatus may place that equipment or control apparatus on the
53 footings or foundation where it is intended to be used during the
54 pendency of the permit application review process. A person

1 intending to take action authorized pursuant to this subsection
2 shall notify the department, via certified mail, of the intent to
3 undertake the action at least seven days prior to the
4 commencement of the action.

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

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

21 (cf. P.L.1967, c.106, s.13)

22 §5. (New section) a. Every major facility shall remit to the
23 State an annual emission fee of \$27.50 per ton (in 1989 dollars) of
24 the actual annual emissions of each regulated air contaminant
25 reported in the emission statement for that facility, or in the
26 absence of such information, on permitted emissions, or where
27 there is not a permit, on potential to emit.

28 The emission fee required pursuant to this subsection for each
29 State fiscal year shall be adjusted each year by the percentage, if
30 any, by which the Consumer Price Index exceeds the Consumer
31 Price Index for the calendar year 1989.

32 b. As part of the adopted fee schedule for major facilities, the
33 department:

34 (1) shall not require a major facility to remit an emission fee
35 if the total actual emissions of all regulated air contaminants
36 from that major facility does not exceed 10 tons per year.

37 (2) shall begin collecting emission fees in fiscal year 1993 for
38 air contaminants reported in a calendar year 1993 emission
39 statement, including carbon monoxide, particulates, sulfur
40 dioxide, oxides of nitrogen, and VOCs, but not including lead,
41 HAPs, and any other air contaminants; and

42 (3) may begin collecting emission fees in fiscal year 1998 for
43 lead, HAPs, and any other air contaminant categories as reported
44 in a calendar year 1996 emission statement.

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

48 d. As used in this section, "major facility" means a facility
49 that has the potential to emit any of the air contaminants listed
50 below in an amount that is equal to or exceeds the applicable
51 major facility threshold levels as follows:

1 Air Contaminant	Threshold level
3 Carbon monoxide	100 tons per year
4 Particulate matter (PM ₁₀)	100 tons per year
5 Total suspended particulates	100 tons per year
6 Sulfur dioxide	100 tons per year
7 Oxides of nitrogen	25 tons per year
8 VOC	25 tons per year
9 Lead	10 tons per year
10 Any HAP	10 tons per year
11 All HAPs collectively	25 tons per year
12 Any other air contaminant	100 tons per year

13
 14 5. (New section) a. (1) Each major facility shall pay to the
 15 department a fee or fees as calculated pursuant to this subsection
 16 and subsections b., c., or d. of this section, as appropriate. The
 17 per-ton emission fees shall be based on the actual annual
 18 emissions of each regulated air contaminant, except as set forth
 19 for carbon monoxide in subsections b., c., and d. of this section,
 20 reported in the emission statement for that major facility, or, in
 21 the absence of such information, on permitted emissions, or
 22 where a permit has not been issued, on the potential to emit.

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

26 (3) The amount of any emission fee payable pursuant to this
 27 section shall be adjusted for each State fiscal year by the
 28 percentage, if any, by which the CPI exceeds the CPI for
 29 calendar year 1980.

30 b. For the State fiscal year 1995, each major facility shall pay
 31 the following fees:

32 (1) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
 33 per ton only on the first 4,000 tons of each regulated air
 34 contaminant, excluding carbon monoxide, and an emission fee of
 35 \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first
 36 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

37 (2) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
 38 per ton on one-half of the total tons of carbon monoxide;

39 (3) An initial operating permit application fee not to exceed
 40 \$25,000. For the purpose of calculating the initial operating
 41 permit application fee, the significant equipment listed in the
 42 operating permit application shall be assessed at \$125 per piece
 43 of equipment. The operating permit application fee shall be
 44 submitted prior to the deadline for submittal of the operating
 45 permit application;

46 (4) A fee for any facility modification in an amount calculated
 47 using the fee schedule therefor set forth in rules and regulations
 48 adopted by the department, except that no fee for a modification
 49 review shall exceed \$25,000; and

50 (5) Certificate fees assessed and collected in a manner
 51 established in rules and regulations adopted by the department.

52 c. (1) For the State fiscal years 1996 and 1997, each major
 53 facility shall pay the following fees:

54 (a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)

1 per ton only on the first 4,000 tons of each regulated air
2 contaminant, excluding carbon monoxide, and an emission fee of
3 \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first
4 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

5 (b) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
6 per ton on one-half of the total tons of carbon monoxide;

7 (c) An initial operating permit application fee not to exceed
8 \$25,000. For the purpose of calculating the initial operating
9 permit application fee, the significant equipment listed in the
10 operating permit application shall be assessed at \$125 per piece
11 of equipment. The operating permit application fee shall be
12 submitted at the time of submission of the operating permit
13 application; and

14 (d) A fee for any facility modification in an amount calculated
15 using the fee schedule therefor set forth in rules and regulations
16 adopted by the department, except that no fee for a modification
17 review shall exceed \$25,000.

18 (2) Notwithstanding the provisions of paragraph (1) of this
19 subsection to the contrary, no major facility shall pay an emission
20 fee less than \$1,000 for each of the State fiscal years 1996 and
21 1997.

22 (3) Of the amount assessed and collected in fees pursuant to
23 this subsection, not more than \$9,510,000 shall be appropriated as
24 provided in section 6 of P.L. 1997, c. (C.) (now before the
25 Legislature as this bill). If the amount of fees collected pursuant
26 to this subsection exceeds \$9,510,000, the amount in excess of
27 \$9,510,000 shall be deposited into the Air Surcharge
28 Reengineering Fund established pursuant to subsection f. of this
29 section. If the amount of fees collected pursuant to this
30 subsection is less than \$9,510,000, the department, in
31 consultation with the fee work group established pursuant to
32 section 12 of P.L. 1997, c. (C.) (now before the Legislature as
33 this bill), shall evaluate the reasons for the deficiency and make
34 recommendations accordingly to the Governor, the Legislature,
35 and the State Treasurer concerning any measures necessary to
36 ensure that the operating permit program is adequately funded.

37 (4) For the State fiscal year 1998 and each fiscal year
38 thereafter, each major facility shall pay the following fees:

39 (a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI)
40 per ton of each regulated air contaminant, excluding carbon
41 monoxide;

42 (b) An initial operating permit application fee not to exceed
43 \$25,000. For the purpose of calculating the initial operating
44 permit application fee, the significant equipment listed in the
45 operating permit application shall be assessed at \$125 per piece
46 of equipment. The operating permit application fee shall be
47 submitted at the time of submission of the operating permit
48 application; and

49 (c) A fee for any significant modification in an amount
50 calculated using a fee schedule therefor to be set forth in rules
51 and regulations to be adopted by the department.

52 (2) Notwithstanding the provisions of paragraph (1) of this
53 subsection to the contrary, no major facility shall pay an emission
54 fee less than \$1,000 for each of the State fiscal years 1998 and
55 thereafter.

1 e. (1) In addition to the fees assessed of major facilities
2 pursuant to subsections b. and c. of this section, each major
3 facility shall be assessed a supplemental surcharge for each of
4 the State fiscal years 1995 and 1996 that shall be sufficient to
5 raise \$1.5 million per fiscal year in revenue. The supplemental
6 surcharge shall be based on actual annual emissions of each
7 regulated air contaminant, excluding carbon monoxide, reported
8 in the emission statement for that major facility, or, in the
9 absence of such information, on permitted emissions, or, where a
10 permit has not been issued, on the potential to emit, but in no
11 case shall a supplemental surcharge assessed of a major facility
12 exceed \$20,000 per year per major facility.

13 (2) If the amount of revenue raised by the assessment of the
14 supplemental surcharge pursuant to paragraph (1) of this
15 subsection is less than \$1,500,000 for either State fiscal years
16 1995 or 1996, the department, in consultation with the fee work
17 group established pursuant to section 12 of P.L. 1993, c. 361
18 (now before the Legislature as this bill), shall evaluate the
19 reasons for the deficiency and the need for adjusting the
20 supplemental surcharge to make up the difference.

21 (3) The supplemental surcharge assessed pursuant to this
22 subsection shall not be collected after State fiscal year 1996.
23 Any monies remaining in the Air Surcharge Reengineering Fund
24 at the conclusion of State fiscal year 1997 shall be used by the
25 department to reduce fees assessed of major facilities in State
26 fiscal year 1998, whereupon the fund shall expire.

27 f. There is established in the department a dedicated fund to
28 be known as the "Air Surcharge Reengineering Fund." All
29 supplemental surcharges collected pursuant to paragraph (1) of
30 subsection e. of this section shall be deposited into that fund.
31 Monies in the fund shall be dedicated solely for use by the
32 department in developing and implementing the air permit
33 computerization system, publication of requirements for
34 advances in the art of air pollution control, establishment of
35 general permits, and establishment of standard permit
36 conditions. No monies from this fund shall be allocated,
37 appropriated, or used for any purpose other than as set forth in
38 this subsection. The department, in consultation with the fee
39 work group established pursuant to section 12 of P.L. 1993, c. 361
40 (C. 13:1D-120 et seq.) (now before the Legislature as this bill), shall develop a
41 plan for the expenditure of monies in the fund, and shall maintain
42 a detailed record of the expenditures and disbursements from the
43 fund and publish it annually in the New Jersey Register.

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

47 h. The department may not assess a major facility any fee to
48 implement the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.)
49 other than the fees authorized pursuant to this section.¹

50 6. (New section) Pursuant to the mandate of the federal Clean
51 Air Act, all revenues collected pursuant to section 5 of P.L. 1954,
52 c. (C. 26:2C-1 et seq.) (now before the Legislature as this bill) shall be
53 dedicated and appropriated annually solely for use by the
54 department in administering the provisions of P.L.1954, 1(C.212)

1 c.212¹ (C.26:2C-1 et seq.) with regard to major facilities [has
2 defined pursuant to subsection d. of section 5 of P.L. . . c.
3 (C.) (now before the Legislature as this bill)]¹ . [Those
4 Except as provided otherwise for the supplemental surcharge
5 assessed pursuant to section 5 of P.L. . . c. (C.) (now before
6 the Legislature as this bill), those¹ monies shall be used only to
7 hire personnel and fund positions, procure necessary equipment,
8 and fund the functions of the department prescribed pursuant to
9 P.L.1954, C.212 (C.26:2C-1 et seq.) with regard to major
10 facilities ¹and to fund implementation and operation of the small
11 business stationary source technical and environmental
12 compliance assistance program required pursuant to 42 U.S.C.
13 §7661f of the federal Clean Air Act¹ . Such program costs may
14 also include, but need not be limited to, costs connected to or
15 associated with: program planning; data collection;
16 investigations; rule and regulation development; reviewing,
17 issuing, and administering operating permits; monitoring and
18 administratively enforcing compliance with laws, codes, rules,
19 regulations, and permits; ¹implementing and operating the small
20 business stationary source technical and environmental
21 compliance assistance program required pursuant to 42 U.S.C.
22 §7661f of the federal Clean Air Act;¹ and any other activities
23 with regard to major facilities required for State compliance with
24 the federal Clean Air Act.

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

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

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

41 The report shall also identify any need for legislative action to
42 adjust the emission fee ¹[cap] prescribed pursuant to
43 ¹[subsection a. of] section 5 of P.L. . . c. (C.) (now before
44 the Legislature as this bill) to ensure that the ¹[cap] fee¹ is
45 adequate to fund the air pollution control program in accordance
46 with the mandates of the federal Clean Air Act, and discuss the
47 advantages and disadvantages of setting higher emission fees for
48 hazardous air pollutants.

49 8. (New section) a. ¹[The] Within 90 days after the effective
50 date of this act, the¹ department shall ¹[adopt] propose¹ .
51 pursuant to the provisions of the "Administrative Procedure
52 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
53 that establish emissions trading and banking programs that use
54 economic incentives to make progress toward the attainment or

1 maintenance of the National Ambient Air Quality Standards
2 (NAAQS), reduce or prevent emissions of hazardous air
3 contaminants¹, ensure healthful air quality, or otherwise
4 contribute to the protection of human health, welfare and the
5 environment from air pollution. ¹The department shall adopt
6 those rules and regulations within 90 days after proposal¹.

7 b. The emissions trading rules and regulations shall be designed
8 so that emissions¹ reductions shall be realized earlier
9 or at a more accelerated rate than would otherwise be achieved
10 in accordance with applicable air quality mandates, and so that
11 compliance with air quality mandates can be achieved with
12 greater flexibility or at lower cost. ¹The rules and regulations
13 shall establish criteria for the generation and use of emissions
14 reduction credits, including the use of emissions reduction credits
15 in lieu of granting exemptions or waivers from compliance with
16 emissions reduction requirements, and shall require that 10% of
17 the emissions reduction credits gained shall be permanently
18 retired for the public benefit when a trade occurs.¹ The rules
19 and regulations may include, but need not be limited to,
20 provisions designating the pollutants to be involved in the
21 program, designating the persons who may participate in the
22 program, establishing emissions¹ limitations and
23 methods for projecting and verifying emissions, and establishing
24 enforcement mechanisms, including emissions tracking, periodic
25 program audits, and penalties.

26 For any emissions trading program adopted for the purpose of
27 making progress toward attaining the National Ambient Air
28 Quality Standard (NAAQS) for ozone, the department may allow
29 reductions of volatile organic compounds (VOCs) to be
30 substituted for required reductions of oxides of nitrogen (NOx) or
31 reductions of oxides of nitrogen (NOx) to be substituted for
32 required reductions of volatile organic compounds (VOCs). Any
33 such substitution shall occur at a ratio established by the
34 department by rule or regulation adopted pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.), ¹which shall be¹ developed in recognition of the role of
37 each pollutant in the formation of ground level ozone.

38 c. The emissions trading rules and regulations adopted by the
39 department shall not conflict with applicable federal law and
40 shall constitute, contribute to, or be consistent with one or more
41 strategies that result in quantifiable emissions reductions and are
42 creditable under the State Implementation Plan (SIP) required
43 pursuant to the federal Clean Air Act. These may be emission
44 limiting or market-response strategies for mobile for¹,
45 stationary or area¹ sources, for both and shall include the
46 creation, trading, and use of emissions reduction credits¹.

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

51 e. The department shall involve in the development of the
52 rules and regulations for emissions¹ trading programs
53 representatives of the affected industry, environmental, and
54 public interest groups as well as governmental entities with
55 affected or related jurisdictions.

1 1f. The department shall consider the role of a third party in
2 the banking, verification, validation of use, enforcement, and
3 program audits associated with emissions reduction credits, and,
4 to the maximum extent possible, create and preserve
5 opportunities for private sector participation in any emissions
6 trading program established by the department.¹

7 9. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to
8 read as follows:

9 19. a. If any person violates any of the provisions of ¹his act
10 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
11 or order ¹[promulgated] adopted¹ or issued pursuant [to the
12 provisions of this act] thereto, the department may institute a
13 civil action in a court of competent jurisdiction for injunctive or
14 any other appropriate relief to prohibit and prevent such violation
15 or violations and the [said] court may proceed in the action in a
16 summary manner.

17 b. Any person who violates the provisions of [this act]
18 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
19 or order ¹[promulgated] adopted¹ or issued pursuant [to this act]
20 thereto shall be liable to a civil administrative penalty of not
21 more than ~~[\$10,000.00]~~ \$10,000 for the first offense, not more
22 than ~~[\$25,000.00]~~ \$25,000 for the second offense, and not more
23 than ~~[\$50,000.00]~~ \$50,000 for the third and each subsequent
24 offense. If the violation is of a continuing nature, each day
25 during which it continues shall constitute an additional, separate
26 and distinct offense. No civil administrative penalty shall be
27 levied except upon an administrative order issued pursuant to
28 section 14 of P.L.1954, c.212 (C.26:2C-14).

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

33 d. Any person who violates the provisions of P.L.1954, c.212
34 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
35 ¹[promulgated] adopted¹ or issued pursuant [to that act] thereto,
36 or a court order issued pursuant to subsection a. of this section,
37 ~~or~~ who fails to pay a civil administrative penalty in full pursuant
38 to section 9 of P.L.1962, c.215 (C.26:2C-14.1), is subject, upon
39 order of the court, to a civil penalty of not more than
40 ~~[\$10,000.00]~~ \$10,000 for the first offense, not more than
41 ~~[\$25,000.00]~~ \$25,000 for the second offense, and not more than
42 ~~[\$50,000.00]~~ \$50,000 for the third and each subsequent offense. If
43 the violation is of a continuing nature, each day during which the
44 violation continues, or each day in which the civil administrative
45 penalty is not paid in full, constitutes an additional, separate and
46 distinct offense. Any penalty imposed under this subsection may
47 be recovered with costs in a summary proceeding pursuant to
48 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law
49 Division of the Superior Court has jurisdiction to enforce "the
50 penalty enforcement law."

51 e. A person who causes a release of air contaminants in a
52 quantity or concentration which poses a potential threat to public
53 health, welfare or the environment or which might reasonably
54 result in citizen complaints shall immediately notify the

1 department. A person who fails to so notify the department is
2 liable to the penalties and procedures prescribed in this section.

3 f. Any person who:

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

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

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

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

27 g. In determining whether an odor unreasonably interferes with
28 the enjoyment of life or property in violation of P.L.1954, c.212
29 (C.26:2C-1 et seq.) or any code, rule, regulation or order
30 [promulgated] adopted¹ or issued pursuant thereto, the
31 department shall consider all of the relevant facts and
32 circumstances, including, but not limited to, the character,
33 severity, frequency, and duration of the odor, and the number of
34 persons affected thereby. In considering these and other relevant
35 facts and circumstances, no one factor shall be dispositive, but
36 each shall be considered relevant in determining whether an odor
37 interferes with the enjoyment of life or property, and, if so,
38 whether such interference is unreasonable considering all of the
39 circumstances.

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

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

47 (cf: P.L.1989, c.333, s.1)

48 10. Section 22 of P.L.1954, c.212 (C.26:2C-22) is amended to
49 read as follows:

50 22. [No ordinances of any governing body of a municipality or
51 county or board of health more stringent than this act or any
52 code, rules or regulations promulgated pursuant thereto shall be
53 superseded by this act. Nothing in this act or in any code, rules
54 or regulations promulgated pursuant thereto shall preclude the

1 right of any governing body of a municipality or county or board
2 of health, subject to the approval of the department, to adopt
3 ordinances or regulations more stringent than this act or any
4 code, rules or regulations promulgated pursuant thereto.
5 Penalties for violations of ordinances of a governing body of a
6 municipality, county or board of health shall not exceed
7 \$2,500.00.]

8 1a. To ensure Statewide uniform treatment of a pollution
9 regulation and control, and eliminate conflicting and inconsistent
10 policies and standards in connection therewith, the pervasive and
11 comprehensive regulatory and enforcement program established
12 pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute
13 the exclusive program of the State concerning the subject matter
14 covered by that act, whether that subject matter be expressed by
15 inclusion in or exclusion from that act.

16 b. No municipality, county, local board of health, local health
17 agency, regional health commission, or any other political
18 subdivision of the State may enact any ordinance, pursuant to
19 section 9 of P.L.1977, c.443 (C.26:3A2-27) or any other authority,
20 concerning the subject matter covered by P.L.1954, c.212
21 (C.26:2C-1 et seq.). This section shall not affect the authority of
22 a certified local health agency to enact ordinances for the
23 limited purposes authorized by section 7 of P.L.1991, c.99
24 (C.26:3A2-34), provided that no such fee shall be assessed against
25 any source or facility required to obtain an operating permit
26 pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9,2).

27 c. Any ordinance adopted by a municipality, county, local
28 board of health, local health agency, regional health commission,
29 or other political subdivision of the State concerning the subject
30 matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted
31 prior to the effective date of P.L. , c. (C.) [now before the
32 Legislature as this bill] shall become null and void on the 180th
33 day after the effective date of P.L. , c. (C.) [now before
34 the Legislature as this bill].

35 d. Nothing in this section shall be construed to limit or impair
36 the authority of the department to delegate authority to a
37 certified local health agency in accordance with the provisions of
38 the "County Environmental Health Act," P.L.1977, c.443
39 (C.26:3A2-21 et seq.).

40 a. (1) No ordinances of any governing body of a municipality or
41 county or board of health more stringent than P.L.1954, c.212
42 (C.26:2C-1 et seq.) or any code, rules or regulations adopted
43 pursuant thereto shall be superseded by P.L.1954, c.212
44 (C.26:2C-1 et seq.). After the effective date of P.L. , c.
45 (C.) [now before the Legislature as this bill], no municipality,
46 county, local board of health, local health agency, regional health
47 commission, or any other political subdivision of the State may
48 enact any ordinance, pursuant to P.L.1954, c.212 (C.26:2C-1 et
49 seq.), section 9 of P.L.1977, c.443 (C.26:3A2-27), or any other
50 authority, concerning the subject matter covered by P.L.1954,
51 c.212 (C.26:2C-1 et seq.) except as provided in subsection b. of
52 this section, whether that subject matter is expressed by
53 inclusion in or exclusion from that act.

54 Penalties for violations of ordinances of a governing body of a

1 municipality or county or board of health shall not exceed \$2,500.
2 Nothing set forth in the "County Environmental Health Act,"
3 P.L.1977, c.443 (C.26:3A2-21 et seq.), or any codes, rules or
4 regulations adopted pursuant thereto, shall affect the validity of
5 local ordinances adopted pursuant to this section prior to the
6 effective date of P.L. ., c. (C.) (now before the Legislature
7 as this bill) or amendments thereto adopted as authorized
8 pursuant to subsection b. of this section.

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

30 c. Notwithstanding the provisions of subsections a. or b. of this
31 section to the contrary, nothing in this section or in the "County
32 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
33 seq.) shall be construed to authorize ordinances providing for the
34 local regulation of, or collection of fees from, any facility
35 required to obtain an operating permit pursuant to section 13 of
36 P.L.1967, c.106 (C.26:2C-9.2) or any research and development
37 facility. However, local inspections of such facilities or research
38 and development facilities delegated pursuant to the "County
39 Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et
40 seq.) may be conducted as necessary in response to citizen
41 complaints.¹

42 (cf. P.L.1985, c.12, s.4)

43 13. (New section) For the purposes of complying with the
44 federal Clean Air Act, there is created in the Department of
45 Environmental Protection a Small Business Compliance Advisory
46 Panel.

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

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

52 (2) four members who shall own a small business stationary
53 source or represent owners of small business stationary sources,
54 of whom one each shall be appointed respectively by the

1 President of the Senate, the Speaker of the General Assembly,
2 the Senate Minority Leader, and the Assembly Minority Leader;
3 and

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

6 b. (1) Members of the panel shall:

7 (a) serve for two year terms;

8 (b) annually elect, by majority vote of the full membership of
9 the panel, a chairperson and a vice-chairperson; and

10 (c) serve without compensation but shall be reimbursed for
11 necessary expenses incurred in the performance of their duties.

12 (2) The panel shall meet at least four times per year.

13 c. It shall be the responsibility of the panel to:

14 (1) render advisory opinions to the Commissioner of
15 Environmental Protection concerning the effectiveness of the
16 department's program for assisting small business stationary
17 sources with technical and environmental compliance issues with
18 respect to air pollution control, as required pursuant to 42 U.S.C.
19 §7661f of the federal Clean Air Act, and concerning air pollution
20 control requirements, permitting, and enforcement pertaining to
21 small business;

22 (2) make periodic reports to the Commissioner of
23 Environmental Protection and the Administrator of the United
24 States Environmental Protection Agency concerning compliance
25 of the State's air pollution control program with the
26 requirements of the federal "Paperwork Reduction Act"
27 (44 U.S.C. §3501 et seq.), the federal "Regulatory Flexibility
28 Act" (5 U.S.C. §601 et seq.), and the federal "Equal Access to
29 Justice Act" (5 U.S.C. §504 et seq. and 28 U.S.C. §2412 et seq.)
30 as they relate to small business;

31 (3) review information and air pollution control permit
32 applications provided to small business stationary sources to
33 assure that the information and applications are understandable
34 to the layperson; and

35 (4) determine if the department provides for the development
36 and dissemination of those advisory opinions and reports issued in
37 accordance with the provisions of this section.

38 12. (New section) The department shall establish industry
39 and environmental work groups as appropriate to consult on
40 matters relating to the regulation of air pollution sources. The
41 work groups shall consist of members of industry, environmental,
42 and other interested and affected parties as may be deemed
43 appropriate by the department.

44 Within 90 days after the effective date of P.L. , c. (C.)
45 (now before the Legislature as this bill), the department shall also
46 establish an industry and environmental work group to evaluate
47 the effects of emissions reductions on emission fee revenues and
48 the resultant impact on the department's air pollution control
49 program. As part of the 1997 annual report required pursuant to
50 section 7 of P.L. , c. (C.) (now before the Legislature as
51 this bill), the fee work group shall present its evaluation and a
52 recommendation on alternatives to funding the department's air
53 pollution control program other than through an increase in
54 emission fees.

1 The fee work group shall also make such evaluations and
2 recommendations concerning fee revenues and supplemental
3 surcharge revenues as required pursuant to section 5 of P.L. ,
4 c. (C.) (now before the Legislature as this bill).¹

5 ¹[12.] 13.¹ (New section) Within 90 days of the effective date
6 of P.L. , c. (C.) (now before the Legislature as this bill),
7 the commissioner shall establish a Privatization Review Task
8 Force. The task force shall include representatives of the
9 department, business and industry, the environmental community,
10 and other members the commissioner may deem appropriate. The
11 task force shall review privatization opportunities within the air
12 pollution control program and issue a report to the commissioner
13 within 180 days of its establishment, whereupon the task force
14 shall dissolve.

15 ¹[13.] 14.¹ This act shall take effect immediately.

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20 Revises "Air Pollution Control Act (1954)," establishes federally
21 mandated operating permit program, and reforms air pollution
22 control permit program.

ASSEMBLY ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2664

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 1995

The Assembly Environment and Energy Committee favorably reports Assembly Bill No. 2664 with committee amendments.

This bill as amended by the committee would amend and revise the "Air Pollution Control Act (1954)" to reform and streamline the current air pollution control permitting program, establish an operating permit program in the Department of Environmental Protection (DEP), establish a small business stationary source technical and environmental compliance assistance program, establish an emissions trading and banking program, and assess a federally mandated operating permit program emission fee.

Currently, the DEP primarily controls air pollution emissions at stationary sources by issuing pre-construction permits, which are required before equipment that emits air pollutants may be installed or altered, and operating certificates, which authorize the operation of that equipment once it is built. In accordance with the 1990 amendments to the federal Clean Air Act (CAAA), the State must now adopt a new operating permit program that would consolidate the existing operating certificates for any major source of air pollution into a single operating permit. The operating permit program would apply only to major sources of air pollution.

The federal CAAA specifies that a minimum fee of \$25 per ton per year (in 1989 dollars) (adjusted by the Consumer Price Index) of certain emissions must be charged unless a workload analysis indicates a different fee is required. Pursuant to this bill as amended, major facilities would be assessed an annual emission fee of \$25 per ton of pollutants per year (in 1989 dollars) (adjusted by the Consumer Price Index).

The DEP would be required to provide annual status reports to the Governor and the Legislature on the progress of the program. The report would include information on program costs and fees collected as well as a staff and workload analysis.

The DEP would be authorized to issue, renew, reopen, and revise operating permits and require major facilities to obtain such a permit. The penalty provisions of the current law would be amended to include the minimum federal criminal penalties for violating federally mandated requirements and to provide guidance with regard to odor-based violations.

A seven-member Small Business Compliance Advisory Panel would be created within the DEP. As required by the federal CAAA, the membership of the panel would be selected as follows: two members selected by the Governor; four members selected respectively by the Senate and General Assembly majority and minority leadership; and one member selected by the Commissioner of the DEP.

The bill as amended would also revise and reform the current pre-construction permit program for air pollution sources not subject to the operating permit program.

For sources emitting less than de minimis limits for hazardous air pollutants as prescribed by the United States Environmental Protection Agency (EPA) and less than five tons per year of any other air contaminant, the bill as amended would delete the requirement for a "state of the art" demonstration.

For sources emitting greater than EPA de minimis limits for hazardous air pollutants or five tons per year of any other air contaminant, the bill as amended would provide for definitions of "state of the art" that mirror the federal definitions.

The DEP would be required to publish technical manuals that could be used by applicants for demonstrating advances in the art of air pollution control.

The bill as amended would allow for implementation of the "Netherlands approach" to environmental regulation in certain circumstances by allowing facilities the option of establishing in an operating permit a 15-year plan for reducing facility emissions beyond minimum air pollution control requirements, provided there is a demonstration of a downward trend in emissions every five years.

In order to promote consistency and avoid duplicative regulation, the bill as amended would provide that nothing in the operative section of the "Air Pollution Control Act (1954)," or in the "County Environmental Health Act," shall be construed to authorize ordinances providing for the local governmental regulation of, or collection of fees from, any facility required to obtain an operating permit pursuant to the bill as amended or any research and development facility. However, that provision would not preclude local inspections of such facilities or research and development facilities, as delegated pursuant to the "County Environmental Health Act," whenever necessary in response to citizen complaints.

The bill as amended would also provide for the coordination of "Pollution Prevention Act" facility-wide permits and operating permits, authorize the DEP to issue general permits for common air pollution sources, and authorize the DEP, in consultation with industry, environmental, and public interest groups, to promulgate regulations for emissions trading incentive programs. Emissions trading programs may be State, multi-state, or regional programs and may utilize mobile, stationary, or area sources.

Finally, the bill as amended would provide for the establishment of industry and environmental work groups to study matters relating to the regulation of air pollution sources as well as emission fee revenues.

The committee amended the bill to:

- (1) revise definitions and provisions with respect to "major facilities" as well as a "grandfather" clause;
- (2) revise the provisions with regard to the assessment and collection of emission fees and supplemental surcharges from major facilities;

(3) make certain additions and changes to the section providing for implementation of the "Netherlands approach";

(4) provide for the publishing of technical manuals concerned with demonstrating advances in the art of air pollution control;

(5) require that rules and regulations for the emissions trading and banking programs be proposed within 90 days of the effective date of the bill, and adopted within 90 days thereafter, and make various other changes to that section of the bill;

(6) revise the section addressing potential preemption of local regulation of air pollution;

(7) provide for the establishment of industry and environmental work groups to study matters relating to the regulation of air pollution sources as well as emission fee revenues;

(8) clarify certain provisions concerned with volatile organic compounds; and

(9) make various clarifying and technical amendments.

The goal of the committee amendments to section 5 of the bill with regard to the assessment of supplemental surcharges is to provide upfront monies for streamlining measures that are expected to reduce the budget for the operating permit program in the DEP below \$9.51 million.

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ASSEMBLY AEN COMMITTEE

AMENDMENTS

to

Assembly, No. 2664

(Sponsored by Assemblywoman OGDEN)



REPLACE SECTION 2 TO READ:

2. Section 2 of P.L.1954, c.212 (C.26:2C-2) is amended to read as follows:

2. [The following words shall have the following meanings:
"Council" means the Clean Air Council created under this act.
"Department" means the State Department of Health.]

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" [as used in this act shall mean] 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 [such territories] 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.

"Commissioner" means the Commissioner of [Health in the State Department of Health] 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 [which] that prevents or controls the emission of any air contaminant.

"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 base 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 [into the open air] 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 [This shall include], and shall include, but need not be limited to, any equipment in which the preponderance of the air [contaminant] contaminants emitted is caused by [the] 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. §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, 1994.¹

"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. §7412).

"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:

<u>Air Contaminant</u>	<u>Threshold level</u>
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 ¹

"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. §7661 et seq.).

"Person" means (and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof) 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 570.2 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 minimus manner.

"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 551.100 or any subsequent amendments thereto.

(cf: P.L.1967, c.106, s.5)

REPLACE SECTION 4 TO READ:

4. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to read as follows:

13. (a) No person shall construct, install or alter any equipment or control apparatus, in other than a one or 2-family dwelling or a dwelling of 6 or less family units one of which is owner-occupied, until an application including plans and specifications has been filed with the department and an installation or alteration permit issued by the department, in accordance with any codes, rules and regulations of the department except that subject to any such codes, rules and regulations the department may dispense with the filing of applications, plans and specifications. Information relating to secret processes or methods of manufacture or production is exempted from the plans and specifications and other pertinent information to which the department is entitled under this section.

(b) No person shall use or cause to be used any such new or altered equipment or control apparatus for which an installation or alteration permit is required or issued until an operating certificate has been issued by the department.

(c) 1a. No person at a facility without an operating permit shall construct, reconstruct, install, modify, use or cause to be used any equipment or control apparatus until an application therefor including plans and specifications has been filed with the department and the department issues a construction, reconstruction, installation, or modification permit and operating certificate in accordance with any applicable codes, rules, or regulations of the department. This requirement shall also apply to any facility that requires an operating permit until such time as a final operating permit is issued to the facility.

b. No person at a facility with an operating permit shall construct, reconstruct, install, modify, use or cause to be used any equipment or control apparatus until an application therefor including plans and specifications has been filed with the department and the department issues an authorization for construction, reconstruction, installation, or modification by revising the operating permit in accordance with any applicable codes, rules, or regulations of the department.

e. No operating permit, operating permit revision or operating certificate or renewal thereof [.] required [by this act] pursuant to P.L.1954, c.212 [C.26:2C-1 et seq.] [.] shall be issued by the department unless the applicant shows to the satisfaction of the department that the equipment is designed to operate without causing a violation of any provision of [this act] P.L.1954, c.212 [C.26:2C-1 et seq.] or of any codes, rules [and] or regulations [promulgated thereunder] adopted pursuant thereto, and that, except in the case of a renewal operating certificate, initial operating permit, or renewal operating permit, the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.]

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

(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 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 equipment¹, control apparatus,¹ 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 requirements¹ in lieu of adhering to strict permit review schedules and complying with less effective State requirements¹. 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. . . c. (C.) (now before the Legislature as this bill).

(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.

¹(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.1974, 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.¹

(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 [as presumptive norms]¹ for demonstrating advances in the art of air pollution control.

¹(a) The department shall, within 18 months after the effective date of P.L. 1991, c. 422 (C. 13:1D-111) (now before the Legislature as this bill), 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. . . . c. [C.] now before the Legislature as this bill) 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.)¹

(1) (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 [in the opinion of the department] 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 [this act] P.L.1954, c.212 (C.26:2C-1 et seq.) or of any codes, rules [and] , or regulations [promulgated thereunder] adopted pursuant thereto . [Such] 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.

(2) (6) [Equipment or control apparatus identified by the department as not] Grandfathered equipment or control apparatus shall not be¹ subject to a demonstration of advances in the art of air pollution control [shall not be subjected to such a demonstration upon inclusion in the initial operating permit application, provided that the equipment or control apparatus is not modified or reconstructed]¹

(7) An operating permit and operating certificate or any renewal thereof shall be valid for a period of [5] 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.

(3) (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 [a period not to exceed] 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

(4) Equipment [or] and¹ 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 as 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 of an 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 as new installation or modification of equipment or control apparatus.¹

(cf: P.L.1967, c.106, s.13)

REPLACE SECTION 5 TO READ:

15. (New section) a. Every major facility shall remit to the State an annual emission fee of \$27.50 per ton (in 1989 dollars) of the actual annual emissions of each regulated air contaminant reported in the emission statement for that facility, or in the absence of such information, on permitted emissions, or where there is not a permit, on potential to emit.

The emission fee required pursuant to this subsection for each State fiscal year shall be adjusted each year by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index for the calendar year 1989.

b. As part of the adopted fee schedule for major facilities, the department:

(1) shall not require a major facility to remit an emission fee if the total actual emissions of all regulated air contaminants from that major facility does not exceed 10 tons per year;

(2) shall begin collecting emission fees in fiscal year 1995 for air contaminants reported in a calendar year 1993 emission statement, including carbon monoxide, particulates, sulfur dioxide, oxides of nitrogen, and VOCs, but not including lead, HAPs, and any other air contaminants; and

(3) may begin collecting emission fees in fiscal year 1998 for lead, HAPs, and any other air contaminant categories as reported in a calendar year 1996 emission statement.

c. 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 authorized pursuant to this section.

d. As used in this section, "major facility" means a facility 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:

<u>Air Contaminant</u>	<u>Threshold level</u>
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

5. (New section) a. (1) Each major facility shall pay to the department a fee or fees as calculated pursuant to this subsection and subsections b., c., or d. of this section, as appropriate. The per-ton emission fees shall be based on the actual annual emissions of each regulated air contaminant, except as set forth for carbon monoxide in subsections b., c., and d. of this section, 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. For the State fiscal year 1995, each major facility shall pay the following fees:

(1) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air contaminant, excluding carbon monoxide, and an emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

(2) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton on one-half of the total tons of carbon monoxide;

(3) An initial operating permit application fee not to exceed \$25,000. For the purpose of calculating the initial 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 prior to the deadline for submittal of the operating permit application;

(4) A fee for any facility modification in an amount calculated using the fee schedule therefor set forth in rules and regulations adopted by the department, except that no fee for a modification review shall exceed \$25,000; and

(5) Certificate fees assessed and collected in a manner established in rules and regulations adopted by the department.

c. (1) For the State fiscal years 1996 and 1997, each major facility shall pay the following fees:

(a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 4,000 tons of each regulated air contaminant, excluding carbon monoxide, and an emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton only on the first 8,000 tons of oxides of nitrogen and the first 8,000 tons of VOCs;

(b) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton on one-half of the total tons of carbon monoxide;

(c) An initial operating permit application fee not to exceed \$25,000. For the purpose of calculating the initial 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

(d) A fee for any facility modification in an amount calculated using the fee schedule therefor set forth in rules and regulations adopted by the department, except that no fee for a modification review shall exceed \$25,000.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, no major facility shall pay an emission fee less than \$1,000 for each of the State fiscal years 1996 and 1997.

(3) Of the amount assessed and collected in fees pursuant to this subsection, not more than \$9,510,000 shall be appropriated as provided in section 6 of P.L. . c. (C.) (now before the Legislature as this bill). If the amount of fees collected pursuant to this subsection exceeds \$9,510,000, the amount in excess of \$9,510,000 shall be deposited into the Air Surcharge Reengineering Fund established pursuant to subsection f of this section. If the amount of fees collected pursuant to this subsection is less than \$9,510,000, the department, in consultation with the fee work group established pursuant to section 12 of P.L. . c. (C.) (now before the Legislature as this bill), shall evaluate the reasons for the deficiency and make recommendations accordingly to the Governor, the Legislature, and the State Treasurer concerning any measures necessary to ensure that the operating permit program is adequately funded.

d. (1) For the State fiscal year 1998 and each fiscal year thereafter, each major facility shall pay the following fees:

(a) An emission fee of \$25 (in 1989 dollars adjusted by the CPI) per ton of each regulated air contaminant, excluding carbon monoxide;

(b) An initial operating permit application fee not to exceed \$25,000. For the purpose of calculating the initial 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.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, no major facility shall pay an emission fee less than \$1,000 for each of the State fiscal years 1998 and thereafter.

e. (1) In addition to the fees assessed of major facilities pursuant to subsections b. and c. of this section, each major facility shall be assessed a supplemental surcharge for each of the State fiscal years 1995 and 1996 that shall be sufficient to raise \$1.5 million per fiscal year in revenue. The supplemental surcharge shall be based on actual annual emissions of each regulated air contaminant, excluding carbon monoxide, 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, but in no case shall a supplemental surcharge assessed of a major facility exceed \$20,000 per year per major facility.

(2) If the amount of revenue raised by the assessment of the supplemental surcharge pursuant to paragraph (1) of this subsection is less than \$1,500,000 for either State fiscal years 1995 or 1996, the department, in consultation with the fee work group established pursuant to section 12 of P.L. . c. (C.) (now before the Legislature as this bill), shall evaluate the reasons for the deficiency and the need for adjusting the supplemental surcharge to make up the difference.

(3) The supplemental surcharge assessed pursuant to this subsection shall not be collected after State fiscal year 1996. Any monies remaining in the Air Surcharge Reengineering Fund at the conclusion of State fiscal year 1997 shall be used by the department to reduce fees assessed of major facilities in State fiscal year 1998, whereupon the fund shall expire.

f. There is established in the department a dedicated fund to be known as the "Air Surcharge Reengineering Fund." All supplemental surcharges collected pursuant to paragraph (1) of subsection e. of this section shall be deposited into that fund. Monies in the fund shall be dedicated solely for use by the department in developing and implementing the air permit computerization system, publication of requirements for advances in the art of air pollution control, establishment of general permits, and establishment of standard permit conditions. No monies from this fund shall be allocated, appropriated, or used for any purpose other than as set forth in this subsection. The department, in consultation with the fee work group established pursuant to section 12 of P.L. . . c. (C.) (now before the Legislature as this bill), shall develop a plan for the expenditure of monies in the fund, and shall maintain a detailed record of the expenditures and disbursements from the fund and publish it annually in the New Jersey Register.

g. The provisions of P.L.1993, c.261 (C.13:1D-120 et seq.) shall not apply to the assessment or payment of emission fees required pursuant to this section.

h. The department may not assess a major facility any fee to implement the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) other than the fees authorized pursuant to this section.¹

REPLACE SECTION 6 TO READ:

6. (New section) Pursuant to the mandate of the federal Clean Air Act, all revenues collected pursuant to section 5 of P.L. . . c. (C.) (now before the Legislature as this bill) shall be dedicated and appropriated annually solely for use by the department in administering the provisions of P.L.1954, [C.212] c.212¹ (C.26:2C-1 et seq.) with regard to major facilities¹ [as defined pursuant to subsection d. of section 5 of P.L. . . c. (C.) (now before the Legislature as this bill)]¹ .¹ [Those] Except as provided otherwise for the supplemental surcharge assessed pursuant to section 5 of P.L. . . c. (C.) (now before the Legislature as this bill), those¹ 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 facilities¹ 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 Act¹ . 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; ¹implementing and operating 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; ¹ and any other activities with regard to major facilities required for State compliance with the federal Clean Air Act.

REPLACE SECTION 7 TO READ:

7. (New section) 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 ¹[cap] prescribed pursuant to ¹[subsection a. of] section 5 of P.L. ., c. (C.) (now before the Legislature as this bill) to ensure that the ¹[cap] fee ¹ 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.

REPLACE SECTION 8 TO READ:

8. (New section) a. ¹[The] Within 90 days after the effective date of this act, the ¹ department shall ¹[adopt] ¹propose ¹, 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 ¹[HAPs] ¹air ¹contaminants ¹, ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution. ¹The department shall adopt those rules and regulations within 90 days after proposal. ¹

b. The emissions trading rules and regulations shall be designed so that ¹[emission] ¹emissions ¹ 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. ¹The 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.¹ 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 ¹[emission] emissions¹ 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 (NOx) or reductions of oxides of nitrogen (NOx) 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 be¹ 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 ¹[or] ¹stationary ¹, or area¹ sources, ¹[or both] and shall include the creation, trading, and use of emissions reduction credits¹.

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.

e. The department shall involve in the development of the rules and regulations for ¹[emission] emissions¹ trading programs representatives of the affected industry, environmental, and public interest groups as well as governmental entities with affected or related jurisdictions.

If 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.¹

REPLACE SECTION 9 TO READ:

9. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to read as follows:

19. a. If any person violates any of the provisions of [this act] P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation or order ¹[promulgated] adopted¹ or issued pursuant to the provisions of this act] 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 [said] court may proceed in the action in a summary manner.

b. Any person who violates the provisions of [this act] P.L.1954, c.212 [C.26:2C-1 et seq.] or any code, rule, regulation or order [promulgated] adopted¹ or issued pursuant [to this act] thereto shall be liable to a civil administrative penalty of not more than [\$10,000.00] \$10,000 for the first offense, not more than [\$25,000.00] \$25,000 for the second offense, and not more than [\$50,000.00] \$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 [promulgated] adopted¹ or issued pursuant [to that act] 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 [\$10,000.00] \$10,000 for the first offense, not more than [\$25,000.00] \$25,000 for the second offense, and not more than [\$50,000.00] \$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:

(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 [promulgated] 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 [promulgated] 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 [promulgated] 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.
(cf: P.L.1989, c.333, s.1)

REPLACE SECTION 10 TO READ:

10. Section 22 of P.L.1954, c.212 (C.26:2C-22) is amended to read as follows:

22. [No ordinances of any governing body of a municipality or county or board of health more stringent than this act or any code, rules or regulations promulgated pursuant thereto shall be superseded by this act. Nothing in this act or in any code, rules or regulations promulgated pursuant thereto shall preclude the right of any governing body of a municipality or county or board of health, subject to the approval of the department, to adopt ordinances or regulations more stringent than this act or any code, rules or regulations promulgated pursuant thereto. Penalties for violations of ordinances of a governing body of a municipality, county or board of health shall not exceed \$2,500.00.]

1[a. To ensure Statewide uniform treatment of air pollution regulation and control, and eliminate conflicting and inconsistent policies and standards in connection therewith, the pervasive and comprehensive regulatory and enforcement program established pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute the exclusive program of the State concerning the subject matter covered by that act, whether that subject matter be expressed by inclusion in or exclusion from that act.

b. 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 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.). This section shall not affect the authority of a certified local health agency to enact ordinances for the limited purposes authorized by section 7 of P.L.1991, c.99 (C.26:3A2-34), provided that no such fee shall be assessed against any source or facility required to obtain an operating permit pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2).

c. Any ordinance adopted by a municipality, county, local board of health, local health agency, regional health commission, or other political subdivision of the State concerning the subject matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted prior to the effective date of P.L. . c. (C.) (now before the Legislature as this bill) shall become null and void on the 180th day after the effective date of P.L. . c. (C.) (now before the Legislature as this bill).

d. Nothing in this section shall be construed to limit or impair the authority of the department to delegate authority to a certified local health agency in accordance with the provisions of the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.).

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. . c. (C.) (now before the Legislature as this bill), 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.

1(a. To ensure Statewide uniform treatment of air pollution regulation and control, and eliminate conflicting and inconsistent policies and standards in connection therewith, the pervasive and comprehensive regulatory and enforcement program established pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute the exclusive program of the State concerning the subject matter covered by that act, whether that subject matter be expressed by inclusion in or exclusion from that act.

b. 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 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.). This section shall not affect the authority of a certified local health agency to enact ordinances for the limited purposes authorized by section 7 of P.L.1991, c.99 (C.26:3A2-34), provided that no such fee shall be assessed against any source or facility required to obtain an operating permit pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2).

c. Any ordinance adopted by a municipality, county, local board of health, local health agency, regional health commission, or other political subdivision of the State concerning the subject matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted prior to the effective date of P.L. . c. (C.) (now before the Legislature as this bill) shall become null and void on the 180th day after the effective date of P.L. . c. (C.) (now before the Legislature as this bill).

d. Nothing in this section shall be construed to limit or impair the authority of the department to delegate authority to a certified local health agency in accordance with the provisions of the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.).

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. . c. (C.) (now before the Legislature as this bill), 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 seq.), 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. , c. (C.) (now before the Legislature as this bill) 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. , c. (C.) (now before the Legislature as this bill). Ordinances adopted prior to the effective date of P.L. , c. (C.) (now before the Legislature as this bill) 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 subsections 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 seq.) 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 seq.) may be conducted as necessary in response to citizen complaints.¹
(cf: P.L.1985, c.12, s.4)

INSERT NEW SECTION 12 TO READ:

^{12.} (New section) 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 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. , c. (C.) (now before the Legislature as this bill), 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. , c. (C.) (now before the Legislature as this bill), 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. , c. (C.) (now before the Legislature as this bill).¹

RENUMBER SECTIONS 12 AND 13 AS SECTIONS 13 AND 14

ASSEMBLY, No. 2664
STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblywoman OGDEN

1 AN ACT concerning air pollution, revising and reforming the air
2 pollution control permit program, creating the Small Business
3 Compliance Advisory Panel, amending P.L.1967, c.106,
4 amending the title of P.L.1954, c.212, and amending and
5 supplementing P.L.1954, c.212.

6
7 BE IT ENACTED by the Senate and General Assembly of the
8 State of New Jersey:

9 1. The title of P.L.1954, c.212 (C.26:2C-1 et seq.) is amended
10 to read as follows:

11 An act [relating to] concerning the control [and suspension] of
12 air pollution [, creating a Clean Air Council in the State
13 Department of Health and prescribing its functions, powers and
14 duties] and supplementing Title 26 of the Revised Statutes .
15 (cf. P.L.1967, c.106, s.1)

16 2. Section 2 of P.L.1954, c.212 (C.26:2C-2) is amended to read
17 as follows:

18 2. [The following words shall have the following meanings.
19 "Council" means the Clean Air Council created under this act.
20 "Department" means the State Department of Health.]

21 As used in this act:

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

25 "Air pollution" [as used in this act shall mean] means the
26 presence in the outdoor atmosphere of one or more air
27 contaminants in such quantities and duration as are, or tend to
28 be, injurious to human health or welfare, animal or plant life , or
29 property, or would unreasonably interfere with the enjoyment of
30 life or property throughout the State and in [such territories]
31 those areas of the State as shall be affected thereby ; and
32 excludes all aspects of an employer-employee relationship as to
33 health and safety hazards.

34 "Commissioner" means the Commissioner of [Health in the
35 State Department of Health] Environmental Protection .

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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

7 "Control apparatus" means any device [which] that prevents or
8 controls the emission of any air contaminant.

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

11 "Department" means the Department of Environmental
12 Protection.

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

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

20 "EPA" means the United States Environmental Protection
21 Agency.

22 "Equipment" means any device capable of causing the emission
23 of an air contaminant [into the open air] either directly or
24 indirectly into the outdoor atmosphere, and any stack, chimney,
25 conduit, flue, duct, vent, or similar device connected or attached
26 to, or serving, the equipment [. This shall include, and shall
27 include, but need not be limited to, any equipment in which the
28 preponderance of the air [contaminant] contaminants emitted is
29 caused by [the] a manufacturing process.

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

40 "Federal Clean Air Act" means the federal "Clean Air Act"
41 (42 U.S.C. §7401 et seq.) and any subsequent amendments or
42 supplements to that act.

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

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

54 "Modify" or "modification" means any physical change in, or

1 change in the method of operation of existing equipment or
2 control apparatus that increases the amount of any air
3 contaminant emitted by that equipment or control apparatus or
4 that results in the emission of any air contaminant not previously
5 emitted, but shall not include normal repair and maintenance.

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

8 "Person" means (and shall include corporations, companies,
9 associations, societies, firms, partnerships and joint stock
10 companies as well as individuals, and shall also include all
11 political subdivisions of this State or any agencies or
12 instrumentalities thereof) an individual, public or private
13 corporation, company, partnership, firm, association, society,
14 joint stock company, international entity, institution, county,
15 municipality, state, interstate body, the United States of
16 America, or any agency, board, commission, employee, agent,
17 officer, or political subdivision of a state, an interstate body, or
18 the United States of America.

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

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

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

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

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

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

54 (cf. P.L. 1967, c. 106, s. 5)

1 3. Section 9 of P.L.1954, c.212 (C.26:2C-9) is amended to read
2 as follows:

3 9. The department shall control air pollution in accordance
4 with the provisions of any applicable code, rule, or regulation
5 promulgated by the department and for this purpose shall have
6 power to [---]:

7 [(a) a. Conduct and supervise research programs for the
8 purpose of determining the causes, effects, and hazards of air
9 pollution;

10 [(b) b. Conduct and supervise Statewide programs of air
11 pollution control education including the preparation and
12 distribution of information relating to air pollution control;

13 [(c) c. Require the registration of persons engaged in
14 operations [which] that may result in air pollution and the filing
15 of reports, including but not limited to emission statements, by
16 them containing information relating to location, size of outlet,
17 height of outlet, rate and period of emission and composition of
18 effluent, and such other information as the department shall
19 prescribe to be filed relative to air pollution, all in accordance
20 with applicable codes, rules, or regulations established by the
21 department.

22 [(d) d. Enter and inspect any building or place, except private
23 residences, for the purpose of investigating an actual or
24 suspected source of air pollution and ascertaining compliance or
25 noncompliance with any [code] codes, rules [and] or regulations
26 of the department. Any information, other than actual or
27 allowable air contaminant emissions, relating to secret processes
28 or methods of manufacture or production obtained in the course
29 of [such] an inspection, investigation, or determination, shall be
30 kept confidential and shall not be admissible in evidence in any
31 court or in any other proceeding except before the department
32 [as herein defined]. If samples are taken for analysis, a duplicate
33 of the analytical report shall be furnished promptly to the person
34 suspected of causing air pollution;

35 [(e) e. Receive or initiate complaints of air pollution, hold
36 hearings in connection with air pollution, and institute legal
37 proceedings for the prevention of air pollution and for the
38 recovery of penalties, in accordance with [this act] P.L.1954,
39 c.212 (C.26:2C-1 et seq.);

40 [(f) f. With the approval of the Governor, cooperate with, and
41 receive [money] funds or other assistance from, the federal
42 government, the State government, any interstate body, or any
43 county or municipal government, or from private sources, for
44 the study and control of air pollution;

45 [(g) The department may in accordance with a fee schedule
46 adopted as a rule or regulation establish and charge] g. Charge,
47 in accordance with a fee schedule that shall be adopted by the
48 department pursuant to the "Administrative Procedure Act,"
49 P.L.1968, c.410 (C.52:14B-1 et seq.), (1) reasonable annual
50 emission fees for major facilities as provided in section 5 of
51 P.L., c. [C.] (now before the Legislature as this bill), and
52 (2) administrative fees for any of the services [it] the department
53 performs [which fees shall be annual or periodic as the
54 department shall determine] or provides in connection with

1 administering P.L.1954, c.212 (C.26:2C-1 et seq.). The
2 administrative fees charged by the department pursuant to this
3 (section) subsection shall not [be less than \$10.00 nor more than
4 \$500.00] exceed \$25,000 per application based on criteria
5 contained in the fee schedule;

6 h. Issue, renew, reopen, and revise operating permits, and
7 require any person who is required to obtain an operating permit
8 under the provisions of the federal Clean Air Act to obtain an
9 operating permit and to certify compliance therewith for all air
10 pollution sources, and

11 i. Establish, implement, and operate a small business
12 stationary source technical and environmental compliance
13 assistance program as required pursuant to 42 U.S.C. §7661f of
14 the federal Clean Air Act.

15 (cf: P.L.1993, c.257, s.1)

16 4. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to
17 read as follows:

18 13. (a) No person shall construct, install or alter any
19 equipment or control apparatus, in other than a one or 2-family
20 dwelling or a dwelling of 6 or less family units one of which is
21 owner-occupied, until an application including plans and
22 specifications has been filed with the department and an
23 installation or alteration permit issued by the department, in
24 accordance with any codes, rules and regulations of the
25 department except that subject to any such codes, rules and
26 regulations the department may dispense with the filing of
27 applications, plans and specifications. Information relating to
28 secret processes or methods of manufacture or production is
29 exempted from the plans and specifications and other pertinent
30 information to which the department is entitled under this
31 section.

32 (b) No person shall use or cause to be used any such new or
33 altered equipment or control apparatus for which an installation
34 or alteration permit is required or issued until an operating
35 certificate has been issued by the department.

36 (c) a. No person at a facility without an operating permit shall
37 construct, reconstruct, install, modify, use or cause to be used
38 any equipment or control apparatus until an application therefor
39 including plans and specifications has been filed with the
40 department and the department issues a construction,
41 reconstruction, installation, or modification permit and operating
42 certificate in accordance with any applicable codes, rules, or
43 regulations of the department. This requirement shall also apply
44 to any facility that requires an operating permit until such time
45 as a final operating permit is issued to the facility.

46 b. No person at a facility with an operating permit shall
47 construct, reconstruct, install, modify, use or cause to be used
48 any equipment or control apparatus until an application therefor
49 including plans and specifications has been filed with the
50 department and the department issues an authorization for
51 construction, reconstruction, installation, or modification by
52 revising the operating permit in accordance with any applicable
53 codes, rules, or regulations of the department.

54 c. No operating permit, operating permit revision, or operating

1 certificate or renewal thereof [.] required [by this act] pursuant
2 to P.L.1954, C.212 [C.26:2C-1 et seq.] [.] shall be issued by the
3 department unless the applicant shows to the satisfaction of the
4 department that the equipment is designed to operate without
5 causing a violation of any provision of [this act] P.L.1954, c.212
6 [C.26:2C-1 et seq.] or of any codes, rules [and] , or regulations
7 [promulgated thereunder] adopted pursuant thereto, and that,
8 except in the case of a renewal operating certificate, initial
9 operating permit, or renewal operating permit, the equipment
10 incorporates advances in the art of air pollution control
11 developed for the kind and amount of air contaminant emitted by
12 the applicant's equipment.

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

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

26 (b) For an air contaminant subject to a significant emissions
27 increase of a non-attainment air contaminant in a
28 non-attainment area, advances in the art of air pollution control
29 shall be the lowest achievable emission rate (LAER) as set forth
30 by the EPA at 40 CFR §51.165(a)(1)(xiii) or any subsequent
31 amendments thereto;

32 (c) For a hazardous air pollutant technology requirement,
33 advances in the art of air pollution control shall be the maximum
34 achievable control technology (MACT) as set forth at 42 U.S.C.
35 §7412; and

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

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

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

1 (b) applicable new source performance standards; and
2 (c) any other applicable State or federal standard, code, rule,
3 or regulation.

4 (3) (a) In order to promote greater emissions reductions than
5 would otherwise be achieved, the department may adopt,
6 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), rules and regulations that offer a person the
8 option of establishing in an operating permit a 15 year plan for
9 reducing facility emissions beyond minimum air pollution control
10 requirements. Such a plan shall include schedules setting forth
11 milestones for reducing emissions at the facility. Milestones may
12 be met by reducing emissions at the facility and by providing
13 emissions reduction credits from non-facility sources pursuant to
14 an emissions trading and banking program adopted pursuant to
15 section 8 of P.L. , c. (C.) (now before the Legislature as
16 this bill).

17 (b) The department shall review the achievement of the
18 milestones in the plan no less frequently than every five years
19 when the operating permit is renewed. The department may
20 require the person to submit, as part of the application for
21 renewal of the operating permit, a summary and trend of the
22 actual air contaminant emissions data reported in the facility's
23 annual emission statements for the previous five years. If the
24 department determines during the approval process for an
25 operating permit renewal that the milestones in the plan have not
26 been met at a facility and that there is no reasonable likelihood
27 that the milestones can or will be met, the department may
28 withdraw the opportunity for the facility to continue pursuant to
29 the plan and shall require instead that the facility comply with
30 the promulgated schedules for all applicable requirements.

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

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

42 (1) (5) Before an operating permit, operating permit revision
43 or operating certificate or any renewal thereof is issued, or as a
44 condition of issuance, the department may require the applicant
45 to conduct such tests as are necessary [in the opinion of the
46 department] to determine the kind or amount of the air
47 contaminant emitted from the equipment or whether the
48 equipment or fuel or the operation of the equipment is in
49 violation of any of the provisions of [this act] P.L.1954, c.212
50 (C.26:2C-1 et seq.) or of any codes, rules [and] or regulations
51 [promulgated thereunder] adopted pursuant thereto. [Such] The
52 tests shall be made at the expense of the applicant and shall be
53 conducted in a manner approved by the department, and the test
54 results shall be reviewed and professionally certified.

1 health, welfare and the environment, and publish that
2 determination and justification in accordance with the provisions
3 of the "Administrative Procedure Act," P.L.1968, c.410
4 (C.52:14B-1 et seq.).

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

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

24 (cf: P.L.1967, c.106, s.13)

25 5. (New section) a. Every major facility shall remit to the
26 State an annual emission fee of \$27.50 per ton (in 1989 dollars) of
27 the actual annual emissions of each regulated air contaminant
28 reported in the emission statement for that facility, or in the
29 absence of such information, on permitted emissions, or where
30 there is not a permit, on potential to emit.

31 The emission fee required pursuant to this subsection for each
32 State fiscal year shall be adjusted each year by the percentage, if
33 any, by which the Consumer Price Index exceeds the Consumer
34 Price Index for the calendar year 1989.

35 b. As part of the adopted fee schedule for major facilities, the
36 department:

37 (1) shall not require a major facility to remit an emission fee
38 if the total actual emissions of all regulated air contaminants
39 from that major facility does not exceed 10 tons per year;

40 (2) shall begin collecting emission fees in fiscal year 1995 for
41 air contaminants reported in a calendar year 1993 emission
42 statement, including carbon monoxide, particulates, sulfur
43 dioxide, oxides of nitrogen, and VOCs, but not including lead,
44 HAPs, and any other air contaminants; and

45 (3) may begin collecting emission fees in fiscal year 1998 for
46 lead, HAPs, and any other air contaminant categories as reported
47 in a calendar year 1996 emission statement.

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

51 d. As used in this section, "major facility" means a facility
52 that has the potential to emit any of the air contaminants listed
53 below in an amount that is equal to or exceeds the applicable
54 major facility threshold levels as follows:

<u>Air Contaminant</u>	<u>Threshold level</u>
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

6. (New section) Pursuant to the mandate of the federal Clean Air Act, all revenues collected pursuant to section 5 of P.L. . . . c. (C.) (now before the Legislature as this bill) 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 as defined pursuant to subsection d. of section 5 of P.L. . . . c. (C.) (now before the Legislature as this bill). 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. 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; implementing and operating 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; and any other activities with regard to major facilities required for State compliance with the federal Clean Air Act.

7. (New section) 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 cap prescribed pursuant to subsection a. of section 5 of P.L. . . . c. (C.) (now before the Legislature as

1 this bill) to ensure that the cap is adequate to fund the air
2 pollution control program in accordance with the mandates of the
3 federal Clean Air Act, and discuss the advantages and
4 disadvantages of setting higher emission fees for hazardous air
5 pollutants.

6 8. (New section) a. The department shall adopt, pursuant to
7 the provisions of the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.), rules and regulations to establish
9 emissions trading and banking programs that use economic
10 incentives to make progress toward the attainment or
11 maintenance of the National Ambient Air Quality Standards
12 (NAAQS), reduce or prevent emissions of HAPs, ensure healthful
13 air quality, or otherwise contribute to the protection of human
14 health, welfare and the environment from air pollution.

15 b. The emissions trading rules and regulations shall be designed
16 so that emission reductions shall be realized earlier or at a more
17 accelerated rate than would otherwise be achieved in accordance
18 with applicable air quality mandates, and so that compliance with
19 air quality mandates can be achieved with greater flexibility or
20 at lower cost. The rules and regulations may include, but need
21 not be limited to, provisions designating the pollutants to be
22 involved in the program, designating the persons who may
23 participate in the program, establishing emission limitations and
24 methods for projecting and verifying emissions, and establishing
25 enforcement mechanisms, including emissions tracking, periodic
26 program audits, and penalties.

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

39 c. The emissions trading rules and regulations adopted by the
40 department shall not conflict with applicable federal law and
41 shall constitute, contribute to, or be consistent with one or more
42 strategies that result in quantifiable emissions reductions and are
43 creditable under the State Implementation Plan (SIP) required
44 pursuant to the federal Clean Air Act. These may be emission
45 limiting or market-response strategies for mobile or stationary
46 sources, or both.

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

51 e. The department shall involve in the development of the
52 rules and regulations for emission trading programs
53 representatives of the affected industry, environmental, and
54 public interest groups as well as governmental entities with

1 affected or related jurisdictions.

2 9. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to
3 read as follows:

4 19. a. If any person violates any of the provisions of [this act]
5 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
6 or order promulgated or issued pursuant [to the provisions of this
7 act] thereto, the department may institute a civil action in a
8 court of competent jurisdiction for injunctive or any other
9 appropriate relief to prohibit and prevent such violation or
10 violations and the [said] court may proceed in the action in a
11 summary manner.

12 b. Any person who violates the provisions of [this act]
13 P.L.1954, c.212 (C.26:2C-1 et seq.) or any code, rule, regulation
14 or order promulgated or issued pursuant [to this act] thereto shall
15 be liable to a civil administrative penalty of not more than
16 [\$10,000.00] \$10,000 for the first offense, not more than
17 [\$25,000.00] \$25,000 for the second offense, and not more than
18 [\$50,000.00] \$50,000 for the third and each subsequent offense. If
19 the violation is of a continuing nature, each day during which it
20 continues shall constitute an additional, separate and distinct
21 offense. No civil administrative penalty shall be levied except
22 upon an administrative order issued pursuant to section 14 of
23 P.L.1954, c.212 (C.26:2C-14).

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

28 d. Any person who violates the provisions of P.L.1954, c.212
29 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
30 promulgated or issued pursuant [to that act] thereto, or a court
31 order issued pursuant to subsection a. of this section, or who fails
32 to pay a civil administrative penalty in full pursuant to section 9
33 of P.L.1962, c.215 (C.26:2C-14.1), is subject, upon order of the
34 court, to a civil penalty of not more than [\$10,000.00] \$10,000 for
35 the first offense, not more than [\$25,000.00] \$25,000 for the
36 second offense, and not more than [\$50,000.00] \$50,000 for the
37 third and each subsequent offense. If the violation is of a
38 continuing nature, each day during which the violation continues,
39 or each day in which the civil administrative penalty is not paid
40 in full, constitutes an additional, separate and distinct offense.
41 Any penalty imposed under this subsection may be recovered with
42 costs in a summary proceeding pursuant to "the penalty
43 enforcement law" (N.J.S.2A:58-1 et seq.). The Law Division of
44 the Superior Court has jurisdiction to enforce "the penalty
45 enforcement law."

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

52 f. Any person who:

53 (1) purposely or knowingly violates the provisions of P.L.1954,
54 c.212 (C.26:2C-1 et seq.), or any code, rule, regulation,

1 administrative order, or court order [promulgated] adopted or
2 issued pursuant thereto, is guilty of a crime of the third degree;

3 (2) purposely or knowingly violates any federally mandated air
4 pollution control requirement, any operating permit condition, or
5 any fee or filing requirement imposed in connection with an
6 operating permit is guilty of a crime of the third degree, the
7 sentence for which may include, notwithstanding the provisions of
8 subsection b. of N.J.S.2C:43-3, an enhanced fine of \$ 1,000 per
9 day per violation;

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

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

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

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

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

41 (cf: P.L.1989, c.333, s.1)

42 10. Section 22 of P.L. 1954, c.212 (C.26:2C-22) is amended to
43 read as follows:

44 22. [No ordinances of any governing body of a municipality or
45 county or board of health more stringent than this act or any
46 code, rules or regulations promulgated pursuant thereto shall be
47 superseded by this act. Nothing in this act or in any code, rules
48 or regulations promulgated pursuant thereto shall preclude the
49 right of any governing body of a municipality or county or board
50 of health, subject to the approval of the department, to adopt
51 ordinances or regulations more stringent than this act or any
52 code, rules or regulations promulgated pursuant thereto.
53 Penalties for violations of ordinances of a governing body of a
54 municipality, county or board of health shall not exceed
55 \$2,500.00.]

1 a. To ensure Statewide uniform treatment of air pollution
2 regulation and control, and eliminate conflicting and inconsistent
3 policies and standards in connection therewith, the pervasive and
4 comprehensive regulatory and enforcement program established
5 pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.) shall constitute
6 the exclusive program of the State concerning the subject matter
7 covered by that act, whether that subject matter be expressed by
8 inclusion in or exclusion from that act.

9 b. No municipality, county, local board of health, local health
10 agency, regional health commission, or any other political
11 subdivision of the State may enact any ordinance, pursuant to
12 section 9 of P.L.1977, c.443 (C.26:3A2-27) or any other authority,
13 concerning the subject matter covered by P.L.1954, c.212
14 (C.26:2C-1 et seq.). This section shall not affect the authority of
15 a certified local health agency to enact ordinances for the
16 limited purposes authorized by section 7 of P.L.1991, c.99
17 (C.26:3A2-34), provided that no such fee shall be assessed against
18 any source or facility required to obtain an operating permit
19 pursuant to section 13 of P.L.1967, c.106 (C.26:2C-9.2).

20 c. Any ordinance adopted by a municipality, county, local
21 board of health, local health agency, regional health commission,
22 or other political subdivision of the State concerning the subject
23 matter covered by P.L.1954, c.212 (C.26:2C-1 et seq.) adopted
24 prior to the effective date of P.L. , c. (C.) (now before the
25 Legislature as this bill) shall become null and void on the 180th
26 day after the effective date of P.L. , c. (C.) (now before
27 the Legislature as this bill).

28 d. Nothing in this section shall be construed to limit or impair
29 the authority of the department to delegate authority to a
30 certified local health agency in accordance with the provisions of
31 the "County Environmental Health Act," P.L.1977, c.443
32 (C.26:3A2-21 et seq.).

33 (cf: P.L.1985, c.12, s.4)

34 11. (New section) For the purposes of complying with the
35 federal Clean Air Act, there is created in the Department of
36 Environmental Protection a Small Business Compliance Advisory
37 Panel.

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

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

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

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

51 b. (1) Members of the panel shall:

52 (a) serve for two year terms;
53 (b) annually elect, by majority vote of the full membership of
54 the panel, a chairperson and a vice-chairperson; and

1 installed or altered, and operating certificates, which authorize
2 the operation of that equipment once it is built. In accordance
3 with the 1990 amendments to the federal Clean Air Act (CAAA),
4 the State must now adopt a new operating permit program that
5 would consolidate the existing operating certificates for any
6 major source of air pollution into a single operating permit. The
7 operating permit program would apply only to major sources of
8 air pollution.

9 The federal CAAA specifies that a minimum fee of \$ 3 per ton
10 per year (in 1989 dollars) of certain emissions must be charged
11 unless a workload analysis indicates a different fee is required.
12 Pursuant to this bill, major facilities would be assessed an annual
13 emission fee of \$27.50 per ton (adjusted by the Consumer Price
14 Index) for criteria air contaminants (i.e., carbon monoxide,
15 particulates, sulfur dioxide, oxides of nitrogen, volatile organic
16 compounds, and lead) as well as for hazardous air pollutants.
17 Emission fees collected would be paid directly to the General
18 Fund and would be appropriated annually to the DEP.

19 The DEP would be required to provide annual status reports to
20 the Governor and the Legislature on the progress of the program.
21 The report would include information on program costs and fees
22 collected as well as a staff and workload analysis.

23 The DEP would be authorized to issue, renew, reopen, and
24 revise operating permits and require major facilities to obtain
25 such a permit. The penalty provisions of the current law would
26 be amended to include the minimum federal criminal penalties
27 for violating federally mandated requirements and to provide
28 guidance with regard to odor-based violations.

29 A seven-member Small Business Compliance Advisory Panel
30 would be created within the DEP. As required by the federal
31 CAAA, the membership of the panel would be selected as
32 follows: two members selected by the Governor; four members
33 selected respectively by the Senate and General Assembly
34 majority and minority leadership, and one member selected by
35 the Commissioner of the DEP.

36 The bill would also revise and reform the current
37 pre-construction permit program for air pollution sources not
38 subject to the operating permit program.

39 For sources emitting less than de minimis limits for hazardous
40 air pollutants as prescribed by the United States Environmental
41 Protection Agency (EPA) and less than five tons per year of any
42 other air contaminant, the bill would delete the requirement for a
43 "state of the art" demonstration.

44 For sources emitting greater than EPA de minimis limits for
45 hazardous air pollutants or five tons per year of any other air
46 contaminant, the bill would provide for definitions of "state of
47 the art" that mirror the federal definitions, and require the DEP
48 to publish "presumptive norms" for "state of the art."

49 The bill would revise the present fee system by changing it
50 from a service fee cap of \$500 per service to an application cap
51 of \$25,000 per application to better reflect permit review costs.

52 The bill would allow for implementation of the "Netherlands
53 approach" to environmental regulation in certain circumstances
54 by allowing facilities the option of establishing in an operating

1 permit a 15-year plan for reducing facility emissions beyond
2 minimum air pollution control requirements, provided there is a
3 demonstration of a downward trend in emissions every five years.

4 In order to promote consistency and avoid duplicative
5 regulation, the bill would eliminate the authority of local
6 governmental entities to enact ordinances regulating sources of
7 air pollution. The elimination of this authority will not disrupt
8 local air pollution enforcement activities conducted in
9 accordance with the "County Environmental Health Act,"
10 P.L.1977, c.443 (C.26:3A2-21 et seq.).

11 The bill would also provide for the coordination of "Pollution
12 Prevention Act" facility-wide permits and operating permits.
13 authorize the DEP to issue general permits for common air
14 pollution sources, and authorize the DEP, in consultation with
15 industry, environmental, and public interest groups, to
16 promulgate regulations for emissions trading incentive programs.
17 Emissions trading programs may be State, multi-state, or
18 regional programs and may utilize mobile or stationary sources,
19 or both.
20
21
22

23
24 Revises "Air Pollution Control Act (1954)," establishes federally
25 mandated operating permit program, and reforms air pollution
26 control permit program.