



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 27 2016

Commissioner Bob Martin
New Jersey Department of Environmental Protection
401 E. State Street, CN 027
Trenton, New Jersey 08625-0027

Dear Commissioner Martin:

On May 6, 2016 the United States Environmental Protection Agency (EPA), Region 2 Office conducted the 4th program evaluation of New Jersey's Title V Operating Permit Program as required by 40 CFR §70.10. In this audit, EPA focused on outstanding issues from previous program audits including Title V fees, rule revisions to prevent supersession of preconstruction permits, and proper citation of the underlying requirements for permit terms and conditions.

EPA is encouraged by the New Jersey Department of Environmental Protection's (NJDEP's) commitment to resolve these issues as they were raised during the May 2016 on-site visit. EPA is pleased to see that draft rule language has since been developed to initiate the necessary rule revisions. EPA is also pleased to see that NJDEP is addressing the funding issue identified in our 2012 audit report by adopting a revision to N.J.A.C. 7:27-22.31 to increase fee revenues, which took effect on February 27, 2015. The effect of this fee increase to meet all of the funding needs of New Jersey's Operating Permit Program is yet to be determined. To ensure adequate funding for the Operating Permit Program in years to come, a new fee analysis should be conducted to determine New Jersey's Title V fee requirements and evaluate all potential funding options. This new fee analysis will inform New Jersey's strategies to achieve Title V fee sufficiency as the Operating Permit Program continues to proceed. Please submit this analysis within 180 days of your receipt of the attached report.

The NJDEP staff was helpful in providing EPA with the necessary information to complete this audit. I would especially like to thank Ken Ratzman and his staff for their assistance. If you have any questions regarding this report, please have your staff contact Mr. Richard Ruvo, Chief of our Air Programs Branch at (212) 637-4014.

Sincerely,

A handwritten signature in black ink that reads "Judith A. Enck". The signature is fluid and cursive, with a large loop at the end of the name.

Judith A. Enck
Regional Administrator

Attachments

cc: Francis Steitz

The Environmental Protection Agency's 4th Audit of the
New Jersey Title V Operating Permit Program
FY 2016

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EPA Region 2’s audit reports of NJ’s Operating Permit Program for prior years can be found at:
<https://www.epa.gov/caa-permitting/title-v-program-evaluations-region-2>

I. Introduction

EPA conducted the fourth audit of New Jersey's Operating Permit Program on May 6, 2016 pursuant to 40 CFR §70.10. This audit focused on resolving outstanding issues that remained from previous program audits as well as recurring issues that EPA has identified during its oversight review of select permits. In the 2012 audit, EPA identified five issues that needed follow up. All of the issues have been resolved except for the two that involve regulatory changes to the Operating Permit Rule at N.J.A.C. 7:27-22 ("Subchapter 22"). These two issues will be resolved after the regulatory changes recommended in this audit report are adopted by New Jersey. EPA would also like to note that, as requested in our 2012 audit report, New Jersey has been submitting its Title V accounting reports to EPA as committed.

This audit began with a letter to NJDEP dated March 17, 2016, providing the scope of the audit with a list of issues to be discussed and resolved. These issues included primarily the supersession language in N.J.A.C. 7:27-22.33 that needs to be deleted and citation of federal requirements that needs to be revised to precisely reflect the origin of the applicable requirements. See Attachment A. On May 6, 2016, EPA met with NJDEP at the NJDEP Office in Trenton, New Jersey to review the issues identified in the March 2016 letter and initiated discussions on how best to resolve each issue. See Attachment B for a list of meeting attendees. EPA is pleased that its request for resolution of the outstanding issues was met with a positive and cooperative response from NJDEP. In the three months following the May 2016 meeting, EPA and NJDEP have worked closely together to craft rule language for the revision of N.J.A.C. 7:27-22 as well as N.J.A.C. 7:27-8 ("Subchapter 8") in an effort to resolve all of the outstanding issues related to supersession. This effort also clarified certain provisions in these rules.

II. Title V Fees

Section 502(b)(3)(A) and 40 CFR §70.9 require State Operating Permit Programs to collect fees from subject sources sufficient to cover the direct and indirect costs of implementing the permit program. New Jersey's Operating Permit Program is funded primarily through major facility annual emission fees, application fees and service fees. Annual emission fees are fixed by the Air Pollution Control Act codified at N.J.S.A. 26:2C-9.5. This fee is set at \$60 per ton of regulated contaminants emitted in 1989 dollars, adjusted annually according to the Consumer Price Index. It is \$116.30 for FY 2016, which is in excess of the presumptive minimum of \$48.49 required in 40 CFR §70.9. Additional fees are charged in the form of application fees for initial and renewal permits and service fees for significant modifications.

In the 2012 audit report, EPA noted that, between FY 2008 and 2011, NJDEP was not collecting sufficient fee revenue to cover the expenses of implementing the New Jersey Operating Permit Program, resulting in a cumulative total deficit of about \$7.5 million as of FY 2011. It appeared that State General Fund was needed to supplement the fee revenues collected for the program. However, EPA's 2012 audit report was inconclusive regarding NJ's Title V fee program because EPA was aware of a \$12 million surplus from FY 2003 to 2007 that NJ was using to offset the shortfalls. Given that Title V fee revenues collected were less than the amount expended annually beginning in FY 2008, EPA cautioned that it

“signals potential fiscal issues that warrant further examination.” NJDEP was asked to respond to the 2012 audit report with a plan to address any fiscal impediments to a sustainable Title V program.

New Jersey has explained that the deficit is the result of a number of contributing factors. Facilities that installed better air pollution control devices to comply with more stringent regulatory requirements emitted fewer pollutants and found themselves paying less in Title V fees that were based on emissions. The economic downturn that resulted in facility closures also reduced the emission based fee revenues. While emission reductions represent a clear success from an environmental standpoint, they do not reduce the workload of the permitting staff. Essentially, the Operating Permit Program needs to cover the same or growing amount of expenses with reduced fee revenues.

In response to the 2012 audit, NJDEP took action to seek an increase in service fees for certain permitting activities. On December 29, 2014, NJDEP adopted regulatory changes to N.J.A.C. 7:27-22 to increase Title V fees that took effect on February 27, 2015. NJDEP adopted a new Base Fee Schedule and a new Supplementary Fee Schedule for significant modifications at N.J.A.C. 7:27-22.31(y) and N.J.A.C. 7:27-22.31(z). NJDEP also increased the registration fee for General Operating Permits and for the authorization to operate a used oil space heater at N.J.A.C. 7:27-22.31(aa). Although these increases in Title V fees are necessary to generate additional revenues for the program, it is unclear whether they are sufficient to eliminate the cumulative deficit and bring the New Jersey Title V fee program to a more solid footing. The impact of this increase cannot be calculated without a fee analysis or fee demonstration. Such an analysis will fully examine the Title V fee program to help secure a long-term solution to the insufficient funding issue. It will help answer questions such as how long it will take the additional fee revenue to eliminate the cumulative deficit, when is the next fee increase projected to be, what factors should be monitored to signal insufficient funding in advance of the shortfall actually taking place, etc. NJDEP last submitted a fee demonstration to EPA in 1995 as part of its initial program submittal when NJ based its Title V fee revenue on the collection of the presumptive minimum of \$25/ton of pollutant in 1989 dollars. The presumptive minimum is \$48.49/ton for FY 2016. Currently, NJ charges emissions based fee at \$116.30/ton and it is still inadequate to fund all direct and indirect costs of implementing the Title V program. A new fee demonstration is needed to analyze all possible funding options that would lead to a self-sufficient fee program. NJDEP is requested to submit the fee demonstration or fee analysis as part of its response to this audit report within 180 days.

III. Rule Revisions Required to Resolve Outstanding Issues

A. Changes to Resolve Supersession

EPA wants to bring to closure the supersession issue in NJ's Operating Permits Rule, N.J.A.C. 7:27-22, that was identified to NJ in a March 29, 2000 letter and in subsequent audits. Language suggesting that the operating permit will replace or supersede a previously issued preconstruction permit is unacceptable in a state operating permit

program. Specifically, the two problematic provisions of NJ's Operating Permits Rule are:

N.J.A.C. 7:27-22.33(b):

“The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility. These approvals will be superseded by the operating permit when it is issued.”

N.J.A.C. 7:27-22.33(c):

“The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. These approvals will be superseded by the operating permit when it is issued.”

By way of background, the NJ Operating Permits Rule containing the above two provisions was submitted to EPA as part of NJ's interim program in 1995. The interim program was approved on May 16, 1996. In 1997, EPA determined that any state rule containing the word “supersede” in the rule text was problematic to Part 70 program implementation because the word “supersede” could be interpreted as rendering preconstruction permits non-existent or invalid for a Title V facility (this came to be known as the “supersession issue”). EPA required States with supersession issues to take action to remove the problematic language from their rule. This policy guidance was formalized in a letter to Robert Hodanbosi and Charles Lagges of the STAPPA/ALAPCO dated May 20, 1999, from John Seitz, Director of EPA's Office of Air Quality Planning and Standards (<https://www3.epa.gov/ttn/caaa/t5/memoranda/hodan7.pdf>). EPA clarified that Title V permits may not supersede, void, replace or eliminate the independent enforceability of terms and conditions of SIP approved permits.

EPA Region 2 informed NJDEP that the two provisions referenced above were problematic to the implementation of NJ's Operating Permit Program based on the guidance established in the May 1999 letter. Kathleen Callahan, Director of the Division of Environmental Planning and Protection of EPA Region 2 sent a letter to William O'Sullivan, Administrator of the Air Quality Permitting Program of NJDEP on March 29, 2000, informing NJDEP that the supersession language in N.J.A.C. 7:27-22.33(b) and (c) must be addressed. See Attachment C. Based on an earlier assertion of NJDEP that the operating permit was not intended to supersede the preconstruction permit, EPA Region 2 offered as an alternative to resolving the NJ supersession issue, the submittal of a written opinion from the New Jersey Attorney General affirming the assertion. In response to EPA's March 2000 letter, NJDEP informed EPA orally that, in lieu of the Attorney General's opinion, it would prefer to delete the word “supersede” or “supersession” from

NJAC 7:27-22.33(b) and (c) in a future rule revision. NJDEP assured EPA that the preconstruction permit issued pursuant to N.J.A.C. 7:27-8 would not disappear upon issuance of the operating permit for any given facility in NJ. Furthermore, NJDEP clarified that the preconstruction permit conditions would be enforced through the operating permit but the preconstruction permit itself would continue to be valid as an archived document.

Although NJDEP acknowledged that the word "supersede" should be removed from the rule to eliminate any ambiguity regarding the relationship between the preconstruction permit and the Title V operating permit, this rule correction has yet to take place in spite of a few revisions to N.J.A.C. 7:27-22 between 2000 and 2014. It is necessary to bring this long standing issue to closure. During our May 6, 2016 on-site visit, EPA requested NJDEP to take action on this issue without further delay. EPA is encouraged that subsequent to our May visit, NJDEP presented, via electronic mail on June 2, 2016, draft language it plans to adopt to replace the problematic supersession wording. EPA has since worked closely with NJDEP staff to assist them in crafting draft revisions to N.J.A.C. 7:27-22.33 to address this matter. It must be noted that in order to eliminate the supersession issue, the preconstruction permit cannot be voided by the issuance of the operating permit. Rather, the preconstruction permit requirements must be maintained pursuant to N.J.A.C 7:27-8 following operating permit issuance.

In addition to the delay in eliminating the supersession issue from N.J.A.C. 7:27-22.33, subsequent changes to New Jersey's Preconstruction Permits Rule, N.J.A.C. 7:27-8 ("Subchapter 8"), have exacerbated the supersession issue for both the Preconstruction Permit Program and the Operating Permit Program. The currently adopted N.J.A.C. 7:27-8.2(b) reads:

"A significant source located at a facility covered by an operating permit issued by the Department under N.J.A.C. 7:27-22 is **not [emphasis added]** subject to this subchapter."

This Subchapter 8 provision in essence allows a source subject to Subchapter 22 to be exempt from obtaining a preconstruction permit under Subchapter 8. As a result, there appears to be no requirement to obtain and maintain a Subchapter 8 preconstruction permit for facilities subject to Subchapter 22. Such a reading is in conflict with Title I of the CAA which requires stationary sources of air pollution to obtain a permit before construction starts. Changes to both N.J.A.C. 7:27-8 and 7:27-22 are needed to ensure that sources subject to Subchapter 22 will comply with both Title I and Title V of the CAA. Towards that end, EPA has also worked closely with NJDEP staff to assist them in developing draft rule revision language for Subchapter 8 to address the supersession problem.

NJDEP clarified to EPA that sources subject to Subchapter 22 have two options to obtain the preconstruction permit. Under the first option, which is the traditional way of obtaining air permits, a source subject to Subchapter 22 may obtain a preconstruction permit pursuant to Subchapter 8 first, start construction, and then apply for an operating

permit pursuant to Subchapter 22 within one year of commencing operation. In accordance with 40 CFR §70.6(a)(1), the final operating permit includes all of the terms and conditions of the preconstruction permit to which the source is subject. Therefore, the final operating permit consolidates the requirements of Subchapter 8 and Subchapter 22 into a single permit document upon issuance. Under the second option, a source subject to Subchapter 22 may opt to obtain both preconstruction and operating permit approval simultaneously by submitting a preconstruction/operating permit application pursuant to N.J.A.C. 7:27-22.5(g). This application will be reviewed under both Subchapters 8 and 22. One draft permit will be issued for public review. Approval of the consolidated preconstruction and operating permit will be issued pursuant to both N.J.A.C. 7:27-22 and N.J.A.C. 7:27-8 before construction of the facility. EPA assisted NJDEP staff in their development of draft rule revision language that would effectuate these two options in a manner that avoids supersession. These draft changes are included in Attachment D.

Another issue that required changes to Subchapter 22 concerns permit modifications to operating permits. The 2008 audit identified inconsistencies between 7:27-22.24(a) and 22.33(e) as they relate to significant modifications. In general, modifications to the New Jersey operating permits are done by the submittal of a single application reviewed under both N.J.A.C. 7:27-8 and N.J.A.C. 7:27-22 in a consolidated process. The final operating permit modification approval is issued with the preconstruction approval. N.J.A.C. 7:27-22.24(a) requires issuance of the operating permit approval before the proposed changes (construction and operation) of the significant modification can take place. However, N.J.A.C. 7:27-22.33(e) provides that, at the request of an applicant for a permit modification, NJDEP may issue the preconstruction permit approval prior to the operating permit approval. N.J.A.C. 7:27-22.33(e) further allows the source to commence construction of the significant modification but does not allow it to operate until the operating permit approval for the modification is issued. These two provisions are not consistent when a facility requests issuance of the preconstruction permit approval before the operating permit approval for a significant modification. In discussions with NJDEP staff, EPA staff recommended changes to both provisions to eliminate the inconsistencies. See Attachment D.

In addition to revising the rule text of N.J.A.C. 7:27-22.33, EPA also recommends changing the title of this rule provision. The current title, "Preconstruction Review," creates an erroneous impression that preconstruction reviews are conducted under the Operating Permit Rule. Since Title V of the Clean Air Act does not provide the State with authority to create preconstruction permit terms and conditions in an operating permit, language suggesting that such an authority derives from Subchapter 22 is not appropriate. Preconstruction permit terms and conditions are authorized under Subchapter 8 but can be consolidated into the operating permit. Therefore, EPA recommends changing the title of N.J.A.C. 7:27-22.33 from "Preconstruction Review" to "Consolidated preconstruction and operating permit review" to eliminate any confusion.

To facilitate discussions on the changes needed to address each of the issues listed above, a meeting was held between EPA and NJDEP on August 19, 2016, at the EPA Region 2 Office in New York City. It was agreed that changes to both Subchapter 8 and

Subchapter 22 are required to rectify the supersession issue, clarify existing rule text and maintain consistencies among these rule provisions. During the meeting, EPA and NJDEP staff discussed draft language to revise N.J.A.C. 7:22.1, 22.3, 22.5, 22.23, 22.24, and 22.33 and N.J.A.C. 7:27-8.2 and 8.3 to address these issues. The revised rule provisions are listed in Attachment D.

B. Changes to Clarify Existing Rule Provisions

During our oversight review of proposed permits, EPA became aware of a discrepancy between the language of 7:27-22.9(d) and the requirement of 40 CFR §70.5(c)(8)(iii)(C). This can be addressed by adding clarifying language in N.J.A.C. 7:27-22.9(c)(5)(ii). Currently, N.J.A.C. 7:27-22.9(d) states that where the facility “is not subject to an order or consent decree for the violation, the owner or operator of the facility may request an administrative consent order from the Department to address the violation.....” This language suggests that an administrative consent order is not contemplated as an element of the compliance plan in the operating permit. This appears to be at odds with 40 CFR 70.5(c)(8)(iii)(C), which requires an administrative order to be reflected in the source’s compliance schedule. 40 CFR 70.5(c)(8)(iii)(C) provides that the “compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” It is clear that 40 CFR §70.5 contemplates the compliance schedule to include administrative consent order terms; however, New Jersey’s Operating Permit Rule at N.J.A.C. 7:27-22.9(d) suggests otherwise. To avoid any confusion regarding the role of an administrative consent order in a NJ operating permit, N.J.A.C. 7:27-22.9(c)(5)(ii) needs to be revised to clarify that “order” includes “administrative consent order.” EPA assisted NJDEP staff in their development of draft rule revision language that would provide the necessary clarification. The draft language can be found in Attachment D.

C. Pre-notification of Rule Revisions

EPA recognizes that NJDEP strives to keep EPA informed of any plan to revise its rule on an on-going basis and share potential rule changes with EPA. However, in some instances EPA has not been made aware of such changes early enough in the rule adoption process to have an opportunity to offer comments or suggestions before rule adoption. During the audit, NJDEP agreed to keep EPA informed of any rule revision plans on an on-going basis and share potential rule changes to engage EPA at the beginning of the state rulemaking process. EPA believes such an arrangement would be helpful in avoiding adoption of rule revisions that may be unapprovable at the federal level.

IV. Rule Citation in Compliance Plan

40 CFR §70.6(a)(1)(i) requires the permit to specify and reference the origin of and authority for each permit term or condition. The rule citation listed on the operating permit plays a role in a source’s annual compliance certification. For this reason, it is important to be precise when citing the underlying applicable requirement for each emission limit of the

operating permit. Below are rule citation issues EPA has identified during its oversight review of select operating permits.

A. SIP Rules

Many operating permits cite N.J.A.C. 7:27-22.16(a) and (e) of the Operating Permit Rule as the underlying authority for imposing limits on emissions or operating parameters. This practice goes back to the beginning of NJ's Operating Permit Program when EPA commented many times that each permit condition should reflect the correct underlying authority that created the requirements stipulated in the permit. However, NJDEP asserted that since N.J.A.C. 7:27-22.16(a) requires the Department to include emission limits in the operating permit, it is appropriate to cite this provision for the authority to impose the permit limits. EPA finds that NJDEP has not properly cited the underlying authority for some permit terms and conditions as required by 40 CFR §70.6(a)(1)(i). Below are EPA's explanation as to why these Subchapter 22 provisions should not be cited as the underlying applicable requirement for certain permit terms and conditions:

N.J.A.C. 7:27-22.16(a):

"The Department will include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance."

Although 7:27-22.16(a) requires NJDEP to include all emission limitations, standards and operational requirements necessary to assure compliance with all applicable requirements, 7:27-22.16(a) does not provide the authority to create such limits or standards. These limits or standards must first be established pursuant to a federal rule (e.g., NSPS, NESHAP, MACT, PSD) or state rule (e.g., N.J.A.C. 7:27-8, N.J.A.C. 7:27-9, N.J.A.C. 7:27-18) before they are included in the operating permit pursuant to 7:27-22.16. Those federal rules or state rules are the underlying applicable requirements that should be cited in the operating permit.

N.J.A.C. 7:27-22.16(e):

"The Department shall incorporate into each operating permit the provisions of any effective preconstruction permit and operating certificate issued for the facility, or any part thereof..."

N.J.A.C. 7:27-22.16(e) requires NJDEP to incorporate all effective preconstruction permit conditions into the operating permit. However, it is the underlying rule or regulation by which the permit conditions were created that should be cited as the basis for that particular permit condition. As explained above, emission limits and standards are established by a federal or state rule in the preconstruction permit. The fact that N.J.A.C. 7:27-22.16(e) requires NJDEP to "copy" the provisions of the preconstruction permit onto the operating permit does not make N.J.A.C. 7:27-22.16(e) the underlying applicable rule that authorized the creation of the emission

limits and standards found in the preconstruction permit. Rather, it is the rule under which the preconstruction permit was issued that authorized those emission limits and standards. Therefore, the operating permit should cite the underlying federal (such as NSPS) or state rule (such as N.J.A.C. 7:27-8), as the underlying applicable requirement that established the preconstruction permit conditions.

In sum, N.J.A.C. 7:27-22.16(a) and (e) merely instruct NJDEP to include all preconstruction permit conditions as well as all emission limitations, standards and operational requirements in the source's operating permit. They are not the underlying applicable requirements that form the basis for the permit terms and conditions necessary to assure compliance with all applicable requirements.

B. BACT/LAER

For pollutants that are subject to the Best Available Control Technology (BACT), the permit conditions establishing the BACT limits must cite 40 CFR §52.21 as the underlying applicable requirement. For those pollutants that are subject to the Lowest Achievable Emission Rate (LAER), the permit conditions establishing the LAER limits should cite N.J.A.C. 7:27-18 (or "Subchapter 18"), New Jersey's Emission Offset Rules for non-attainment areas approved under Title I of the CAA. NJDEP has not been consistent in citing the correct underlying applicable requirements for BACT and/or LAER. EPA found permit conditions establishing LAER limits that failed to cite N.J.A.C. 7:27-18 as the underlying authority for the limits. Instead, permit conditions frequently incorrectly cited N.J.A.C. 7:27-22.16(a) which is a general requirement for NJDEP to "include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance." See discussion in IV.A above.

To illustrate EPA's point regarding inconsistencies in this regard, EPA will use the West Deptford operating permit as an example. EPA reviewed the Title V permit issued to West Deptford, ID 56078, BOP 120001, dated July 17, 2014 where NO_x was subject to both 40 CFR §52.21 and Subchapter 18 and VOC was subject to Subchapter 18. The BACT emission limit for NO_x was less than or equal to 2 ppmvd @15% O₂ which was identical to the LAER emission limit. Below are citation issues identified on this permit:

Ref # 3 and 4 of Operating Scenario 1 (pages 74 of 164) established the BACT and LAER NO_x emission limits and cited N.J.A.C. 7:27-22.16(a) as the underlying applicable requirement (Attachment E). This is incorrect. These permit conditions should cite N.J.A.C. 7:27-18 and 40 CFR §52.21 as the underlying applicable requirements for the LAER and BACT limits, respectively.

Ref #4 and 5 of Operating Scenario 2 (page 79 of 164) established the BACT and LAER limits and correctly cited 40 CFR §52.21 as the underlying applicable

requirement for the BACT limit but incorrectly cited N.J.A.C. 7:27-22.16(a) as the underlying applicable requirements for the LAER limit (Attachment E).

N.J.A.C. 7:27-18 should have been cited as the correct underlying applicable requirements for the LAER limit.

The VOC limit established under Ref #11 of Operating Scenario 1 (page 75 of 164) and under Ref #12 of Operating Scenario 2 (page 80 of 164) again incorrectly cited N.J.A.C. 7:27-22.16(a) as the underlying authority for the LAER limits. See Attachment F. The underlying applicable requirement cited for these permit conditions should have been N.J.A.C. 7:27-18.

The above was discussed at the May 2016 on site meeting, NJDEP agreed that N.J.A.C. 7:27-18 should be cited for LAER limits. NJDEP agreed to look into this issue and provide its response to EPA's audit report.

C. MACT, NESHAP, NSPS

During EPA's oversight review of select permits, EPA found inconsistencies in the citation of MACT, NESHAP, and NSPS in the compliance plan within the same permit. For permit conditions that originated from the MACT, NESHAP or NSPS, it would be helpful in EPA's oversight review as well as citizens' review, if both the general description of the rule (e.g., 40 CFR Part 60 Subpart Da, 40 CFR Part 61 Subpart J, MACT Subpart ZZZZ) and the specific provision of the rule (e.g., 40 CFR §61.112(c)) are cited.

For example, in the West Deptford Energy LLC permit dated August 6, 2015, EPA found the following differences in the NSPS citations:

Ref #22 (page 132 of 169) and Ref. #25 (page 133 of 169) provided the general description of the rule, NSPS Subpart IIII, as well as the rule citation, 40 CFR 60.4211(c). See Attachment G.

Ref #54 (page 68 of 169) of the same permit only stated the rule citation, 40 CFR 60.4320(a), but failed to provide the general description, i.e., NSPS Subpart KKKK. See Attachment H.

Ref #66 (page 72 of 169) of the same permit also only provided the rule citation, 40 CFR 60.4385, but did not provide the general description of the rule, i.e., NSPS Subpart KKKK. See Attachment H.

To facilitate the reviewer's evaluation, it is recommended that NJDEP provide both the citation for the specific rule provision and the general description for all NSPS, NESHAPS, and MACT requirements.

V. Permit Content

A. MACT/NSPS Provisions

In some permits, when an emission unit is subject to a particular MACT or NSPS, all of the requirements from the federal standard are copied onto the operating permit verbatim, even if some of the requirements do not apply due to the size or type of units involved. The size of the operating permit can be reduced and the permit itself can be made clearer to the reader if irrelevant requirements are not included in the permit.

During the on-site visit, NJDEP responded that EPA's comments are in line with NJDEP's standard operating procedure. NJDEP agreed to look into the issue and alert permit writers of the need to pay closer attention to multi-faceted federal requirements that require tailoring on a case-by-case basis.

B. Periodic Monitoring for PM2.5

For sources that emit both PM10 and PM2.5, it is common practice to assume emissions of PM10 equal the emissions of PM2.5 for certain types of emissions units. Often times, NJDEP correctly requires stack testing as the monitoring strategy for sources to demonstrate compliance with PM10. However, the permit does not specify how compliance with the PM2.5 emission limit is to be demonstrated. Where PM10 and PM2.5 emissions are assumed to be equal and NJDEP intends the source to demonstrate compliance with the PM2.5 limit using PM10 stack test results, then the monitoring section for the PM2.5 limit should state that compliance is demonstrated using the PM10 stack test results. Other monitoring provisions should be stated if PM2.5 compliance is demonstrated via other methods.

During the on-site visit, NJDEP expressed agreement with EPA's comments. In future permits, where PM2.5 emissions are assumed to be equal to PM10 emissions, the monitoring section for the PM2.5 limit will require stack testing with the option of using the PM10 stack test results to demonstrate compliance with the PM2.5 limit. If the PM2.5 emissions are not equal to that of PM10, monitoring will be specified to demonstrate compliance with PM2.5 emission limits.

VI. Fiscal Report Questions

Clarification on the following operating cost items are needed since the amounts varied greatly during FY 2013, 2014, 2015:

Code 2499 HOUSEHOLD/SEC REIMBURSEMENT
Code 3699 PROFESSIONAL SERV REIMBURSEMENT
Code 3899 OTHER SERVICES REIMBURSEMENTS
Code 7710 INFO PROCESSING TELE EQUIPMENT

VII. Compliance Certifications via CDX

EPA initiated a conversation with NJDEP during the on-site visit about changing the format of the Title V compliance certification submitted by facilities to one that can be uploaded to EPA's Central Data Exchange (CDX). NJDEP has since submitted draft permit language to change the compliance certification submittal requirement from paper copy to EPA to direct electronic submittal to the CDX. EPA finds the submitted language acceptable for implementing the new data submittal requirement. See Attachment I.

Attachment A

March 17, 2016 letter from Richard Ruvo of EPA Region 2
to Kenneth Ratzman of NJDEP

Attachment B

May 6, 2016 Meeting
List of Attendees

Kenneth Ratzman, Assistant Director
Air Quality Regulation & Planning
(609) 292-0834

Robert Kettig, Manager
Bureau of Stationary Sources
(609) 292-0834

Bachir Bouzid, Section Chief
Operating Permits Section
(609) 777-0286

Margaret Gardner, Rule Manager
Division of Air Quality
(609) 292-7095

Khawar Kalim, Air Program Consultant
Division of Air Quality
(609) 292-1215

Suilin Chan, Senior Environmental Engineer
U.S. Environmental Protection Agency, Region 2
(212) 637-4019

Attachment C

March 29, 2000, Letter from Kathleen Callahan, Director of the Division of Environmental Planning and Protection of EPA Region 2 to William O'Sullivan, Administrator of the Air Quality Permitting Program of NJDEP

Attachment D

Draft Rule Changes for N.J.A.C. 7:27-8 and 22

7:27 22.1 Definitions

“Operating permit” means the consolidated preconstruction and operating permit issued pursuant to Title V of the federal Clean Air Act, 42 U.S.C. § 7661 et seq. and N.J.A.C. 7:27-8. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27 22.26; or for a component of a facility pursuant to N.J.A.C. 7:27 22.5(j).

7:27-22.5 Application procedures for initial operating permits

(g) A new facility subject to this subchapter may either obtain preconstruction permit and operating certificate approval pursuant to N.J.A.C. 7:27-8 or such facility may elect to obtain both preconstruction and operating permit approval simultaneously by the submittal and approval of a consolidated preconstruction and operating permit application pursuant to this subchapter and N.J.A.C. 7:27-8 prior to construction of the facility. In either situation, the facility must comply with the application deadline in (f) above.

7:27-22.33 Consolidated preconstruction and operating permit review

(a) This section sets forth the procedures by which the Department will implement the preconstruction review requirements of N.J.S.A. 26:2C-1 et seq., as they apply to facilities subject to this subchapter.

(b) The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility. Upon issuance of an operating permit, all terms of preconstruction permits will be consolidated and maintained in the operating permit as defined in N.J.A.C. 7:27-22.1.

(c) The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. Upon issuance of an operating permit, all terms of preconstruction permits will be consolidated and maintained in the operating permit as defined in N.J.A.C. 7:27-22.1.

(d) An application for a minor modification pursuant to N.J.A.C. 7:27-22.23, or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall be subject to preconstruction review, which will include a demonstration that any equipment or control apparatus which is constructed, reconstructed, or modified incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted pursuant to N.J.A.C. 7:27-22.35.

(e) The Department can simultaneously perform the preconstruction review pursuant to N.J.A.C.7:27-8 and the operating permit review of an application for a minor or significant modification. Ordinarily, the Department will issue the final operating permit modification with the preconstruction approval. However, if requested by an applicant for a modification, the Department will issue the preconstruction approval simultaneously with the proposed operating permit which is forwarded to EPA pursuant to N.J.A.C. 7:27-22.12. For a minor modification, this preconstruction approval will authorize the permittee to begin construction and operation of a minor modification, at the permittee's own risk, in accordance with N.J.A.C. 7:27-22.23. For a significant modification of the operating permit pursuant to N.J.A.C. 7:27-22.24, the permittee may begin construction of a significant modification, but may not operate the modified facility until final issuance of the significant modification.

(f) If a facility or source operation becomes subject to a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26(c) prior to issuance of an operating permit for the facility, the owner or operator of the facility shall establish a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26(e). The owner or operator of the facility shall obtain and maintain a preconstruction permit and operating certificate pursuant to N.J.A.C. 7:27-8, which applies the case-by-case MACT standard to the appropriate source operation(s), until an operating permit covering the facility is issued which incorporates the case-by-case MACT standard. (For reference only, no change was made to this provision.)

7:27-22.23 Minor modifications

a) A permittee may make any change listed at (c) below through the minor modification procedures set forth in this section. Minor modifications are set forth in (c) below, and include changes which may increase actual emissions by insignificant amounts, and other changes which do not increase emissions, but may increase ambient concentrations of air contaminants. The Department shall, upon approval of an application for a minor modification of the operating permit, incorporate the changes into the operating permit. The application for a minor modification constitutes the consolidated preconstruction and operating permit application under this subchapter and N.J.A.C. 7:27-8. The permittee shall not make any change proposed in a minor modification of the operating permit until the Department has approved the minor modification, except as specified in (a)1, 2, and 3 below.

7:27 22.24 Significant modifications

(a) Notwithstanding any other provision of this subchapter, a permittee is required to make any of the changes listed at (b) through the significant modification procedures set forth in this section. The Department shall, upon its approval of an application for a significant modification of the operating permit, incorporate the change(s) into the operating permit. The application for

a significant modification constitutes the consolidated preconstruction and operating permit application under this subchapter and N.J.A.C. 7:27-8. For a significant modification of the operating permit, the permittee may begin construction of a significant modification, but may not operate the modified facility until final issuance of the significant modification.

7:27-22.3 General provisions

(ww) Any applicable requirements in an operating permit derived from an existing or terminated consent decree with EPA will be noted as such and will not be changed without advance consultation by the Department with EPA.

7:27 22.9 Compliance plans

(c)5ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order, including an administrative consent order, or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and

7:27 8.2 Applicability

(b) The following requirements will apply if a significant source subject to this subchapter also becomes subject to operating permit requirements under N.J.A.C 7:27-22:

1. Any permits or certificates required by this subchapter must be obtained and maintained until an operating permit, as defined in N.J.A.C. 7:27-22.1, is issued.
2. If a new source which is subject to operating permit requirements elects under N.J.A.C. 7:27-22.5(g) to obtain a preconstruction permit and certificate under this subchapter prior to obtaining an operating permit, the source shall continue to comply with the terms of preconstruction permits which shall be consolidated in the operating permit as defined in N.J.A.C. 7:27-22.1.
3. In some cases, a portion of an operating permit facility (such as a research and development operation) is not subject to operating permit requirements. In such a case, the owner and operator must obtain and maintain a separate preconstruction permit issued pursuant to this subchapter with terms that will not be consolidated in a facility's operating permit.

7:27 8.3 General provisions

(k) Any applicable requirements in a preconstruction permit derived from an existing or terminated consent decree with EPA will be noted as such and will not be changed without advance consultation by the Department with EPA.

Attachment E

Excerpt from July 17, 2014 West Deptford Energy LLC Permit
with Highlighted BACT and LAER Citations

Attachment F

Excerpt from July 17, 2014 West Deptford Energy LLC permit
with Highlighted LAER Citation

Attachment G

Excerpt from August 6, 2015 West Deptford Energy LLC permit
with Highlighted Full NSPS Citation

Attachment H

Excerpt from August 6, 2015 West Deptford Energy LLC permit
with Highlighted NSPS Citation

Attachment I

Revised Reporting Requirement to Conform with EPA's CDX

Attachment A

March 17, 2016 letter from Richard Ruvo of EPA Region 2
to Kenneth Ratzman of NJDEP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 17 2016

Mr. Kenneth Ratzman
Chief, Bureau of Operating Permits
Air Quality Permitting Program
New Jersey Department of Environmental Protection
401 E. State Street, CN 027
Trenton, New Jersey 08625-0027

Dear Mr. Ratzman:

The United States Environmental Protection Agency (EPA), Region 2 Office, will be conducting the fourth audit of New Jersey's Operating Permits Program in the next few months. In this audit, we will focus on outstanding issues from the 2012 audit and permit content issues that we have identified during our oversight review of draft and proposed permits made available by NJDEP on its permitting website found at <http://www.state.nj.us/dep/aqpp/publicnotices.htm>

This audit will take approximately 3-4 months to complete. This letter defines the scope of our audit. The issues we would like to discuss and resolve in this audit are listed in the Attachment to this letter. A meeting will be scheduled at the NJDEP Trenton office to allow for clarification of issues and discussion of potential resolution to address them. To facilitate our meeting discussion, please provide a response to the issues listed in the Attachment within 30 days of your receipt of this letter. Please have your staff contact Sulin Chan of my staff at (212) 637-4019 to arrange for a mutually convenient date for the meeting. We will draft a report to document our findings as well as any mutual agreement made with NJDEP during this audit.

EPA Region 2 is committed to working closely with NJDEP to ensure issuance of high quality Operating Permits.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard Ruvo".

Richard A. Ruvo, Chief
Air Programs Branch

Attachment

cc: Frank Steitz, NJDEP

Attachment

Discussion Document for 2016 Audit of NJDEP's Operating Permit Program

I. Outstanding Issues from 2012 Audit

Rule Changes – Update on the two rule revision requests noted below is needed.

- a) NJ needs to eliminate the “supersession issue” from its Operating Permit Rule in Subchapter 22 by removing the word “supersede” from N.J.A.C. 7:27-22.33(b) and (c). NJ had previously agreed to remove the supersession language from these provisions in a future rule revision. However, this has yet to take place since 2000 despite many revisions to N.J.A.C.7:27-22.
- b) The provisions in N.J.A.C. 7:27-22.33(e) and 7:27-22.23(a)(2) concerning construction of modifications prior to receiving approvals need to be made consistent with N.J.A.C. 7:27-24(a). The purpose of the revision is to maintain consistency in these three provisions of Subchapter 22 to ensure that NSR/PSD modifications cannot start construction before a significant modification to the title V permit is approved under NJ's merged process. EPA has previously suggested specific changes to these 3 provisions but NJDEP is encouraged to propose alternatives.

Title V Fees

EPA found potential fiscal issues with NJ's Title V fee program since cumulative surplus from FY 2003 to 2007 was being exhausted by the cumulative deficits that began in FY 2009. EPA asked NJDEP to examine factors that contributed to the continuing short fall in the Title V fee revenue and develop a plan to bring the Title V fee program onto a sustainable path. As a way to address this issue, NJ adopted a rule revision to increase Title V fees for significant modifications, General Operating Permits and authorization for used oil space heaters on December 29, 2014. The revised rule took effect on February 27, 2015 and NJDEP has since been collecting additional fees. EPA is encouraged by NJ's quick action to seek regulatory change to remedy the deficit situation. EPA understands the effect of the new fee schedule on deficit reduction would not be immediate. EPA will continue to work closely with NJDEP to ensure that the Title V program will be adequately funded.

II. 2016 Audit Focus

a) Operating Permit Rule

The preconstruction review language referenced in Sub 22.33(b) and (c) has become a significant issue that NJDEP needs to address in a timely manner due to language recently discovered by EPA in N.J.A.C.7:27-8.2(b). These two sections of the rule are:

N.J.A.C. 7:27-22.33(b): “The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at

N.J.A.C. 7:27-22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility. These approvals will be superseded by the operating permit when it is issued.”

N.J.A.C. 7:27-22.33(c): “The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. These approvals will be superseded by the operating permit when it is issued.”

The above two provisions are part of the approved Subchapter 22 Rule that was submitted to EPA for program approval in 1996. Subsequently, EPA found all state rules that contained the word “supersede or supersession” to be problematic to Part 70 program implementation because the word “supersede” could be interpreted as rendering the preconstruction permits non-existent or invalid for a Title V facility. This came to be known as the “supersession issue.” EPA required States with supersession issues to take action to remove the problematic language from their rule. In 1999, EPA informed NJDEP that the two provisions referenced above are problematic to NJ’s Operating Permit Program. Hence, a letter dated March 29, 2000 from Kathleen Callahan, Director of the Division of Environmental Planning and Protection of EPA Region 2 was sent to William O’Sullivan, Administrator of the Air Quality Permitting Program of NJDEP, informing NJDEP that N.J.A.C. 7:27-22.33(b) and (c) must be revised to address the supersession issue. Mr. O’Sullivan reassured EPA that the NJ Subchapter 8 preconstruction permit would not disappear upon issuance of the Operating Permit for any given facility in NJ. Furthermore, Mr. O’Sullivan stated that the preconstruction permit conditions would be enforced through the Operating Permit but the preconstruction permit itself would continue to be valid. Given this clarification and assurance from Mr. O’Sullivan, EPA agreed that the requisite revision to Subchapter 22 to remove the supersession language was not urgent and could be combined with the next Subchapter 22 rule revision.

In spite of the delay in eliminating the supersession issue from N.J.A.C. 7:27-22.33, subsequent changes to Subchapter 8 have created a more severe issue for the NJ Operating Permit Program. More specifically, N.J.A.C. 7:27-8.2(b) states:

“A significant source located at a facility covered by an operating permit issued by the Department under N.J.A.C. 7:27-22 is not [emphasis added] subject to this subchapter.”

This new Subchapter 8 provision in essence allows a source subject to Subchapter 22 to be exempt from obtaining a preconstruction permit under Subchapter 8. As a result, there is no requirement to obtain a Subchapter 8 preconstruction permit for facilities subject to Subchapter 22. In addition, the title for N.J.A.C. 7:27-22.33, namely, “Preconstruction Review” creates an erroneous impression that preconstruction reviews will be conducted

under the Operating Permit Rule. Since Title V of the Clean Air Act does not create any preconstruction permit review authority for the state, NJDEP must remove any and all language that suggests such an authority from Subchapter 22. While the current audit is focused on New Jersey's Title V program, changes to both Subchapter 22 and Subchapter 8 need to be discussed to ensure that Clean Air Act's Title I requirements are met as well. EPA Region 2 has initiated conversations with NJDEP recently about addressing our concerns with Subchapters 8 and 22 and provided background information on the issues. Region 2 will work closely with NJDEP to explore options for resolving these issues.

b) NJDEP had committed to keeping EPA informed of any plan to revise its rule on an ongoing basis and share potential rule changes with EPA. A discussion on how to make this process a part of NJ's Title V program infrastructure to keep this update current is needed.

c) Improper citation in permits –

i. Citation of 22.16(a) and (e) in lieu of the underlying SIP creates confusion.

Many Operating Permits cite these two provisions of the Operating Permit Rule as the underlying authority for imposing limits on emissions or operating parameters. Although this practice goes back to the beginning of NJ's Operating Permit Program, each permit condition should reflect the correct underlying authority that created the requirements stipulated in the permit.

ii. Improper citation for LAER limits for non-attainment pollutants creates confusion.

We note that for pollutants subject to BACT, the permit conditions establishing the BACT limits correctly cite 40 CFR 52.21, a majority of the time. However, in several instances, we noticed that the permit conditions establishing LAER limits did not cite Subchapter 18 as their origin of authority. Instead, these permit conditions cited N.J.A.C 7-27.22.16(a). This practice needs to be corrected so that Subchapter 18 is cited for LAER limits.

iii. Full citation of federal standards (i.e., MACT, NESHAP, NSPS) on page 1 of the Facility Specific conditions for the particular emission unit is needed for clarity.

For permit conditions that originated from the MACT, NESHAP or NSPS, it would be helpful in EPA's oversight review, if the general citation of the standard (e.g., 40 CFR 60 Subpart Da, 40 CFR 61 Subpart J, 40 CFR 63 Subpart ZZZZ, etc.) is stated on the first page where the listing of the respective federal standard requirements begins.

d) Permit content

i. Inclusion of MACT and NSPS provisions in the permit that are irrelevant to the emission unit creates confusion.

It appears that when an emission unit is subject to a particular MACT or NSPS, sometimes all of the requirements from the federal standard are rolled into the Operating Permit verbatim, even if some of the requirements do not apply due to the size or type of units involved. The size of the NJ Operating Permit can be reduced and

the permit itself can be made clearer to the reader if irrelevant requirements are not included in the permit.

- ii. Lack of monitoring provisions to demonstrate PM2.5 compliance in cases where PM2.5 emissions are set to equal to PM10 emissions.

It is common to assume emissions of PM10 equals the emissions of PM2.5 for certain types of emission units. In those cases, stack testing of PM10 is often required to demonstrate compliance with PM10. The permit, however, does not specify how compliance with the PM2.5 emission limit is demonstrated. Although PM10 and PM2.5 emissions are assumed to be equal, the monitoring section for the PM2.5 limit should, at least, state that compliance is demonstrated using the PM10 stack test results.

e) Other

- i. Fiscal reports for FY 2012 – 2014

Clarification on the following operating cost items are needed since the amount varied greatly during these three fiscal years:

- Code 2499 HOUSEHOLD/SEC REIMBURSEMENT
- Code 3699 PROFESSIONAL SERV REIMBURSEMENT
- Code 3899 OTHER SERVICES REIMBURSEMENTS
- Code 7710 INFO PROCESSING TELE EQUIPMENT

- ii. Submittal of compliance certifications from facilities to EPA's Central Data Exchange (CDX).

EPA would like to start a conversation with NJDEP to develop a plan for changing the format of Title V compliance certifications submitted by facilities to one that can be uploaded to EPA's Central Data Exchange.

Attachment B

May 6, 2016 Meeting
List of Attendees

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Air Quality Regulation & Planning
(609) 292-0834

Robert Kettig, Manager
Bureau of Stationary Sources
(609) 292-0834

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Division of Air Quality
(609) 292-1215

Suilin Chan, Senior Environmental Engineer
U.S. Environmental Protection Agency, Region 2
(212) 637-4019

Attachment C

March 29, 2000, Letter from Kathleen Callahan, Director of the Division of Environmental Planning and Protection of EPA Region 2 to William O'Sullivan, Administrator of the Air Quality Permitting Program of NJDEP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 29 2000

Mr. William O'Sullivan
Administrator
Air Quality Permitting Program
New Jersey Department of Environmental Protection
401 East State Street CN 027
Trenton, New Jersey 08625

Re: Supersession

Dear Mr. O'Sullivan:

The purpose of this letter is to inform you of EPA's concerns over the language found in N.J.A.C. 7:27-22.33 which may imply the supersession of existing SIP permitting requirements upon issuance of Title V Operating Permits by the NJDEP. As you may be aware, several months ago EPA had many discussions internally as well as externally with states regarding the potential problems associated with supersession language in States' Operating Permit Rules. Although such language in State Operating Permit Rules may not have been identified as an interim program approval issue (as it was the case for New Jersey), it has come to EPA's attention that they may be interpreted in ways that could potentially threaten the enforcement of existing State permitting requirements. As such, EPA headquarters and the regions had discussed this issue at length to determine the potential impact of this kind of language in State Operating Permit Rules. After a thorough investigation of this issue, EPA has come to the conclusion that language in a State Operating Permit Rule by which a permit supersedes existing SIP requirements, including SIP permit requirements, is unacceptable.

In a May 20, 1999 memorandum, John Seitz, EPA Director of the Office of Air Quality Planning and Standards, explained EPA's position on various Title V issues including supersession of existing permit requirements. He explained that Title V permits may not supersede, void, replace or otherwise eliminate the independent terms and conditions of SIP approved permits and permit programs. This position is expressed in 40 C.F.R. § 70.6, which spells out the terms and conditions to be included in a Title V permit. These terms and conditions consist of all applicable requirements to which the source is subject. In essence, the Title V permit is a catalog of the state and federal requirements applicable to the source but it is not a vehicle to create new requirements other than periodic monitoring. On the other hand, the SIP-approved preconstruction and operating certificate programs are federally approved (or promulgated) SIP programs which are independent of Title V and cannot be revised other than by the SIP revision procedures. Since all requirements must exist independent of Title V and Title V cannot revise a SIP, we have become concerned about the proper interpretation of the provision in the State's

Operating Permits Rule, specifically N.J.A.C. 7:27-22.33, calling for Title V permits to supersede pre-existing permits.

The Title V program is not a revision to existing SIP permit requirements. SIP approved permit programs must remain in existence especially because they are the legal mechanism through which important new source requirements relevant to NAAQS attainment and maintenance become applicable to facilities. The distinction between the SIP and Title V permitting programs is very different than the historic interface between preconstruction permits and operating certificates in New Jersey. In New Jersey, the terms and conditions within the preconstruction permit convert into the terms and conditions within the operating certificate, through which they are enforced once the source is in operation and compliance has been demonstrated. This is the SIP approved permit mechanism. New Jersey's Operating Permits Rule implies a similar result with the following language in N.J.A.C. 7:27-22.33(b) :

The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility. These approvals will be superseded by the operating permit when it is issued.

We fully appreciate New Jersey's view that the terms and conditions imposed through its SIP approved permit programs will be put into a source's Title V permit and then can be enforced through that Title V permit. This quoted rule might be viewed as continuing the existing New Jersey system of one enforceable permit at a time. However, since the Title I SIPs and the Title V permit programs operate separately under the Clean Air Act, EPA cannot agree that Title V permits will fully supersede an existing SIP requirement, including SIP permit requirements. Although we can discuss streamlining which might result in a revision to the SIP permit programs, this has not yet occurred.

We are concerned that one interpretation of your Operating Permits Rule quoted above is that your SIP permits would be applicable requirements only until the issuance of the Title V permit at which point the Title V permit would supersede the SIP permit, nullifying the SIP permit. Although the terms and conditions of the SIP permit would be re-stated in the Title V permit, the SIP permit itself would no longer exist. We understand your interest in reshaping existing requirements to eliminate or coordinate permitting requirements but, until the SIP permit requirements are revised, the Title V permit cannot fully supersede any SIP permits including existing permit requirements. We have not concluded that there is any irreconcilable conflict but until we address this further the Title V permits should not be labeled as superseding any SIP permits. You may wish to address these as permit shields which we think is consistent with the intent of NJDEP's Operating Permits Rule, that is, that the Title V condition rather than the SIP-permit condition will be enforced.

It is our belief that what you are attempting to describe through the language of N.J.A.C. 7:27-22.33(b) is that the terms and conditions of all preconstruction permits and operating certificates issued pursuant to N.J.A.C. 7:27-8 are included within the Title V permit to be enforced through the Title V permit, rather than through the subchapter 8 permit or certificate of the SIP approved permit program. This is equivalent to a permit shield for these terms and conditions and a permit shield would accomplish the same result. However, the regulatory language as it now stands could give the impression that the SIP permits are nullified upon issuance of the Title V permit. Because this result would be a SIP revision, this cannot be the case. All SIP permitting requirements remain independent applicable requirements and Title V limits may supersede such requirements only in the enforcement context. They remain applicable requirements just as all the other rules and regulations remain applicable requirements and are not nullified by the Title V permit.

EPA's interpretation is that all SIP requirements, including permit requirements, remain and cannot be nullified by the Title V program. We do not believe that this is a problem but, if the intent of the NJ rule is to call for permit shields, the applicable requirement should be identified as a permit under the relevant SIP approved permit program and the SIP permits must continue to be maintained by the state and permittees.

The SIP permit requirements are important. They are the vehicles for carrying out some SIP flexibilities and major source requirements not found elsewhere. Therefore, we are compelled to be cautious. In the case of New Jersey, we believe that the solution is simple if the interpretation we convey in this letter reflects the intent of N.J.A.C. 7:27-22.33. Therefore, you may want to request review by the New Jersey Attorney General if there is any doubt as to interpreting the NJ permitting requirements. In fact, to avoid any ambiguity, we ask that your State Attorney General issue an opinion regarding the above interpretation and the permit consolidation and streamlining that the NJDEP is planning.

If you have any questions regarding this letter, please feel free to call Mr. Steven C. Riva, Chief, Permitting Section, at 212-637-4074 so he may facilitate further discussion.

Sincerely yours,

Kathleen C. Callahan

Kathleen C. Callahan, Director
Division of Environmental Planning and Protection

cc: Mr. Donald P Patterson
Administrator
Air & Environmental Quality
Compliance & Enforcement

Attachment D

Rule Changes for N.J.A.C. 7:27-8 and 22 Developed with EPA's Input

7:27 22.1 Definitions

“Operating permit” means the consolidated preconstruction and operating permit issued pursuant to Title V of the federal Clean Air Act, 42 U.S.C. § 7661 et seq. and N.J.A.C. 7:27-8. This term shall include a general operating permit which is applicable facility wide, but does not include a general operating permit which applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27 22.26; or for a component of a facility pursuant to N.J.A.C. 7:27 22.5(j).

7:27-22.5 Application procedures for initial operating permits

(g) A new facility subject to this subchapter may either obtain preconstruction permit and operating certificate approval pursuant to N.J.A.C. 7:27-8 or such facility may elect to obtain both preconstruction and operating permit approval simultaneously by the submittal and approval of a consolidated preconstruction and operating permit application pursuant to this subchapter and N.J.A.C. 7:27-8 prior to construction of the facility. In either situation, the facility must comply with the application deadline in (f) above.

7:27-22.33 Consolidated preconstruction and operating permit review

(a) This section sets forth the procedures by which the Department will implement the preconstruction review requirements of N.J.S.A. 26:2C-1 et seq., as they apply to facilities subject to this subchapter.

(b) The owner or operator of a facility subject to this subchapter, which is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until an operating permit is issued for the facility. Upon issuance of an operating permit, all terms of preconstruction permits will be consolidated and maintained in the operating permit as defined in N.J.A.C. 7:27-22.1.

(c) The owner or operator of a facility subject to this subchapter, which commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c), shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. Upon issuance of an operating permit, all terms of preconstruction permits will be consolidated and maintained in the operating permit as defined in N.J.A.C. 7:27-22.1.

(d) An application for a minor modification pursuant to N.J.A.C. 7:27-22.23, or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall be subject to preconstruction review, which will include a demonstration that any equipment or control apparatus which is constructed, reconstructed, or modified incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted pursuant to N.J.A.C. 7:27-22.35.

(e) The Department can simultaneously perform the preconstruction review pursuant to N.J.A.C.7:27-8 and the operating permit review of an application for a minor or significant modification. Ordinarily, the Department will issue the final operating permit modification with the preconstruction approval. However, if requested by an applicant for a modification, the Department will issue the preconstruction approval simultaneously with the proposed operating permit which is forwarded to EPA pursuant to N.J.A.C. 7:27-22.12. For a minor modification, this preconstruction approval will authorize the permittee to begin construction and operation of a minor modification, at the permittee's own risk, in accordance with N.J.A.C. 7:27-22.23. For a significant modification of the operating permit pursuant to N.J.A.C. 7:27-22.24, the permittee may begin construction of a significant modification, but may not operate the modified facility until final issuance of the significant modification.

(f) If a facility or source operation becomes subject to a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26© prior to issuance of an operating permit for the facility, the owner or operator of the facility shall establish a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26(e). The owner or operator of the facility shall obtain and maintain a preconstruction permit and operating certificate pursuant to N.J.A.C. 7:27-8, which applies the case-by-case MACT standard to the appropriate source operation(s), until an operating permit covering the facility is issued which incorporates the case-by-case MACT standard. (For reference only, no change was made to this provision.)

7:27-22.23 Minor modifications

a) A permittee may make any change listed at (c) below through the minor modification procedures set forth in this section. Minor modifications are set forth in (c) below, and include changes which may increase actual emissions by insignificant amounts, and other changes which do not increase emissions, but may increase ambient concentrations of air contaminants. The Department shall, upon approval of an application for a minor modification of the operating permit, incorporate the changes into the operating permit. The application for a minor modification constitutes the consolidated preconstruction and operating permit application under this subchapter and N.J.A.C. 7:27-8. The permittee shall not make any change proposed in a minor modification of the operating permit until the Department has approved the minor modification, except as specified in (a)1, 2, and 3 below.

7:27 22.24 Significant modifications

(a) Notwithstanding any other provision of this subchapter, a permittee is required to make any of the changes listed at (b) through the significant modification procedures set forth in this section. The Department shall, upon its approval of an application for a significant modification

of the operating permit, incorporate the change(s) into the operating permit. The application for a significant modification constitutes the consolidated preconstruction and operating permit application under this subchapter and N.J.A.C. 7:27-8. For a significant modification of the operating permit, the permittee may begin construction of a significant modification, but may not operate the modified facility until final issuance of the significant modification.

7:27-22.3 General provisions

(ww) Any applicable requirements in an operating permit derived from an existing or terminated consent decree with EPA will be noted as such and will not be changed without advance consultation by the Department with EPA.

7:27 22.9 Compliance plans

(c)5ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order, including an administrative consent order, or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and

7:27 8.2 Applicability

(b) The following requirements will apply if a significant source subject to this subchapter also becomes subject to operating permit requirements under N.J.A.C 7:27-22:

1. Any permits or certificates required by this subchapter must be obtained and maintained until an operating permit, as defined in N.J.A.C. 7:27-22.1, is issued.
2. If a new source which is subject to operating permit requirements elects under N.J.A.C. 7:27-22.5(g) to obtain a preconstruction permit and certificate under this subchapter prior to obtaining an operating permit, the source shall continue to comply with the terms of preconstruction permits which shall be consolidated in the operating permit as defined in N.J.A.C. 7:27-22.1.
3. In some cases, a portion of an operating permit facility (such as a research and development operation) is not subject to operating permit requirements. In such a case, the owner and operator must obtain and maintain a separate preconstruction permit issued pursuant to this subchapter with terms that will not be consolidated in a facility's operating permit.

7:27 8.3 General provisions

(k) Any applicable requirements in a preconstruction permit derived from an existing or terminated consent decree with EPA will be noted as such and will not be changed without advance consultation by the Department with EPA.

Attachment E

Excerpt from July 17, 2014 West Deptford Energy LLC Permit
with Highlighted BACT and LAER Citations

BOP120001

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Emission Unit: U1 Combined Cycle Turbines / Duct Burners, natural gas-fired

Operating Scenario: OS1 Combustion Turbine #1 - normal operation, ducts off (Siemens Unit), OS4 Combustion Turbine #2 - normal operation, ducts off (Siemens Unit)

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
1	Maximum Gross Heat Input \leq 2,350 MMBTU/hr (HHV) per turbine firing natural gas. [N.J.A.C. 7:27-22.16(a)]	Maximum Gross Heat Input: Monitored by fuel flow/firing rate instrument continuously. [N.J.A.C. 7:27-22.16(o)]	Maximum Gross Heat Input: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. [N.J.A.C. 7:27-22.16(a)]	None.
2	Particulate Emissions \leq 235 lb/hr Particulate emission limit from the combustion of natural gas based on rated heat input of 2,350 MMBtu/hr for each turbine (without duct burner). [N.J.A.C. 7:27- 4.2(a)]	Particulate Emissions: Monitored by stack emission testing once initially, based on each of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Particulate Emissions: Recordkeeping by stack test results once initially. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
3	NOx (Total) \leq 2 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	NOx (Total): Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
4	NOx (Total) \leq 2 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	NOx (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
5	NOx (Total) \leq 17.31 lb/hr. [N.J.A.C. 7:27-22.16(a)]	NOx (Total): Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]

BOP120001

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Emission Unit: U1 Combined Cycle Turbines / Duct Burners, natural gas-fired

Operating Scenario: OS2 Combustion Turbine #1 - normal operation, ducts on (Siemens Unit), OS5 Combustion Turbine #2 - normal operation, ducts on (Siemens Unit)

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
1	Maximum Gross Heat Input \leq 333 MMBTU/hr (HHV) per duct burner firing natural gas. [N.J.A.C. 7:27-22.16(o)]	None.	None.	None.
2	Maximum Gross Heat Input \leq 2,683 MMBTU/hr (HHV) per turbine with duct burner firing natural gas. [N.J.A.C. 7:27-22.16(a)]	Maximum Gross Heat Input: Monitored by fuel flow/firing rate instrument continuously. [N.J.A.C. 7:27-22.16(o)]	Maximum Gross Heat Input: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. [N.J.A.C. 7:27-22.16(a)]	None.
3	Particulate Emissions \leq 268.3 lb/hr Particulate emission limit from the combustion of natural gas based on rated heat input of 2,683 MMBtu/hr for each turbine and duct burner. [N.J.A.C. 7:27-4.2(a)]	Particulate Emissions: Monitored by stack emission testing once initially, based on each of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Particulate Emissions: Recordkeeping by stack test results once initially. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
4	NOx (Total) \leq 2 ppmvd @ 15% O ₂ . N.J.A.C 7:27-22.16(a) and. [40 CFR 52.21]	NOx (Total): Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
5	NOx (Total) \leq 2 ppmvd @ 15% O ₂ . N.J.A.C 7:27-22.16(a) and. [40 CFR 52.21]	NOx (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
6	NOx (Total) \leq 19.76 lb/hr. [N.J.A.C. 7:27-22.16(a)]	NOx (Total): Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]

Attachment F

Excerpt from July 17, 2014 West Deptford Energy LLC permit
with Highlighted LAER Citation

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
6	NO _x (Total) ≤ 17.31 lb/hr. [N.J.A.C. 7:27-22.16(a)]	NO _x (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NO _x (Total): Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
7	CO ≤ 2 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
8	CO ≤ 2 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
9	CO ≤ 10.54 lb/hr. [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
10	CO ≤ 10.54 lb/hr. [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
11	VOC (Total) ≤ 1 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	VOC (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	VOC (Total): Recordkeeping by stack test results once initially. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
7	NO _x (Total) ≤ 19.76 lb/hr. [N.J.A.C. 7:27-22.16(a)]	NO _x (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	NO _x (Total): Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
8	CO ≤ 2 ppmvd @ 15% O ₂ . N.J.A.C. 7:27-22.16(a) and. [40 CFR 52.21]	CO: Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
9	CO ≤ 2 ppmvd @ 15% O ₂ . N.J.A.C. 7:27-22.16(a) and. [40 CFR 52.21]	CO: Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
10	CO ≤ 12.03 lb/hr. [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by continuous emission monitoring system continuously, based on a 3 hour rolling average based on a 1 hour block average. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by data acquisition system (DAS) / electronic data storage continuously. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Every April 30, July 30, October 30, and January 30 for the preceding quarter year (the quarter years begin on January 1, April 1, July 1, and October 1) electronically through the NJDEP online EEMPR web portal. [N.J.A.C. 7:27-22.16(o)]
11	CO ≤ 12.03 lb/hr. [N.J.A.C. 7:27-22.16(a)]	CO: Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	CO: Recordkeeping by stack test results once initially and prior to permit expiration date. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]
12	VOC (Total) ≤ 1.9 ppmvd @ 15% O ₂ . [N.J.A.C. 7:27-22.16(a)]	VOC (Total): Monitored by stack emission testing once initially and prior to permit expiration date, based on the average of three Department validated stack test runs. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	VOC (Total): Recordkeeping by stack test results once initially. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]	Stack Test - Submit protocol, conduct test and submit results: As per the approved schedule. (Please see U1/OS Summary). [N.J.A.C. 7:27-22.16(o)]

Attachment G

Excerpt from August 6, 2015 West Deptford Energy LLC permit
with Highlighted Full NSPS Citation

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
20	PM-2.5 (Total) \leq 0.05 tons/yr. Annual emission limit based on 100 hours per year of testing and maintenance. N.J.A.C. 7:27-22.16(a) and. [40 CFR 52.21]	PM-2.5 (Total): Monitored by calculations each month during operation, based on a consecutive 12 month period (rolling 1 month basis). Please see GR1 or GR2 for formula except that only the equipment in this emission unit, U3, shall be used in the calculations to determine compliance with this applicable requirement. [N.J.A.C. 7:27-22.16(o)]	PM-2.5 (Total): Recordkeeping by manual logging of parameter or storing data in a computer data system each month during operation. [N.J.A.C. 7:27-22.16(o)]	None.
21	Greenhouse gases as CO ₂ e \leq 625 tons/yr. Please see GR1 or GR2 for formula except that only the equipment in this emission unit, U, shall be used in the calculations to determine compliance with this applicable requirement. Annual emission limit based on 100 hours per year of testing and maintenance. N.J.A.C. 7:27-22.16(a) and. [40 CFR 52.21]	Greenhouse gases as CO ₂ e: Monitored by calculations each month during operation, based on a consecutive 12 month period (rolling 1 month basis). Please see GR1 or GR2 for formula except that only the equipment in this emission unit, U3, shall be used in the calculations to determine compliance with this applicable requirement. [N.J.A.C. 7:27-22.16(o)]	Greenhouse gases as CO ₂ e: Recordkeeping by manual logging of parameter or storing data in a computer data system each month during operation. [N.J.A.C. 7:27-22.16(o)]	None.
22	The owner or operator of a 2007 model year and later emergency generator with a displacement of < 10 liters per cylinder and a maximum engine power \geq 37 kW (HP \geq 50) and no greater than 3,000HP (\leq 2,237 kW) must comply with the certification emissions standards in 40 CFR 89.112 and smoke standards in 40 CFR 89.113 for the same model year and maximum engine power as follows: NMHC + NO _x \leq 6.4 g/kW-hr, CO \leq 3.5 g/kW-hr, PM \leq 0.2 g/kW-hr, weighted average emissions as defined in 40 CFR 89.404. (NSPS Subpart III). [40 CFR 60.4205(b)]	None.	Other: The owner or operator of a 2007 model year or later engine must keep manufacturer certification showing compliance with the applicable emission standards, for the same model year and maximum engine power. [40 CFR 60.4211].	None.
23	Owners and operators of stationary CI internal combustion engines must operate and maintain stationary CI ICE that achieve the emission standards as required in 40 CFR 60.4204 and 60.4205 over the entire life of the engine. [40 CFR 60.4206]	None.	Other: The owner or operator shall keep the manufacturer's emission-related written instructions over the entire life of the engine. [40 CFR 60.4206].	None.

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submission/Action Requirement
24	Beginning October 1, 2010, the CI internal combustion engines with a displacement of less than 30 liters per cylinder subject to NSPS IIII (manufactured after April 1, 2006 or modified or reconstructed after July 11, 2005) that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b) that contains the following per gallon standards: 15 ppm (0.0015 percent) maximum sulfur content and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent, except that any existing diesel fuel purchased (or otherwise obtained) prior to October 1, 2010, may be used until depleted. [40 CFR 60.4207(b)]	Monitored by review of fuel delivery records once per bulk fuel shipment. For each diesel delivery received, the owner or operator shall review written documentation of the delivery to ensure the maximum allowable fuel oil sulfur content and either a minimum cetane index or a maximum aromatic content is not being exceeded. Such written documentation can include, but is not limited to: bill of lading, delivery invoice, certificate of analysis. [N.J.A.C. 7:27-22.16(o)]	Recordkeeping by invoices / bills of lading / certificate of analysis once per bulk fuel shipment. The owner or operator shall keep records of fuel showing oil sulfur content and either a minimum cetane index or a maximum aromatic content for each delivery received. All records must be maintained for a minimum of 2 years following the date of such records per 40 CFR 60.7(f). [N.J.A.C. 7:27-22.16(o)]	None.
25	The owner or operator of a 2007 model year and later stationary CI internal combustion engine complying with the emission standards specified in 40 CFR 60.4205(b), must comply by purchasing an engine certified to the emission standards in 40 CFR 60.4205(b), for the same model year and maximum engine power. The engine must be installed and configured according to the manufacturer's emission-related specifications (NSPS Subpart IIII). [40 CFR 60.4211(c)]	None.	Other: The owner or operator must keep documentation from the manufacturer, for the life of the equipment, that the engine is certified to meet the emission standards as applicable, for the same model year and maximum engine power. If the engine and control device is not installed, configured, operated, and maintained according to the manufacturer's emission-related written instructions, or emission-related settings are changed in a way that is not permitted by the manufacturer, the owner or operator must demonstrate compliance as prescribed at 40 CFR 60.4211(g)(1), (2) or (3) depending on the maximum engine power. [40 CFR 60.4211(c)].	None.

Attachment H

Excerpt from August 6, 2015 West Deptford Energy LLC permit
with Highlighted NSPS Citation

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
54	<p>NOx (Total) \leq 15 ppmvd @ 15% O₂. This limit applies to a turbine that has heat input at peak load greater than 850 MMBtu/hr (HHV) firing natural gas and commenced construction, modification or reconstruction after February 18, 2005.</p> <p>Either meet NO_x concentration this limit of 15 PPM here or meet 0.43 lb/Mw output limit as listed below. [40 CFR 60.4320(a)]</p>	<p>NOx (Total): Monitored by stack emission testing at the approved frequency, based on the average of three Department validated stack test runs. The owner or operator shall conduct an initial performance test as required in 40 CFR 60.8. The subsequent testing shall only be conducted if choosing to comply with 40 CFR 60.4340(a).</p> <p>Test methods and procedures shall be consistent with the requirements of 40 CFR 60.4400 or, if a NO_x diluent CEMS is installed, consistent with 40 CFR 60.4405.</p> <p>The performance test must be done at any load condition within plus or minus 25 percent of 100 percent of peak load. Alternatively, the testing might be performed at the highest achievable load point, if at least 75 percent of peak load cannot be achieved in practice. For turbines with supplemental duct burner NO_x measurements shall be taken after the duct burner, which has to be in operation during the performance test. [40 CFR 60.4400]</p>	<p>NOx (Total): Recordkeeping by data acquisition system (DAS) / electronic data storage continuously or Recordkeeping by stack test results at the approved frequency. [40 CFR 60.4460]</p>	<p>Submit a report: As per the approved schedule. The owner or operator shall submit a written report of the results of each performance test before the close of business on the 60th day following the completion of the performance test. [40 CFR 60.4375(b)]</p>

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submittal/Action Requirement
65	The owner or operator shall submit reports of excess emissions and monitor downtime in accordance with 40 CFR 60.7(c) for Nitrogen oxides. Excess emissions shall be reported for all periods of unit operation, including startup, shutdown and malfunction. An excess emissions as defined in 40 CFR 60.4380(b)1 is any unit operating period in which the 30-day rolling average NOx emission rate exceeds the applicable emission limit in 40 CFR 60.4320. A period of monitor downtime is any unit operating hour in which the data for any of the following parameters are either missing or invalid: NOx concentration, CO2 or O2 concentration, fuel flow rate, steam flow rate, steam temperature, steam pressure, or megawatts. The steam flow rate, steam temperature, and steam pressure are only required if used for compliance demonstration. [40 CFR 60.4380(b)]	Other: For the purposes of identifying excess emissions based on data from the continuous emission monitoring equipment the permittee shall follow procedures described in 40 CFR 60.4350(a), (b), (c), (e), (f), (g), and (h). If a NOx diluent CEMS meets the requirements of 40 CFR 75, then only quality assured data from the CEMS shall be used to identify excess emissions. Periods where the missing data substitution procedures in subpart D of 40 CFR 75 are applied are to be reported as monitor downtime.[40 CFR 60.4350].	None.	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Semi-annually beginning on the 30th day of the 6th month following initial performance tests. All reports required under 40 CFR 60.7(c) must be postmarked by the 30th day following the end of each 6-month period. [40 CFR 60.4395]
66	The owner or operator shall submit reports of excess emissions and monitor downtime for Sulfur content in the fuel. An excess emissions as defined in 40 CFR 60.4385(a) and (b) occurs each unit hour included in the period beginning on the date and hour of any sample for which the sulfur content of the fuel being fired exceeds the applicable limit and ending on the date and hour that a subsequent sample is taken that demonstrate compliance with the sulfur limit. A period of monitor downtime begins when a required sample is not taken by its due date or if a sample is taken but invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample. [40 CFR 60.4385]	None.	None.	Submit an Excess Emissions and Monitoring Systems Performance Report (EEMPR): Semi-annually beginning on the 30th day of the 6th month following initial performance tests. All reports required under 40 CFR 60.7(c) must be postmarked by the 30th day following the end of each 6-month period. [40 CFR 60.4395]
67	Acid Rain:Comply with the requirements contained in the attached Acid Rain Permit. [40 CFR 72]	Other: Acid Rain:Comply with the requirements contained in the attached Acid Rain Permit.[40 CFR 72].	Other: Acid Rain:Comply with the requirements contained in the attached Acid Rain Permit.[40 CFR 72].	Other (provide description): As per the approved schedule Acid Rain:Comply with the requirements contained in the attached Acid Rain Permit. [40 CFR 72]

Attachment I

Revised Reporting Requirement to Conform with EPA's CDX

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Ref.#	Applicable Requirement	Monitoring Requirement	Recordkeeping Requirement	Submission/Action Requirement
7	<p>Compliance Certification: Submit annual compliance certification for each applicable requirement, pursuant to N.J.A.C. 7:27-22.19(f), within 60 days after the end of each calendar year during which this permit was in effect. [N.J.A.C. 7:27-22]</p>	None.	None.	<p>Submit an Annual Compliance Certification: Annually to the Department and EPA within 60 days after the end of each calendar year during which this permit was in effect. The annual compliance certification reporting period will cover the calendar year ending December 31. The certification shall be submitted electronically through the NJDEP online web portal - Periodic Compliance Certification service, and shall be certified pursuant to N.J.A.C. 7:27-1.39 by the responsible official. Access to the NJDEP online web portal shall be obtained by following the instructions at: http://www.state.nj.us/dep/online/.</p> <p>The certification should be printed for submission to EPA at the following address: US EPA, Region II, Air Compliance Branch, 200 Broadway, New York, NY 10007-1866. [N.J.A.C. 7:27-22]</p> <p><u>The certification should be submitted to EPA electronically at EPA's Central Data Exchange (CDX) at https://cdx.epa.gov/</u> [N.J.A.C. 7:27-22]</p>

