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NJSA: 13:1D-111

LAWS OF: 1991 CHAPTER: 422

BILL NO: A4517

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DATE INTRODUCED: March 4, 1991

COMMITTEE: ASSEMBLY: Land Use
SENATE: Environmental Quality

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks

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SENATE: January 6, 1992

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE:

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings-attached.

KBG/pp

[SECOND REPRINT]

ASSEMBLY, No. 4517

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1991

By Assemblymen DUCH, ALBOHN and Assemblywoman Cooper

1 **AN ACT** concerning the development of technical manuals for
2 permits issued by the Department of Environmental Protection,
3 and supplementing Title 13 of the Revised Statutes.

4

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

7 ¹[1. As used in this act:

8 "Department" means the Department of Environmental
9 Protection and its various divisions, bureaus, agencies, offices,
10 and administrative units.

11 "Permit" means any permit, license, certificate, or written
12 approval, or any renewal thereof, issued by the Department of
13 Environmental Protection, or any division, bureau, agency, office,
14 or other administrative unit thereof, pursuant to: R.S.12:5-1 et
15 seq.; P.L.1975, c.232 (C.13:1D-29 et seq.); the "Solid Waste
16 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17
17 of P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated
18 Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1
19 et al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey
20 Statewide Mandatory Source Separation and Recycling Act,"
21 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act
22 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Environmental
23 Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.);
24 the "Toxic Catastrophe Prevention Act," P.L.1985, c.403
25 (C.13:1K-19 et seq.); "The Wetlands Act of 1970," P.L.1970,
26 c.272 (C.13:9A-1 et seq.); the "Freshwater Wetlands Protection
27 Act," P.L.1987, c.156 (C.13:9B-1 et seq.); the "Coastal Area
28 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the
29 "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et
30 seq.); section 13 of P.L.1967, c.106 (C.26:2C-9.2); the "Water
31 Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.);
32 section 10 of P.L.1947, c.377 (C.58:4A-14); the "Water Pollution
33 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986,
34 c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water Act,"
35 P.L.1977, c.224 (C.58:12A-1 et seq.); the "Flood Hazard Area
36 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.); or the federal
37 "Resource Conservation and Recovery Act of 1976," as amended
38 and supplemented, 42 U.S.C. §6901 et seq. "Permit" shall also
39 mean any other permit, license, certificate, or written approval,

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 AEE committee amendments adopted June 10, 1991.

² Senate SLM committee amendments adopted December 19, 1991.

1 or any renewal thereof, issued by the Department of
2 Environmental Protection, or any division, bureau, agency, office,
3 or other administrative unit thereof, pursuant to law that the
4 Commissioner of Environmental Protection or the Permit
5 Management Staff created pursuant to section 1 of P.L. , c.
6 (C.) (now before the Legislature as Assembly Bill No. 4511 of
7 1991 or Senate Bill No. of 1991) determines to be subject to the
8 provisions of this act.]¹

9 ¹[2.] 1.¹ Within 12 months of the effective date of this section
10 ¹[of the act, the Permit Management Staff of the Department of
11 Environmental Protection created pursuant to section 1 of
12 P.L. , c. (C.) (now before the Legislature as Assembly Bill
13 No. 4511 of 1991 or Senate Bill No. of 1991)] , the Department
14 of Environmental Protection¹ shall develop a technical manual
15 for each ¹[type of permit] class or category of permit, as
16 established pursuant to section 1 of P.L. , c. (C.)
17 (pending in the Legislature as Assembly Bill No. 4518),¹ issued by
18 the department. Each ¹[such]¹ manual shall define the
19 procedural and substantive requirements ¹[pertaining to permit
20 applications, serve as a guide]¹ for the completion of ¹[permit
21 applications by permit applicants] an application for a class or
22 category of permit¹ and the review thereof ¹[by personnel of
23 the department]¹ , and ¹shall¹ clarify departmental policies and
24 interpretations of any laws, rules, and regulations ¹[affecting the
25 type of permit that is the subject of the technical manual]
26 relating to the filing and review of the application¹. Each
27 ¹[such]¹ technical manual shall also:

28 a. Provide a detailed summary and explanation of any policy
29 considerations not otherwise identified by law, rule, or regulation
30 that are used in the department's review and consideration of
31 ¹[applications for each type of permit] the permit application¹;

32 b. Detail and clarify the department's interpretation of any
33 ¹[statutory or regulatory terms relating to permit]¹ standards or
34 other requirements that do not have a fixed meaning or are not
35 defined by law, rule, or regulation, including, but not limited to,
36 identification or stipulation of¹ state-of-the-art control
37 technologies¹ and best management practices; and

38 c. Include any other general information about department
39 policies that would facilitate ¹[for each type of permit]¹ the
40 preparation ¹by an applicant, and the review by the department,¹
41 of an application ¹[for that permit and the review of that
42 application by department personnel]¹ .

43 ¹ d. Adoption of a technical manual, or of revisions thereto,
44 shall not be subject to the notice and publication requirements of
45 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
46 et seq.).

47 As used in this act:

48 "Permit" shall have the same meaning as in section 1 of P.L. ,
49 c. (C.) (pending in the Legislature as Assembly
50 Bill No. 4516).

1 ²["State-of-the art" means a commercially available
2 technology or operational controls, or a combination thereof,
3 designed to reduce to the maximum degree practicable the
4 amount or type of each pollutant or contaminant emitted into the
5 environment, except as may be contrary to federal law,
6 regulations or guidance, or to a duly promulgated and federally
7 approved State Implementation Plan or similar federal
8 approval.¹²

9 ¹[3.] ^{2.1} a. Policies and interpretations contained in a
10 technical manual developed pursuant to section ¹[2 of this act] ¹
11 of this act and in force on the date that an application for a
12 permit subject to that technical manual has been filed,¹ shall be
13 binding upon both the department and a permit applicant ¹,
14 except as otherwise required under federal or State law, or rule
15 or regulation promulgated thereunder, or an order of the court;
16 however, if an application is determined to be incomplete, the
17 date of filing shall be the date that the information required for a
18 completed application is filed with the department¹ . Any
19 revision made to a technical manual shall have no effect upon a
20 permit application that was submitted to the department prior to
21 adoption of the revision.

22 ¹Nothing in this section shall be construed to:

23 (1) exempt an applicant from complying with all applicable
24 federal and State laws, or rules or regulations adopted
25 thereunder, including compliance with the requirements of a
26 permit issued by the department; or

27 (2) compromise or limit any enforcement action available to
28 the department pursuant to law.¹

29 b. The department ¹[may] shall periodically, but not more
30 frequently than every six months, except as otherwise required by
31 federal or State law, or rules or regulations adopted thereunder,¹
32 update and revise a technical manual ¹[developed pursuant to
33 section 2 of this act no more frequently than every six months,
34 unless otherwise required by federal law]¹.

35 ¹[4.] ^{3.1} The department shall make copies of technical
36 manuals developed pursuant to this act readily available to
37 ¹prospective applicants for department permits and¹ the public,
38 and may charge a reasonable fee to cover the reasonable costs of
39 producing the manuals.

40 ¹[5.] ^{4.1} This act shall take effect immediately, except that
41 sections ¹[3 and 4] ² and ³¹ shall take effect one year after the
42 date of enactment of this act.

ENVIRONMENT

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47 Requires DEP to prepare technical manuals for the filing and
48 review of applications for certain department permits.

STATEMENT

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3 This bill would require that the department develop a technical
4 manual for each major type of permit it issues pursuant to law.
5 The technical manuals would contain departmental policies and
6 interpretations of laws, rules, and regulations that would be
7 binding upon both the department and the applicant. These
8 manuals would assist permit applicants by defining the procedural
9 and substantive requirements pertaining to permit applications,
10 serving as a guide for the completion of permit applications by
11 permit applicants and the review thereof by personnel of the
12 department, and clarifying departmental policies and
13 interpretations of any laws, rules, and regulations affecting the
14 type of permit that is the subject of a technical manual. Each
15 technical manual would also (1) provide a detailed summary and
16 explanation of any policy considerations not otherwise identified
17 by law, rule, or regulation that are used in the department's
18 review and consideration of applications for each type of permit;
19 (2) detail and clarify the department's interpretation of any
20 statutory or regulatory terms relating to permit standards or
21 other requirements that do not have a fixed meaning or are not
22 defined by law, rule, or regulation, including, but not limited to,
23 state-of-the-art control technology and best management
24 practices; and (3) include any other general information about
25 department policies that would facilitate for each type of permit
26 the preparation of an application for that permit and the review
27 of that application by department personnel.

ENVIRONMENT

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32 Requires DEP to prepare technical manuals for permits.

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4517

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 1991

Assembly Bill No. 4517, with committee amendments, is reported favorably by the Assembly Energy and Environment Committee.

This bill requires the department to develop a technical manual for each class or category of permit issued by the department. The technical manuals shall clarify departmental policies, including department procedures, substantive requirements, and interpretations of laws, rules, and regulations. The technical manual shall also stipulate state-of-the-art control technologies and best management practices required to be used by applicants. The provisions of a manual in effect at the time of the filing of an application shall be binding on the department and an applicant, except as otherwise required by federal or State statutes, or rules or regulations adopted thereunder, or unless the application is determined to be incomplete. The technical manuals shall be available to prospective applicants and the public.

The committee amendments makes clear that notwithstanding the provisions of the bill, an applicant must comply with all extant laws, rule or regulations, including those adopted after the filing of an application. The amendments also make binding on the parties the provisions of the applicable technical manual in effect on the date of the filing of a completed application, except as otherwise required by federal law, or rule or regulation.

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SENATE LAND USE MANAGEMENT
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 4517

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 19, 1991

The Senate Land Use Management and Regional Affairs Committee favorably reports Assembly Bill No. 4517 [1R] with committee amendments.

Assembly Bill No. 4517 [1R] requires the Department of Environmental Protection to develop a technical manual for each class or category of permit issued by the department. The technical manuals shall clarify departmental policies, including department procedures, substantive requirements, and interpretations of laws, rules, and regulations. The technical manual shall also stipulate state-of-the-art control technologies and best management practices required to be used by applicants. The provisions of a manual in effect at the time of the filing of an application shall be binding on the department and an applicant, except as otherwise required by federal or State statutes, or rules or regulations adopted thereunder, or unless the application is determined to be incomplete. The technical manuals shall be available to prospective applicants and the public.

The bill provides that an applicant must comply with all extant laws, rule or regulations, including those adopted after the filing of an application. The bill also provides that the provisions of the applicable technical manual in effect on the date of the filing of a completed application are binding on the parties, except as otherwise required by federal law, or rule or regulation.

Senate committee amendments would delete the definition of "state-of-the-art" control technologies from the bill.

As amended, Assembly Bill No. 4517 [1R] is identical to Senate Bill No. 3632 Sca.