

SENATE, No. 1602

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Authorizes regulation of greenhouse gas emissions under "Air Pollution Control Act (1954)" and "Global Warming Response Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning greenhouse gases and amending P.L.1954,
2 c.212 and P.L.2007, c.112.

3

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

6

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

9 2. As used in **[this act]** P.L.1954, c.212 (C.26:2C-1 et seq.):

10 "Air contaminant" means any substance, other than water or
11 distillates of air, present in the atmosphere as solid particles, liquid
12 particles, vapors, or gases**[:]** .

13 "Air pollution" means the presence in the outdoor atmosphere of
14 one or more air contaminants in such quantities and duration as are,
15 or tend to be, injurious to human health or welfare, animal or plant
16 life, or property, or would unreasonably interfere with the
17 enjoyment of life or property throughout the State and in those
18 areas of the State as shall be affected thereby, and excludes all
19 aspects of an employer-employee relationship as to health and
20 safety hazards**[:]** .

21 "Antimicrobial pesticide" means a product that destroys or
22 repels, or prevents or mitigates the growth of, any bacteria, fungus,
23 virus or other micro-organism that is defined as a pest pursuant to 7
24 U.S.C. s.136w (c)(1), and includes any product required to be
25 registered as an antimicrobial pesticide pursuant to the "Federal
26 Insecticide, Fungicide and Rodenticide Act," 7 U.S.C. s.136 et
27 seq.**[:]**

28 "Commissioner" means the Commissioner of Environmental
29 Protection**[:]** .

30 "Construct" or "construction" means to fabricate or erect
31 equipment or control apparatus at a facility where it is intended to
32 be used, but shall not include the dismantling of existing equipment
33 or control apparatus, site preparation, or the ordering, receiving,
34 temporary storage, or installation of equipment or control apparatus.
35 Unless otherwise prohibited by federal law, "construct" or
36 "construction" shall also not include the pouring of footings or
37 placement of a foundation where equipment or control apparatus is
38 intended to be used**[:]** .

39 "Consumer Price Index" or "CPI" means the annual Consumer
40 Price Index for a calendar year as determined year to year using the
41 decimal increase in the September through August, 12-month
42 average for the previous year of the Consumer Price Index for All
43 Urban Consumers (CPI-U), as published by the United States
44 Department of Labor**[:]** .

45 "Control apparatus" means any device that prevents or controls
46 the emission of any air contaminant**[:]** .

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Council" means the Clean Air Council created pursuant to
2 section 3 of P.L.1967, c.106 (C.26:2C-3.2) [;] .

3 "Department" means the Department of Environmental
4 Protection [;] .

5 "Emission fee" means an annual fee that is based on the emission
6 of any regulated air contaminant [;] .

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

12 "EPA" means the United States Environmental Protection
13 Agency [;] .

14 "Equipment" means any device capable of causing the emission
15 of an air contaminant either directly or indirectly into the outdoor
16 atmosphere, and any stack, chimney, conduit, flue, duct, vent, or
17 similar device connected or attached to, or serving, the equipment,
18 and shall include, but need not be limited to, any equipment in
19 which the preponderance of the air contaminants emitted is caused
20 by a manufacturing process [;] .

21 "Excess greenhouse gas emissions" means Statewide greenhouse
22 gas emissions which exceed those of the limits established in
23 section 4 of P.L.2007, c.112 (C.26:2C-40) or the interim
24 benchmarks adopted pursuant to section 5 of P.L.2007, c.112
25 (C.26:2C-41).

26 "Facility" means the combination of all structures, buildings,
27 equipment, control apparatus, storage tanks, source operations, and
28 other operations that are located on a single site or on contiguous or
29 adjacent sites and that are under common control of the same
30 person or persons. Research and development facilities that are
31 located with other facilities shall be considered separate and
32 independent entities for the purposes of complying with the
33 operating permit requirements of P.L.1954, c.212 (C.26:2C-1 et
34 seq.) or any codes, rules, or regulations adopted pursuant thereto [;]
35 .

36 "Federal Clean Air Act" means the federal "Clean Air Act" (42
37 U.S.C.s.7401 et seq.) and any subsequent amendments or
38 supplements to that act [;] .

39 "Grandfathered" means construction, reconstruction, or
40 modification of equipment or control apparatus prior to the date of
41 enactment of section 13 of P.L.1967, c.106 (C.26:2C-9.2) on June
42 15, 1967, or prior to the subsequent applicable revisions to rules
43 and regulations codified at N.J.A.C.7:27-8.1 et seq. that occurred
44 March 5, 1973, June 1, 1976, April 5, 1985, and October 31,
45 1994 [;] .

46 "Greenhouse gas" means the same as the term is defined in
47 section 3 of P.L.2007, c.112 (C.26:2C-39).

1 "HAP" or hazardous air pollutant" means any air pollutant listed
 2 in or pursuant to subsection (b) of section 112 of the federal Clean
 3 Air Act (42 U.S.C. s.7412)【;】 。

4 "Hospital or medical disinfectant" means an antimicrobial
 5 product registered with the United States Environmental Protection
 6 Agency that qualifies to bear the name or claim to be a "hospital or
 7 medical environment disinfectant" pursuant to United States
 8 Environmental Protection Agency guidelines published pursuant to
 9 7 U.S.C. s.136a (c)(2)(A), and shall include, but shall not be limited
 10 to, antimicrobial pesticides used in hospitals, doctor and dentist
 11 offices, and other medical environments【;】 。

12 "Install" or "installation" means to carry out final setup activities
 13 necessary to provide equipment or control apparatus with the
 14 capacity for use or service, and shall include, but need not be
 15 limited to, connection of equipment or control apparatus, associated
 16 utilities, piping, duct work, or conveyor systems, but shall not
 17 include construction or reconfiguration of equipment or control
 18 apparatus to an alternate configuration specified in a permit
 19 application and approved by the department【;】 。

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

Air Contaminant	Threshold level
Carbon monoxide	100 tons per year
Particulate matter (PM-10)	100 tons per year
Total suspended particulates	100 tons per year
Sulfur dioxide	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year
Any HAP	10 tons per year
All HAPs collectively	25 tons per year
Any other air contaminant	100 tons per year【;】 。

37 "Modify" or "modification" means any physical change in, or
 38 change in the method of operation of, existing equipment or control
 39 apparatus that increases the amount of any air contaminant emitted
 40 by that equipment or control apparatus or that results in the
 41 emission of any air contaminant not previously emitted, but shall
 42 not include normal repair and maintenance【;】 。

43 "Operating permit" means the permit described in Title V of the
 44 federal Clean Air Act (42 U.S.C. s.7661 et seq.)【;】 。

45 "Person" means an individual, public or private corporation,
 46 company, partnership, firm, association, society, joint stock
 47 company, international entity, institution, county, municipality,

1 state, interstate body, the United States of America, or any agency,
2 board, commission, employee, agent, officer, or political
3 subdivision of a state, an interstate body, or the United States of
4 America[;] .

5 "Potential to emit" means the same as that term is defined by the
6 EPA in rules and regulations adopted pursuant to the federal Clean
7 Air Act at 40 CFR 70.2 or any subsequent amendments thereto[;] .

8 "Process unit" means equipment assembled to produce
9 intermediate or final products. A process unit can operate
10 independently if supplied with sufficient feed or raw materials and
11 sufficient storage facilities for the product. The storage and transfer
12 of product or raw materials to and from the process unit shall be
13 considered separate from the process unit for the purposes of
14 making reconstruction determinations. Product recovery equipment
15 shall be considered to be part of the process unit, not part of the
16 control apparatus[;] .

17 "Reconstruct" or "reconstruction" means the replacement of parts
18 of equipment included in a process unit, or the replacement of
19 control apparatus, if the fixed capital cost of replacing the parts
20 exceeds both of the following amounts: (1) Fifty percent of the
21 fixed capital cost that would be required to construct a comparable
22 new process unit or control apparatus; and (2) \$80,000 (in 1995
23 dollars) adjusted by the Consumer Price Index[;] .

24 "Regulated air contaminant" means the same as the term
25 "regulated air pollutant" as defined by the EPA in rules and
26 regulations adopted pursuant to the federal Clean Air Act at 40 CFR
27 70.2 or any subsequent amendments thereto[;] .

28 "Research and development facility" means any facility the
29 primary purpose of which is to conduct research and development
30 into new processes and products, including academic and
31 technological research and development, provided that such a
32 facility is operated under the close supervision of technically
33 trained personnel and is not engaged in the manufacture of products
34 for commercial sale, except in a de minimis manner[; and] .

35 "Statewide greenhouse gas emissions" means the same as the
36 term is defined in section 3 of P.L.2007, c.112 (C.26:2C-39).

37 "VOC" or "volatile organic compound" means the same as that
38 term is defined by the EPA in rules and regulations adopted
39 pursuant to the federal Clean Air Act at 40 CFR 51.100 or any
40 subsequent amendments thereto.

41 (cf: P.L.1999, c.100, s.1)

42

43 2. Section 8 of P.L.1954, c.212 (C.26:2C-8) is amended to read
44 as follows:

45 8. a. The department shall have power to formulate and
46 promulgate, amend, and repeal codes and rules and regulations
47 preventing, controlling, and prohibiting air pollution and excess

1 greenhouse gas emissions throughout the State or in such territories
2 of the State as shall be affected thereby, except as provided in
3 subsection b. of this section; provided, however, that no such code,
4 rule, or regulation and no such amendment or repeal shall be
5 adopted except after public hearing to be held after 30 days' prior
6 notice thereof by public advertisement of the date, time and place of
7 such hearing, at which opportunity to be heard by the department
8 with respect thereto shall be given to the public; and provided,
9 further, that no such code, rule, or regulation and no such
10 amendment or repeal shall be or become effective until 60 days
11 after the adoption thereof as aforesaid. Any person heard at such
12 public hearing shall be given written notice of the determination of
13 the department.

14 All codes, rules, and regulations heretofore adopted by the Air
15 Pollution Control Commission shall continue in full force and effect
16 subject to the power of the department to amend and repeal such
17 codes, rules and regulations as provided by this act.

18 b. Unless otherwise required by federal law, rule or regulation,
19 no code, regulation, rule, or standard may be adopted by the
20 department that diminishes the efficacy of a hospital or medical
21 disinfectant in killing or inactivating agents of infectious diseases,
22 including, but not limited to, restrictions on the volatile organic
23 compound content or emissions caused by the use of such products.
24 No federal requirement to reduce volatile organic compound
25 content or emissions in general may be construed to permit the
26 department to regulate the volatile organic compounds found in, or
27 released in the use of, a hospital or medical disinfectant, unless the
28 federal law, rule, or regulation establishing the federal requirement
29 specifically requires the reduction of volatile organic compounds
30 found in, or released in the use of, hospital or medical disinfectants.

31 c. No later than 24 months after the effective date of P.L. _____,
32 c. (C. _____), the department shall adopt rules and regulations,
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.), which incorporate greenhouse gas emissions
35 limits into the department's operating permit requirements adopted
36 pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.), and which include
37 any other restrictions on greenhouse gas emissions deemed by the
38 department to be necessary for the State to meet the requirements of
39 section 4 of P.L.2007, c.112 (26:2C-40).

40 (cf: P.L.1999, c.100, s.2)

41

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

44 9. a. The department shall conduct ambient air quality tests, on
45 at least a monthly basis and wherever possible in conjunction with
46 the county college or other county facility, which are representative
47 of every county of the State. The department shall report the results

1 of these tests to the county health officers, the Legislature, and the
2 news media.

3 b. The department shall control air pollution and excess
4 greenhouse gas emissions in accordance with the provisions of any
5 applicable code, rule, or regulation promulgated by the department
6 and for this purpose shall have power to:

7 (1) Conduct and supervise research programs for the purpose of
8 determining the causes, effects, and hazards of air pollution;

9 (2) Conduct and supervise Statewide programs of air pollution
10 control education including the preparation and distribution of
11 information relating to air pollution control;

12 (3) Require the registration of persons engaged in operations
13 that may result in air pollution or excess greenhouse gas emissions
14 and the filing of reports, including but not limited to emission
15 statements, by them containing information relating to location, size
16 of outlet, height of outlet, rate and period of emission and
17 composition of effluent, and such other information as the
18 department shall prescribe to be filed relative to air pollution or
19 excess greenhouse gas emissions, all in accordance with applicable
20 codes, rules, or regulations established by the department;

21 (4) Enter and inspect any building or place, except private
22 residences, for the purpose of investigating an actual or suspected
23 source of air pollution or excess greenhouse gas emissions and
24 ascertaining compliance or noncompliance with any codes, rules, or
25 regulations of the department. Any information, other than actual
26 or allowable air contaminant emissions or greenhouse gas
27 emissions, relating to secret processes or methods of manufacture or
28 production obtained in the course of an inspection, investigation, or
29 determination, shall be kept confidential and shall not be admissible
30 in evidence in any court or in any other proceeding except before
31 the department. If samples are taken for analysis, a duplicate of the
32 analytical report shall be furnished promptly to the person
33 suspected of causing air pollution or excess greenhouse gas
34 emissions;

35 (5) Receive or initiate complaints of air pollution or excess
36 greenhouse gas emissions, hold hearings in connection with air
37 pollution or greenhouse gas emissions, and institute legal
38 proceedings for the prevention of air pollution or excess greenhouse
39 gas emissions and for the recovery of penalties, in accordance with
40 P.L.1954, c.212 (C.26:2C-1 et seq.);

41 (6) With the approval of the Governor, cooperate with, and
42 receive funds or other assistance from, the federal government, the
43 State government, any interstate body, or any county or municipal
44 government, or from private sources, for the study and control of air
45 pollution or excess greenhouse gas emissions;

46 (7) Charge, in accordance with a fee schedule that shall be
47 adopted by the department pursuant to the "Administrative
48 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), (a)

1 reasonable annual emission fees for major facilities as provided in
2 section 5 of P.L.1995, c.188 (C.26:2C-9.5), and (b) administrative
3 fees for any of the services the department performs or provides in
4 connection with administering P.L.1954, c.212 (C.26:2C-1 et seq.).
5 The administrative fees charged by the department pursuant to this
6 subsection shall not exceed \$25,000 per application based on
7 criteria contained in the fee schedule;

8 (8) Issue, renew, reopen, and revise operating permits, and
9 require any person who is required to obtain an operating permit
10 under the provisions of the federal Clean Air Act to obtain an
11 operating permit and to certify compliance therewith for all air
12 pollution sources; and

13 (9) Establish, implement, and operate a small business
14 stationary source technical and environmental compliance
15 assistance program as required pursuant to 42 U.S.C. 7661f of the
16 federal Clean Air Act.

17 (cf: P.L.1995, c.188, s.3)

18

19 4. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to
20 read as follows:

21 13. a. No person shall construct, reconstruct, install, or modify
22 equipment or control apparatus and then use or cause to be used that
23 equipment or control apparatus except in accordance with P.L.1954,
24 c.212 (C.26:2C-1 et seq.) and the rules and regulations adopted
25 pursuant thereto.

26 b. No operating permit, operating permit revision, or operating
27 certificate or renewal thereof shall be issued unless the applicant
28 demonstrates that the equipment or control apparatus will operate,
29 or operates, in accordance with the provisions of P.L.1954, c.212
30 (C.26:2C-1 et seq.) and the rules and regulations adopted pursuant
31 thereto.

32 c. Newly constructed, reconstructed, or modified equipment
33 and control apparatus shall incorporate advances in the art of air
34 pollution control as developed for the kind and amount of air
35 contaminant emitted by the applicant's equipment and control
36 apparatus as provided in this subsection.

37 (1) For equipment and control apparatus with a potential to emit
38 any hazardous air pollutant equal to or greater than the de minimis
39 levels specified by the EPA pursuant to subsection (g) of section
40 112 of the federal Clean Air Act (42 U.S.C. 7412) or with a
41 potential to emit five tons per year or more of any other air
42 contaminant, the applicant shall document advances in the art of air
43 pollution control in accordance with the following criteria, as
44 applicable:

45 (a) For an air contaminant subject to the prevention of
46 significant deterioration technology requirement, advances in the art
47 of air pollution control shall be the best available control

1 technology (BACT) as set forth by the EPA at 40 CFR 52.21
2 (b)(12) or any subsequent amendments thereto;

3 (b) For an air contaminant subject to a significant emissions
4 increase of a non-attainment air contaminant in a non-attainment
5 area, advances in the art of air pollution control shall be the lowest
6 achievable emission rate (LAER) as set forth by the EPA at 40 CFR
7 51.165(a)(1)(xiii) or any subsequent amendments thereto;

8 (c) For a hazardous air pollutant technology requirement,
9 advances in the art of air pollution control shall be the maximum
10 achievable control technology (MACT) as set forth at 42 U.S.C.
11 7412 or any subsequent amendments thereto; and

12 (d) For other air contaminants, advances in the art of air
13 pollution control means up-to-date technology and methods,
14 reflected in equipment, control apparatus, and procedures, that
15 when applied to an emission source shall reasonably minimize air
16 contaminant emissions. The technology shall have been
17 demonstrated for similar air contaminant discharge parameters to be
18 reliable and shall be available at reasonable cost commensurate with
19 the reduction in air contaminant emissions.

20 (2) For equipment and control apparatus with a potential to emit
21 hazardous air pollutants at less than the de minimis levels specified
22 by the EPA pursuant to subsection (g) of section 112 of the federal
23 Clean Air Act (42 U.S.C. 7412) and with a potential to emit less
24 than five tons per year of any other air contaminant, the applicant
25 need not document advances in the art of air pollution control, but
26 shall document compliance with:

27 (a) reasonably available control technology as defined in rules
28 and regulations that shall be adopted by the department pursuant to
29 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.);

31 (b) applicable new source performance standards; and

32 (c) any other applicable State or federal standard, code, rule, or
33 regulation.

34 (3) (a) In order to promote greater emissions reductions than
35 would otherwise be achieved, the department may adopt, pursuant
36 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
37 1 et seq.), rules and regulations that offer a person the option of
38 establishing in an operating permit a 15-year plan for reducing
39 facility emissions beyond minimum air pollution control
40 requirements in lieu of adhering to strict permit review schedules
41 and complying with less effective State requirements. Such a plan
42 shall include schedules setting forth milestones for reducing
43 emissions at the facility. Milestones may be met by reducing
44 emissions at the facility and by providing emissions reduction
45 credits from non-facility sources pursuant to an emissions trading
46 and banking program adopted pursuant to section 8 of P.L.1995,
47 c.188 (C.26:2C-9.8).

1 (b) The department shall review the achievement of the
2 milestones in the plan no less frequently than every five years when
3 the operating permit is renewed. The department may require the
4 person to submit, as part of the application for renewal of the
5 operating permit, a summary and trend of the actual air contaminant
6 emissions data reported in the facility's annual emission statements
7 for the previous five years. If the department determines during the
8 approval process for an operating permit renewal that the
9 milestones in the plan have not been met at a facility and that there
10 is no reasonable likelihood that the milestones can or will be met,
11 the department may withdraw the opportunity for the facility to
12 continue pursuant to the plan and shall require instead that the
13 facility comply with the promulgated schedules for all applicable
14 requirements.

15 (c) The department shall allow a person entering a 15-year plan
16 the option of establishing in that person's operating permit reduced
17 administrative application requirements for de minimis
18 modifications of equipment and control apparatus at the facility,
19 provided that: any increase in allowable emissions for any
20 individual equipment and control apparatus is below de minimis
21 levels defined by rule or regulation adopted by the department
22 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
23 (C.52:14B-1 et seq.); and, as part of the five-year achievement
24 review set forth in subparagraph (b) of paragraph (3) of this
25 subsection, the person includes a demonstration that confirms no
26 net emissions increases have occurred at the facility over the
27 previous five years.

28 (d) The department shall involve in the development of the rules
29 and regulations for the 15-year plan program adopted pursuant to
30 this paragraph representatives of the affected industry,
31 environmental, and public interest groups as well as impacted
32 governmental entities.

33 (4) Consistent with the provisions of P.L.1991, c.422 (C.13:1D-
34 111 et seq.), the department shall periodically publish, with an
35 opportunity provided for public comment, technology, methods, and
36 performance levels with respect to air pollution control for use by
37 applicants for demonstrating advances in the art of air pollution
38 control.

39 (a) The department shall, within 18 months after the effective
40 date of P.L.1995, c.188 (C.26:2C-9.5 et al.), publish the first
41 technical manual containing technology, methods, and performance
42 levels that can be used by applicants for demonstrating advances in
43 the art of air pollution control. Public notice of the availability of
44 each draft technical manual shall be published in the New Jersey
45 Register, and each final technical manual shall consider any public
46 comments thereon that are received by the department.

47 (b) Once the department has published a technical manual for
48 advances in the art of air pollution pursuant to subparagraph (a) of

1 paragraph (4) of this subsection, any application submitted that
2 demonstrates compliance with that technical manual shall be
3 considered to incorporate advances in the art of air pollution control
4 for the source operations covered by the technical manual. The
5 department shall periodically review and update each technical
6 manual as necessary, after providing public notice and opportunity
7 for public comment. If the department amends a technical manual,
8 the new standard shall apply only to applications submitted after the
9 final publication of the amended technical manual.

10 (c) Instead of relying on a technical manual for advances in the
11 art of air pollution control, an applicant may propose "case-by-case"
12 advances in the art of air pollution control applicable to a specific
13 source operation. If the department determines that the proposal is
14 consistent with the provisions of this subsection, the proposal shall
15 be deemed to constitute advances in the art of air pollution control
16 for that specific source operation.

17 (d) Advances in the art of air pollution control shall include new
18 source performance standards adopted by the EPA on or after the
19 effective date of P.L.1995, c.188 (C.26:2C-9.5 et al.) and those new
20 source performance standards published as advances in the art of air
21 pollution control pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.).

22 (5) Before an operating permit, operating permit revision or
23 operating certificate or any renewal thereof is issued, or as a
24 condition of issuance, the department may require the applicant to
25 conduct such tests as are necessary to determine the kind or amount
26 of the air contaminant emitted from the equipment or whether the
27 equipment or fuel or the operation of the equipment is in violation
28 of any of the provisions of P.L.1954, c.212 (C.26:2C-1 et seq.) or of
29 any codes, rules, or regulations adopted pursuant thereto. The tests
30 shall be made at the expense of the applicant and shall be conducted
31 in a manner approved by the department, and the test results shall
32 be reviewed and professionally certified.

33 (6) Grandfathered equipment or control apparatus shall not be
34 subject to a demonstration of advances in the art of air pollution
35 control.

36 (7) An operating permit and operating certificate or any renewal
37 thereof shall be valid for a period of five years from the date of
38 issuance, unless sooner revoked for cause by order of the
39 department, and may be renewed upon application to the
40 department.

41 (8) Upon receipt of an application for the issuance of an
42 operating certificate or any renewal thereof, the department, in its
43 discretion, may issue a temporary operating certificate valid for 90
44 days or until a five-year operating certificate has been issued or
45 denied.

46 d. The following are exempt from the provisions of subsections
47 a. and b. of this section:

48 (1) One or two family dwellings;

- 1 (2) A dwelling of six or less family units, one of which is owner
2 occupied;
- 3 (3) Equipment or control apparatus that is subject to a general
4 permit issued pursuant to subsection h. of this section; and
- 5 (4) Equipment and control apparatus that is de minimis in terms
6 of size or emissions as prescribed in rules and regulations that shall
7 be adopted by the department pursuant to the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
- 9 e. Except as otherwise prohibited by the EPA pursuant to the
10 federal Clean Air Act, any person who has received or receives a
11 facility-wide permit issued pursuant to the "Pollution Prevention
12 Act," P.L.1991, c.235 (C.13:1D-35 et seq.) shall be deemed to
13 satisfy the requirement for an operating permit issued pursuant to
14 P.L.1954, c.212 (C.26:2C-1 et seq.).
- 15 f. The department may establish policies and procedures for
16 categories of operations that specify the procedures to be followed
17 for obtaining any permit required pursuant to this section.
- 18 g. Any requirement solely related to an air contaminant
19 regulated by the department that is not a federally regulated air
20 pollutant or contaminant, or to greenhouse gas emissions, shall be
21 identified in an operating permit as a State-only requirement that
22 would not be federally enforceable.
- 23 h. Notwithstanding the provisions of any other law, rule, or
24 regulation to the contrary, the department may issue a general
25 permit in lieu of any permit issued pursuant to this section. Prior to
26 issuing a general permit, the department shall provide public notice
27 and opportunity for public comment.
- 28 i. The department may require the reporting and evaluation of
29 emissions information for any air contaminant. However, prior to
30 requiring that such information be included on a permit or
31 regulating any air contaminant not regulated by the EPA pursuant to
32 the federal Clean Air Act, the department shall first make a
33 determination and advise the public of its conclusion that regulating
34 that air contaminant is in the best interest of human health, welfare
35 and the environment, and publish that determination and
36 justification in accordance with the provisions of the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.).
- 39 j. Except as otherwise prohibited by federal law, any person
40 who has submitted to the department an application for a permit to
41 construct, reconstruct, install, or modify equipment or control
42 apparatus may place that equipment or control apparatus on the
43 footings or foundation where it is intended to be used during the
44 pendency of the permit application review process. A person
45 intending to take action authorized pursuant to this subsection shall
46 notify the department, via certified mail, of the intent to undertake
47 the action at least seven days prior to the commencement of the
48 action.

1 A person who constructs equipment or control apparatus in
2 accordance with this subsection that the department determines is
3 not consistent with applicable State laws, codes, rules, or
4 regulations shall not be subject to civil or criminal penalties for that
5 inconsistent action provided that the person's actions do not result
6 in the emission of any air contaminants. Any costs incurred by the
7 applicant in connection with such construction may not be used by
8 the applicant as grounds for an appeal of the department's decision
9 on the permit application.

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

17 (cf: P.L.1995, c.188, s.4)

18

19 5. Section 5 of P.L.2007, c.112 (C.26:2C-41) is amended to
20 read as follows:

21 5. a. No later than 18 months after the effective date of P.L.2019,
22 c.197, the department shall adopt, pursuant to the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
24 regulations establishing a greenhouse gas emissions monitoring and
25 reporting program to monitor and report Statewide greenhouse gas
26 emissions.

27 b. The rules and regulations adopted pursuant to subsection a.
28 of this section shall identify all significant sources of Statewide
29 greenhouse gas emissions including short-lived climate pollutants,
30 and shall provide for, but need not be limited to, the following:

31 (1) monitoring and reporting of existing emissions and changes
32 in emissions over time from the sources identified by the
33 department;

34 (2) reporting the levels of those emissions and changes in those
35 emissions levels annually, commencing 18 months after the
36 effective date of P.L.2019, c.197; and

37 (3) monitoring progress toward the 2020 limit and the 2050
38 limit and any interim limits.

39 c. Pursuant to the rules and regulations adopted pursuant to
40 subsection a. of this section, the department shall require reporting
41 of the greenhouse gas emissions:

42 (1) associated with fossil fuels used in the State, as reported by
43 entities that are manufacturers and distributors of fossil fuels, which
44 may include, but need not be limited to, oil refineries, oil storage
45 facilities, natural gas pipelines, and fuel wholesale and retail
46 distributors;

47 (2) from any entity generating electricity in the State and from
48 any entity that generates electricity outside the State that is

1 delivered for end use in the State. With respect to electricity
2 generated outside the State and imported into the State, the
3 department shall determine the emissions from that generation by
4 subtracting the kilowatt-hours of electricity generated in the State
5 from the kilowatt-hours of electricity consumed in the State, and
6 multiplying the difference by a default emissions rate determined by
7 the department;

8 (3) from any gas public utility as defined in section 3 of
9 P.L.1999, c.23 (C.48:3-51); and

10 (4) from any additional entities that are significant emitters of
11 greenhouse gases, as determined by the department, and as
12 appropriate to enable the department to monitor compliance with
13 progress toward the 2020 limit and the 2050 limit.

14 d. No later than 18 months after the department prepares and
15 transmits the report as required pursuant to subsection c. of section
16 6 of P.L.2007, c.112 (C.26:2C-42), the department shall adopt,
17 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.), rules and regulations establishing interim
19 benchmarks necessary to achieve the 2050 limit, and measures
20 necessary to achieve the 2050 limit and the established interim
21 benchmarks.

22 e. The department shall adopt rules and regulations as necessary
23 to meet the requirements of section 4 of P.L.2007, c.112 (26:2C-
24 40), including, but not limited to, rules and regulations that restrict
25 the sale and use of fossil fuel types or establish greenhouse gas
26 emissions limits from any stationary source of greenhouse gas
27 emissions. The rules and regulations shall include those authorized
28 pursuant to subsection c. of section 8 of P.L.1954, c.212 (C.26:2C-
29 8).

30 (cf: P.L.2019, c.197, s.3)

31

32 6. This act shall take effect immediately.

33

34

35

STATEMENT

36

37 This bill would amend the "Air Pollution Control Act (1954),"
38 P.L.1954, c.212 (C.26:2C-1 et seq.), and the "Global Warming
39 Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), to authorize the
40 Department of Environmental Protection (DEP) to adopt rules and
41 regulations limiting greenhouse gas emissions.

42 Specifically, the bill would expand the authority given to the
43 DEP to regulate air pollution in the State to also include "excess
44 greenhouse gas emissions," which is defined by the bill to mean
45 "Statewide greenhouse gas emissions which exceed those of the
46 limits established in section 4 of P.L.2007, c.112 (26:2C-40) or the
47 interim benchmarks adopted pursuant to section 5 of P.L.2007,
48 c.112 (C.26:2C-41)." "Greenhouse gas" is defined by the bill to

1 mean carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
2 perfluorocarbons, sulfur hexafluoride, and any other gas or
3 substance determined by the DEP to be a significant contributor to
4 the problem of global warming. The bill would also direct the DEP
5 to adopt rules and regulations, no later than 24 months after the
6 bill's enactment, which incorporate greenhouse gas emissions limits
7 into the DEP's operating permit requirements adopted pursuant to
8 "Air Pollution Control Act (1954)," and include any other
9 restrictions on greenhouse gas emissions deemed by the DEP to be
10 necessary for the State to meet the requirements of the "Global
11 Warming Response Act."

12 In addition, the bill would require the DEP to adopt rules and
13 regulations as necessary to meet the requirements of the "Global
14 Warming Response Act," including, but not limited to, rules and
15 regulations that restrict the sale and use of fossil fuel types or
16 establish greenhouse gas emissions limits from stationary sources.