

**7:1K-10.8 Hearing before disclosure of information for which a confidentiality claim has been made**

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:1K-12.3.

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:1K-12.3(b);
2. The Department receives the request after disclosure of the assertedly confidential information occurs; or
3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure.

(c) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:1K.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless the Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential or assertedly confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) The Department shall maintain a record of all persons obtaining access to confidential or assertedly confidential information, including the date and time of, and the reasons for, the access.

(e) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential or assertedly confidential information, shall contain indicators identifying the confidential or assertedly confidential information.

(f) Every Department employee, representative, and contractor who has custody or possession of confidential or assertedly confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(g) Department employees, representatives and contractors are prohibited from duplicating confidential or assertedly confidential information.

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**SUBCHAPTER 11. TREATMENT OF  
CONFIDENTIAL AND ASSERTEDLY  
CONFIDENTIAL INFORMATION**

**7:1K-11.1 Nondisclosure of confidential or assertedly confidential information**

Unless specifically required by any Federal or State law, statute, administrative rule, regulation, order, court order, or applicable court rule, the Department shall not disclose confidential or assertedly confidential information to any person other than as provided in N.J.A.C. 7:1K-10.

**7:1K-11.2 Safeguarding of confidential or assertedly confidential information**

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

**7:1K-11.3 Confidentiality agreements**

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

**7:1K-11.4 Wrongful access or disclosure; penalties**

(a) No person shall disclose, obtain or have possession of any confidential or assertedly confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential or assertedly confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a

contractor discloses confidential or assertedly confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or
2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) In addition to any other penalty that may be sought by the Department, any officer or employee of the State or contractor of the State who has access to any confidential or assertedly confidential information, and who willingly and knowingly discloses the confidential or assertedly confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

## SUBCHAPTER 12. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

### 7:1K-12.1 Authority, scope and purpose

(a) This subchapter governs the Department's issuance of administrative orders and the assessment and settlement of civil administrative penalties for violations of the Act. In particular, this subchapter establishes ranges of civil administrative penalties for violations of similar type, seriousness, and duration, as required by N.J.S.A. 13:1D-49(d). This subchapter also sets forth the procedures for persons requesting an adjudicatory hearing on an administrative order, notice of civil administrative penalty assessment or confidentiality determination issued under the Act or this chapter.

(b) The Department may assess a civil administrative penalty of not more than \$15,000 for each violation of the Act.

(c) Each day during which a violation of the Act continues constitutes an additional, separate, and distinct offense.

(d) Neither the issuance of an administrative order, the assessment of a civil administrative penalty, nor the payment of any civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by the Act, or any other statute or administrative regulation, in connection with the violation of the Act for which the order is issued or the assessment is levied.

### 7:1K-12.2 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for a violation of the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. The administrative order and notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, administrative order, or permit violated;
2. Concisely state the facts that constitute the violation of the Act;
3. Specify the amount of the civil administrative penalty assessed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:1K-12.3.

(b) A notice of assessment of a civil administrative penalty may be issued separately or as part of an administrative order issued pursuant to N.J.S.A. 13:1D-49(b) requiring the alleged violator to take affirmative action to comply with the Pollution Prevention Act or a rule or regulation issued pursuant to the Act.

(c) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a notice of civil administrative penalty assessment becomes a Final Order, as follows:

1. If an adjudicatory hearing is not requested pursuant to the procedures in N.J.A.C. 7:1K-12.3, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If an adjudicatory hearing is requested pursuant to the procedures in N.J.A.C. 7:1K-12.3 but the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or