



ENVIRONMENTAL PRACTICE

ALERT

PERMITTED FACILITIES FACE NEW CHALLENGES IN MAINTAINING AIR POLLUTION CONTROL PERMITS

By David Restaino

The New Jersey Department of Environmental Protection (NJDEP) recently provided updates and guidance concerning air permitting issues, including important information relating to the renewal of Title V operating permits, the use of temporary equipment and construction equipment and reporting greenhouse gas emissions under federal law. The NJDEP's public outreach reflects its effort to have a uniform approach for permitted sources – but its efforts may also create enforcement concerns. We have summarized the main issues.

Title V Permit Renewals

Each individual permit writer at the NJDEP may be approaching renewal permits differently, making Title V permit renewals a less-than-uniform process. Because permit conditions are enforceable once the permit goes final, facilities need to pay close attention during the renewal process.

According to the NJDEP, permit conditions should not be changed unless the facility requests a change or a new requirement necessitates a change. (One uniform change that will be required in all renewals, however, is the incorporation of federal requirements; the change was necessitated by a United States Environmental Protection Agency (EPA) audit of the state's program). Therefore, facilities need to pay attention to the details, otherwise they may find that their renewed permit contains different – and more onerous – requirements that should not have been changed at all.

Two additional concepts have been noted by the NJDEP with respect to Title V permits.

1. Hazardous air pollutants (HAPs) being released in de minimis quantities need not be listed in the permit. Thus, enforcement should not penalize facilities about existing de minimis HAP emissions that are not listed on a Title V permit.
2. The Title V recordkeeping and monitoring requirements for engines will continue to be handled on a case-by-case basis until the NJDEP can implement a uniform approach.

Temporary Equipment at Title V Facilities

Until the regulations can be modified or a “general permit” developed by the NJDEP, it has implemented a short-term solution – using a template for permit modifications to allow for quicker approvals – so that facilities can get temporary equipment permitted.

But there are some potential enforcement issues associated with the new policy.

- The NJDEP is presuming that such equipment is already subject to a Subchapter 8 air permit. However, equipment rental companies do not always get permits for their equipment – in some cases because the rental company is concerned that it cannot control a customer's fuel usage once the equipment is taken away – so facilities need to consider permitting issues before using temporary equipment.

- In non-attainment areas, a facility will be required to demonstrate an emission offset before it can begin using temporary equipment. This is a requirement in the NJDEP's rules. Although the NJDEP is reviewing whether the use of temporary equipment can be offset by the "down time" associated with the original equipment, guidance on this issue does not yet exist, and facilities should not assume everything will be fine without checking first.

NJDEP Clarifies Subchapter 8 Permit Requirements

The NJDEP has clarified the requirements for permitting construction equipment. Generally, a permit is required if such equipment is utilized in a continuous operation or at a production area. However, under the clarified policy, if equipment is used at a construction site for the short-term then the permit requirements will not apply, notwithstanding whether the equipment exceeds the 50 pounds-per-hour Subchapter 8 permit threshold. The NJDEP has provided some examples to make it easier for facilities to work through the process:

- Traditional sources, such as heaters and boilers, require a permit even at a construction site.
- Recycling and grinding operations may not need a permit if the material that is generated will be used on-site. If the material is taken off-site for sale however, then a permit is definitely required.
- Portable internal combustion engines that provide temporary mechanical or electrical energy for construction – such as a generator powering a construction elevator – do not require permits.
- Portable welding equipment used for construction does not require a permit.

While this new approach will definitely provide flexibility to, and reduce the burdens on, those entities engaging in construction activities, there are some potential traps for the unwary. Specifically, there will be "gray areas" associated with enforcement of this new policy, and facilities should consider what form of

documentation they can create in order to prove, for example, that materials generated during construction were used on-site.

Greenhouse Gas Reporting

Are you monitoring your generation of carbon dioxide (CO₂) and CO₂ equivalents?

Last year, the EPA adopted rules that require certain large sources and suppliers to report their greenhouse gas emissions. Generally speaking, the reporting requirements apply to several categories:

- "Threshold sources," or those facilities emitting 25,000 metric tons or more of CO₂ or its "equivalent" (CO₂e) per year. The bulk of threshold sources fall into the category of stationary units, glass production facilities and iron and steel production facilities.
- "All in" sources, or those facilities specifically listed in the federal rules.
- Specific categories of suppliers, for example, suppliers of fuels or industrial greenhouse gases.
- Manufacturers of vehicles and engines.

About 100 sources in New Jersey will be required to comply with these mandatory reporting rules. Monitoring was to begin on January 1, 2010, with the first annual emissions reports due March 31, 2011. Monitoring plans must be prepared by April 1, 2010.

There are potential traps in the rule. First, if the 25,000 metric ton threshold is triggered, then self-certified reporting is required for all sources and not just the triggering unit. Second, to exit the program, facilities and suppliers would need to demonstrate that their CO₂e emissions are below a specified quantity — for a number of years.

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