

**CHAPTER 31  
TOXIC CATASTROPHE PREVENTION  
ACT PROGRAM**

**Authority**

N.J.S.A. 13:1B-3, 13:1K-19 et seq., 13:1D-9, and 26:2C-1 et seq.

**Source and Effective Date**

R.1998 d.355, effective June 18, 1998.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 31, Toxic Catastrophe Prevention Act Program, expires on December 15, 2003. See: 35 N.J.R. 935(a).

**Chapter Historical Note**

Chapter 31, Toxic Catastrophe Prevention Act Program, except Subchapter 5, was adopted as R.1988 d.272, effective June 20, 1988 (operative July 21, 1988). See: 19 N.J.R. 1687(a), 20 N.J.R. 1356(a). Subchapter 5, Confidentiality and Trade Secrets, was adopted as R.1988 d.378, effective August 1, 1988. See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

Pursuant to Executive Order No. 66(1978), Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.1993 d.358, effective June 18, 1993. See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.1998 d.355, effective June 18, 1998. A new Subchapter 2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new Subchapter 6, Extraordinarily Hazardous Substances, was adopted, with N.J.A.C. 7:31-6.3 recodified from former N.J.A.C. 7:31-2.3, and former Subchapter 6, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was recodified as Subchapter 11; Subchapter 7, Risk Management Plan and TCPA Program Submission, was adopted, with N.J.A.C. 7:31-7.4 recodified from former N.J.A.C. 7:31-2.8; Subchapter 8, Other Federal Requirements, was adopted, with N.J.A.C. 7:31-8.2 recodified from former N.J.A.C. 7:31-2.12; Subchapter 9, Work Plan/EHSARA, was adopted; and former Appendices I and II were repealed by R.1998 d.355, effective July 20, 1998. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart A, including all future amendments and supplements except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR Part 68 Subpart A are not incorporated by reference: 40 CFR 68.2, Stayed provisions; 40 CFR 68.10(b), Applicability; and 40 CFR 68.12(b), General requirements.

(c) The following provisions of 40 CFR 68 Subpart A are incorporated by reference with the specified changes:

1. 40 CFR 68.1, Scope:
  - i. In the first and second sentences, delete the word "part" and replace with "chapter."
  - ii. Delete the phrase, "the petition process for adding or deleting substances to the list of regulated substances" and replace with the word "and".
  - iii. Delete the phrase, "and the state accidental release prevention programs approved under section 112(r)."

iv. Delete the sentence, "The list of substances, threshold quantities and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)1."

2. 40 CFR 68.3, Definitions:

i. At the definition of "covered process," delete "a regulated substance present in more than a threshold quantity as determined under § 68.115" and replace with "an EHS inventory that meets or exceeds the threshold quantity as determined under N.J.A.C. 7:31-6.3."

ii. At the definition of "process," add "at a facility" after "Process means any activity" and before "involving a regulated substance."

iii. At the definition of "threshold quantity," delete, "quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part." and replace with, "minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a covered process that determines whether or not an owner or operator must register under the program."

iv. At the definition of "regulated substance," delete "any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.", and replace with, "an EHS listed in Table I, Parts A, B, and C of N.J.A.C. 7:31-6.3."

3. 40 CFR 68.10, Applicability:

i. At 40 CFR 68.10(a), delete the phrase, "more than a threshold quantity" and replace with the phrase, "at least the threshold quantity", and delete the phrase, "as determined under 40 CFR 68.115" and replace with "as determined under N.J.A.C. 7:31-6" and at 40 CFR 68.10(a)(3) delete the phrase, "above a threshold quantity" and replace with "at a threshold quantity."

ii. At 40 CFR 68.10(a)1, delete the semicolon after "June 21, 1999" and add the following, "for covered processes with EHSs listed in N.J.A.C. 7:31-6.3 in Table 1, Part B or Part C. For covered processes with EHSs listed in N.J.A.C. 7:31-6.3 Table 1 Part A, the obligation to comply with this chapter begins on the operative date of these rules, June 18, 1998; however, the schedule for risk management program implementation shall be in accordance with N.J.A.C. 7:31-7.5."

iii. After 40 CFR 68.10(a)(1)-(3), add another item, "For new covered processes, in accordance with the requirements at N.J.A.C. 7:31-3.4 (for Program 2 covered processes) or N.J.A.C. 7:31-4.11 (for Program 3 covered processes)."

iv. At 40 CFR 68.10(c), delete the words "either paragraph (b) or paragraph (d) of this section," and replace with "Program 3 eligibility requirements."

v. At 40 CFR 68.10(d), delete the phrase "if the process does not meet the requirements of paragraph (b) of this section, and".

4. 40 CFR 68.12, General requirements:

i. At 40 CFR 68.12(a), delete the word "part" and replace with "chapter," and add "with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2" after "68.150" and add "(b)" after "40 CFR 68.185."

ii. At 40 CFR 68.12(c), change the following:

(1) At 40 CFR 68.12(c), add "with changes specified at N.J.A.C. 7:31-1.1(c)3iv" after "§ 68.10(c)."

(2) At 40 CFR 68.12(c)(1), add "with changes specified at N.J.A.C. 7:31-1.1(c)5" after "§ 68.15."

(3) At 40 CFR 68.12(c)(2), delete the semicolon at the end of the sentence and add ", with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2."

(4) At 40 CFR 68.12(c)(3), insert the phrase "with changes specified at N.J.A.C. 7:31-3.1(c)1-8 and N.J.A.C. 7:31-3.2 through 3.4" after "68.60," and delete the semicolon at the end of the sentence and add "with changes specified at N.J.A.C. 7:31-4.1(c)1-22 and N.J.A.C. 7:31-4.2 through 4.11."

(5) At 40 CFR 68.12(c)(4), insert "with changes specified at N.J.A.C. 7:31-5.1(c)1-4 and N.J.A.C. 7:31-5.2" between "§ 68.95" and the semicolon.

iii. At 40 CFR 68.12(d), change the following:

(1) At 40 CFR 68.12(d), after "§ 68.10(d)" add "with changes specified at N.J.A.C. 7:31-1.1(c)3v."

(2) At 40 CFR 68.12(d)(1), add "with changes specified at N.J.A.C. 7:31-1.1(c)5" after "§ 68.15."

(3) At 40 CFR 68.12(d)2, delete the semicolon at the end of the sentence and add ", with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2."

(4) At 40 CFR 68.12(d)(3), delete the semicolon and add "with changes specified at N.J.A.C. 7:31-4.1(c)1-22 and N.J.A.C. 7:31-4.2 through 4.11."

(5) At 40 CFR 68.12(d)(4), insert "with changes specified at N.J.A.C. 7:31-5.1(c)1-4 and N.J.A.C. 7:31-5.2" after "of this part;".

5. At 40 CFR 68.15, Management, add the following:

i. The management system shall include a documentation plan which shall: (1) provide a means of identifying all documentation required by this chapter; and (2) describe how the owner or operator of a covered process will store, maintain and update all documentation required by this chapter.

ii. The management system shall provide a means for recording the daily quantity of each extraordinarily hazardous substance (EHS) contained in storage vessels and shipping containers.

Repeal and New Rule, R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Section was "Scope and applicability".

**7:31-1.2 Construction**

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

(b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30-1 et seq.

**7:31-1.3 Purpose**

(a) The general purpose of this chapter is to protect the public from catastrophic accidents from chemical releases of extraordinarily hazardous substances to the environment by anticipating the circumstances that could result in such releases and requiring precautionary and preemptive actions to prevent such releases.

(b) In order to achieve this general purpose, this chapter establishes:

1. The extraordinarily hazardous substance list which, among other things, is used to determine the facilities subject to the Toxic Catastrophe Prevention Act program;
2. The procedures to be followed by owners or operators subject to the program;
3. The minimum requirements for an acceptable risk management program;
4. The requirements for an extraordinarily hazardous substance risk reduction work plan and accident risk assessment;
5. The criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment;
6. Fees for the administration of the TCPA Program;
7. The requirements for emergency response plans;
8. The reporting requirements for owners and operators subject to the Toxic Catastrophe Prevention Act Program;
9. Administrative penalties for those facilities which violate the Act, this chapter or any order or consent agreement issued pursuant thereto; and

10. The incorporation by reference of specified provisions of the Federal Chemical Accident Prevention Provisions at 40 CFR Part 68.

Amended by R.1998 d.355, effective July 20, 1998.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).  
In (b), added 10.

#### 7:31-1.4 Incorporation by reference of the Code of Federal Regulations

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (CFR) is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, publications and all future amendments and supplements are also incorporated by reference.

(b) When a provision of 40 CFR Part 68 is incorporated by reference, all internal references contained therein are also incorporated by reference for the purposes of that provision, unless otherwise noted. Each internal reference to 40 CFR Part 68 shall be interpreted to include, in addition to the Federal citation, any changes or deletions to that citation by the corresponding State subchapter. For example, all references within the CFR to 40 CFR Part 68 shall include the changes, additions and deletions which N.J.A.C. 7:31 makes to 40 CFR Part 68.

(c) Provisions of the CFR which are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation which was specifically entirely excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference.

(d) Federal statutes and regulations that are cited in 40 CFR Part 68 that are not specifically adopted by reference shall be used to assist in interpreting the Federal regulations in 40 CFR Part 68.

(e) In the event that there are inconsistencies or duplications in requirements in the provisions incorporated by reference from 40 CFR Part 68 and the rules set forth in this chapter, the provisions incorporated by reference from 40 CFR Part 68 shall prevail, except where the rules set forth in this chapter are more stringent.

(f) Nothing in these provisions incorporated by reference from the CFR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Commissioner.

(g) Any future additional Subparts of 40 CFR Part 68 are incorporated by reference.

Repeal and New Rule, R.1998 d.355, effective July 20, 1998.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Section was "Program information".

#### 7:31-1.5 State definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Acute toxicity concentration" or "ATC" means a minimum lethal concentration which is greater than the Threshold Limit Value (TLV) or the Short Term Exposure Limit (STEL), as defined by the American Conference of Governmental Industrial Hygienists, and equivalent to the lowest of the following three categories: one-tenth of the median lethal concentration ( $LC_{50}$ ); or one times the lowest lethal concentration ( $LC_{L0}$ ) of test data for any mammalian species in test periods up to eight hours; or the Immediately Dangerous to Life and Health (IDLH) concentration.  $LC_{50}$ ,  $LC_{L0}$ , IDLH, TLV, and STEL have been defined by the U.S. Department of Health and Human Services in the "Registry of Toxic Effects of Chemical Substance" (RTECS) and the National Institute of Occupational Safety and Health (NIOSH) "Pocket Guide to Chemical Hazards".

"Agent of the Department" means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.

"ANSI" means the American National Standards Institute.

"Budget-expenditure variance" means the difference, either positive or negative, between the gross expenditures and the spending plan (budget) of the same fiscal year of the TCPA program. Where budget exceeds expenditures, this difference is positive.

"Change" means any modification in existing EHS equipment or procedures which are directly involved with an EHS, including additions or deletions. Change does not include routine maintenance, which means the repair or replacement in kind of existing EHS equipment to provide continuity of operation, or replacement with identical equipment.

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person delegated to act on his behalf.

"Confidential copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.

“Confidential information” means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the owner or operator or compromise the security of the covered process or its operations; consisting of non-privileged trade secret information, proprietary information and non-privileged security information.

“Confidentiality claim” or “claim” means a written request made by an owner or operator of a covered process pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.

“Consequence analysis” means the determination of the potential consequence of an EHS release on the surrounding population, using dispersion, thermal or overpressure analysis and, at a minimum, identifying potential populations exposed to the toxic, thermal or overpressure endpoint for each EHS.

“Department” means the New Jersey Department of Environmental Protection.

“Dispersion analysis” means the calculation, by means of EPA Offsite Consequence Analysis look-up tables or a model acceptable to the Department, of the ambient concentrations of an EHS after its release, taking into account the physical and chemical states and properties of the EHS, the release scenario and the geographical, topographical, geological and meteorological characteristics of the environment, which will influence the migration, movement, dispersion, or degradation of the EHS in the environment.

“EHS accident” means an unplanned, unforeseen or unintended incident, situation, condition, or set of circumstances which directly or indirectly results in an EHS release.

“EHS equipment” means that equipment within a covered process whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation, EHS release detection equipment, and EHS shipping container handling equipment.

“EHS operator” means an employee who is directly involved with an EHS and qualified and trained in the operations of EHS equipment or procedures.

“EHS procedure” means a step of an operation involving an EHS, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

“EHS release” means a discharge or emission of an EHS into the environment, excluding discharges or emissions occurring pursuant to and in compliance with the conditions of any State permit or a regulation promulgated pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

“EHS service” means the handling, use, manufacture, storage or generation of an EHS.

“Electrical classification” means the electrical area or bubble classification according to the National Electrical Code (NEC) which provides the NEC group number of the flammable or combustible substance(s) handled, stored or used. The NEC may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322.

“Electrical one-line diagram” means a diagram including legend of the electrical power distribution system that could contribute to an EHS release showing such items as power consumers, the chain of supply back through starters, distribution centers, substations to the main feeder, emergency power supply, and connections to various components. For complex systems, the one-line diagram may be a group of drawings.

“Emergency condition” means any situation at a covered process during which an EHS release is in progress or will occur because no preventive measures would be effective.

“Employee” means any person allowed or permitted to work by an owner or operator of a covered process, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the owner or operator of a covered process.

“External forces and events” means forces of nature or sabotage or such events as neighboring fires or explosions, neighboring EHS releases, electric power failures, and intrusions of external transportation vehicles such as aircraft, ships, trucks or automobiles.

“Extraordinarily hazardous accident risk” means a potential for an EHS release which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability.

“Extraordinarily hazardous substance accident risk assessment” or “EHSARA” means a review and safety evaluation of those operations at a covered process which involve the generation, storage, or handling of an extraordinarily hazardous substance.

"Extraordinarily hazardous substance" or "EHS" means any substance or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-6.3.

"Extraordinarily Hazardous Substance List" means the list of substances and chemical compounds set forth in Table I of N.J.A.C. 7:31-6.3.

"Extraordinarily Hazardous Substance Risk Reduction Work Plan" or "work plan" means the document developed by the Department for each covered process at which is generated, stored, or handled an extraordinarily hazardous substance, setting forth the scope and detail of the EH-SARA to which the covered process will be submitted.

"Facility" means a building, equipment, and contiguous area which embodies a process. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person. Facility shall include pilot plant scale operations.

"Failure mode and effects analysis" or "FMEA" means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and the effect of the failure on the system with respect to an EHS release. The failure and effects are determined in a study of updated piping and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned. The results of the FMEA are reported for a unit or system of a covered process on an FMEA table. The results entered on an FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

"Fault tree analysis" or "FTA" means the analysis of the logic diagram constructed from a study of the updated piping and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release. The combinations are determined by solving the fault tree logic diagram for the minimal cut sets, that is, the smallest combination of equipment or procedural failures, which if all occur, will result in the "top event", that is the EHS release. The table is also entered with a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. The analysis of the logic diagram includes the identification of "minimal cut sets." When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability or frequency of occurrence of the EHS release.

"Fire water system piping diagram" means one or more diagrams relevant to the covered process and its potential releases showing that portion of the site plan that includes fire water pumps and piped distribution system showing the location of branches for fire monitors, fire hydrants, sprinklers and deluge systems and, where available, the sizes and designation numbers of header and subheader piping and piping specifications.

"Hazard analysis" means a systematic identification of the potential conditions that may result in an EHS accident.

“Hazard and operability study” or “HAZOP” means a systematic study of updated piping and instrument diagrams that describes the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The study is performed by a multidisciplinary team to identify hazard or operability problems that would result in an EHS accident. Deviations from the design value of key parameters (flow, temperature, composition, time, quantity, etc.) of each segment of the covered process and its procedures are studied using guide words (such as, more of, less of, none of, part of, more than and other) to control the examination and evaluation. Results of the HAZOP study shall be reported by tabulation for a unit by key equipment, such as vessels or pipelines, and process parameter. The results are entered on the table as follows: guide word, causes of the deviation, consequences of the deviation in terms of a potential EHS release, the criticality based on the quantity or rate of potential release and the suggested action in terms of equipment or procedure to mitigate the deviation.

“Hazard unit” means the measure of inventory of an EHS expressed as multiples of its threshold quantity, used in calculating TCPA fees.

“Inventory” means the EHS quantity contained in a process or the quantity of EHS generated within one hour by the process, whichever is greater.

“Management system” means the composite of organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing, evaluating and maintaining the required Risk Management Program.

“Material deficiency” means the failure of an owner’s or operator’s risk management program to meet each of the requirements of N.J.A.C. 7:31-3 or 4.

“Operating alternative” means an alternative procedure, schedule or process chemistry or a combination thereof.

“Overpressure analysis” means the computation of the distance that a criterion level of overpressure extends from the center of an explosion due to a release/ignition scenario of a flammable substance.

“Person” means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.

“Petition to withhold privileged trade secret or security information” or “petition” means a written request made by an owner or operator of a covered process pursuant to this

chapter to withhold from disclosure to the Department certain information which is privileged trade secret or security information.

“Petitioner” means any person who submits a petition to withhold privileged trade secret or security information under this chapter.

“Piping and instrument diagram” or “P & ID” means one or more detailed diagrams including legends and citations of referenced documents, showing: every item of EHS equipment and its identification number (including installed spare equipment); every pipe including size, flow direction, identification number and indication of ANSI piping specification and break between piping specifications; symbols and identification of every instrument including instrument function to show trips and interlocks represented in accordance with Instrument Society of America standards or a standard adequate for the conduct of a safety review or hazard analysis with an appropriate symbol legend shown; every valve; the failsafe position of control valves or non-hand operated valves in the case of instrument air or power failure; steam traps; representation of insulation or heat tracing of piping, EHS equipment and instruments; sizes of all important equipment nozzles with location shown schematically to reflect function and elevation, such as, drains, vents, flushing connections and steam connections; references to inter-facing with other diagrams describing process, service, treatment, disposal, or utility systems; data on type, size, and set pressures of every relief valve and relieving device; instruments to monitor early detection of abnormal conditions or an EHS release; where critical, the relative elevations between equipment and of key piping; notes or symbols on such items as slope of critical piping to avoid pockets, or, where critical, symmetrical piping; notes on each item of EHS equipment, such as, material of construction, design temperature, design pressure, design thermal duty of heat exchangers, design capacity and dynamic head of rotating equipment, etc.

“Potential catastrophic event” means an incident that could have reasonably resulted in a catastrophic release of an EHS.

“Privileged trade secret or security information” means trade secret or security information which the Department has determined the owner or operator of a covered process is entitled to withhold from and not disclose to the Department; consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or state law or regulation, and which has never been released to any person other than the owner’s or operator’s employees involved in its use.

“Process chemistry” means the chemical reactions which are relevant to possible scenarios of EHS release, including information on raw materials, intermediates, products, and waste products.

“Process flow diagram” means one or more diagrams of a covered process including legends and citations of referenced documents showing the use, generation, storage or handling of an EHS, items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. A process flow diagram includes, or references, a block flow diagram that depicts the receipt, handling and storage steps at the stationary source of shipping containers of the EHS.

“Public copy” means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.

“Qualified person or position” means the member of management who has the overall responsibility for the development, implementation and integration of the risk management program elements for the stationary source and who shall possess sufficient corporate authority and technical background to adjudicate issues relating to the execution of the risk management program based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

“Registered EHS” means an EHS which is handled, used, manufactured or stored, or is capable of being generated within one hour, at a covered process in a quantity equal to or greater than the threshold quantity for that EHS in Table I of N.J.A.C. 7:31-6.3.

“Reliability study” means the determination of the probability of a piece of EHS equipment performing its required function in the desired manner under all relevant conditions and on the occasion or during the time intervals when it is required to so perform. It includes the analysis of the failure of EHS equipment to perform its normal required function.

“Risk assessment section” means all Department personnel engaged in the following activities concerning the review of risk management programs developed by owners and operators to ensure their compliance with TCPA: detailed review of the risk management programs; creation and implementation of work plans; review of submittals to construct and operate new EHS covered processes; and periodic inspections and audits of risk management programs.

“Risk management program” means the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks, including, but not limited to, requirements for safety review of design for new and existing equipment, requirements for standard operating procedures, requirements for preventive maintenance programs, requirements for operator training and accident investigation procedures, requirements for risk assessment for specific pieces of equipment or operating alternatives, requirements for emergency response planning, and internal or external audit procedures to ensure programs are being executed as planned.

“Risk reduction plan” means the plan developed as a result of a hazard analysis, risk assessment or EHSARA which identifies the risk reduction measures, recommends corrective actions, and provides for scheduling and implementation of remedial actions.

“Security information” means information the release of which could either compromise the physical security of the covered process or its operations, or adversely affect national security.

“Sewer system piping diagram” means one or more diagrams relevant to the covered process and its potential releases showing those portions of the site plan that include the chemical sewers, sanitary sewers and storm water sewers drainage systems in the covered process or the adjoining areas.

“Site plan” means a diagram of the stationary source showing exact locations to scale of all units or areas, warehouses, buildings, roads, access ways, walkways, parking areas, fences, gates and property lines plus the covered process.

“Standard operating procedures” or “SOP” means the documents setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the covered process.

“Stationary source emergency response team” means those personnel identified in the emergency response plan that respond to an emergency at the stationary source which involves an EHS. Functions for which the stationary source emergency response team shall be responsible include activities such as alarm identification and response, response to an EHS release, use of emergency protective equipment, rescue procedures, evacuation procedures, medical assistance, action plans for dealing with specific scenarios, and specifically assigned emergency response duties. Owners or operators of a covered process may arrange with outside providers for any portion of these functions as needed.

“Substantiation” means the written submittal on a Department provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.

“Tabletop exercise” means an activity in which the participants are gathered informally to describe actions to be taken to respond to a pre-planned simulated EHS release scenario based upon the emergency response plan as if it were an actual release, to include documents relevant to the EHS release scenario such as site plans, equipment arrangement plans and local street maps referenced by the participants during the exercise.

“TCPA” means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

“TCPA program operating expense” means the cost for normal TCPA program operating items such as postage, telephone, travel supplies and data management systems.

“Thermal analysis” means the computation of the distance from the center of a fireball that a criterion thermal radiation dose extends subsequent to specific release/ignition scenarios of a flammable substance.

“Total spending plan of the TCPA program” means the total annual estimated cost of operating the TCPA program approved by the Department for the fiscal year beginning July 1.

“Trade secret” means information concerning a formula, process, device or compilation which an owner or operator of a covered process uses to gain a business advantage over competitors who do not know or use it.

“What if Checklist” means a method of hazard analysis based on a systematic study of updated piping and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The study is composed of a comprehensive list of questions prepared in advance from study of the documents by team members either in conference or independently usually corresponding to their individual background. Results of the study shall be reported for a unit on a table. The results are entered on the table as follows: the “what if” question and its corresponding consequence/hazard, the criticality based on the quantity or rate of the potential release and the recommended action in terms of equipment or procedure to mitigate the consequence/hazard.

Administrative Correction.

See: 20 N.J.R. 1743(c).

Amended by R.1988 d.378, effective August 1, 1988.

See: 20 N.J.R. 350(a), 20 N.J.R. 1913(a).

Added definitions.

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

### 7:31-1.6 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

### 7:31-1.7 Practice where these rules do not govern

The Department may rescind, amend or expand these rules from time to time, and such rules shall be filed with the Office of Administrative Law as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In any matter concerning chemical accident prevention that arises not governed by these rules, the Department shall exercise its discretion within the authority of N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., 26:2C-1 et seq. and all other legislatively conferred powers.

New Rule, R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

### 7:31-1.8 Document availability

(a) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference are available for review. Publications incorporated by reference within the Code of Federal Regulations are also available for review. These may be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection

Division of Waste Compliance and Enforcement  
and Release Prevention

PO Box 424

Trenton, NJ 08625-0424

Telephone: (609) 633-7289

(b) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference may be purchased from the following sources:

U.S. Government Printing Office

Superintendent of Documents

Mail Stop: SCOP

Washington, DC 20402-9328

U.S. Government Printing Office Bookstore

Room 110, 26 Federal Plaza

New York, NY 10278-0081

U.S. Government Printing Office Bookstore

Robert Morris Building

100 North 17th Street

Philadelphia, PA 19103

(c) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference herein are also available for review at the following public libraries:

New Jersey State Library  
 PO Box 520, 185 West State Street  
 Trenton, NJ 08625-0520  
 Newark Public Library  
 5 Washington Street  
 Newark, NJ 07101

New Rule, R.1998 d.355, effective July 20, 1998.  
 See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

### 7:31-1.9 Prohibitions

(a) No owner or operator of a covered process shall handle, use, manufacture, generate or store an EHS, except in a manner which complies with the TCPA, this chapter, and the approved risk management program.

(b) No owner or operator of a stationary source for which there is no previously approved risk management program shall construct a new covered process or utilize an existing process for a new EHS service unless the owner or operator has complied with N.J.A.C. 7:31-3.4 (Program 2) or N.J.A.C. 7:31-4.11 (Program 3).

(c) No owner or operator of a newly constructed covered process or an existing process being utilized for a new EHS service covered process at a stationary source for which there is no previously approved risk management program shall begin operating that covered process until the Department and the owner or operator have executed a consent agreement containing an approved risk management program.

(d) No owner or operator of a stationary source with an approved risk management program shall operate a new process or utilize an existing covered process for a new EHS service before submitting to the Department the documentation required by N.J.A.C. 7:31-3.4(c) or (d) (Program 2) or N.J.A.C. 7:31-4.11(c) or (d) (Program 3), and the fee required by N.J.A.C. 7:31-1.11. The owner or operator shall not operate the new covered process before executing a consent agreement to update the approved risk management program for the new covered process.

(e) No owner or operator of a covered process shall fail to provide the Department with any information required to be submitted to the Department pursuant to the TCPA or this chapter.

New Rule, R.1998 d.355, effective July 20, 1998.  
 See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

### 7:31-1.10 Prevention of catastrophic accidents

(a) The Department may take such actions as it deems necessary in order to protect human health from an EHS release. Such actions may include, but shall not be limited to, issuing such orders as may be necessary to protect the health of persons who may be subject to such a release.

(b) The Department may include in the orders, at its discretion, the following:

1. A requirement that the owner or operator immediately submit a risk management program to the Department for review;

2. A requirement that the owner or operator perform a safety review, hazard analysis or risk assessment;

3. A requirement that the owner or operator immediately take risk reduction actions or implement a risk reduction plan;

4. A requirement that the owner or operator cease operating until the identified risk or risks have been abated; or

5. Any other requirement the Department determines is necessary to carry out the purposes of the TCPA or this chapter.

(c) When the Department issues an order or takes other appropriate action pursuant to this section, such order or action shall not be deemed to affect the availability of, or preclude the use of, any other enforcement provision.

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Recodified from N.J.A.C. 7:31-2.13 and amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

In (b), deleted references to registrants throughout.

### 7:31-1.11 Fees (effective until June 21, 1999)

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-7.1 shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (b), (c) and (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) The Department shall assess annual fees that include a base fee, a facility derived fee, and an inventory derived fee. The base fee unit rate and the facility derived fee unit rate shall be calculated using the data from the TCPA data base as of October 1 of the current year.

(c) The Department shall annually determine during the month of December the base fee and the facility derived fee unit rates, taking the steps in (c)1 through 8 below. The Department shall:

1. Establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which registrants shall be charged fees based on the following data:

i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;

- ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
  - iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;
  - iv. The estimated TCPA program operating expenses; and
  - v. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the TCPA program;
2. Subtract a positive difference or add a negative difference of the "budget-expenditure variance" of the spending plan for the TCPA program of prior fiscal year, determined by the Department as of October 1 of the current fiscal year, from the amount of money required to fund the TCPA program determined in (c)1 above to determine the net money required;
  3. Project the total amount to be contributed by the inventory derived fee to the aggregate fee of each registrant. This projection shall be based on the following data and steps:
    - i. Determine the sum of hazard units at all sites or systems registered as of October 1 of the current fiscal year; and
    - ii. Multiply the sum of hazard units by the inventory derived fee unit rate specified at (l)3 below;
  4. Subtract the contribution of the inventory derived fee determined in (c)3 above from the net money required as determined in (c)2 above to determine the sum of base fee plus facility derived fee contribution needed;
  5. Determine the facility derived fee contribution based on the following data and steps:
    - i. Determine the number of facilities in EHS service registered as of October 1 of the current fiscal year; and
    - ii. Calculate the facility derived fee rate which equals the sum of salaries plus fringe of the Risk Assessment Section staff plus the percent of the TCPA program operating expenses assigned to that staff divided by the number of facilities;
  6. Subtract the contribution of the facility derived fee determined in (c)5ii above from the remainder from (c)4 above to determine the base fee contribution needed;
  7. Determine the base fee unit rate by dividing the base fee contribution needed from (c)6 above by the total number of registrants; and
  8. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted facility-derived and base fee unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.
    - (d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (b), (c) and (i) through (m) below in accordance with the bill received from the Department.
    - (e) Each registrant registering a new EHS facility or increasing the EHS inventory or both at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, in accordance with the bill received from the Department.
    - (f) The annual fees are assessed on the basis of the calendar year and shall not be prorated or refunded.
    - (g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.
      1. This bill shall include the base fee and additional fees calculated based on data from the registrant's registration form on file with the Department as of the previous October 1—the number of facilities reported in Section E, or determined by the Department, and the inventory reported in Section D.
      - (h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee. The check or money order shall be submitted in accordance with the remittance information contained on the bill.
      - (i) For the purpose of calculating fees, "inventory" as used in (j), (k), (l) and (m) below means the maximum

quantity for each EHS reported by the registrant on Section D of the registration form it submitted to the Department as part of its initial registration and its subsequent annual report in compliance with N.J.A.C. 7:31-7.1, 4.9 and 3.3.

(j) Each owner or operator of a registered water treatment system or a registered wastewater treatment system or both shall pay annually for those systems a base fee plus a facility derived fee for one facility plus an EHS inventory derived fee.

(k) (Reserved)

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1. The inventory of each EHS is divided by the registration quantity for that EHS as set forth in Table I in N.J.A.C. 7:31-6.3;

2. The number resulting from the division required by (l)1 above is the number of hazard units for that EHS;

3. The number of hazard units for each EHS is multiplied by \$10.00 per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of the facility derived fee for each facility and the sum of each EHS inventory derived fee except as provided at (j) above, and (n) and (o) below.

(n) The annual fee for each registrant that does not have to comply with N.J.A.C. 7:31-3 for the site, subsequent to the granting of an exemption pursuant to N.J.A.C. 7:31-2.19, shall be 25 percent of the regular base fee.

(o) The annual fee for each registrant who has temporarily discontinued use, handling, storage or generation of the particular EHS at the site and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-4.10 shall be 25 percent of the base fee.

(p) An owner who has leased portions of a site to one or more than one facility operator shall pay an annual fee separately or jointly with the facility operator(s) or, alternatively, the operator(s) shall pay an annual fee. The fee shall be the sum of the base fee for the site and the facility derived fee for each facility and the sum of each EHS inventory derived fee for each facility except for (n) above.

(q) Each registrant submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-10.5(d) shall submit a fee of \$350.00 for the review of its claim at the time it submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated on the bill.

(r) Each registrant submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-10.6 shall submit a fee of \$350.00 for the review of its petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated on the bill.

(s) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(t) For the purposes of this section, the following definitions shall apply:

“Facility” means a building, equipment, and contiguous area covered by a process flow diagram and standard operating procedures, and under common area management. EHSs in a contiguous process flow under common area management shall be viewed as in a single facility. EHSs in a noncontiguous process flow shall be viewed as in separate facilities. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

“Registrant” means an owner or operator of a site who has registered one or more facilities in EHS service at that site with the Department pursuant to the Act or this chapter.

“Site” means the entire plot of contiguous land upon which the registrant operates or locates one or more facilities.

“Wastewater treatment system” means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage, pumping and discharge facilities under control of the operator of such system and used primarily in connection with such system.

“Water treatment system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, pumping or distribution facilities under control of the operator of such system and used primarily in connection with such system.

(u) Subsections (a) through (t) above shall be effective until June 21, 1999. On and after June 21, 1999, fees assessed pursuant to this chapter shall be calculated in accordance with the provisions of N.J.A.C. 7:31-1.11A.

Correction: Deleted “State’s” from (f).

See: 20 N.J.R. 1743(c).

Amended by R.1988 d.378, effective August 1, 1988.

See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

Added (n).

Amended by R.1991 d.463, effective September 3, 1991.

See: 23 N.J.R. 818(a), 23 N.J.R. 2780(a).

In (a), added references to N.J.A.C. 7:31-2.5, "(i) through (m) below" for computation of fees and "(f) through (h) below" for billing and remittance. Deleted texts of (b) and (c); Reserved. In (d), deleted reference to (b) and (c); deleted "with the registration forms"; added "in accordance with the bill received from the Department". In (e), deleted "with the amended registration forms"; added "in accordance with the bill received from the Department". In (g), deleted references to calendar year 1988 and (f). In (h), added "Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee." In (j), the words "or" and "or both" replaced "and" as a clarification of what the fee applies to and the fee was revised to "\$6,500". In (k), fee revised to "\$6,500". In (l)3, revised inventory derived fee. In (m), added "except for (n) below". Added (n). Recodified existing (n) and (o) as (o) and (p).

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Public Notice: Annual TCPA Fee Schedule Report, FY 1995.

See: 26 N.J.R. 5116(a).

Public Notice: Annual TCPA Fee Schedule Report, FY 1996.

See: 27 N.J.R. 5055(a).

Public Notice: Annual TCPA Fee Schedule Report, FY 1997.

See: 28 N.J.R. 5499(b).

Public Notice: Annual TCPA Fee Schedule Report, FY 1998.

See: 29 N.J.R. 5334(c).

Recodified from N.J.A.C. 7:31-2.16 and amended by R.1998 d.355, effective July 20, 1998 (to expire June 21, 1999).

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

In (a), (i), (l) and (o), changed N.J.A.C. references; in (h), substituted "in accordance with the remittance information contained on the bill" for an address at the end; in (q) and (r), changed N.J.A.C. references, and substituted "on the bill" for "in N.J.A.C. 7:31-2.16(h)" at the end of each; and added (s) through (u).

Public Notice: Annual TCPA Fee Schedule Report, FY 1999.

See: 30 N.J.R. 4478(b).

### 7:31-1.11A Fees (effective on June 21, 1999)

(a) After June 21, 1999, each owner or operator of a stationary source subject to this chapter shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (b), (c) and (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) The Department shall assess annual fees that include a base fee, a covered process derived fee, and an inventory derived fee. The base fee unit rate, covered process derived fee unit rate, and inventory derived fee unit rate shall be calculated using the data from the TCPA database as of October 1 of the current year.

(c) The Department shall annually determine during the month of December the base fee and the covered process and inventory derived fee unit rates, taking the following steps:

1. Establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which owners or operators shall be charged fees based on the following data:

i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;

ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

iv. The estimated TCPA program operating expenses; and

v. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the TCPA program;

2. Subtract a positive difference or add a negative difference of the "budget-expenditure variance" of the spending plan for the TCPA program of the prior fiscal year, determined by the Department as of October 1 of the current fiscal year, from the amount of money required to fund the TCPA program determined in (c)1 above to determine the net money required;

3. Project the total amount to be contributed by the inventory derived fee to the aggregate fee of each owner or operator. This projection shall be based on the following data and steps:

i. Determine the sum of hazard units at all covered processes registered as of October 1 of the fiscal year during which the determination is made; and

ii. Determine the contribution of the aggregate inventory fees to be collected as 40 percent of the net money required as determined at (c)2 above; and

iii. Determine the value of the unit inventory derived fee in dollars per hazard unit by dividing (c)3ii above by (c)3i above;

4. Determine the total amount to be contributed by the covered process derived fee to the aggregate fee of each owner or operator of a covered process. The determination shall be based on the following data and steps:

i. Determine the number of covered processes as of October 1 of the fiscal year during which the determination is made;

- ii. Determine the contribution of the aggregate covered process fees to be collected as 40 percent of the net money required as determined at (c)2 above; and
- iii. Determine the value of the unit covered process derived fee in dollars per covered process by dividing (c)4ii above by (c)4i above;
5. Determine the total amount to be contributed by the base fee to the aggregate fee of each owner or operator. The determination shall be based on the following data and steps:
- i. Determine the total number of stationary sources as of October 1 of the fiscal year during which the determination is made;
- ii. Determine the contribution of the aggregate base fee to be collected as 20 percent of the net money required as determined at (c)2 above; and
- iii. Determine the value of the base fee in dollars per owner or operator by dividing (c)5ii above by (c)5i above; and
6. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted base fee, covered process derived, and inventory derived unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.
- (d) An owner or operator of a new covered process with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (b), (c) and (i) through (m) below in accordance with the bill received from the Department.
- (e) An owner or operator having previously registered EHSs who is registering a new covered process or increasing the EHS inventory shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i) below, in accordance with the bill received from the Department.
- (f) The annual fees are assessed on the basis of the fiscal year and shall not be prorated or refunded.
- (g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each owner or operator a bill for each stationary source stating the fee for that calendar year.
1. This bill shall include the base fee and fees calculated using inventory and covered process data from the owner or operator's registration form on file with the Department as of the previous October 1.
- (h) The owner or operator shall pay his or her fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any owner or operator who has not paid the annual fee by the due date shall be assessed a 25 percent late fee. The check or money order shall be submitted in accordance with the remittance information contained on the bill.
- (i) For the purpose of calculating fees, "inventory" as used in this section means the maximum quantity for each EHS reported by the owner or operator of a covered process on the registration form submitted to the Department in accordance with N.J.A.C. 7:31-7.
- (j)-(l) (Reserved)
- (m) The annual fee for the owner or operator of a stationary source shall be the sum of the base fee and the sum of the covered process derived fee for each covered process and the sum of each EHS inventory derived fee except as provided at (o) and (p) below.
- (n) (Reserved)
- (o) The annual fee for an owner or operator who has temporarily discontinued use, handling, storage or generation of all EHSs at the stationary source and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-4.10 (for the Program 3 covered processes) shall be 25 percent of the base fee.
- (p) The annual fee for an owner or operator who obtained or has temporarily discontinuance in accordance with N.J.A.C. 7:31-4.10 for one or more EHSs, but has retained other registered EHSs at the stationary source, shall be the full base fee and the covered process and inventory fees for the registered EHSs.
- (q) Each owner or operator submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-10.5(d) shall submit a fee of \$350.00 for the review of the claim at the time he or she submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-1.11(h).
- (r) Each owner or operator submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-10.6 shall submit a fee of \$350.00 for the review of his or her petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-1.11(h).
- (s) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

New Rule, R.1998 d.355, effective June 21, 1999.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report  
for fiscal year 2000.

See: 31 N.J.R. 4342(a).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report  
for fiscal year 2001.

See: 32 N.J.R. 4478(c).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report  
for fiscal year 2002.

See: 34 N.J.R. 311(b).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report  
for fiscal year 2003.

See: 34 N.J.R. 4475(a).

**7:31-1.12 Release of information by insurance carriers**

(a) After a review of documents and a stationary source inspection, the Department may determine that an owner or operator shall authorize its environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the owner or operator's EHS management practices.

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;
2. Reports of safety and environmental inspections or audits;
3. Reports of inspections of fire protection equipment;
4. Reports of any additional studies conducted which evaluated the adequacy of the owner or operator's management of EHSs; and
5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the owner or operator shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the owner or operator.

(e) The Department is authorized to disclose information obtained from an insurance carrier or its representative pursuant to this section only to its own employees or agents to assist in enforcing the provisions of the TCPA, or for use in a civil or criminal proceeding, if so ordered by a court.

New Rule, R.1988 d.378, effective August 1, 1988.  
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

The rule that was printed 6-20-88 had not been adopted and was printed in error. This section should have been (Reserved). See: 20 N.J.R. 1743(a).

Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Recodified from N.J.A.C. 7:31-2.15 and amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Substituted references to owners and operators for references to registrants throughout; and in (a), substituted a reference to stationary source inspection for a reference to site inspection.

**SUBCHAPTER 2. HAZARD ASSESSMENT****7:31-2.1 Incorporation by reference**

(a) This subchapter incorporates by reference 40 CFR Part 68 Subpart B, including all future amendments and supplements, except as provided in (b) below.

(b) The following provision of 40 CFR 68 Subpart B is not incorporated by reference: 40 CFR 68.25(a)(1).

(c) The following provisions of 40 CFR 68 Subpart B are incorporated by reference with the specified changes:

1. 40 CFR 68.20, in the first sentence, delete the word "part" and replace with "chapter."

2. 40 CFR 68.22(a)(1), after "in Appendix A of this part." add, "Toxic endpoints for Table I, Part A toxic substances not listed in Appendix A shall be determined in accordance with the criteria used by EPA in developing 40 CFR Part 68 Appendix A."

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**SUBCHAPTER 3. MINIMUM REQUIREMENTS  
FOR A PROGRAM 2 TCPA RISK  
MANAGEMENT PROGRAM**
**7:31-3.1 Incorporation by reference**

(a) This subchapter incorporates by reference 40 CFR 68 Subpart C, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions are incorporated by reference with the specified changes:

1. 40 CFR 68.48(a), Safety information, at the end add the following:

i. Simplified process flow diagrams and simplified piping and instrumentation diagrams.

2. 40 CFR 68.48(c), Safety information, delete the words "a major" and replace with the word "any" before the word "change."

3. 40 CFR 68.52, Operating procedures, beginning of heading, add the word "Standard."

4. 40 CFR 68.54, Training, beginning of heading, add "EHS operator" before "training."

5. 40 CFR 68.58(a), Compliance audits, after the first sentence, add, "Also, the owner or operator shall verify that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.48(a) and (b)."

6. 40 CFR 68.58(c), Compliance audits, after the first sentence add, "The compliance audit report shall also include the scope, audit techniques, methods used and the names of the audit participants."

7. 40 CFR 68.60(a), Incident investigation, delete the words "incident which resulted in, or could reasonably have resulted in, a catastrophic release" and replace with "EHS accident or potential catastrophic event."

8. 40 CFR 68.60(b), (c)(1), (c)(3) and (c)(4), Incident investigation, delete the word "incident" and replace with "EHS accident or potential catastrophic event."

### 7:31-3.2 Emergency response

The owner or operator of a Program 2 covered process shall comply with the emergency response requirements of N.J.A.C. 7:31-5.

### 7:31-3.3 Triennial reports

(a) The owner or operator shall submit a triennial report to the Department reflecting the risk management program activities for the 36 month period ending on the anniversary date within 90 days of the third anniversary date, and each subsequent third anniversary date. The anniversary date shall be the date of the signing of the initial consent agreement or the date of issuance of an administrative order by the Department designating the approval of the risk management program for the stationary source. The Department shall change the anniversary date upon receipt of a written request from the owner or operator provided the anniversary date has not been changed in the preceding 24 months.

(b) The triennial report shall contain:

1. An update, if applicable, of the supplemental TCPA program information as specified in N.J.A.C. 7:31-7.2(a)2;

2. A description of significant changes to the management system;

3. Documentation of the hazard review results as specified at 40 CFR 68.50(c) for each hazard review completed during the previous three years;

4. A summary of EHS accidents that occurred during the previous three years that includes a brief description of each EHS accident and the basic and contributory causes; and

5. The compliance audit report for the previous three years ending on the anniversary date prepared pursuant to N.J.A.C. 7:31-3.1(c)6.

(c) The first triennial report shall be submitted no later than September 21, 2002.

### 7:31-3.4 New covered processes—construction and new EHS service

(a) Owners or operators who plan to construct a new Program 2 covered process at a stationary source for which there is no previously approved risk management program shall:

1. Submit the documentation required at N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to construction of the covered process;

2. Proceed with construction of the new covered process only upon receiving written approval from the Department;

3. Submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service any updates of the documentation as required by (a)1; and

4. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(b) Owners or operators who plan to utilize existing equipment for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program shall:

1. Submit the documentation required at N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to placing the equipment into EHS service; and

2. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(c) Owners or operators who plan to construct a new Program 2 covered process or utilize existing equipment for a new Program 2 covered process at a stationary source that has a previously approved risk management program shall:

1. Update documentation in accordance with N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to the scheduled placing of the equipment into EHS service; and

2. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(d) Prior to placing equipment into EHS service the owner or operator of a covered process shall enter into a consent agreement, or consent agreement addendum, for that equipment with the Department, subsequent to a stationary source inspection by the Department, and complete any items of the consent agreement, or consent agreement addendum, for that equipment in accordance with the schedule in the consent agreement or consent agreement addendum.

## SUBCHAPTER 4. MINIMUM REQUIREMENTS FOR A PROGRAM 3 TCPA RISK MANAGEMENT PROGRAM

### 7:31-4.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart D, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions of 40 CFR 68 Subpart D are incorporated by reference with the specified changes:

1. 40 CFR 68.65(c)(1)(i), before "process flow diagram" delete "simplified."
2. 40 CFR 68.65(d)(1)i, at the beginning, add the words "Equipment specifications including" before the existing words "Materials of construction";
3. 40 CFR 68.65(d)(1), at the end, add the following:
  - i. Electrical one-line diagrams relevant to the covered process and its potential releases;
  - ii. Site plan;
  - iii. Firewater system piping diagrams relevant to the covered process and its potential releases;
  - iv. Sewer system piping diagrams relevant to the covered process and its potential releases; and
  - v. External forces and events data.
4. 40 CFR 68.65(d)(2), after "good engineering" add "and operating".
5. 40 CFR 68.67, Process hazard analysis, in the heading, after "Process hazard analysis" add "with risk assessment for specific pieces of EHS equipment or operating procedures."
6. 40 CFR 68.67(a), add the following:
  - i. In the first and second sentences, after the phrase "process hazard analysis" add the phrase "with risk assessment."
  - ii. In the third sentence, after the phrase "process hazard analyses" add the phrase "with risk assessments."
  - iii. In the third sentence, after the word "employees" add the phrase "and offsite public."
  - iv. In the fourth sentence, after the phrase "process hazard analysis" add the phrase "with risk assessment."
  - v. In the fifth sentence, after the citation "29 CFR 1910.119(e)" add the phrase "prior to June 21, 1999."
  - vi. In the fifth sentence, after the phrase "initial process hazard analyses" add the phrase "with risk assessments."
7. 40 CFR 68.67(f), add the following:
  - i. In the first sentence, after the first and the second occurrences of the phrase "process hazard analysis" add the phrase "(with risk assessment)."
  - ii. In the first sentence, after the third occurrence of the phrase "process hazard analysis" add the phrase "with risk assessment."
  - iii. In the second sentence after "29 CFR 1910.119(e)" add the phrase, "and the additional requirements of N.J.A.C. 7:31-4.2".
8. 40 CFR 68.69, Operating procedures, in the heading, add "Standard" before "operating procedures."
9. 40 CFR 68.71, Training, in the heading, add "EHS operator" before "training."
10. 40 CFR 73, Mechanical integrity, in the heading, add "/preventive maintenance" after "Mechanical integrity."
11. 40 CFR 68.73(a)(6), at the end, add the following:
  - i. All EHS equipment;
  - ii. Standby emergency equipment such as power generators, fire pumps, and lighting; and
  - iii. Electrical grounding systems.
12. 40 CFR 68.75(b)(2), at the end, add the words "and preventive maintenance procedures."
13. 40 CFR 68.79(a), Compliance audits, delete "every three years" and replace with "every year." Add, "Also, the owner or operator shall verify that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.65(c) and (d)."
14. 40 CFR 68.79(c), add, "The compliance audit report shall also include the scope, audit techniques, methods used and the names of the audit participants."
15. 40 CFR 68.81, Incident investigation, in the heading and in (b), (c), (d)(1), (d)(3), (d)(4), (e), (f) and (g), delete the word "incident" and replace it with the words "EHS accident or potential catastrophic event."
16. 40 CFR 68.81(a), delete the phrase "incident which resulted in, or could reasonably have resulted in, a catastrophic release of a regulated substance" and replace it with "EHS accident or potential catastrophic event."
17. 40 CFR 68.81(d)(1), after the word "date" add "time, and location."
18. 40 CFR 68.81(d)(3), after the word "incident," which is being replaced by the words "EHS accident and potential catastrophic event," (see (c)15 above) add, "in chronological order providing all the relevant facts. Include the identity, amount and duration of the EHS release if these facts can be reasonably determined based on the information obtained through the investigation. Also, identify the consequences, if any, of the EHS accident or potential catastrophic event including the number of evacuees, injured, and fatalities, and the impact on the community."
19. 40 CFR 68.81(d)(4), after the word "incident," which is being replaced by the words "EHS accident or potential catastrophic event," (see (c)15 above) add, "that

includes an identification of basic and contributory causes, either direct or indirect.”

20. 40 CFR 68.81(d)(5), after the word “investigation,” add “to prevent a recurrence.”

21. 40 CFR 68.81(d)(5), at the end, add the following:

i. The names and position titles of the investigators.

22. 40 CFR 68.83, Employee participation, at (b) and (c), after the phrase “process hazard analyses” add “with risk assessments.”

**7:31-4.2 Process hazard analysis with risk assessment for specific pieces of EHS equipment or operating alternatives**

(a) The provisions of this section apply in addition to those in 40 CFR 68.67 with changes specified at N.J.A.C. 7:31-4.1(c)5 through 7.

(b) The owner or operator of a covered process shall perform a process hazard analysis with risk assessment which shall include the following:

1. Identification of EHS equipment subject to the assessment, the points of possible EHS release, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuing EHS release, either steady or non-steady state, and the corresponding cause of the EHS release. Estimates of the quantity or rate and duration of a release shall be based on actual release mechanisms and shall reflect the operating procedures and mitigation equipment and procedures, planned for new or modified covered processes, or in place for existing covered processes;

2. Consideration of both toxicity and flammability for EHSs which appear in N.J.A.C. 7:31-6.3(a), Table I, Parts A and/or B as a toxic substance and Part C as a flammable substance; and

3. Identification of all scenarios that have a potential offsite impact for the endpoint criteria defined at (b)3iii and iv below using a consequence analysis consisting of dispersion analysis, thermal analysis or overpressure analysis. The following parameters shall be used for the consequence analysis:

i. 1.5 meters per second wind speed and F atmospheric stability class;

ii. All parameters listed for alternative scenarios at 40 CFR 68.22(c) through (g);

iii. The endpoint criteria of 10 times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2; 1750 thermal dose units (equivalent to 17 kW/m<sup>2</sup> for 40 seconds); 18.5 psi overpressure; or the lower flammability limit. As an alternative to using the 10 times toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2, the value of five times the Acute Toxicity Concentration (ATC) may be used for toxic release scenarios; and

iv. The endpoint criteria of five times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2; 1200 thermal dose units (equivalent to 15 kW/m<sup>2</sup> for 40 seconds); or 14.5 psi overpressure. As an alternative to using the five times toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2, the value of the ATC may be used for toxic release scenarios.

(c) The owner or operator shall identify risk reduction measures which significantly reduce the frequency or consequences for the potential offsite release scenarios identified pursuant to (b)3iii and iv above. As an option, the owner or operator may determine the release frequency for the release scenarios identified pursuant to (b)3iv above, and risk reduction measures are not required to be identified for those scenarios which have a release frequency less than 10<sup>-4</sup> per year.

(d) The following documentation from the process hazard analysis with risk assessment shall be maintained:

1. Table(s) of the process hazard analysis results giving the release point and corresponding release scenario of the potential basic (initiating) and intermediate event sequences; the corresponding estimated quantity or rate and duration of releases, and the recommended resolution action;

2. Table(s) summarizing each potential offsite release scenario identified that includes:

i. A scenario identification number and brief description;

ii. The rate and duration, or quantity, of potential release;

iii. The distance to the endpoint determined in (b)3iii and (b)3iv above and the respective distance to the nearest property line; and

iv. The release frequency determined pursuant to (c)2 above, if applicable;

3. Information from the dispersion modeling that includes:

i. The identification of the dispersion model used; and

ii. Printouts of the dispersion model inputs and outputs, if a dispersion model other than the lookup tables provided in the EPA's RMP Offsite Consequence Analysis Guidance current as of the time of modeling was used; and

4. An explanation why any risk reduction measures identified in (c) above have not been included in the risk reduction plan.

(e) The owner or operator of a covered process shall prepare a report of the process hazard analysis with risk assessment. The report shall include the following:

1. An identification of the covered process that is the subject of the process hazard analysis with risk assessment; the name, position and affiliation of persons who performed the process hazard analysis with risk assessment; the date of completion; and the methodology used;

2. A description of each scenario identified in (b)3iii and iv above; and

3. A risk reduction plan for each scenario identified in (c) above;

#### **7:31-4.3 Standard operating procedures**

(a) The provisions of this section apply in addition to those in 40 CFR 68.69, Operating procedures, with changes specified at N.J.A.C. 7:31-4.1(c)8.

(b) The standard operating procedures shall include the following:

1. A process description defining the operation and showing flows, temperatures and pressures, or a reference to a document with this information;

2. Sampling procedures addressing apparatus and specific steps involved in the taking of samples;

3. Logsheets and checklists where appropriate to the operation;

4. A statement as to the number of EHS operators required to meet safety needs for each operation with requirements for shift coverage;

5. A requirement that an EHS operator be in attendance at the stationary source, be able to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage, or generation except:

i. During chlorination of water using chlorine vapor out of a supply vessel, if the Department determines that chlorine monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident and the online supply vessel total capacity is less than 2,100 pounds;

ii. During EHS storage requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action for an appropriate response, and a risk assessment demonstrates that an EHS operator is not necessary onsite during the specified activity; or

iii. During storage not requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station; and

6. A table of contents or a system to index each covered process's standard operating procedures covering the items of 40 CFR 68.69(a) and (b)1 through 5 above.

#### **7:31-4.4 EHS operator training**

(a) The provisions of this section apply in addition to those in 40 CFR 68.71 with changes specified at N.J.A.C. 7:31-4.1(c)9.

(b) The owner or operator of a covered process shall provide a written job description which includes the duties and responsibilities for each EHS operator position.

(c) The training program shall specify the qualifications required for the personnel responsible for training EHS operators.

#### **7:31-4.5 Mechanical integrity/preventive maintenance program**

(a) The provisions of this section apply in addition to those of 40 CFR 68.73 with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11.

(b) The owner or operator shall implement a system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis for the primary purpose of determining frequency of inspections and tests.

#### **7:31-4.6 Management of change**

(a) The provisions of this section apply in addition to those in 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12.

(b) If any change in the covered process or procedures results in an increase in rate, duration or quantity, or release frequency, the associated release scenarios and changes in rate, duration or quantity shall be identified. The associated release scenarios shall be analyzed in accordance with the parameters and methods required at N.J.A.C. 7:31-4.2 to determine whether a criterion endpoint defined at N.J.A.C. 7:31-4.2(b)3iv extends beyond the stationary source boundary.

(c) If a release scenario due to the change results in a criterion endpoint extending beyond the stationary source boundary, the documentation and report required by N.J.A.C. 7:31-4.2(d) and (e) shall be prepared or updated for that change prior to implementing the change.

(d) Temporary changes involving EHS procedures, equipment, or safety instrumentation shall not be considered a change requiring compliance with 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12 and 4.6(a), (b) and (c). The management of change procedures shall contain the following requirements for implementing temporary changes:

1. Preparation of a description of the temporary change that includes:

- i. The temporary change to be made;
  - ii. Identification of the EHS equipment, piping and instrument diagram(s), and standard operating procedure(s) affected by the temporary change; and
  - iii. The reason for the temporary change;
2. Authorization of the temporary change by the appropriate person specified in the management system developed pursuant to 40 CFR 68.15(c);
3. Notification of all affected personnel of the temporary change;
4. A requirement to implement appropriate safety precautions while the temporary change is in EHS service;
5. The time limit for the temporary change. If this time limit is exceeded, the owner or operator shall comply with all requirements of 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12 and 4.6(a), (b) and (c); and
6. A requirement to ensure that the equipment and procedures are returned to their original or designed conditions at the end of the temporary change.

#### 7:31-4.7 Safety reviews: design and pre-startup

(a) The provisions of this section apply in addition to those in 40 CFR 68.77.

(b) For each new covered process, the owner or operator shall conduct a safety review of design for new EHS equipment prior to construction and shall document that the design of the covered process follows design and operating standards as reflected in the process safety information compiled in accordance with 40 CFR 68.65 with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4.

(c) A written report shall be prepared for each safety review performed pursuant to (b) above. The safety review of design report shall include the following:

1. The date of the report and an identification of the covered process, the process safety information, and standard operating procedures reviewed;
2. An identification of the codes and standards upon which the covered process design and operations were based;
3. The names of the persons who performed the safety review; and
4. The deviations from the design and operating codes and standards that were found with an appropriate description of the resolution of each deviation finding.

(d) For each new covered process or modified covered process, the owner or operator shall conduct and document a pre-startup safety review prior to placing the covered process into EHS service.

(e) A written report shall be prepared for each pre-startup safety review performed pursuant to (d) above. The pre-startup safety review report shall include the following:

1. The date of the report and an identification of the covered process; and
2. Documentation that all the requirements of 40 CFR 68.77(b) have been completed prior to the startup of the new or modified covered process.

#### 7:31-4.8 Emergency response

Owners and operators of Program 3 covered processes are subject to the emergency response provisions of N.J.A.C. 7:31-5.1.

#### 7:31-4.9 Annual reports

(a) Each owner or operator shall submit an annual report to the Department reflecting the risk management activities for the 12 month period ending on the anniversary date within 90 days of the anniversary date. The anniversary date shall be the date of the signing of the initial consent agreement or the date of issuance of an administrative order by the Department designating the approval of the risk management program for the stationary source. The Department shall change the anniversary date upon receipt of a written request from the owner or operator provided the anniversary date has not been changed in the preceding 24 months.

(b) The annual report shall contain:

1. An update, if applicable, of the supplemental TCPA program information as specified in N.J.A.C. 7:31-7.2(a)2;
2. A description of significant changes to the management system;
3. A process hazard analysis with risk assessment report prepared pursuant to N.J.A.C. 7:31-4.2(e) for each process hazard analysis with risk assessment completed during the previous year, if applicable. For those risk assessment reports prepared pursuant to N.J.A.C. 7:31-4.6(c), a list of the reports may be submitted instead of the reports;
4. A summary of EHS accidents that occurred during the previous year that includes a brief description of each EHS accident and the basic and contributory causes; and
5. The compliance audit report for the year ending on the anniversary date prepared pursuant to 40 CFR 68.79(c) with changes specified at N.J.A.C. 7:31-4.1(c)14.

**7:31-4.10 Obligations upon temporary discontinuance of EHS use, storage and handling**

(a) The owner or operator of a covered process who temporarily discontinues use, storage, handling and generation of an EHS in the covered process, or temporarily stores it at less than the threshold quantity, shall continue activities required of the owner or operator by this chapter until the date a consent agreement, or consent agreement addendum, that is signed by the owner or operator, is signed by the Department which requires, at a minimum:

1. Performance of a pre-startup safety review of the discontinued EHS equipment and procedures in accordance with the requirements of 40 CFR 68.77(a), (b)(1) and (2) and N.J.A.C. 7:31-4.7(e), within 60 calendar days prior to bringing the EHS back to the covered process;
2. Performance of inspections, tests and checks for proper operation of the discontinued EHS equipment, conforming to requirements of 40 CFR 68.73 with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11 and 4.5, within 60 calendar days prior to bringing the EHS back to the covered process; and
3. Performance of EHS operator training activities, conforming to 40 CFR 68.71 with changes specified at N.J.A.C. 7:31-4.1(c)9 and 4.4, within 60 calendar days prior to bringing the EHS back to the covered process; and
4. Payment of the annual fee.

New Rule, R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).  
Amended by R.1998 d.355, effective July 20, 1998.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).  
Rewrote the section.

**7:31-4.11 New covered processes—construction and new EHS service**

(a) Owners or operators who plan to construct a new Program 3 covered process at a stationary source for which there is no previously approved RMP shall:

1. Submit to the Department a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and the documentation required at N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 at least 90 days prior to construction of the covered process;
2. Proceed with construction of the new covered process only upon receiving written approval from the Department;
3. Submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service any updates of the documentation as required by N.J.A.C. 7:31-4.11(a)1;
4. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and

5. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(b) Owners or operators who plan to utilize existing equipment for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program shall:

1. Submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and the documentation required at N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 at least 90 days prior to placing the equipment into EHS service;
2. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and
3. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(c) Owners or operators who plan to construct a new Program 3 covered process or utilize existing equipment for a new Program 3 covered process at a stationary source that has a previously approved risk management program shall:

1. Submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and update documentation in accordance with N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 at least 90 days prior to the scheduled placing of the equipment into EHS service;
2. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and
3. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(d) Prior to placing equipment into EHS service the owner or operator of a covered process shall enter into a consent agreement, or consent agreement addendum, for that equipment with the Department, subsequent to a stationary source inspection by the Department, and complete any deficiencies in the consent agreement, or consent agreement addendum, for that equipment in accordance with the schedule in the consent agreement or consent agreement addendum.

**SUBCHAPTER 5. EMERGENCY RESPONSE****7:31-5.1 Incorporation by reference**

(a) This subchapter incorporates by reference 40 CFR 68 Subpart E, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions of 40 CFR 68 Subpart E are incorporated by reference with the specified changes:

1. 40 CFR 68.90(b), after "The owner or operator of a stationary source" add, "of a Program 2 covered process", and after "§ 68.95" add "(a)(1)(ii) and (iii), (2), (3), and (4), (b) and (c)."

2. 40 CFR 68.90(b)(3), at the end, add "The owner or operator shall obtain documentation from the local fire department or other outside emergency responder agencies, as applicable, that they will be responsible for responding to accidental releases at the owner or operator's stationary source."

3. 40 CFR 68.95(b), delete the words "complies with other Federal contingency plan regulations or"; and

4. 40 CFR 68.95(b), after the words "is consistent with" add the words "and as stringent as."

### 7:31-5.2 Emergency response program

(a) The provisions of this section apply in addition to those of 40 CFR 68.95 with changes specified at N.J.A.C. 7:31-5.1(c)3 and 4.

(b) Each emergency response (ER) program shall include:

1. A schedule for initial and annual refresher emergency response training for all employees in relevant procedures to implement the emergency response plan;

2. A schedule to perform at least one ER exercise per calendar year in accordance with the following requirements:

i. Owners or operators of stationary sources for Program 2 covered processes whose employees will not respond to an EHS accident in accordance with 40 CFR 68.90(b) with changes specified at N.J.A.C. 7:31-5.1(c)2 shall invite at least one outside responder agency designated in the ER plan to participate in the ER exercise. Employees of the stationary source shall perform their assigned responsibilities for all ER exercises; and

ii. All other owners or operators shall perform at least one full scale ER exercise in which the ER team and ER containment, mitigation, and monitoring equipment are deployed at a strength appropriate to demonstrate the adequacy and implementation of the plan; and

3. A written assessment of the ER plan and of the adequacy or need for ER equipment after each ER plan implementation or each ER exercise;

4. A description of the emergency notification system at the stationary source which shall include the following requirements for reporting EHS accidents:

i. Immediate notification to the Department's emergency communications center at 609-292-7172 by the emergency coordinator or designee of an EHS accident or imminent EHS accident at the stationary source. The notification shall include the following information:

(1) The company name and address of the EHS accident;

(2) The name, position, and telephone number of caller;

(3) The time of, or anticipated time, of the EHS accident and the projected duration;

(4) The chemical name of the EHS released;

(5) The actual EHS quantity or, if not known, the estimated EHS quantity and whether it will have an offsite impact; and

(6) Weather conditions, including wind direction and speed and expected offsite effects, if any;

ii. The emergency coordinator or designee for the stationary source shall be prepared to provide the Department's emergency communications center updates, if requested, which shall include the following information:

(1) The name and address of stationary source of the EHS accident;

(2) The name, position and telephone number of caller;

(3) The location of the point of EHS release, a description of the source, cause and type of EHS accident, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;

(4) The measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures; and

(5) An update on weather conditions; and

iii. The EHS accidental releases in (b)4iii(1) through iii below shall be exempt from the notification provisions of (b)4 above provided the EHS accident is recorded in accordance with the procedures established for EHS accident investigation at 40 CFR 68.60 with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8 for Program 2 covered processes or 40 CFR 68.81 with changes specified at N.J.A.C. 7:31-4.1(c)15 through 21 for Program 3 covered processes. This exemption does not affect any other State or Federal reporting requirements.

(1) An EHS release that has no potential offsite impact;

(2) An EHS release that results in no actual or potential injuries or fatalities at the stationary source; and

(3) An EHS release that does not activate the emergency response plan.

(CAS No. 74-98-6), propylene (CAS No. 115-07-1), butanes (normal butane (CAS No. 106-97-8) or isobutane (CAS No. 75-28-5), and butylenes (1-butene (CAS No. 106-98-9, 2-butene (CAS No. 107-01-7), butene (CAS No. 25167-67-3), 2-butene-cis (CAS No. 590-18-1), 2-butene-trans (CAS No. 624-64-6), and 2-methylpropene (CAS No. 115-11-7)) are incorporated as N.J.A.C. 7:31-6.3(a), Table I, Part C.

**SUBCHAPTER 6. EXTRAORDINARILY HAZARDOUS SUBSTANCES**

**7:31-6.1 Incorporation by reference**

(a) This subchapter incorporates by reference 40 CFR 68 Subpart F, Regulated Substances for Accidental Release Prevention, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) The following provisions are not incorporated by reference: 40 CFR 68.120, Petition process; and 40 CFR 68.125, Exemptions.

(c) The following provisions are incorporated by reference with the specified changes:

1. 40 CFR 68.100, delete "subpart" and replace with "subchapter", after "as amended," add "and the Toxic Catastrophe Prevention Act, as amended, and". Delete the phrase "and establishes the requirements for petitioning to add or delete substances from the list".

2. 40 CFR 68.115(a), delete "regulated substance" and replace with "EHS" at both occurrences. After "listed in" delete "\$ 68.130" and replace with "N.J.A.C. 7:31-6.3(a), Table 1," and add "meets or" before "exceeds".

3. 40 CFR 68.115(b), (b)(1), and (b)(2) at all occurrences delete "more than" before "a threshold quantity," and delete "regulated toxic substance" and replace with "toxic EHS" and delete "regulated flammable substance" and replace with "flammable EHS".

4. 40 CFR 68.115(b)(5)(ii), after "operations;" replace "and" with "however, only the substances and threshold quantities listed at 40 CFR 68.130 shall be used for determining whether a process containing an EHS is covered under this chapter; and".

5. 40 CFR 68.130, all substances and their specified threshold quantities are incorporated by reference into two lists as follows:

i. 40 CFR 68.130 Table 1 (and 2), List of Regulated Toxic Substances, including all future amendments and supplements, are incorporated as N.J.A.C. 7:31-6.3(a), Table I, Part B;

ii. 40 CFR 68.130 Table 3 (and 4), List of Regulated Flammable Substances, including all future amendments and supplements, with the exception of propane

**7:31-6.2 Threshold quantity determination**

(a) If an EHS is listed as a toxic substance in N.J.A.C. 7:31-6.3(a) Table I, Part A and Part B, the lower threshold quantity shall apply as the threshold quantity throughout this chapter.

(b) If an EHS is listed in N.J.A.C. 7:31-6.3(a) as a toxic substance in Table I, Part A or B and as a flammable substance in Part C, the lower threshold quantity shall apply as the threshold quantity throughout this chapter.

(c) If a toxic EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Part A is present in a mixture at a concentration which is lower than the acute toxicity concentration (ATC), the amount of the EHS in the mixture shall not be considered in determining if the threshold quantity is present at a covered process.

(d) For mixtures of EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Part A, the threshold quantity shall be calculated using the weight percent of EHS contained in the mixture. When the weight of the total mixture times the weight percent is equal to or greater than the threshold quantity for that EHS, the owner or operator must comply with this chapter.

(e) For a toxic EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Part B, threshold quantity shall be determined in accordance with 40 CFR 68.115(b) with changes specified at N.J.A.C. 7:31-6.1(c)3 and 4.

(f) For mixtures containing toxic EHSs listed in N.J.A.C. 7:31-6.3(a) Table I, Part B, the weight of the pure EHS shall be considered in determining whether a threshold quantity is present at a covered process.

**7:31-6.3 Extraordinarily hazardous substance list**

(a) The substances listed in Table I, Parts A, B and C below constitute the Department's extraordinarily hazardous substance list.

Table I  
Part A—EHS List

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
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Group I

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds	Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
*Hydrogen chloride (HCl)	7647-01-0	2,000	*Ethylenimine (Aziridine)	151-56-4	800
*Hydrochloric acid 36 percent by weight or more HCl	7647-01-0	5,600	*Ethyl mercaptan	75-08-1	13,000
Allyl chloride	107-05-1	2,000	*Fluorine	7782-41-4	450
*Hydrogen cyanide (hydrocyanic acid)	74-90-8	500	***Formaldehyde (gas)	50-00-0	175
*Hydrogen fluoride (HF)	7664-39-3	500	*Furan1	10-00-9	200
***Hydrofluoric acid 70 percent by weight or more HF	7664-39-3700		Hexafluoroacetone	684-16-2	3,300
*Chlorine	7782-50-5	1,000	Hydrogen bromide (HBr)	10035-10-6	2,900
***Phosphorus trichloride	7719-12-2	500	Hydrobromic acid 62 percent by weight or more HBr	10035-10-6	4,800
*Hydrogen sulfide	7783-06-4	1,000	***Hydrogen selenide	7783-07-5	125
*Phosgene	75-44-5	100	*Isorpylamine	75-31-0	3,300
*Bromine	7726-95-6	1,000	Ketene	463-51-4	50
*Methyl isocyanate	624-83-9	100	Methacryladehyde	78-85-3	1,300
*Toluene-2,4-diisocyanate	584-84-9	10,000	*Methyl acrylonitrile	126-98-7	175
*Toluene-2,4-diisocyanate (mixture with Toluene-2,6- diisocyanate, unspecified isomer)	26471-62-5	10,000	*Methylamine	74-89-5	2,300
			Methyl bromide	74-83-9	1,800
			*Methyl chloride	74-87-3	12,000
			*Methyl chloroformate	79-22-1	350
			Methyl dichlorosilane	75-54-7	27,000
			Methyl fluoroacetate	453-18-9	90
			Methyl fluorosulfate	421-20-5	50
			*Methylhydrazine	60-34-4	125
			Methyl iodide	74-88-4	2,900
			*Methyl mercaptan	74-93-1	2,400
			Methyl vinyl ketone	78-94-4	10
			*Nichel carbonyl	13463-39-3	125
			*Nitric acid (HNO <sub>3</sub> ) 94 percent by weight or more HNO <sub>3</sub>	7697-37-2	450
			Nitrogen Oxides		
			Nitrogen dioxide (NO <sub>2</sub> ) 10 percent by volume or more	10102-44-0	200
			*Nitric oxide 10 percent by volume or more	10102-43-9	125
			Nitrogen tetroxide 10 percent by volume or more	10544-72-6	200
			Nitrogen trifluoride	7783-54-2	10,000
			Nitrogen trioxide 10 percent by volume	10544-73-7	175
			***Oleum 65 percent by weight or more free sulfur trioxide (SO <sub>3</sub> )	8014-95-7	800
			Osmium tetroxide	20816-12-0	4,500
			Oxygen difluoride	7783-41-7	10
			Ozone	10028-15-6	15
			Pentaborane	19624-22-7	15
			*Perchloromethyl mercaptan	7616-94-6	2,900
			Perchloryl fluoride	7803-51-2	30
			*Phosphine	7803-51-2	30
			Phosphorus trifluoride	7783-53-3 3	4,000
			*Phosphoryl chloride	10025-87-3	800
			Propylamine	107-10-8	11,000
			Selenium hexafluoride	7783-79-1	700
			Stibine	7803-52-3	250
			*Sulfur dioxide (SO <sub>2</sub> ) 10 percent by volume or more SO <sub>2</sub>	7446-09-5	4,600
			Sulfur monochloride	10025-67-9	2,800
			Sulfur pentafluoride	5714-22-7	175
			*Sulfur tetrafluoride	7783-60-0	150
			*Sulfur trioxide	7446-11-9	500
			Sulfuryl fluoride	2699-79-8	22,000
			Tellurium hexafluoride	7783-80-4	175
			Tetrafluorohydrazine	10036-47-2	3,800
			*Tetramethyl lead	75-74-1	800
Group II					
*Acetaldehyde	75-07-0	4,900			
*Acrolein	107-02-8	200			
*Acrylonitrile	107-13-1	2,300			
*Allylamine	107-11-9	1,200			
*Ammonia (NH <sub>3</sub> )	7664-41-7	5,200			
*Ammonia (aqueous) 28 per- cent by weight or more NH <sub>3</sub>	1336-21-6	19,000			
*Arsine	7784-41-1	60			
***bis (Chloromethyl) ether	542-88-1	80			
Boron tribromide	10294-33-4	10,000			
*Boron trichloride	10294-34-5	1,700			
*Boron trifluoride	7637-07-2	200			
Bromine chloride	13863-41-7	800			
Bromine pentafluoride	7789-30-2	1,300			
Carbon monoxide (10 percent by volume or more)	630-08-0	12,000			
Carbonyl fluoride	353-50-4	1,700			
*Chlorine dioxide	10049-04-4	500			
Chlorine pentafluoride	13637-63-3	500			
Chlorine trifluoride	7790-91-2	600			
*Chloromethyl methyl ether	107-30-2	300			
Chloropicrin	76-06-2	900			
Chloroprene	126-99-8	12,000			
*Crotonaldehyde (cis-, trans-isomers)	123-73-9	450			
	4170-30-3				
*Cyanogen	460-19-5	1,300			
*Cyanogen chloride	506-77-4	200			
Diazomethane	334-88-3	300			
*Diborane	19287-45-7	60			
Dichloroacetylene	7572-29-4	125			
*Dichlorosilane	4109-96-0	2,000			
Diethylamine	109-89-7	9,600			
*Dimethylamine	124-40-3	6,600			
*1,1 Dimethylhydrazine	57-14-7	800			
***Epoxypropane (Propylene oxide)	75-56-9	7,700			
*Ethylamine	75-04-7	7,500			
*Ethylene oxide (Oxirane)	75-21-8	2,700			

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
*Tetranitromethane	509-14-8	900
Thionyl chloride	7719-09-7	250
*Titanium tetrachloride	7750-45-0	600
*Trichlorosilane	10025-78-2	2,700
*Trifluorochloroethylene	79-38-9	7,300
Trimethoxysilane	2487-90-3	1,100
*Trimethylamine	75-50-3	11,000
*Trimethylchlorosilane	75-77-4	1,400
Vinyl trichlorosilane	75-94-5	7,700

\*EHS also listed in Part B or Part C as of June 18, 1998. Some may appear with different Federal thresholds or concentrations.

Part B

40 CFR 68.130 Table 1 (and 2) incorporated by reference

Part C

40 CFR 68.130 Table 3 (and 4) incorporated by reference with the exception of propane (CAS No. 74-98-6), propylene (CAS No. 115-07-1), butanes (normal butane (CAS No. 106-97-8) or isobutane (CAS No. 75-28-5), and butylenes (1-butene (CAS No. 106-98-9, 2-butene (CAS No. 107-01-7), butene (CAS No. 25167-67-3), 2-butene-cis (CAS No. 590-18-1), 2-butene-trans (CAS No. 624-64-6), and 2-methylpropene (CAS No. 115-11-7)).

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

SUBCHAPTER 7. RISK MANAGEMENT PLAN AND TCPA PROGRAM SUBMISSION

7:31-7.1 Incorporation by reference

(a) This subchapter incorporates by reference the provisions of 40 CFR 68 Subpart G, Risk Management Plan, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR 68 Subpart G are not incorporated by reference: 40 CFR 68.165(a)(1) and 40 CFR 68.185(a).

(c) The following provisions of 40 CFR 68 Subpart G, are incorporated by reference with the specified changes:

1. 40 CFR 68.150(a) Submission, add the following phrase to the beginning of the last sentence, "For covered processes regulated under 40 CFR 68."

2. 40 CFR 68.150(a) Submission, after "June 21,1999." add the following sentence, "For all covered processes including those only regulated under 40 CFR 68, submittal of the RMP to the Department shall be in accordance with N.J.A.C. 7:31-7.2 below."

3. 40 CFR 68.190(a) Updates, in the first sentence after "owner or operator", add "of a covered process regulated under 40 CFR 68".

4. 40 CFR 68.190(a) Updates, after "June 21, 1999" add the following sentence, "For all covered processes including those regulated under 40 CFR 68, submittal of updates to the Department shall be in accordance with 40 CFR 190(b) and N.J.A.C. 7.2 below."

5. 40 CFR 68.190(b) Updates, after "§ 68.150" add "with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2."

7:31-7.2 TCPA risk management plan submission and updates

(a) Prior to June 21, 1999, all owners or operators of a covered process shall submit the following to the Department in a format to be specified:

1. All documents required by 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2; and

2. The following supplemental TCPA program information:

i. Identification of the position titles, expertise and affiliation of the persons involved with the development of each element of the risk management program;

ii. A description and profile of the area in which the covered process is situated, including its proximity to population and water supplies;

iii. Identification of insurance carriers underwriting the stationary source's environmental liability and workers compensation insurance policies including the address of the carrier, the type of policy, the amount of insurance and limitations or exclusions to the policy; and

iv. Identification of the extraordinarily hazardous substances inventory at the covered process as end products, intermediate products, byproducts or waste products.

(b) In addition to updates required by N.J.A.C. 7:31-7.1(c)3 through 5, all owners or operators of a covered process shall submit an update to the Department within six months of an increase in maximum inventory of a covered process.

7:31-7.3 Risk management program and RMP—initial evaluation

(a) All RMPs submitted in accordance with this subchapter shall be reviewed by the Department to determine if they comply with the requirements of 40 CFR 68.150-185 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 and 7.2.

(b) The RMPs and risk management programs of owners or operators that have an existing approved risk management program at their stationary source shall be audited in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 and 8.2 for the covered processes that are already part of the approved risk manage-

ment program and also for the newly regulated covered processes.

(c) The RMPs of owners or operators that do not have an approved risk management program at their stationary source shall be reviewed by the Department to determine whether the stationary source has an established risk management program. Owners or operators that have at least one process hazard analysis (for Program 3 covered processes) or at least one hazard assessment and one hazard review (for Program 2 covered processes) shall be determined to have an established risk management program and shall be notified and audited in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)1 through 12 and 8.2.

(d) Approval of the risk management program for owners or operators who are audited pursuant to (c) above shall be the signing of the consent agreement or implementation of corrective actions required by the administrative order issued pursuant to N.J.A.C. 7:31-8.1(c)9.

(e) Owners or operators that do not have an approved risk management program at their stationary source and that the Department determines do not have an established risk management program shall be notified that they are subject to workplan in accordance with N.J.A.C. 7:31-9.

#### 7:31-7.4 Transfer of risk management program

(a) In the event of the transfer of the covered process to a new owner or operator, change in ownership or the name of an owner or operator, the new owner or operator shall, before operating EHS equipment, adopt the existing, or obtain a new, approved Program 2 or Program 3 TCPA Risk Management Program for the covered process.

(b) A new owner or operator shall adopt an existing approved Program 2 or Program 3 TCPA Risk Management Program by submitting an updated registration in accordance with this subchapter and signing an addendum to the consent agreement that was previously signed by the Department and the former owner or operator.

New Rule, R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).  
Amended by R.1998 d.355, effective July 20, 1998.  
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).  
Rewrote the section.

#### 7:31-7.5 Schedule for risk management program implementation

(a) Owners or operators having an approved risk management program shall comply with their approved risk management program for EHSs listed in N.J.A.C. 7:31-6.3, Table I, Part A until the risk management program is revised to reflect the new requirements of this chapter, which shall be no later than June 21, 1999.

(b) All owners or operators of covered processes shall be in compliance with this chapter by June 21, 1999.

(c) As of June 18, 1998, owners or operators planning to put into EHS service a new covered process for an EHS listed in N.J.A.C. 7:31-6.3, Table I, Part A shall comply with N.J.A.C. 7:31-3.4 for Program 2 covered processes or N.J.A.C. 7:31-4.11 for Program 3 covered processes.

(d) Owners or operators planning to put into EHS service a new covered process for an EHS listed in N.J.A.C. 7:31-6.3, Table I, Parts B and/or C on or after June 21, 1999 shall comply with N.J.A.C. 7:31-3.4 for Program 2 covered processes or N.J.A.C. 7:31-4.11 for Program 3 covered processes.

### SUBCHAPTER 8. OTHER FEDERAL REQUIREMENTS

#### 7:31-8.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR Part 68 Subpart H, Other requirements, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR Part 68 Subpart H are not incorporated by reference: 40 CFR 68.210 Availability of information to the public, and 40 CFR 68.215 Permit content and air permitting authority or designated agency requirements.

(c) The following provisions are incorporated by reference with the specified changes:

1. 40 CFR 68.200 Recordkeeping, replace "Subpart D of this part" with "N.J.A.C. 7:31-4."

2. 40 CFR 69.220 Audits, replace "implementing agency" with "the Department" and replace "Subpart G of this part" with "N.J.A.C. 7:31-7" in all occurrences of this section.

3. 40 CFR 68.220(a) add the phrase "risk management programs and" before each occurrence of "RMPs."

4. 40 CFR 68.220(a) add "and N.J.A.C. 7:31-3 (Program 2) and N.J.A.C. 7:31-4 (Program 3)" to the end of the sentence.

5. 40 CFR 68.220(d) at the end of the sentence, add the phrase "in accordance with N.J.A.C. 7:31-8.2."

6. 40 CFR 68.220(e) replace the first sentence with "Based on the audit, the Department shall issue the owner or operator of a stationary source a written preliminary determination of material deficiencies and necessary revisions to the owner or operator's RMP and risk management program for the stationary source to ensure that the RMP meets the criteria of Subchapter 7 of this chapter and that the risk management program meets the criteria of N.J.A.C. 7:31-3 (for Program 2 covered processes) and N.J.A.C. 7:31-4 (for Program 3 covered processes)."

7. 40 CFR 68.220(f) change the introductory clause from "Written response to a preliminary determination" to "In response to a preliminary determination:".

8. 40 CFR 68.220(f)(2) replace this provision with "The written response under paragraph (f)(1) of this section shall be received by the Department within 60 days of the issue of the preliminary determination."

9. 40 CFR 68.220(g) replace this provision with "If the Department and owner or operator reach agreement on the RMP and risk management program, the owner or operator shall enter into a consent agreement (or consent agreement addendum for previously approved risk management programs) with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement or consent agreement addendum. The consent agreement or consent agreement addendum shall be signed by the owner or operator or his/her representative and by the Chief of the Bureau of Chemical Release Information and Prevention or his/her supervisor. If the owner or operator has not signed a consent agreement or consent agreement addendum within 120 days of receipt of the preliminary determination, the Department shall prepare and send an administrative order. The administrative order may adopt or modify the revisions contained in the preliminary determination under 40 CFR 68.220(e) with changes specified at N.J.A.C. 7:31-8.1(c)6 or may modify the substitute revisions provided in the response under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c)7-8. An administrative order that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. An administrative order that fails to adopt a substitute revision provided under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c)7-8 shall include an explanation of the basis for finding such substitute revision unreasonable. In the administrative order, the Department shall advise the owner or operator of his/her right to an adjudicatory hearing pursuant to N.J.A.C. 7:31-11.3(b)."

10. 40 CFR 68.220(h) delete "final determination" and replace with "consent agreement or consent agreement addendum or administrative order" at all occurrences.

11. 40 CFR 68.220(i) replace "final determinations" with "consent agreements or consent agreement addenda or administrative orders" and "§ 68.210 of this part" with "N.J.S.A. 47:1A-1 et seq."

12. 40 CFR 68.220(j) replace "EPA or the state" with "the Department" and "part under the Act" with "chapter."

### 7:31-8.2 Audits

(a) The Department shall have the right to enter and inspect and/or audit any stationary source, building or equipment, or any portion thereof, at any time, in order to determine compliance with the TCPA, this chapter, or any

order or consent order or agreement. Such right shall include, but not be limited to, the right to test or sample any materials at the stationary source, to sketch or photograph any portion of the stationary source, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance, and to interview any employees or representatives of the owner or operator. Such right shall be absolute except for those parts or portions of any materials, equipment, documents and records which contain either privileged trade secret or security information or confidential information for which the owner or operator has submitted a petition in accordance with N.J.A.C. 7:31-10.6, or claim in accordance with N.J.A.C. 7:31-10.4, and which petition or claim has not been denied by the Department. Those parts or portions of any materials, equipment, documents and records containing privileged trade secret or security information shall be treated as provided in (b)1 below, and those parts or portions containing confidential information shall be treated as provided in (b)2 below. Such right of inspection and audit shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators, employees, and representatives shall not hinder or delay, and shall assist, the Department in the performance of all aspects of any inspection and audit.

(b) At the beginning of an inspection and/or audit by the Department, an owner or operator may identify those materials, equipment, documents and records at the stationary source which contain either privileged trade secret or security information or confidential information for which an appropriate petition or claim has been asserted and which has not been denied by the Department.

1. Those parts or portions of any materials, equipment, documents and records at the stationary source which contain privileged trade secret or security information need not be disclosed to or submitted to the Department. Any such materials, areas, documents or records disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged trade secret or security information thereafter. The fact that such trade secret or security information has been disclosed, or submitted, to the Department shall not prohibit the owner or operator from asserting a confidentiality claim concerning such information.

2. Those parts or portions of any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or submitted to the Department during an inspection, including all negatives and prints of photographs, and shall be labelled "confidential". In order to assert a confidentiality claim, a properly completed claim form must be submitted to the Department at the same time any such confidential information is submitted or disclosed to the Department. These materials, equipment, documents and records shall

not be disclosed by the Department to other persons except in accordance with the provisions of this chapter.

(c) The Department may require submittal of any risk management program document for review.

(d) Within a reasonable time after an audit, the owner or operator shall be furnished with a preliminary determination of material deficiencies and necessary revisions to the risk management program and RMP in accordance with 40 CFR 68.220(e) with changes specified at N.J.A.C. 7:31-8.1(c).

New Rule, R.1988 d.378, effective August 1, 1988.  
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

The rule that was printed 6-20-88 had not been adopted and was printed in error. This section should have been (Reserved).

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

## SUBCHAPTER 9. WORK PLAN/EHSARA

### 7:31-9.1 Work plan preparation

(a) An owner or operator who does not have an established risk management program as determined by the Department pursuant to N.J.A.C. 7:31-7.3 shall assist the Department in developing a work plan to perform an Environmental Hazardous Substance Accident Risk Assessment (EHSARA) and develop a risk reduction plan.

(b) The work plan shall consist of the stationary source data and the detailed scope of work necessary to perform an EHSARA. The EHSARA shall result in a recommended risk reduction plan that will include any deficiencies that when corrected will result in an approved risk management program.

(c) An owner or operator assisting the Department in the development of the required work plan shall compile and submit to the Department the list of risk management program documents within 30 days after receipt of notice of the determination that the owner or operator does not have an established risk management program. The list of documents shall be grouped by operating or utility unit area in EHS service at the stationary source giving their document number, name, the EHS involved, most recent revision number and date, file location at the stationary source, and code of sheet size according to ANSI Y14.1-1996 (A, B, C, D, or E) or Deutshes Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0).

(d) Upon review of the documents submitted, the Department shall schedule a meeting with the owner or operator for the purpose of:

1. Identifying any other documents the owner or operator must submit to the Department;

2. Discussing and adapting the work plan to be developed to the owner or operator's EHS equipment and procedures;

3. Explaining the consultant selection process as described in N.J.A.C. 7:31-9.3;

4. Determining any limits on the scope or details of the work plan;

5. Identifying the members of the owner or operator's staff who shall assist in the work of the EHSARA under the direction of the independent consultant or the Department;

6. Setting an end-date of the EHSARA that shall be included in the owner or operator's request for proposal to independent consultants; and

7. Reviewing the instructions to bidders to be included in the owner or operator's request for proposal document to which the work plan will be attached.

### 7:31-9.2 Generic scope of work

(a) The scope of work for the work plan for each owner or operator required to have an EHSARA performed by a consultant or the Department for a Program 3 covered process shall include the following:

1. A general description of how the owner or operator uses EHSs at the stationary source;

2. A requirement for the verification of the quantities and methods of handling all EHSs at the stationary source against the registration submitted by the owner or operator;

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. A review of process description and process chemistry to define all the possible chemical reactions at the stationary source that may cause or contribute to an EHS accident;

ii. A review or creation of the design codes and standards and operating consensus standards employed; and

iii. A review of the EHS process flow diagrams; piping and instrument diagrams including those of process, utility or service units at the stationary source that are interactive with the EHS piping and instrument diagrams; electrical one-line diagrams; and site plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3iii above;

(2) Legibility;

(g) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs  
 New Jersey Department of Environmental Protection  
 PO Box 402  
 Trenton, New Jersey 08625-0402  
 Attention: Hearing Request

In (a), deleted "except as provided in (b) below" at the end of the introductory paragraph, and rewrote 2; rewrote (b) and (c); and in (d), changed N.J.A.C. reference.

**7:31-11.4 Civil administrative penalty determination**

(a) Each violation of the Toxic Catastrophe Prevention Act or any rule, consent agreement or administrative order issued pursuant thereto, shall constitute an additional, separate and distinct offense.

(b) If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for the offenses described in Table II below on the basis of the category of offense and the frequency of the violation as follows:

Amended by R.1988 d.378, effective August 1, 1988.  
 See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).  
 Added text in (b) "or of a . . . or security information." and added text in (c) "and/or an . . . or security information."  
 Administrative change in (c).  
 See: 23 N.J.R. 3325(b).  
 Amended by R.1993 d.358, effective July 19, 1993.  
 See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).  
 Amended by R.1998 d.355, effective July 20, 1998.  
 See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

**TABLE II**  
 Penalty in U.S. Dollars By Offense Category

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
1. Failure to provide information requested by the Department	N.J.A.C. 7:31-8.2(c)	1,000	2,000	5,000
2. Failure to authorize an insurance carrier to release information requested by the Department within 30 days of the request	N.J.A.C. 7:31-1.12(d)	2,000	4,000	10,000
3. Failure to pay any annual fee	N.J.A.C. 7:31-1.11(a)	one-third of fee	one-third of fee	one-third of fee
4. 40 CFR 68.15—with changes specified at N.J.A.C. 7:31-1.1(c)5				
(a) Failure to develop a management system with a document plan	40 CFR 68.15(a)	2,000	4,000	10,000
(b) Failure to assign a qualified person or position that has overall responsibility for development, implementation and integration of PM program	40 CFR 68.15(b)	1,000	2,000	5,000
(c) Failure to document names and define organization charts	40 CFR 68.15(c)	1,000	2,000	5,000
5. 40 CFR 68.22 with changes specified at N.J.A.C. 7:31-2.1(c)2				
(a) Failure to use correct parameters for offsite consequence analysis	40 CFR 68.22(a) with changes specified at N.J.A.C. 7:31-2.1(c)2	500	1,000	2,500
6. 40 CFR 68.25				
(a) Failure to analyze all required worst case release scenarios for the stationary source	40 CFR 68.25(a)	4,000	8,000	20,000
7. 40 CFR 68.28				
(a) Failure to analyze alternative release scenarios	40 CFR 68.28(a)	4,000	8,000	20,000
8. 40 CFR 68.30				
(a) Failure to define offsite impact—population	40 CFR 68.30(a)	500	1,000	2,000
9. 40 CFR 68.33				
(a) Failure to define offsite impact—environment	40 CFR 68.33(a)	500	1,000	2,000
10. 40 CFR 68.36(a)				
(a) Failure to update the offsite consequence analysis every five years	40 CFR 68.36(a)	2,000	4,000	10,000
(b) Failure to update offsite consequence analysis within six months if endpoint distance changes by a factor of two or more	40 CFR 68.36(b)	2,000	4,000	10,000
11. 40 CFR 68.39				
(a) Failure to maintain offsite consequence analysis documentation	40 CFR 68.39(a)	2,000	4,000	10,000

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
12. 40 CFR 68.42 (a) Failure to include all required data in five year accident history	40 CFR 68.42(a)	2,000	4,000	10,000
13. 40 CFR 68.48—with changes specified at N.J.A.C. 7:31-3.1(c)1 (a) Failure to compile and maintain up-to-date safety information	40 CFR 68.48(a) with changes specified at N.J.A.C. 7:31-3.1(c)1	2,000	4,000	10,000
(b) Failure to ensure process is designed in compliance with recognized and generally accepted good engineering practices	40 CFR 68.48(b)	5,000	10,000	25,000
(c) Failure to update safety information after a change has occurred	40 CFR 68.48(c) with changes specified at N.J.A.C. 7:31-3.1(c)2	500	1,000	2,500
14. 40 CFR 68.50 (a) Failure to conduct a hazard review of the hazards associated with the regulated substance, process and procedures	40 CFR 68.50(a)	4,000	8,000	20,000
(b) Failure to document the results of the hazard review and ensure that problems identified were resolved in a timely manner	40 CFR 68.50(c)	2,000	4,000	10,000
(c) Failure to update the hazard review at least once every five years	40 CFR 68.50(d)	2,000	4,000	10,000
(d) Failure to update the hazard review when any major change in the process occurred	40 CFR 68.50(d)	4,000	8,000	20,000
(e) Failure to resolve all issues identified in the hazard review before startup of the changed process	40 CFR 68.50(d)	4,000	8,000	20,000
15. 40 CFR 68.52—with changes specified at N.J.A.C. 7:31-3.1(c)3 (a) Failure to prepare written standard operating procedures	40 CFR 68.52(a)	1,000	2,000	5,000
(b) Failure to update the standard operating procedures when a major change had occurred and prior to startup of the changed process	40 CFR 68.52(c)	1,000	2,000	5,000
16. 40 CFR 68.54—with changes specified at N.J.A.C. 7:31-3.1(c)4 (a) Failure to ensure the present operators or newly assigned operators have been trained or tested competent in the operating procedures	40 CFR 68.54(a)	2,000	4,000	10,000
(b) Failure to provide refresher training at least every three years or more often if changes have occurred to the standard operating procedures	40 CFR 68.54(b)	1,000	2,000	10,000
(c) Failure to provide training in any updated or new procedure prior to startup of a process after a major change	40 CFR 68.54(d)	1,000	2,000	5,000
17. 40 CFR 68.56 (a) Failure to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment	40 CFR 68.56(a)	1,000	2,000	5,000
(b) Failure to properly train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process	40 CFR 68.56(b)	2,000	4,000	10,000
(c) Failure to ensure that contract maintenance employees are properly trained to perform the maintenance procedures	40 CFR 68.56(c)	2,000	4,000	10,000
(d) Failure to properly perform or cause to be performed inspections and tests on process equipment that follow good engineering practices at a frequency consistent with applicable manufacturers recommendations, industry standards or codes, good engineering practices, or prior operating experience	40 CFR 68.56(d)	2,000	4,000	10,000
18. 40 CFR 68.58—with changes specified at N.J.A.C. 7:31-3.1(c)5 and 6				

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(a) Failure to certify that compliance with N.J.A.C. 7:31-3 has been evaluated at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed and that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.48(a) and (b)	40 CFR 68.58(a) with changes specified at N.J.A.C. 7:31-3.1(c)5	5,000	10,000	25,000
(b) Failure to conduct a compliance audit with at least one person knowledgeable in the process	40 CFR 68.58(b)	1,000	2,000	5,000
(c) Failure to develop a complete compliance audit report	40 CFR 68.58(c) with changes specified at N.J.A.C. 7:31-3.1(c)6	1,000	2,000	5,000
(d) Failure to document an appropriate response to each of the compliance audit findings and document that deficiencies have been corrected	40 CFR 68.58(d)	1,000	2,000	5,000
(e) Failure to retain the two most recent compliance audit reports	40 CFR 68.58(e)	1,000	2,000	5,000
19. 40 CFR 68.60—with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8				
(a) Failure to initiate an EHS accident investigation within 48 hours of the EHS accident occurrence	40 CFR 68.60(b) with changes specified at N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000
(b) Failure to prepare a summary at the conclusion of the EHS accident investigation	40 CFR 68.50(c) with changes specified at N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000
(c) Failure to promptly address and resolve the EHS accident investigation findings and recommendations and to document resolutions and corrective actions	40 CFR 68.60(d)	2,000	4,000	10,000
(d) Failure to review the findings of the EHS accident investigation with all affected personnel whose job tasks are affected by the findings	40 CFR 68.60(e)	1,000	2,000	5,000
(e) Failure to retain EHS accident investigation summaries for five years	40 CFR 68.60(f)	2,000	4,000	10,000
State provisions added to the Federal provisions				
20. N.J.A.C. 7:31-3.2—Emergency Response Program				
(a) Failure to comply with the emergency response requirements of N.J.A.C. 7:31-5	N.J.A.C. 7:31-3.2(a)	2,000	4,000	10,000
21. N.J.A.C. 7:31-3.3—Triennial Report				
(a) Failure to submit a triennial report on or before each third anniversary of the initial approval of the risk management program	N.J.A.C. 7:31-3.3(a)	1,000	2,000	5,000
(b) Failure to provide all required information in the triennial report	N.J.A.C. 7:31-3.3(b)	500	1,000	2,500
22. N.J.A.C. 7:31-3.4—New Covered Process construction and new EHS Service				
(a) Failure to submit required documentation at least 90 days prior to construction of a new Program 2 covered process at a stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)1	2,000	4,000	10,000
(b) Failure to receive written Department approval before proceeding with construction for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)2	6,000	12,000	30,000
(c) Failure to submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service an update of the documentation required at N.J.A.C. 7:31-3.4(a)1 for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)3	2,000	4,000	10,000
(d) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)4	one-third of fee	one-third of fee	one-third of fee

Categories of Offense	Cite	First Offense 2,000	Second Offense 4,000	Third and each Subsequent Offenses 10,000
(e) Failure to submit required documentation at least 90 days prior to placing the equipment into EHS service for existing equipment to be utilized for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-3.4(b)1			
(f) Failure to submit to the Department the fees required by N.J.A.C. 7:31-11.1 for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-3.4(b)2	one-third of fee	one-third of fee	one-third of fee
(g) Failure to update required documentation at least 90 days prior to placing equipment into EHS service for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-3.4(c)1	2,000	4,000	10,000
(h) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-3.4(c)2	one-third of fee	one-third of fee	one-third of fee
(i) Failure to enter into a consent agreement or consent agreement addendum, or to complete all items of the consent agreement or consent agreement addendum, as specified prior to placing EHS equipment into service for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process	N.J.A.C. 7:31-3.4(d)	5,000	10,000	25,000
23. 40 CFR 68.65—with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4				
(a) Failure to compile written process safety information	40 CFR 68.65(a)-(d) with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4	2,000	4,000	10,000
24. 40 CFR 68.67—with changes specified at N.J.A.C. 7:31-4.1(c)5 through 7				
(a) Failure to perform an initial hazard analysis with risk assessment on processes covered by N.J.A.C. 7:31-4—Program 3 Prevention Program that conforms to the requirements outlined in 40 CFR 68.67(a) with changes specified at N.J.A.C. 7:31-4.1(c)6	40 CFR 68.67(a) with changes specified at N.J.A.C. 7:31-4.1(c)6	5,000	10,000	25,000
(b) Failure to use an approved methodology in performing the hazard analysis with risk assessment	40 CFR 68.67(b)	2,000	4,000	10,000
(c) Failure to address all required items in the process hazard analysis with risk assessment	40 CFR 68.67(c)	1,000	2,000	5,000
(d) Failure to perform the process hazard analysis with risk assessment with a properly composed team	40 CFR 68.67(d)	1,000	2,000	5,000
(e) Failure to establish a system to promptly address and document the team's findings and recommendations	40 CFR 68.67(e)	2,000	4,000	10,000
(f) Failure to update and revalidate the hazard analysis with risk assessment every five years after the completion of the initial process hazard analysis with risk assessment	40 CFR 68.67(f) with changes specified at N.J.A.C. 7:31-4.1(c)7	2,000	4,000	10,000
(g) Failure to retain the process analysis with risk assessment and updates or revalidation for each process covered by this section, as well as documented resolution of recommendation, for the life of the process	40 CFR 68.67(g)	2,000	4,000	10,000
State provisions added to the Federal provisions				
25. N.J.A.C. 7:31-4.2—Process Hazard Analysis With Risk Assessment For Specific Pieces of EHS Equipment or Operating Alternatives				
(a) Failure to perform the process hazard analysis with risk assessment using the correct parameters and methods	N.J.A.C. 7:31-4.2(b)	5,000	10,000	25,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(b) Failure to perform an evaluation of risk reduction measures to significantly reduce the frequency or consequence of each potential offsite release scenario	N.J.A.C. 7:31-4.2(c)	2,000	4,000	10,000
(c) Failure to maintain documentation of the process hazard analysis with risk assessment	N.J.A.C. 7:31-4.2(d)	2,000	4,000	10,000
(d) Failure to prepare a report of the process hazard analysis with risk assessment	N.J.A.C. 7:31-4.2(e)	2,000	4,000	10,000
26. 40 CFR 68.69—with changes specified at N.J.A.C. 7:31-4.1(c)8				
(a) Failure to develop and implement written standard operating procedures	40 CFR 68.69(a)	1,000	2,000	5,000
(b) Failure to make standard operating procedures readily accessible to employees who work in or maintain a process	40 CFR 68.69(b)	1,000	2,000	5,000
(c) Failure to review standard operating procedures as often as necessary to reflect current practices	40 CFR 68.69(c)	1,000	2,000	5,000
(d) Failure to certify annually that these standard operating procedures are current and accurate	40 CFR 68.69(c)	1,000	2,000	5,000
(e) Failure to develop and implement safe work practices in conformance with 40 CFR 68.69(d)	40 CFR 68.69(d)	2,000	4,000	10,000
State provisions added to the Federal provisions				
27. N.J.A.C. 731-4.3—Standard Operating Procedures				
(a) Failure to include required information in standard operating procedures	N.J.A.C. 7:31-4.3(b)	500	1,000	2,500
28. 40 CFR 68.71—with changes specified at N.J.A.C. 7:31-4.1(c)9				
(a) Failure to provide initial training in compliance with 40 CFR 68.71(a)1 or 2	40 CFR 68.71(a)	2,000	4,000	10,000
(b) Failure to provide refresher training at least every three years or more often if necessary to assure that employees understand and adhere to the current operating procedures	40 CFR 68.71(b)	1,000	2,000	5,000
(c) Failure to ascertain that each employee involved in operating a process has received and understood the required training	40 CFR 68.71(c)	500	1,000	2,500
(d) Failure to prepare a record containing the identity of the employee trained, date of training and means used to verify that the employee understood the training	40 CFR 68.71(c)	2,000	4,000	10,000
State provisions added to the Federal provisions				
29. N.J.A.C. 7:31-4.4 EHS Operator Training				
(a) Failure to provide written job descriptions which include the duties and responsibilities for each EHS operator position	N.J.A.C. 7:31-4.4(a)	500	1,000	2,500
(b) Failure to specify the qualifications required for the personnel responsible for training EHS operators	N.J.A.C. 7:31-4.4(b)	500	1,000	2,500
30. 40 CFR 68.73—with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11				
(a) Failure to include all EHS equipment of the covered process in the mechanical integrity/preventive maintenance program	40 CFR 68.73(a) with changes specified at N.J.A.C. 7:31-4.1(c)11	1,000	2,000	5,000
(b) Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment	40 CFR 68.73(b)	2,000	4,000	10,000
(c) Failure to properly train each employee involved in maintaining the on-going integrity of the process equipment	40 CFR 68.73(c)	2,000	4,000	10,000
(d) Failure to perform inspections and tests on the process equipment as required	40 CFR 68.73(d)(1)	1,000	2,000	5,000
(e) Failure to follow recognized and generally accepted good engineering procedures for inspections and tests	40 CFR 68.73(d)(2)	1,000	2,000	5,000
(f) Failure to maintain the frequency of inspections and tests of process equipment consistent with applicable manufacturer's recommendations and good engineering practices or more frequently if determined necessary by prior operating experience	40 CFR 68.73(d)(3)	1,000	2,000	5,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(g) Failure to properly document each inspection and test performed on process equipment	40 CFR 68.73(d)(4)	500	1,000	2,500
(h) Failure to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner	40 CFR 68.73(e)	2,000	4,000	10,000
(i) Failure to assure that equipment as it is fabricated is suitable for the process application for which it will be used	40 CFR 68.73(f)(1)	1,000	2,000	5,000
(j) Failure to make appropriate checks and inspections to assure that equipment is installed properly and is consistent with design specifications, and the manufacturer's instructions	40 CFR 68.73(f)(2)	1,000	2,000	5,000
(k) Failure to assure that maintenance materials, spare parts or equipment are suitable for the process application for which they will be used	40 CFR 68.73(f)(3)	1,000	2,000	5,000
State provisions added to the Federal provisions				
31. N.J.A.C. 7:31-4.5 Mechanical Integrity/Preventive Maintenance Program				
(a) Failure to implement a system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to determine frequency of inspections and tests	N.J.A.C. 7:31-4.5(b)	2,000	4,000	10,000
32. 40 CFR 68.75—with changes specified at N.J.A.C. 7:31-4.1(c)12				
(a) Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment or procedures or change to stationary sources that affect a covered process	40 CFR 68.75(a)	2,000	4,000	10,000
(b) Failure to address all requirements prior to any change	40 CFR 68.75(b) with changes specified at N.J.A.C. 7:31-4.1(c)12	1,000	2,000	5,000
(c) Failure to properly inform or train employees affected by the change prior to start-up of the process or affected part or the process	40 CFR 68.75(c)	1,000	2,000	5,000
(d) Failure to update process safety information prior to startup of the process or the effected part of the process	40 CFR 68.75(d)	1,000	2,000	5,000
(e) Failure to update standard operating procedures or practices prior to startup of the process or the affected part of the process	40 CFR 68.75(e)	1,000	2,000	5,000
State provisions added to the Federal provisions				
33. N.J.A.C. 7:31-4.6 Management of Change				
(a) Failure to identify the associated release scenarios and changes in rate, duration or quantity for any change in the covered process or procedure that results in an increase in rate, duration or quantity, or release frequency	N.J.A.C. 7:31-4.6(b)	1,000	2,000	5,000
(b) Failure to analyze the release scenario associated with the change in accordance with parameters and methods provided at N.J.A.C. 7:31-4.2 to determine whether a criterion endpoint defined at N.J.A.C. 7:31-4.2(b)3iv extends beyond the stationary source boundary	N.J.A.C. 7:31-4.6(b)	2,000	4,000	10,000
(c) Failure to maintain documentation and prepare a report of hazard analysis with risk assessment required by N.J.A.C. 7:31-4.2(d) and (e) for a release scenario due to a change that results in a criterion endpoint extending beyond the site boundary	N.J.A.C. 7:31-4.6(c)	4,000	8,000	20,000
(d) Failure to establish and implement required procedures for temporary changes	N.J.A.C. 7:31-4.6(d)	2,000	4,000	10,000
34. 40 CFR 68.77				
(a) Failure to perform a pre-startup safety review of a new stationary source or for a modified stationary source when the modification is significant enough to require a change in the process safety information	40 CFR 68.77(a)	2,000	4,000	10,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(b) Failure of the pre-startup safety review to confirm all requirements prior to introducing an EHS to a process State provisions added to the Federal provisions	40 CFR 68.77(b)	2,000	4,000	10,000
35. N.J.A.C. 7:31-4.7 Safety Review: Design and Pre-start-up				
(a) Failure to conduct a safety review of design for each new EHS facility prior to construction	N.J.A.C. 7:31-4.7(b)	2,000	4,000	10,000
(b) Failure to prepare a report for a safety review of design	N.J.A.C. 7:31-4.7(c)	1,000	2,000	5,000
(c) Failure to prepare a pre-startup safety review report	N.J.A.C. 7:31-4.7(e)	1,000	2,000	5,000
36. 40 CFR 68.79—with changes specified at N.J.A.C. 7:31-4.1(c)13 and 14				
(a) Failure of owner or operator to certify that they have evaluated compliance with the provisions of this section at least every year to verify that the procedures and practices developed under the standards are adequate and are being followed and that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.65(c) and (d)	40 CFR 68.79 with changes specified at N.J.A.C. 7:31-4.1(c)13	4,000	8,000	20,000
(b) Failure to conduct the compliance audit by at least one person knowledgeable in the process	40 CFR 68.79(b)	1,000	2,000	5,000
(c) Failure to develop a report of the compliance audit	40 CFR 68.79(c) with changes specified at N.J.A.C. 7:31-4.1(c)4	1,000	2,000	5,000
(d) Failure to promptly determine and document an appropriate response to each of the findings of the compliance audit or failure to document that deficiencies found in the compliance audit have been corrected	40 CFR 68.79(d)	1,000	2,000	5,000
(e) Failure to retain the two most recent compliance audit reports	40 CFR 68.79(c)	1,000	2,000	5,000
State provisions added to the Federal provisions				
37. N.J.A.C. 7:31-4.9 Annual Reports				
(a) Failure to submit an annual report to the Department on or before the anniversary date	N.J.A.C. 7:31-4.9(a)	1,000	2,000	5,000
(b) Failure to include all required information in the annual report	N.J.A.C. 7:31-4.9(b)	500	1,000	2,500
38. 40 CFR 68.81—with changes specified at N.J.A.C. 7:31-4.1(c)14 through 21				
(a) Failure to investigate an EHS accident	40 CFR 68.81(a) with changes specified at N.J.A.C. 7:31-4.1(c)16	2,000	4,000	10,000
(b) Failure to initiate an EHS accident investigation within 48 hours following the EHS accident	40 CFR 68.81(b) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(c) Failure to establish the proper EHS accident investigation team	40 CFR 68.81(c) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(d) Failure to prepare a complete EHS accident report at the conclusion of the investigation	40 CFR 68.81(d) with changes specified at N.J.A.C. 7:31-4.1(c)15 and 17 through 21	1,000	2,000	5,000
(e) Failure to establish a system to promptly address and resolve the EHS accident report findings and recommendations	40 CFR 68.81(e) with changes specified at N.J.A.C. 7:31-4.1(c)15	2,000	4,000	10,000
(f) Failure to properly document the resolutions and corrective actions	40 CFR 68.81(e) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(g) Failure to review the report with all affected personnel whose job tasks are relevant to the EHS accident findings	40 CFR 68.81(f)	1,000	2,000	5,000
(h) Failure to retain the EHS accident report for five years	40 CFR 68.81(g) with changes specified at N.J.A.C. 7:31-4.1(c)15	2,000	4,000	10,000

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
39. 40 CFR 68.83				
(a) Failure to develop a written plan of action regarding the implementation of employee participation required by this section	40 CFR 68.83(a)	2,000	4,000	10,000
(b) Failure to consult with employees and their representatives on the conduct and development of a process hazard analysis with risk assessment and/or development of the other elements of process safety management in this rule	40 CFR 68.83(b) with changes specified at N.J.A.C. 7:31-4.1(c)22	1,000	2,000	5,000
(c) Failure to provide to employees and their representatives access to a process hazard analysis with risk assessment and/or to all other information required to be developed under this rule	40 CFR 68.83(c) with changes specified at N.J.A.C. 7:31-4.1(c)22	2,000	4,000	10,000
40. 40 CFR 68.85				
(a) Failure to issue a hot work permit for hot work operations conducted on or near a covered process	40 CFR 68.85(a)	1,000	2,000	5,000
(b) Failure to document all requirements in the hot work permit	40 CFR 68.85(b)	500	1,000	2,000
41. 40 CFR 68.87				
(a) Failure to obtain and evaluate information regarding contractor's safety performance and programs	40 CFR 68.87(b)(1)	2,000	4,000	10,000
(b) Failure to inform contractor of known fire, explosion or toxic release hazard related to the contractor's work and the process	40 CFR 68.87(b)(2)	2,000	4,000	10,000
(c) Failure to explain to the contractor the applicable provisions of 40 CFR 68 Subpart E—Emergency Response	40 CFR 68.87(b)(3)	1,000	2,000	5,000
(d) Failure to develop and implement safe work practices consistent with 40 CFR 68.69(d) to control entrance, presence and exit of the contractor in covered process areas	40 CFR 68.87(b)(4)	1,000	2,000	5,000
(e) Failure to periodically evaluate the performance of the contractor in fulfilling obligations as specified in this section	40 CFR 68.87(b)(5)	2,000	4,000	10,000
(f) Failure to assure that each contract employee is trained in the work practices necessary to perform the job	40 CFR 68.87(c)(1)	2,000	4,000	10,000
(g) Failure to assure that each contract employee is instructed in known potential fire, explosion or toxic release hazards related to the job	40 CFR 68.87(c)(2)	2,000	4,000	10,000
(h) Failure to document that each contract employee has received and understood the training required by this section	40 CFR 68.87(c)(3)	1,000	2,000	5,000
(i) Failure to assure that each contract employee follows the safety rules of the stationary source which includes the safe work practices required by 40 CFR 68.69(d)	40 CFR 68.87(c)(4)	2,000	4,000	10,000
(j) Failure to advise the owner or operator of any unique hazards presented by the contractor's work or of any hazards found by the contractor	40 CFR 68.87(c)(5)	2,000	4,000	10,000
State provisions added to the Federal provisions				
42. N.J.A.C. 7:31-4.8 Emergency Response Program				
(a) Failure to establish an emergency response element of the risk management program in accordance with N.J.A.C. 7:31-5	N.J.A.C. 7:31-4.8(a)	4,000	8,000	20,000
43. N.J.A.C. 7:31-4.10 Obligations Upon Temporary Discontinuance of EHS Use, Storage and Handling				
(a) Failure to continue activities required of the registrant by this chapter until a consent agreement or consent agreement addendum is signed by the registrant and by the Department or to comply with the requirements of that consent agreement or consent agreement addendum for covered processes that are temporarily discontinued.	N.J.A.C. 7:31-4.10(a)	2,000	4,000	10,000
44. N.J.A.C. 7:31-4.11—New Covered Processes—Construction and New EHS Service				

Categories of Offense	Cite	First Offense 2,000	Second Offense 4,000	Third and each Subsequent Offenses 10,000
(a) Failure to submit required documentation at least 90 days prior to construction of a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)1			
(b) Failure to receive written Department approval before proceeding with construction for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)2	6,000	12,000	30,000
(c) Failure to submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service an update of the documentation required at N.J.A.C. 7:31-4.11(a)1 for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)3	2,000	4,000	10,000
(d) Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)4	4,000	8,000	20,000
(e) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)5	one-third of fee	one-third of fee	one-third of fee
(f) Failure to submit required documentation at least 90 days prior to placing the equipment into EHS service for existing equipment to be utilized for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)1	2,000	4,000	10,000
(g) Failure to conduct a pre-startup review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)2	2,000	4,000	10,000
(h) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 to utilize existing equipment for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)3	one-third of fee	one-third of fee	one-third of fee
(i) Failure to submit required documentation at least 90 days prior to placing equipment into EHS service for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)1	2,000	4,000	10,000
(j) Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)2	2,000	4,000	10,000
(k) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)3	one-third of fee	one-third of fee	one-third of fee
(l) Failure to enter into a consent agreement or consent agreement addendum and to complete all items of the consent agreement or consent agreement addendum prior to placing EHS equipment into service for a new Program 3 covered process being constructed or existing equipment to be utilized for a new program 3 covered process	N.J.A.C. 7:31-4.11(d)	6,000	12,000	30,000
45. 40 CFR 68.90—with changes specified at N.J.A.C. 7:31-5.1(c)1 and 2				

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(a) Failure to comply with alternative emergency response requirements for Program 2 covered processes for which employees will not respond to an emergency	40 CFR 68.90(b) with changes specified at N.J.A.C. 7:31-5.1(c)1 and 2	1,000	2,000	5,000
46. 40 CFR 68.95—with changes specified at N.J.A.C. 7:31-5.1(c)3 and 4				
(a) Failure to develop an emergency response plan	40 CFR 68.95(a)(1)	4,000	8,000	20,000
(b) Failure to provide procedures for the use of emergency response equipment and for its inspection, testing and maintenance	40 CFR 68.95(a)(2)	1,000	2,000	5,000
(c) Failure to provide initial and annual refresher emergency response training for all employees in relevant procedures	40 CFR 68.95(a)(3)	1,000	2,000	5,000
(d) Failure to provide procedures to review and update, as appropriate, the emergency response plan	40 CFR 68.95(a)(4)	1,000	2,000	5,000
(e) Failure to coordinate the emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003	40 CFR 68.95(c)	1,000	2,000	5,000
State provisions added to the Federal provisions				
47. N.J.A.C. 7:31-5.2—Emergency Response Program				
(a) Failure to provide initial and annual refresher emergency response training for all employees in relevant procedures	N.J.A.C. 7:31-5.2(b)1	1,000	2,000	5,000
(b) Failure to complete at least one emergency response exercise each calendar year	N.J.A.C. 7:31-5.2(b)2	2,000	4,000	10,000
(c) Failure to complete a written assessment of the ER plan and of the adequacy or need for ER equipment after each ER plan implementation or each ER exercise	N.J.A.C. 7:31-5.2(b)3	1,000	2,000	5,000
(d) Failure to describe and implement the emergency notification system	N.J.A.C. 7:31-5.2(b)4	2,000	4,000	10,000
48. 40 CFR 68.150—with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2				
(a) Failure to submit a single RMP that includes the information required by 40 CFR 68.155 through 68.185 prior to June 21, 1999	40 CFR 68.150(a) with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2	2,500	5,000	12,500
(b) Failure to submit the first RMP prior to three years after the date on which a regulated substance is first listed under 40 CFR 68.130	40 CFR 68.150(b)2	2,500	5,000	12,500
(c) Failure to submit the first RMP prior to the date on which a regulated substance is first present above a threshold quantity in a process	40 CFR 68.150(b)3	2,500		5,000
49. 40 CFR 68.190—with changes specified at N.J.A.C. 7:31-7.1(c)3 through 5				
(a) Failure to review, update as specified in 40 CFR 68.190(b), and submit the RMP in a method and format to a central point specified by EPA prior to June 21, 1999	40 CFR 68.190(a) with changes specified at N.J.A.C. 7:31-7.1(c)3 and 4	1,000	2,000	5,000
(b) Failure to revise, update and submit the RMP in accordance with the conditions required at 40 CFR 68.190(b) and (c)	40 CFR 68.190(a) with changes specified at N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000
State provisions added to the Federal provisions				
50. N.J.A.C. 7:31-7.2—TCPA Risk Management Plan Submission				
(a) Failure to submit all required information for the TCPA RMP	N.J.A.C. 7:31-7.2(a)	1,000	2,000	5,000
(b) Failure to submit updates for maximum EHS inventory changes	N.J.A.C. 7:31-7.2(b)	1,000	2,000	5,000
51. N.J.A.C. 7:31-7.4—Transfer of Risk Management Program				
(a) Failure of a new owner or operator to adopt an existing, or obtain a new, approved risk management program	N.J.A.C. 7:31-7.4(a) and (b)	2,000	4,000	10,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
52. 40 CFR 68.200—with changes specified at N.J.A.C. 7:31-8.1(c)1 (a) Failure to maintain records supporting the implementation of this chapter for five years unless otherwise provided in N.J.A.C. 7:31-4	40 CFR 68.200(a) with changes specified at N.J.A.C. 7:31-8.1(c)1	2,000	4,000	10,000
53. 40 CFR 68.220—with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 (a) Failure to provide the Department access to the stationary source, supporting documentation, and any area where an accidental release could occur in accordance with N.J.A.C. 7:31-8.2 (b) Failure to comply with the requirements of a consent agreement or administrative order for a risk management program and RMP	40 CFR 68.220(h) with changes specified at N.J.A.C. 7:31-8.1(c)5 40 CFR 68.220(h) with changes specified at N.J.A.C. 7:31-8.1(c)10	2,000 2,000	4,000 4,000	10,000 10,000
54. Failure to submit stationary source data for work plan	N.J.A.C. 7:31-9.1(c)	2,000	4,000	10,000
55. Failure to nominate on time three consultants to perform the EHSARA	N.J.A.C. 7:31-9.3(b)	2,000	4,000	10,000
56. Failure to nominate on time an additional three consultants, upon determination of the inadequacy of the first three	N.J.A.C. 7:31-9.4(d)1	2,000	4,000	10,000
57. Failure to execute contract with chosen consultant within 45 days of receipt of notification of the name of the consultant	N.J.A.C. 7:31-9.4(e)	2,000	4,000	10,000
58. Failure to perform an EHSARA according to the schedule in the work plan	N.J.A.C. 7:31-9.4(f)	2,000	4,000	10,000
59. Failure of owner or operator's consultant to prepare and submit for Department review a report of EHSARA in accordance with the work plan schedule when a consultant hired by the owner or operator prepares the report of EHSARA	N.J.A.C. 7:31-9.5(b)	2,000	4,000	10,000
60. Failure of consultant to obtain approval in writing from the Department to subcontract any of the work of the EHSARA or to change the staff named to do any of the work of the EHSARA	N.J.A.C. 7:31-9.3(c)4	750	1,500	3,750

(d) The Department may assess a civil administrative penalty for a violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order adopted or issued pursuant thereto, for which no penalty amount is specified under (c) above, according to the following:

1. Not more than \$10,000 for the first offense;
2. Not more than \$20,000 for the second offense; and
3. Not more than \$50,000 for the third and each subsequent offense.

(e) The Department may, in its discretion, adjust the penalty amount determined pursuant to (d) above to assess a civil administrative penalty based on any or all of the following factors:

1. The amount of the penalty established under (c) above for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping completeness, reporting completeness or performance of risk management program requirements) and the nature

and extent of the extraordinarily hazardous accident risk likely to result from the type of violation; and/or

2. The factors listed in (g) below.

(f) If the owner or operator has not committed the same offense within the three year period preceding the pending offense, the penalty for the pending offense will be assessed at the frequency of violation level of the prior offense. The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section to assess a civil administrative penalty amount no greater than \$10,000 for the first offense, \$20,000 for the second offense and \$50,000 for the third and each subsequent offense, based upon any or all of the following factors:

1. The nature of the violation;
2. The nature and extent of the extraordinarily hazardous accident risk;

3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident risks in addition to those minimally required by applicable statute or rule;

4. The compliance history of the violator;

5. The number of times and the frequency with which the violation occurred;

6. The severity of the violation;

7. Any other mitigating, extenuating or aggravating circumstances; and/or

8. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed.

Amended by R.1993 d.358, effective July 19, 1993.

See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

#### Case Notes

Municipal water utility failed to timely file site documentation; penalty assessed. Department of Environmental Protection and Energy v. North Brunswick Water Works. 92 N.J.A.R.2d (EPE) 121.

Late filing of summary risk management program statement; de minimis violation. Division of Environmental Quality v. Middlesex Water Company. 92 N.J.A.R.2d (EPE) 62.

Failure of municipal utilities authority to timely submit Summary Risk Management Program Statement was one-time event. Department of Environmental Protection and Energy v. Gloucester Township Municipal Utilities Authority. 92 N.J.A.R.2d (EPE) 57.

Utility operating sewerage treatment facility utilizing liquid chlorine could not be penalized for failing to enter into administrative consent agreement. Camden County Municipal Utilities Authority v. New Jersey Department of Environmental Protection and Energy. 92 N.J.A.R.2d (EPE) 41.