

26:2C-1

**LEGISLATIVE HISTORY CHECKLIST**  
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(Air pollution--violations of permits)

**NJSA:** 26:2C-1

**LAWS OF:** 1993 **CHAPTER:** 89

**BILL NO:** S1282

**SPONSOR(S)** Sinagra and DiFrancesco

**DATE INTRODUCED:** October 15, 1992

**COMMITTEE:** **ASSEMBLY:** Environment  
**SENATE:** Environment

**AMENDED DURING PASSAGE:** Yes Senate committee substitute  
(1R) enacted

**DATE OF PASSAGE:** **ASSEMBLY:** March 1, 1993  
**SENATE:** January 25, 1993

**DATE OF APPROVAL:** March 23, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

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[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1282

STATE OF NEW JERSEY

ADOPTED JANUARY 12, 1993

Sponsored by Senators SINAGRA, DiFRANCESCO  
McNAMARA and Inverso

1 AN ACT concerning violations of air pollution control permits  
2 and supplementing P.L.1954, c.212 (C.26:2C-1 et seq.).

3

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

6 1. The Legislature finds that equipment in facilities regulated  
7 by the "Air Pollution Control Act <sup>1</sup>[,]<sup>1</sup> (1954)," P.L. 1954, c.212,  
8 may malfunction or fail to perform optimally, even when  
9 carefully maintained and operated; that violations of the act may  
10 occur due to an <sup>1</sup>[unforeseeable] unforeseeable<sup>1</sup> and unavoidable  
11 malfunction, during equipment start-up or shut-down, or during  
12 necessary equipment maintenance due to the inherently intricate  
13 nature of mechanical equipment; and that these violations should  
14 not be accorded penalties as long as any resulting air emission  
15 causes no potential threat to the public health, welfare or the  
16 environment. The Legislature therefore finds and declares that it  
17 is the policy of this State to protect the public health, <sup>1</sup>[safety]  
18 welfare<sup>1</sup> and the environment, to promote the careful operation  
19 and maintenance of equipment in facilities regulated by the "Air  
20 Pollution Control Act <sup>1</sup>[,]<sup>1</sup> (1954)," and to reduce the unnecessary  
21 burden of monetary penalties for violations caused by a  
22 non-recurring equipment malfunction, equipment start-up, <sup>1</sup>or<sup>1</sup>  
23 equipment shut-down or during necessary equipment maintenance  
24 by providing an affirmative defense to liability for penalties when  
25 <sup>1</sup>[the] a<sup>1</sup> facility is operated and maintained carefully, when all  
26 reasonable steps are taken to minimize emission levels caused by  
27 <sup>1</sup>[the] a<sup>1</sup> violation, and <sup>1</sup>when<sup>1</sup> the emissions do not cause a  
28 potential threat to the public health, welfare or the environment.

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

39 b. A person asserting an affirmative defense pursuant to  
40 subsection a. of this section shall notify the department of the  
41 violation by 5:00 p.m. of the second full calendar day following  
42 the occurrence, or if due diligence was exercised to discover the

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:

<sup>1</sup> Assembly AEN committee amendments adopted February 22, 1993.

1 violation, by 5:00 p.m. of the second full calender day after  
2 becoming aware of the <sup>1</sup>[occurrence] occurrence<sup>1</sup> , and, within  
3 30 days thereof, shall submit written documentation on the  
4 circumstances of the violation and demonstrating as applicable,  
5 that:

6 (1) the violation occurred, and was caused by an equipment  
7 malfunction, an equipment start-up, <sup>1</sup>or<sup>1</sup> an equipment  
8 shut-down <sup>1</sup>,<sup>1</sup> or during the performance of necessary equipment  
9 maintenance, as applicable;

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

11 (3) the violation did not result from operator error or failure  
12 to maintain the equipment with due care;

13 (4) the person has taken all reasonable steps to minimize levels  
14 of emissions caused by the violation; and

15 (5) with respect to violations caused by a malfunction, the  
16 malfunction is not a part of a recurrent pattern.

17 3. A person shall not be entitled to an affirmative defense to  
18 liability pursuant to section 2 of P.L. , c. (C. )(now before  
19 the Legislature as this bill) for any violation that causes the  
20 presence in the outdoor atmosphere of one or more air  
21 contaminants in a quantity or concentration which poses a  
22 potential threat to public health, welfare or the environment.

23 4. Nothing in P.L. , c. (C. )(now before the Legislature  
24 as this bill) shall be construed to limit or alter the responsibility  
25 of a person who causes a release of air contaminants to notify the  
26 department immediately as required pursuant to subsection e. of  
27 section 19 of P.L.1954, c.212 (C.26:2C-19).

28 5. a. The department shall adopt, pursuant to the  
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
30 et seq.), rules and regulations that establish limitations upon the  
31 maximum frequency and duration of violations resulting from  
32 equipment malfunctions, equipment start-ups, equipment  
33 shut-downs, and the performance of necessary equipment  
34 maintenance operations for which an affirmative defense may be  
35 asserted pursuant to section 2 of P.L. , c. (C. ) (now before  
36 the Legislature as this bill). The limitations shall be based upon  
37 the operating history of similar sources on an industry basis.

38 b. The affirmative defense established pursuant to section 2 of  
39 P.L. , c. (C. ) (now before the Legislature as this bill), shall  
40 not be available with respect to violations arising from equipment  
41 malfunctions, <sup>1</sup>[start-up of]<sup>1</sup> equipment <sup>1</sup>start-ups<sup>1</sup> ,  
42 <sup>1</sup>[shut-down of] <sup>1</sup>or<sup>1</sup> equipment <sup>1</sup>shut-downs<sup>1</sup> , <sup>1</sup>[and] <sup>1</sup>or<sup>1</sup> during  
43 necessary equipment maintenance operations <sup>1</sup>,<sup>1</sup> that occur more  
44 frequently or persist for a longer duration than the maximum  
45 limitations established pursuant to subsection a. of this section.

46 6. This act shall take effect immediately.

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51 Provides affirmative defense to certain air pollution control  
52 violations due to malfunction, start-up condition, shut-down  
53 condition and equipment maintenance.

SENATE, No. 1282

STATE OF NEW JERSEY

INTRODUCED OCTOBER 15, 1992

By Senators SINAGRA and DiFRANCESCO

1 AN ACT concerning violations of air pollution control permits  
2 and supplementing P.L.1954, c.212 (C.26:2C-1 et seq.).

3

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

6 1. a. A person shall be entitled to an affirmative defense to  
7 liability for a violation of a condition, emission rate, limit, or  
8 standard, required pursuant to a permit issued pursuant to  
9 P.L.1954, c.212 (C.26:2C-1 et seq.) when the violation occurs as a  
10 result of an equipment malfunction, a start-up of equipment, a  
11 shut-down of equipment, or during necessary equipment  
12 maintenance. A person entitled to this affirmative defense shall  
13 comply with the provisions of subsections b., c., and d. as  
14 applicable, of this section, but shall not be required to provide  
15 the notification and documentation to the department otherwise  
16 required by the provisions of subsections b., c., and d. of this  
17 section if the violation occurs for a period of less than three  
18 consecutive hours.

19 b. In the case of a violation resulting from an equipment  
20 malfunction, a person asserting an affirmative defense pursuant  
21 to this section, shall notify the department of the equipment  
22 malfunction that caused the violation within 72 hours of the  
23 violation, or of becoming aware of the violation, and, within  
24 30 days thereof, shall submit written documentation on the  
25 circumstances of the violation and demonstrating as applicable,  
26 that:

27 (1) the malfunction occurred, including the cause of the  
28 malfunction, if known;

29 (2) the permitted facility at the time of the malfunction was  
30 being properly operated;

31 (3) the malfunction did not result from a failure to maintain  
32 the equipment properly; and

33 (4) the person has taken reasonable steps to minimize levels of  
34 emissions.

35 c. In the case of a violation resulting from a start-up or  
36 shut-down condition, a person asserting an affirmative defense  
37 pursuant to this section, shall notify the department of the  
38 start-up or shut-down condition that caused the violation within  
39 72 hours of the violation, or of becoming aware of the violation,  
40 and within 30 days thereof, shall submit written documentation  
41 on the circumstances of the violation and demonstrating as  
42 applicable, that:

43 (1) the start-up or shut-down condition occurred;

44 (2) the permitted facility at the time of the start-up or  
45 shut-down was being properly operated;

1 (3) the start-up or shut-down condition that resulted in the  
2 violation did not result from failure to maintain the equipment  
3 properly; and

4 (4) the person has taken reasonable steps to minimize levels of  
5 emissions.

6 d. In the case of a violation resulting from necessary  
7 equipment maintenance, a person asserting an affirmative  
8 defense pursuant to this section, shall notify the department of  
9 the necessary equipment maintenance operation that caused the  
10 violation within 72 hours of the occurrence, or of becoming aware  
11 of the occurrence, and within 30 days thereof, shall submit written  
12 documentation on the circumstances of the violation and  
13 demonstrating as applicable, that:

14 (1) the equipment maintenance operation occurred;

15 (2) the permitted facility at the time of the necessary  
16 equipment maintenance was being properly operated;

17 (3) there was no feasible alternative to the equipment  
18 maintenance operation that would not result in a violation such as  
19 the performance of equipment maintenance during periods of  
20 downtime; and

21 (4) the person has taken reasonable steps to minimize levels of  
22 emissions.

23 e. An assertion of an equipment malfunction, start-up  
24 condition, shut-down condition or necessary equipment  
25 maintenance operation as an affirmative defense pursuant to this  
26 section may not include noncompliance to the extent caused by  
27 operational error, lack of preventive maintenance or careless or  
28 improper operation.

29 2. This act shall take effect immediately.

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32 STATEMENT

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34 This bill would provide an affirmative defense for a violation of  
35 a permit condition, rate, limit or standard imposed pursuant to  
36 the "Air Pollution Control Act (1954)," P.L.1954, c.212 (26:2C-1  
37 et seq). if the violation occurs as the result of an equipment  
38 malfunction, start-up condition, shut-down condition or  
39 necessary equipment maintenance.

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44 Provides affirmative defense to certain air pollution control  
45 violations due to malfunction, start-up condition, shut-down  
46 condition and equipment maintenance.

ASSEMBLY ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 1282**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 22, 1993

The Assembly Environment Committee favorably reports Senate Bill No. 1282 (SCS) with Assembly committee amendments.

The Senate Committee Substitute for Senate Bill No. 1282 of 1992 would provide an affirmative defense for a violation of a permit condition, rate, limit or standard required pursuant to a permit issued pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), or any rule or regulation adopted pursuant to P.L.1954, c.212, if the violation occurs as the result of an equipment malfunction, an equipment start-up, or an equipment shut-down or during necessary equipment maintenance. A person asserting the affirmative defense would be required to notify the department of the violation no more than two days following the occurrence or if due diligence was exercised to discover the violation, two days after becoming aware of the occurrence. Within 30 days following the occurrence, the person asserting the defense would be required to demonstrate that the violation was caused by an equipment malfunction, an equipment start-up, an equipment shut-down or during necessary equipment maintenance, that the facility was operated with due care, that the violation did not result from operator error or failure to maintain the equipment with due care, that all reasonable steps were taken to minimize levels of emissions, and, in the case of a malfunction, the malfunction is not a part of a recurrent pattern.

The affirmative defense would not be available if the violation causes the presence in the outdoor atmosphere of one or more air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment. Also, the committee substitute provides that nothing in its provisions would affect the requirement to notify the Department of Environmental Protection immediately of a release as required pursuant to subsection e. of section 19 of P.L.1954, c.212 (C.26:2C-19).

Finally, the committee substitute would require the department to adopt rules and regulations that establish limitations upon the maximum frequency and duration of violations resulting from equipment malfunctions, equipment start-up, equipment shut-down, and the performance of necessary equipment maintenance operations for which an affirmative defense may be asserted based upon the operating history of similar sources on an industry basis.

The committee made technical and clarifying amendments to the bill.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2004 of 1992, which was also reported by the committee.

SENATE ENVIRONMENT COMMITTEE  
STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1282**  
**STATE OF NEW JERSEY**

DATED: JANUARY 11, 1993

The Senate Environment Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1282.

This committee substitute for Senate Bill No. 1282 would provide an affirmative defense for a violation of a permit condition, rate, limit or standard required pursuant to a permit issued pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (26:2C-1 et seq.), or any rule or regulation adopted pursuant to P.L.1954, c.212, if the violation occurs as the result of an equipment malfunction, an equipment start-up, an equipment shut-down or during necessary equipment maintenance. A person asserting the affirmative defense would be required to notify the department of the violation no more than two days following the occurrence or if due diligence was exercised to discover the violation, two days after becoming aware of the occurrence. Within 30 days following the occurrence, the person asserting the defense would be required to demonstrate that the violation was caused by an equipment malfunction, an equipment start-up, an equipment shut-down or during necessary equipment maintenance, that the facility was operated with due care, the violation did not result from operator error or failure to maintain the equipment with due care, that all reasonable steps were taken to minimize levels of emissions, and, in the case of a malfunction, the malfunction is not a part of a recurrent pattern.

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