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/Impreveduto+3

Date Introduced: 03/13/95

Committee Reference:	**Statement:**	**Public Hearing:**
Assembly:		
Environment and Energy	Yes	No
Appropriations	Yes	No
Senate:		
(Without reference)		

Sponsor Statement: Yes

Fiscal Note: Yes

Dates of Passage:

Assembly:	*Senate:*
06/26/95 (75-1)	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:

§§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)*

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

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

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

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

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

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

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.

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

"Consumer Price Index" [1]or "CPI"[1] 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 based on the emission of any regulated air contaminant.

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

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant [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.

[1]"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.

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

Air Contaminant	Threshold level
Carbon monoxide	100 tons per year
Particulate matter (PM-10)	100 tons per year
Total suspended particulates	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs collectively	25 tons per year
Any other air contaminant	100 tons per year[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 §70.2 or any subsequent amendments thereto.

"Research and development facility" means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de 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 §51.100 or any subsequent amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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)] 1[a. 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.

c. 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 equipment [1], 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 requirements [1]in lieu of adhering to strict permit review schedules and complying with less effective State requirements[1] . 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.1968, c.410 (C.52:14B-1 et seq.); and, as part of the five-year achievement review set forth in subparagraph (b) of paragraph (3) of this subsection, the person includes a demonstration that confirms no net emissions increases have occurred at the facility over the previous five years.[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 [1][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. , c. (C.) (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) [1][Equipment or control apparatus identified by the department as not] Grandfathered equipment or control apparatus shall not be[1] subject to a demonstration of advances in the art of air pollution control [1][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 [1][or] and[1] control apparatus that is de minimis in terms of size or emissions as prescribed in rules and regulations that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

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

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

i. The department may require the reporting and evaluation of emissions information for any air contaminant. However, prior to [1]requiring that such information be included on a permit or[1] 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.

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

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

[1][5. (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:

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]

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 [2]per facility[2] 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 [2]per facility[2] 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, reciprocating 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 review[2] .

(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 [2]per facility[2] 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 $25,000[2].

(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.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]

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, [1][C.212] c.212[1] (C.26:2C-1 et seq.) with regard to major facilities [1][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), those[1] 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 [1]and to fund implementation and operation of the small business stationary source technical and environmental compliance assistance program required pursuant to 42 U.S.C. §7661f of the federal Clean Air Act[1] . 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; [1][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;][1] 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 [1][cap][1] prescribed pursuant to [1][subsection a. of][1] 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.

8. (New section) a. [1][The] Within 90 days after the effective date of this act, the[1] department shall [1][adopt] propose[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] air contaminants[1] , ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution. [1]The 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] emissions[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. [1]The rules and regulations shall establish criteria for the generation and use of emissions reduction credits, including the use of emissions reduction credits in lieu of granting exemptions or waivers from compliance with emissions reduction requirements, and shall require that 10% of the emissions reduction credits gained shall be permanently retired for the public benefit when a trade occurs.[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] emissions[1] 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.), [1]which shall be[1] 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] ,[1] stationary [1], or area[1] sources, [1][or both] and shall include the creation, trading, and use of emissions reduction credits[1] .

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] emissions[1] trading programs representatives of the affected industry, environmental, and public interest groups as well as governmental entities with affected or related jurisdictions.

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

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] adopted[1] 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 [1][promulgated] adopted[1] 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 [1][promulgated] adopted[1] 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)

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.

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)

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

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

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

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

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

b. (1) Members of the panel shall:

(a) serve for two year terms;

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

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

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

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

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

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

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

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

[1]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]

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

[1][13.] 14.[1] This act shall take effect immediately.

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

[SECOND REPRINT]

ASSEMBLY, No. 2664

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblywoman OGDEN, Assemblymen Felice, Rooney
and Assemblywoman Wright

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

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

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

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

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

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

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.

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

"Consumer Price Index" [1]or "CPI"[1] 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 based on the emission of any regulated air contaminant.

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

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant [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.

[1]"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.

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

Air Contaminant	Threshold level
Carbon monoxide	100 tons per year
Particulate matter (PM-10)	100 tons per year
Total suspended particulates	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs collectively	25 tons per year
Any other air contaminant	100 tons per year[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 §70.2 or any subsequent amendments thereto.

"Research and development facility" means any facility the primary purpose of which is to conduct research and development into new processes and products, including academic and technological research and development, provided that such a facility is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale, except in a de 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 §51.100 or any subsequent amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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)] [1][a. 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.

c. 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 equipment [1], 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 requirements [1]in lieu of adhering to strict permit review schedules and complying with less effective State requirements[1] . 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.1968, c.410 (C.52:14B-1 et seq.); and, as part of the five-year achievement review set forth in subparagraph (b) of paragraph (3) of this subsection, the person includes a demonstration that confirms no net emissions increases have occurred at the facility over the previous five years.[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 [1][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. , c. (C.) (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) [1][Equipment or control apparatus identified by the department as not] Grandfathered equipment or control apparatus shall not be[1] subject to a demonstration of advances in the art of air pollution control [1][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 [1][or] and[1] control apparatus that is de minimis in terms of size or emissions as prescribed in rules and regulations that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

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

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

i. The department may require the reporting and evaluation of emissions information for any air contaminant. However, prior to [1]requiring that such information be included on a permit or[1] 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.

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

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

[1][5. (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:

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]

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 [2]per facility[2] 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, reciprocating 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 $25,000[2].

(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.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]

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, [1][C.212] c.212[1] (C.26:2C-1 et seq.) with regard to major facilities [1][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), those[1] 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 [1]and to fund implementation and operation of the small business stationary source technical and environmental compliance assistance program required pursuant to 42 U.S.C. §7661f of the federal Clean Air Act[1] . 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; [1][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;][1] 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 [1][cap][1] prescribed pursuant to [1][subsection a. of][1] 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.

8. (New section) a. [1][The] Within 90 days after the effective date of this act, the[1] department shall [1][adopt] propose[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] air contaminants[1], ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution. [1]The 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] emissions[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. [1]The rules and regulations shall establish criteria for the generation and use of emissions reduction credits, including the use of emissions reduction credits in lieu of granting exemptions or waivers from compliance with emissions reduction requirements, and shall require that 10% of the emissions reduction credits gained shall be permanently retired for the public benefit when a trade occurs.[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] emissions[1] 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.), [1]which shall be[1] 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] ,[1] stationary [1], or area[1] sources, [1][or both] and shall include the creation, trading, and use of emissions reduction credits[1].

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] emissions[1] trading programs representatives of the affected industry, environmental, and public interest groups as well as governmental entities with affected or related jurisdictions.

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

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] adopted[1] 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 [1][promulgated] adopted[1] 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 [1][promulgated] adopted[1] 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 [1][promulgated] adopted[1] 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)

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.

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)

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

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

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

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

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

b. (1) Members of the panel shall:

(a) serve for two year terms;

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

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

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

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

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

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

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

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

[1]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

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

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

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

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

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

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

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

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

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

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

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

13. This act shall take effect immediately.

Sponsors' STATEMENT

This bill 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) of certain emissions must be charged unless a workload analysis indicates a different fee is required. Pursuant to this bill, major facilities would be assessed an annual emission fee of $27.50 per ton (adjusted by the Consumer Price Index) for criteria air contaminants (i.e., carbon monoxide, particulates, sulfur dioxide, oxides of nitrogen, volatile organic compounds, and lead) as well as for hazardous air pollutants. Emission fees collected would be paid directly to the General Fund and would be appropriated annually to the DEP.

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 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 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 would provide for definitions of "state of the art" that mirror the federal definitions, and require the DEP to publish "presumptive norms" for "state of the art."

The bill would revise the present fee system by changing it from a service fee cap of $500 per service to an application cap of $25,000 per application to better reflect permit review costs.

The bill 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 would eliminate the authority of local governmental entities to enact ordinances regulating sources of air pollution. The elimination of this authority will not disrupt local air pollution enforcement activities conducted in accordance with the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.).

The bill 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 or stationary sources, or both.

Revises "Air Pollution Control Act (1954)," establishes federally mandated operating permit program, and reforms air pollution 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):

Major Source Program	FY 1996	FY 1997	FY 1998
Operating Budget	$11.65	$11.65	$11.65
Revenues	9.51	9.51	6.10
Balance	($2.14)	($2.14)	($5.55)

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.

Legislative Fiscal Est
Page 2

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;

Assembly E&E Committee statement

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

	FY96	FY97	FY98
Operations	$11.65 mil	$11.65mil	$11.65mil
Revenues	-9.51 mil	9.51mil	6.10mil
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.

Approp. C'ttee statement

(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.

A. E&E

06/22/95 jtc
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Document ID 1410
EA 0091
SR [redacted] 0003
TR [redacted] 0008

ADOPTED
JUN 22 1995

ASSEMBLY AAP COMMITTEE

AMENDMENTS

to

Assembly Bill No. 2664 (1R)

(Sponsored by Assemblywoman OGDEN)

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 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:

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]

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 [2]per facility[2] 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 [2]per facility[2] 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, reciprocating 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 review[2] .

(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 [2]per facility[2] 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 $25,000[2]

.

(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.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]

A.2664

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001
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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 find the operating permit program, and is a major step toward complying with the Clean Air Act," said DEP Commissioner Robert C. Shinn, Jr.

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.

Governors Message.

Page 2