

“Office” means the Office of Pollution Prevention and Right to Know established in the Department pursuant to N.J.S.A. 13:1D-38.

“Operator” means any person in control of, or exercising responsibility for, the daily operation of an industrial facility or a priority industrial facility.

“Owner” means any person who owns an industrial facility or a priority industrial facility.

“Person” means any individual, partnership, company, corporation, society, firm, consortium, joint venture, or any commercial or other legal entity.

“Pilot facility” means a facility or designated area of a facility used for pilot-scale development of products or processes not primarily involved in the production of goods for commercial sale.

“Pollution prevention” means: changes in production technologies, raw materials or products, that result in the reduction of the demand for hazardous substances per unit of product manufactured and the creation of hazardous products or nonproduct outputs; or changes in the use of raw materials, products, or production technologies that result in the reduction of the input use of hazardous substances and the creation of hazardous by-products or destructive results; or on-site facility changes in production processes, products, or the use of substitute raw materials that result in the reduction of the amount of hazardous waste generated and disposed of on the land of hazardous substances discharged into the air or water per unit of product manufactured prior to treatment and that reduce or eliminate, without shifting, the risks that the use of hazardous substances at an industrial facility pose to employees, consumers, and the environment and human health. “Pollution prevention” includes, but is not limited to, raw material substitution, product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance of production process equipment. “Pollution prevention” does not include any action or change entailing a substitution of one hazardous substance, product or nonproduct output for another that results in the creation of substantial new risk, and does not include treatment, increased pollution control, out-of-process recycling, or incineration.

“Pollution Prevention Assessment” means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5.

“Pollution Prevention Plan” means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 4.

“Pollution Prevention Plan Progress Report” or “Plan Progress Report” means a report required to be submitted annually to the Department by the owner or operator of an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 6.

“Pollution Prevention Plan Summary” or “Plan Summary” means a summary of a Pollution Prevention Plan required to be prepared by an industrial facility and submitted to the Department pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 5.

“Pollution prevention planning” means the preparation by a priority industrial facility of a Pollution Prevention Plan, Plan Summary, and Plan Progress Report pursuant to this chapter, and includes any reporting of information to the Department required by this chapter as part of the preparation or submittal of pollution prevention planning documents.

“Pollution Prevention Planning Guidance Document” means a document prepared by the Department pursuant to N.J.S.A. 13:1D-40(b), setting forth the administrative and regulatory requirements for preparing Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports, and providing additional information which may be used by industrial facilities for pollution prevention planning.

“Preliminary public copy” means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the “preliminary public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Priority industrial facility” means:

1. Any industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023; or
2. Any other industrial facility designated by the Department as a priority industrial facility pursuant to the criteria and procedure at N.J.A.C. 7:1K-3.2.

“Product” means one or more desired result(s) of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator.

“Production process” means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques used to produce a product or reach a planned result.

“Raw Material Substitution Certification” means a list of individual hazardous substances used in specific targeted production processes at a priority industrial facility, for which the owner or operator of the industrial facility has determined through preparation and completion of a Pollution Prevention Plan and has certified to the Department that it is not technically or economically feasible to reduce the input-use of the hazardous substance below current levels by replacing the hazardous substance with a different raw material in the specific production process.

“Record” means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which information can be retrieved and copied.

“Requester” means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

“Research and development laboratory” means a facility or a specially designated area of a facility used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances are used by, or under, the direct supervision of a technically qualified person.

“Source” means a point or location in a production process at which a nonproduct output is generated or released, provided, however, that similar, related or identical kinds of sources may be considered a single source for the purposes of the Act pursuant to the criteria at N.J.A.C. 7:1K-4.2.

“Substantiation” means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1K-9.3.

“Targeted production process” means any production process which significantly contributes to the use or release of hazardous substances or the generation of nonproduct output, as determined by the owner or operator of a priority industrial facility pursuant to criteria established by the Department at N.J.A.C. 7:1K-4.4.

“Targeted source” means any source which significantly contributes to the generation of nonproduct output, as determined by the owner or operator of a priority industrial facility pursuant to criteria established by the Department at N.J.A.C. 7:1K-4.4.

“TRI list” means the Toxic Release Inventory (TRI) list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. § 11023.

“Unit of product” means a unit used to measure the total quantity of product(s), co-product(s) and/or intermediate product(s) produced by a production process, and which is not changed by an industrial facility from year to year.

“U.S. EPA” means the United States Environmental Protection Agency.

“Violation” means a violation of any provision of the Act, or any rule or regulation, administrative order, or facility-wide permit adopted or issued pursuant to the Act.

Amended by R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

In “Form DEQ-114” substituted “Release and Pollution Prevention Report (RPPR)” for “reporting”; and inserted “Standard Industrial Classification (SIC)” and “U.S. EPA”.

Special amendment, R.2004 d.87, effective January 28, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 1233(a).

Rewrote “Industrial facility”; deleted “Standard Industrial Classification (SIC)”.

Administrative correction.

See: 36 N.J.R. 2762(b).

Adopted concurrent amendment, R.2004 d.330, effective July 29, 2004.

See: 36 N.J.R. 1233(a), 36 N.J.R. 4127(b).

Provisions of R.2004 d.87 adopted without change.

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Added definition “Grace period” and substituted “Right to Know” for “Permit Coordination” in definition “Office”.

7:1K-1.6 Construction

These rules shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:1K-1.7 Severability

If any subchapter, section, subsection, paragraph, subparagraph, provision, clause or portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:1K-1.8 Access to public information

Interested persons may obtain information on the pollution prevention program, copies of pollution prevention reporting forms, and copies of the Pollution Prevention Planning Guidance Document by contacting:

Office of Pollution Prevention and Right to Know
Department of Environmental Protection
Mail Code 22-03C
PO Box 420
Trenton, New Jersey 08625-0420
(609) 777-0518, or
<http://www.nj.gov/dep/opppc/>

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In contact information, substituted “Right to Know” for “Permit Coordination”, changed the PO Box number from “423” to “443”, changed the zip code from “08625-0423” to “08625-0443”, and added the email address.

prevention planning documents pursuant to (a) or (b) above, but who subsequently becomes subject to the filing of a toxic chemical release form pursuant to 42 U.S.C. § 11023, for example, by the U.S. EPA's addition of new hazardous substances or new North American Industry Classification System codes, shall:

1. Prepare Parts IA and II of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) and 4.5 and submit a Pollution Prevention Plan Summary to the Department in accordance with N.J.A.C. 7:1K-5.1 within 12 months after the date set by the U.S. EPA for the submittal of a toxic chemical release form pursuant to 42 U.S.C. § 11023;

2. Prepare Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by July 1 of the year following the submittal of the industrial facility's first Pollution Prevention Plan Summary to the Department;

3. Update Part IB of the Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-3.7 and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by each July 1 thereafter; and

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, 3.8, 3.9, and 3.10.

(f) The owner or operator of an industrial facility who was not required to prepare and submit pollution prevention planning documents pursuant to (a) or (b) above, but who subsequently manufactures or uses a hazardous substance in a quantity above the threshold quantity established at N.J.A.C. 7:1K-3.5, shall prepare a Pollution Prevention Plan and submit a Plan Summary to the Department by July 1 of the year after the submittal to the Department of a Release and Pollution Prevention Report (RPPR), Form DEQ-114, Sections A and B.

(g) The owner or operator of a priority industrial facility who is no longer required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 is no longer subject to the pollution prevention planning requirements of this chapter, unless designated as a priority industrial facility pursuant to N.J.A.C. 7:1K-3.2. The owner or operator of a facility shall notify the Department in writing concerning the facility status by July 1 of the year following its change in status to a facility to which this subsection applies.

(h) The owner or operator of a priority industrial facility required to prepare and submit a Federal Toxic Chemical Release Form pursuant to 42 U.S.C. §11023 shall be exempt from preparing a Pollution Prevention Plan, and submitting a Plan Summary and annual Progress Reports in accordance with the schedule in this section, if the sum of nonproduct

output and quantity shipped as or in product for that hazardous substance does not exceed 500 pounds, determined from the value reported in Section B of the most current RPPR.

(i) The provisions of (a) above notwithstanding, the owner or operator of a priority industrial facility in business prior to September 7, 2004, who has fulfilled the reporting requirements of this section utilizing a base year of 1993 shall continue to fulfill the requirements of this section utilizing 1993 as the base year.

(j) The provisions of (b) above notwithstanding, the owner or operator of a priority industrial facility in business prior to September 7, 2004, who has fulfilled the reporting requirements of this section utilizing a base year of 1995 shall continue to fulfill the requirements of this section utilizing 1995 as the base year.

Amended by R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

In (d), inserted “; for example, by the U.S. EPA's addition of new hazardous substances or new SIC codes,” following “§ 11023”; in (d)1, substituted “12 months after the date set by the U.S. EPA for the submittal” for “18 months of becoming subject to the filing” following “within”; inserted a new (e); and recodified former (e) as (f).

Special amendment, R.2004 d.87, effective January 28, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 1233(a).

In (a), substituted “North American Industry Classification System code” for “Standard Industrial Classification” in the introductory paragraph; in (b), substituted “North American Industry Classification System code, as listed in Table 3.1(b) of Appendix D” for “Standard Industrial Classification other than those enumerated in (a) above” in the introductory paragraph; in (d), substituted “North American Industry Classification System” for “SIC” in the introductory paragraph.

Administrative correction.

See: 36 N.J.R. 2762(b).

Adopted concurrent amendment, R.2004 d.330, effective July 29, 2004.

See: 36 N.J.R. 1233(a), 36 N.J.R. 4127(b).

Provisions of R.2004 d.87 adopted without change.

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Added (c) and (h) through (j); recodified former (c) and (d) as (d) and (e); recodified former (e) and (f) as (f) and (g) and rewrote the subsections.

7:1K-3.2 Designation of individual industrial facilities not subject to 42 U.S.C. § 11023 as priority industrial facilities

(a) The Department may issue a directive to an owner or operator of an individual industrial facility which is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023 designating the industrial facility as a priority industrial facility for pollution prevention planning purposes in accordance with the criteria and procedures in this section.

(b) The Department may issue a directive designating an individual industrial facility which is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023 as a priority industrial facility for pollution

prevention planning purposes if it determines that the industrial facility meets one or more of the following criteria:

1. The industrial facility uses or manufactures a hazardous substance in a quantity greater than the threshold established for the hazardous substance pursuant to N.J.A.C. 7:1K-3.5(a) or (b);

2. The volume of hazardous substances or hazardous wastes used, generated or released at the industrial facility contributes more than 10 percent to the total amount of hazardous substances used, generated or released in the State or region of the State;

3. The industrial facility has a history of unpermitted releases or non-compliance with the terms of any permit, certificate, registration, or any other relevant Department approval issued to the owner or operator of the industrial facility pursuant to N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 58:10A-1 et seq., or 26:2C-1; or

4. The industrial facility is the subject of emergency management actions taken by the Department under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., including, but not limited to, actions pertaining to landfill capacity or sludge management.

(c) The procedure for issuing a draft directive designating an individual industrial facility as a priority industrial facility for pollution prevention planning purposes is as follows:

1. The Department shall prepare a draft directive containing a written finding that, based on one or more of the criteria at (b) above, requiring the industrial facility to conduct pollution prevention planning is likely to result in a reduction in the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility and a reduction in the threat posed to the environment or public health by the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility;

2. The draft directive shall be signed by the Director of the Office of Pollution Prevention or his or her designee;

3. The draft directive shall be mailed by the Department to the industrial facility by certified mail; and

4. The Department shall notify the public of the issuance of the draft directive by commonly available public notice mechanisms.

(d) The procedure for the issuance of a final directive designating an individual industrial facility as a priority industrial facility for pollution prevention planning purposes is as follows:

1. If the owner or operator of an industrial facility designated as a priority industrial facility for pollution prevention planning purposes believes that the written findings contained in the draft directive are incomplete or inaccurate, or otherwise disagrees with the Department's

written findings, he or she may appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft directive. Such appeal shall identify the specific written finding(s) the owner or operator believes to be incomplete or inaccurate or with which the owner or operator disagrees and shall include any documentation necessary to support the owner or operator's claims;

2. The Assistant Commissioner shall review all appeals of draft directives under (d)1 above, and shall issue a final determination or final directive within 30 calendar days following receipt of the owner or operator's appeal. This shall constitute the final agency action of the Department on the directive; and

3. If the owner or operator of an industrial facility designated as a priority industrial facility for pollution prevention planning purposes does not appeal the issuance of the draft directive pursuant to (d)1 above, the draft directive becomes a final directive on the 30th day following receipt of the draft directive by the owner or operator.

(e) The owner or operator of an individual industrial facility designated as a priority industrial facility for pollution prevention planning purposes shall prepare a Pollution Prevention Plan and submit to the Department a Pollution Prevention Plan Summary within 18 months of receipt of the Department's final directive, and shall submit to the Department a Pollution Prevention Plan Progress Report each July 1 thereafter.

7:1K-3.3 Designation of NAICS Code(s) as priority industrial facilities (Reserved)

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In rule heading, substituted "NAICS" for "SIC".

7:1K-3.4 Scope of pollution prevention planning documents

(a) The owner or operator of a priority industrial facility is required to include in the industrial facility's Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports information on any hazardous substance which is used or manufactured at the industrial facility in quantities above 10,000 pounds per year, or in quantities exceeding a lower threshold for the hazardous substance set by the Department in accordance with N.J.A.C. 7:1K-3.5(b), measured on a facility-wide basis, and which is listed on either:

1. The Toxic Release Inventory (TRI) list established by the United States Environmental Protection Agency for reporting of hazardous substances pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11023; or

2. The list of additional hazardous substances designated by the Department for pollution prevention planning

purposes pursuant to N.J.A.C. 7:1K-3.5 and appearing at Appendix A.

(b) The owner or operator of a priority industrial facility is not required to include in a Pollution Prevention Plan, Plan Summary or Plan Progress Report the following:

1. Information concerning a research and development laboratory, as defined at N.J.A.C. 7:1K-1.5, located at the industrial facility, for which the owner or operator has received a research and development laboratory exemption pursuant to the procedure at N.J.A.C. 7:1G-3.2(a)2;

2. Information concerning a pilot facility, as defined at N.J.A.C. 7:1K-1.5, for which the owner or operator has received a pilot facility exemption pursuant to the procedure at N.J.A.C. 7:1G-3.2(a)2;

3. Information concerning non-hazardous substances or product formulas for mixtures that include non-hazardous substances.

(c) The owner or operator of a priority industrial facility is not required to include in Part IB or Part II of a Pollution Prevention Plan or in a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for production processes established after January 1, 1992, until the first five-year revision of the Pollution Prevention Plan and Pollution Prevention Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later. See N.J.A.C. 7:1K-3.10.

Amended by R.1994 d.51, effective February 7, 1994.
See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

7:1K-3.5 Threshold quantities for pollution prevention planning

(a) Except as otherwise provided by (b) below, the owner or operator of a priority industrial facility is required to include in a Pollution Prevention Plan, Pollution Prevention Plan Summary, and Pollution Prevention Plan Progress Report information on any hazardous substance which is used or manufactured by the industrial facility in quantities above 10,000 pounds per year, measured on a facility-wide basis.

(b) If the Department determines that the use or manufacture of a particular hazardous substance in quantities less than 10,000 pounds poses a significant risk to human health, including risks to occupational and consumer health, or the environment, it may require the owners or operators of priority industrial facilities to incorporate pollution prevention planning for the substance in quantities less than 10,000 pounds into their Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports, as follows:

1. The Department may lower the pollution prevention planning threshold for a hazardous substance by adding the

hazardous substance to Appendix B, Pollution Prevention Planning Thresholds Less Than 10,000 Pounds, incorporated herein by reference through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. A proposal to lower the pollution prevention planning threshold for a hazardous substance shall specifically include, in addition to the requirements of N.J.A.C. 1:30:

i. The chemical identity and Chemical Abstract Service (CAS) number of the hazardous substance;

ii. A brief basis and background for the Department's determination that the use or manufacture of a particular hazardous substance in quantities less than 10,000 pounds poses a significant risk to human health, including risks to occupational and consumer health, or the environment; and

iii. The new threshold planning quantity for the hazardous substance, in pounds.

2. If the threshold quantity for a hazardous substance for reporting under 42 U.S.C. § 11023 is decreased by the U.S. EPA below the threshold established by the Department under this section for that substance, the effective threshold for the purposes of this chapter shall be that established by the U.S. EPA.

(c) The owner or operator of a priority industrial facility which uses or manufactures a substance for which the Department has lowered the pollution prevention planning threshold shall revise the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary to incorporate information consistent with the new threshold for that substance. The revised Pollution Prevention Plan Summary shall be submitted to the Department within 12 months of the adoption of a lower pollution prevention planning threshold for the hazardous substance, and Pollution Prevention Progress Reports reflecting reporting for the revised threshold shall be submitted to the Department each July 1 thereafter.

Amended by R.2000 d.118, effective March 20, 2000.
See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).
Inserted (b)2.

7:1K-3.6 Additional hazardous substances for which pollution prevention planning is required

(a) The Department may designate a hazardous substance not on the TRI list to Appendix A, Additional Hazardous Substances For Pollution Prevention Planning, through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., upon consideration of all of the following criteria:

1. Prior regulation as a hazardous substance pursuant to 42 U.S.C. § 11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.; or

the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601;

2. The risk to human health or the environment due to the toxicity of the hazardous substance; and

3. Evidence of the production of the hazardous substance in commercial quantities that are used as a commodity in trade in the channels of commerce by the general public.

(b) A rule proposal to designate a hazardous substance not on the TRI list to Appendix A, Additional Hazardous Substances For Pollution Prevention Planning, incorporated herein by reference, shall specifically include, in addition to the requirements of N.J.A.C. 1:30:

1. The chemical identity and Chemical Abstract Service (CAS) number of the hazardous substance;

2. A brief basis and background for the Department's determination that, considering the criteria in (a) above, the toxicity of the hazardous substance justifies its designation to Appendix A, Additional Substances For Pollution Prevention Planning; and

3. The proposed threshold planning quantity for the hazardous substance, in pounds. If the proposed threshold planning quantity is less than 10,000 pounds, the proposal shall also contain the information required by N.J.A.C. 7:1K-3.5(b).

(c) The owner or operator of a priority industrial facility that uses or manufactures a substance designated by the Department to Appendix A as an additional hazardous substance for which pollution prevention planning is required shall revise the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary to include reporting on the newly added substance. The revised Pollution Prevention Plan Summary shall be submitted to the Department within 12 months of the adoption of this listing, and Pollution Prevention Progress Reports reflecting reporting for the newly added substance shall be submitted to the Department each July 1 thereafter.

Amended by R.2005 d.317, effective September 19, 2005.
See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In (a), substituted "19" for "9" following "13:1K-".

7:1K-3.7 Five-year revision of Pollution Prevention Plans and Pollution Prevention Plan Summaries

(a) The owner or operator of a priority industrial facility is required to prepare a complete revision of the industrial facility's Pollution Prevention Plan by July 1 of the fifth year after the year of the initial completion of Part IA of the industrial facility's Pollution Prevention Plan, and by July 1 of each fifth year thereafter.

(b) The owner or operator of a priority industrial facility is required to prepare and submit a complete revision of the

industrial facility's Pollution Prevention Plan Summary by July 1 of the fifth year after the year of the initial preparation and submittal of the industrial facility's Pollution Prevention Plan Summary, and by July 1 of each fifth year thereafter.

Repeal and New Rule by R.2005 d.317, effective September 19, 2005.
See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

7:1K-3.8 Annual Pollution Prevention Plan updates

The owner or operator of a priority industrial facility is required to annually update the information required to be recorded in Part IB of a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-3.1 and 4.3(c).

7:1K-3.9 Pollution Prevention Plan, Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications

(a) The owner or operator of a priority industrial facility is required to modify the information required to be recorded or reported in a Pollution Prevention Plan, Plan Summary, or Plan Progress Report if any of the following occurs:

1. A production process changes or a grouping or targeting decision changes because the industrial facility:

i. Ceases operation of a production process or significantly expands the operation of a targeted production process;

ii. Installs a new and different primary component in a targeted production process or removes a primary component from a targeted production process, unless the installation or removal of the component results from the implementation of pollution prevention techniques at the industrial facility;

iii. Uses a hazardous substance, or generates or releases a nonproduct output or hazardous waste, at a targeted production process, in quantities above the threshold established for the hazardous substance at N.J.A.C. 7:1K-3.5, which was not used, released or generated when the industrial facility's current Pollution Prevention Plan was completed;

iv. Reclassifies an existing nonproduct output as a product, intermediate product, or co-product;

v. Modifies a grouping decision that affects a targeted process; or

vi. Modifies a targeting decision pursuant to N.J.A.C. 7:1K-4.4.

2. A hazardous substance quantity used or manufactured at a priority industrial facility changes relative to the planning threshold quantity established at N.J.A.C. 7:1K-3.5;

3. A hazardous substance is added to or deleted from the TRI list or Appendix A of this chapter and that hazardous substance is used or manufactured at a priority in-

dustrial facility above the threshold quantity established at N.J.A.C. 7:1K-3.5 in the year following the year the hazardous substance was added; or

4. The Pollution Prevention planning threshold for a hazardous substance established at N.J.A.C. 7:1K-3.5 is revised in accordance with that section and a priority industrial facility uses or manufactures the hazardous substance in the year following the year in which the revised threshold takes effect at a quantity above the revised threshold.

(b) If any of the changes described in (a) above occur at a priority industrial facility during the reporting year, the owner or operator of the priority industrial facility shall review and revise the following sections of its current Pollution Prevention Plan and Plan Summary as they apply to targeted production processes:

1. Facility-level inventory data required in Part IA of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(b)2);

2. Process-level inventory data required in Part IA of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(b)3);

3. Facility-level and process-level pollution prevention reductions required to be recorded in Part IB of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(c)1) or reported in a Pollution Prevention Progress Report (see N.J.A.C. 7:1K-6.1(c)4);

4. Process-level pollution prevention reductions required to be recorded in Part IB of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(c)2) or reported in a Pollution Prevention Progress Report (see N.J.A.C. 7:1K-6.1(c)5);

5. Five-year pollution prevention goals required in Part II of a Pollution Prevention Plan and in a Pollution Prevention Plan Summary (see N.J.A.C. 7:1K-4.5(a)7 through 10 and 5.1(b)3);

6. Description of targeted production processes required in Part II of a Pollution Prevention Plan and in a Pollution Prevention Plan Summary (see N.J.A.C. 7:1K-4.5(a)1 and 5.1(e)5i);

7. Planned pollution prevention options required in Part II of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.5(a)6); and

8. Implementation schedules for pollution prevention options required in Part II of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.5(a)11).

(c) If any of the Pollution Prevention Plan or Plan Summary sections listed in (b) above change as a result of the changes described in (a) above at a priority industrial facility during the reporting year, the owner or operator of a priority industrial facility shall review its Pollution Prevention Plan and Pollution Prevention Plan Summary and shall:

1. Prepare substitute pages containing the revised information for inclusion in the industrial facility's Pollution Prevention Plan;

2. Submit substitute pages containing the revised information for the Pollution Prevention Plan Summary at the same time it submits the industrial facility's annual Pollution Prevention Plan Progress Report for the year in which the changes took place; and

3. Submit substitute pages containing the revised information as part of the Pollution Prevention Plan Progress Report for the reporting year in which the changes took place and each subsequent year.

(d) For a source or production process, if the quantity of a hazardous substance used or manufactured annually at a priority industrial facility decreases below the threshold quantity established at N.J.A.C. 7:1K-3.5, the owner or operator shall notify the Department in writing of such change and the reason for the change by July 1 of the year following the decrease.

(e) If a hazardous substance is deleted from the TRI list or Appendix A of this chapter, and the substance is used or manufactured at a priority industrial facility above the threshold quantity established at N.J.A.C. 7:1K-3.5, the owner or operator of the facility shall submit a final Pollution Prevention Plan Progress Report for this substance by July 1 of the year following the deletion.

(f) If deletion of a hazardous substance from the TRI list or Appendix A of this chapter results in a priority industrial facility no longer being regulated under this chapter, the owner or operator of the facility shall submit a final Pollution Prevention Plan Progress Report by July 1 of the year following the deletion.

(g) The owner or operator of a priority industrial facility may, but is not required to, retarget its processes under N.J.A.C. 7:1K-4.4 and/or prepare a new Pollution Prevention Plan as part of the modification of its Pollution Prevention Plan, Plan Summary or Plan Progress Report pursuant to this section.

Repeal and New Rule, R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

Section was "Pollution Prevention Plan, Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications". Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In rule heading, deleted "resulting from production changes or grouping or targeting changes" following "modifications"; rewrote (a); in (b), added "and revise" following "shall review" in the introductory paragraph and changed the N.J.A.C. reference in 6; in (c), rewrote the introductory paragraph; added (d)-(f); recodified former (d) as (g).

7:1K-3.10 Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications due to improvements in pollution prevention for a production process established after January 1, 1992

(a) The owner or operator of a priority industrial facility is not required to include in Part IB or Part II of a Pollution Prevention Plan or in a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for a production process established after January 1, 1992 until the first five-year revision of the Pollution Prevention Plan and Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later, subject to the following:

1. For the purposes of this subsection, a production process shall be considered to be established after January 1, 1992, if it meets any one of the following criteria:

i. The production process results in production of a new product, new coproduct, or new intermediate product after January 1, 1992 which was not identified in the industrial facility's most recent Pollution Prevention Plan;

ii. The production process results in production after January 1, 1992 of a product whose new active ingredient is chemically different from other products made at the industrial facility; or

iii. The production process results in production after January 1, 1992 of a product which is made by a different chemical route from other products made at the industrial facility, except for an improvement in the established chemistry such as a more efficient catalyst.

2. If an existing production process generates non-product output which is subsequently sold or designated as a product, coproduct, or intermediate product, it shall not be considered a production process established after January 1, 1992.

(b) The owner or operator of a priority industrial facility is required to complete all pollution prevention planning requirements for Part I of a Pollution Prevention Plan, N.J.A.C. 7:1K-4.3, for production processes established after January 1, 1992 not less than one year but no more than two years after establishing the new production process. This requirement shall be included as part of an annual update or five-year revision of the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-3.6 or 3.7.

New Rule, R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

Recodified from N.J.A.C. 7:1K-3.13 by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Former N.J.A.C. 7:1K-3.10, Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications resulting from change in hazardous substance quantity relative to threshold quantity, repealed.

7:1K-3.11 Department review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports

(a) The owner or operator of a priority industrial facility shall maintain a copy of the Pollution Prevention Plan, Plan Summary and Plan Progress Report for the industrial facility at the industrial facility, and these documents shall be available for inspection and review by the Department.

(b) The Department may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan, Plan Summary or Plan Progress Report necessary for compliance with the provisions of the Act or this chapter.

(c) The Department shall conduct its review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports by applying the following review criteria:

1. For the purposes of review and/or enforcement action under N.J.A.C. 7:1K-12, the Department shall determine and evaluate the following:

i. Whether the industrial facility has prepared a Pollution Prevention Plan, Plan Summary and/or Plan Progress Report as required by N.J.A.C. 7:1K-3.1, 3.6 or 3.8;

ii. Whether the Pollution Prevention Plan is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-4.3 and 4.5 have been included in the Pollution Prevention Plan, the items identified in N.J.A.C. 7:1K-5.1 have been included in the Pollution Prevention Plan Summary, and the items identified in N.J.A.C. 7:1K-6.1 have been included in the Pollution Prevention Plan Progress Report;

2. For the purposes of review, but not for the purposes of enforcement action under N.J.A.C. 7:1K-12, the Department shall determine and evaluate the following:

i. Whether the industrial facility's grouping decision includes a pollution treatment or control system or out-of-process recycling system as prohibited by N.J.A.C. 7:1K-4.2(d);

ii. Whether the pollution prevention methods contained in the Pollution Prevention Plan, Plan Summary and Plan Progress Report are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5. Pollution prevention methods include, but are not limited to:

(1) Pollution prevention methods considered by the industrial facility for targeted sources or production processes pursuant to N.J.A.C. 7:1K-4.5(a) 3;

(2) Pollution prevention methods proposed by the industrial facility to achieve its use and nonproduct output reduction goals pursuant to N.J.A.C. 7:1K-4.5(a)6; and

(3) Pollution prevention activities that occurred prior to 1987 or prior to preparation of an initial Pollution Prevention Plan and which are recorded in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)2vii or viii;

iii. How an owner or operator's grouping decisions under N.J.A.C. 7:1K-4.2 and 4.3(b)3iii impacts:

(1) The number of production processes at the industrial facility listed in the industrial facility's Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)3i;

(2) The number of sources at the industrial facility listed in the industrial facility's Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.5(a)1;

(3) The unit of product for each grouped process, determined in accordance with N.J.A.C. 7:1K-4.3(b)3ii and iii;

(4) The industrial facility's targeting decision pursuant to N.J.A.C. 7:1K-4.4;

(5) The identification of available and viable pollution prevention options at the industrial facility under N.J.A.C. 7:1K-4.5(a)4 and 6;

(6) The development of pollution prevention goals for the industrial facility pursuant to N.J.A.C. 7:1K-4.5(a)7 through 10; and

(7) The tracking of progress towards the industrial facility's pollution prevention goals;

iv. How an owner or operator's targeting decision under N.J.A.C. 7:1K-4.4 impacts:

(1) The development of pollution prevention goals for the industrial facility pursuant to N.J.A.C. 7:1K-4.5(a)7 through 10; and

(2) The development of source-specific information pursuant to N.J.A.C. 7:1K-4.5(a)2;

v. The value of Total Cost Assessment methods to the industrial facility's financial analysis under N.J.A.C. 7:1K-4.3(b)6 and 4.5(a)5ii;

vi. The industrial facility's methods for incorporating pollution prevention into corporate policies and decision-making;

vii. The industrial facility's methods for obtaining process-level and source-level estimates of use and nonproduct output;

viii. The industrial facility's unit of product for tracking pollution prevention progress, determined in accordance with N.J.A.C. 7:1K-4.3(b) 3ii;

ix. How the identification of products and production processes under N.J.A.C. 7:1K-4.3(b)3ii affects pollution prevention planning and reporting at the industrial facility;

x. Whether any current environmental rules or regulations are obstacles to implementing pollution prevention methods identified in the industrial facility's Pollution Prevention Plan; and

xi. If applicable, whether the industrial facility has met the requirements for a Raw Material Substitution Certification set forth in N.J.A.C. 7:1K-4.6.

(d) If the Department determines through its review under (c) above that a priority industrial facility has not prepared a Pollution Prevention Plan, Plan Summary or Plan Progress Report as required by N.J.A.C. 7:1K-3.1 or that a Pollution Prevention Plan, Plan Summary or Plan Progress Report is administratively incomplete, it shall issue an administrative order in accordance with N.J.A.C. 7:1K-12.2 directing the owner or operator to prepare a Pollution Prevention Plan, Plan Summary or Plan Progress Report or modify the industrial facility's Pollution Prevention Plan, Plan Summary or Plan Progress Report.

(e) If the Department determines through its review under (c) above that it is possible for a priority industrial facility to improve its Pollution Prevention Plan, Plan Summary or Plan Progress Report, it may issue an opinion letter to the priority industrial facility in accordance with the following:

1. The Department may issue an opinion letter identifying sections of the Pollution Prevention Plan, Plan Summary or Plan Progress Report that could be amended to strengthen pollution prevention planning at the industrial facility, including improving the industrial facility's grouping or targeting decisions;

2. The Department's opinion letter shall include a description of suggested Pollution Prevention Plan, Plan Summary or Plan Progress Report amendments and a suggested time frame for implementing the amendments;

3. In lieu of implementing any of the amendments suggested by the Department in an opinion letter, the owner or operator of the industrial facility may submit a response letter supplementing or explaining information in the industrial facility's Pollution Prevention Plan, Plan Summary or Plan Progress Report;

4. After evaluating information submitted by the industrial facility in a response letter, the Department may reaffirm its original opinion letter, issue a revised opinion

letter to the industrial facility, or withdraw its original opinion letter; and

5. The failure of an industrial facility to implement the amendments suggested in an opinion letter issued under this subsection shall not constitute non-compliance with this chapter and shall not be grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12. See N.J.A.C. 7:1K-12.9.

Amended by R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Recodified from N.J.A.C. 7:1K-3.10 by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

Recodified from N.J.A.C. 7:1K-3.14 and amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Former N.J.A.C. 7:1K-3.11, Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications resulting from addition or deletion of a hazardous substance on the TRI list or in Appendix A, repealed.

7:1K-3.12 Submittal of Pollution Prevention Plans

(a) The Department may require the owner or operator of a priority industrial facility to submit a copy of the industrial facility's Pollution Prevention Plan to the Department for review if the industrial facility requests an out-of-process recycling exemption pursuant to N.J.A.C. 7:1K-4.7 or participates in the facility-wide permitting program pursuant to N.J.A.C. 7:1K-7.

(b) The Department shall provide the owner or operator of a priority industrial facility with at least 45 days advance notice by certified mail before requiring submission of its Pollution Prevention Plan for review under (a) above, in order to enable the industrial facility to assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable.

New Rule, R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Recodified from N.J.A.C. 7:1K-3.11 by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

Recodified from N.J.A.C. 7:1K-3.15 by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Former N.J.A.C. 7:1K-3.12, Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications resulting from change in planning threshold, repealed.

SUBCHAPTER 4. POLLUTION PREVENTION PLANS

7:1K-4.1 Sequence of pollution prevention planning

(a) The Department recommends that industrial facilities conduct pollution prevention planning steps in the following order:

1. Identify all production processes, and sources as applicable, in accordance with N.J.A.C. 7:1K-4.3(b)3;

2. Group sources or production processes in accordance with N.J.A.C. 7:1K-4.2;

3. Complete Part IA of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) except for the identification of production processes in accordance with N.J.A.C. 7:1K-4.3(b)3;

4. Target sources or production processes in accordance with N.J.A.C. 7:1K-4.4;

5. Complete Part II of a Pollution Prevention Plan, including setting use reduction and NPO reduction goals, in accordance with N.J.A.C. 7:1K-4.5;

6. Develop a Raw Material Substitution Certification, if applicable, in accordance with N.J.A.C. 7:1K-4.6;

7. Complete and submit a Pollution Prevention Plan Summary in accordance with N.J.A.C. 7:1K-5;

8. Request an out-of-process recycling authorization, if applicable, in accordance with N.J.A.C. 7:1K-4.7; and

9. Complete Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report in accordance with N.J.A.C. 7:1K-6.

7:1K-4.2 Grouping of production processes or sources for pollution prevention planning purposes

(a) An owner or operator of a priority industrial facility may choose to group sources or production processes that use similar ingredients to produce one or more similar products so that the grouped sources or production processes are considered a single source or production process for pollution prevention planning purposes.

(b) An owner or operator of a priority industrial facility who chooses to group may consider any of the following criteria to determine whether sources or production processes that use similar ingredients to produce one or more similar products should be considered a single source or production process for pollution prevention planning purposes:

1. The function of the hazardous substance in the development of a product, that is, how is the hazardous substance used in the production process? This criterion is intended to aid industrial facilities in distinguishing between basic types or classes of products manufactured, for example, chemicals or articles;

2. The function of the equipment. This criterion is intended to aid industrial facilities in distinguishing between different modes of operation for production processes, for example, batch operations or continuous operations;

3. Whether the sources or processes use similar ingredients;

4. Whether the sources or processes produce similar products; and

(4) Generated as nonproduct output at each production process for each of the following categories:

- (A) Recycled out of process;
- (B) Destroyed by on-site treatment;
- (C) Destroyed by on-site energy recovery;
- (D) Stack air emissions;
- (F) Fugitive air emissions;
- (F) Discharge to POTWs;
- (G) Discharge to groundwater;
- (H) Discharge to surface waters;
- (I) On-site land disposal;
- (J) Transferred off-site; and
- (K) Ending inventory, as non-product output minus beginning inventory, as non-product output;

- (5) Released from each production process; and
- (6) Recycled outside of each production process;

ii. Pollution Prevention techniques used in a given year;

iii. Whether or not a process was discontinued or sent off-site in a given year;

iv. Whether or not a facility made a process change that triggered a P2 Plan modification pursuant to N.J.A.C. 7:1K-3.9; and

v. An explanation on whether or not a facility's pollution prevention progress for targeted processes was less than anticipated;

5. Information and data on hazardous waste generation, treatment, storage and disposal activities:

i. Annual facility-level data for each hazardous waste generated, including, but not limited to:

- (1) Amount generated at the industrial facility;
- (2) Amount treated outside of a production process;
- (3) Amount stored outside of a production process;
- (4) Amount disposed outside of a production process;
- (5) Reductions or increases in the amount of each hazardous waste generated, per unit of product, in comparison to the base year;
- (6) Address of off-site treatment, storage or disposal facilities (TSD's); and

(7) Description of type of treatment at each treatment, storage or disposal facility (TSD);

ii. Facility-level recycling data for each hazardous waste, including by direct measurement or estimates using best engineering judgment:

- (1) Amount recycled on site; and
- (2) Amount recycled off site; and

iii. The annual amounts of each hazardous waste generated at each production process at the industrial facility, including reductions or increases in the amount of each hazardous waste generated, per unit of product, in comparison to the base year; and

6. Cost data:

i. An estimate for each source or production process, of the costs of using hazardous substances, generating hazardous substances as nonproduct output, and releasing hazardous substances, including, at a minimum:

- (1) Storage and handling costs;
- (2) Monitoring, tracking and reporting costs;
- (3) Treatment costs;
- (4) Transportation and disposal costs;
- (5) Manifesting and labeling costs;
- (6) Permit fees;
- (7) Liability insurance costs, if the industrial facility is covered by liability insurance;
- (8) Raw material costs;
- (9) Safety and health compliance costs; and

(10) Optional: Additional costs which may be considered are found in the Pollution Prevention Planning Guidance Document published by the Department. The Pollution Prevention Planning Guidance Document describes the total cost assessment method of capital budgeting for industrial facilities who choose to apply total cost assessment to their sources and production processes.

(c) Part IB of a Pollution Prevention Plan shall contain information on the reduction or increase in use of hazardous substances and the generation of hazardous substances as nonproduct output, including, but not limited to, the following:

- 1. Facility-level information on pollution prevention reductions (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(f)4i through iv.).

i. Calculations of the reduction or increase in use of each hazardous substance in comparison to the base year;

ii. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output, in comparison to the base year;

iii. Calculations of the reduction or increase in multimedia releases, by medium, after recycling and treatment, in comparison to the base year; and

iv. A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the facility-level five-year goals reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3. Quantities of co-products sold by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving pollution prevention goals.

2. Information on Targeted Production Processes:

i. An identification of targeted production processes, using a unique identification number assigned by the industrial facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a targeted process cannot be assigned to any other process; and

ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(f)5ii(1) through (7).):

(1) Calculations of the reduction or increase in use of each hazardous substance within each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the base year;

(2) Calculations of the reduction or increase in the generation of nonproduct output for each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the base year;

(3) Calculations of the reduction or increase in use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of coproducts from each production process, which are not the result of pollution prevention techniques, in comparison to the base year;

(4) Calculations of the reduction or increase in nonproduct output generation per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of coproducts from each production process, which are not the result of pollution prevention techniques, in comparison to the base year;

(5) Calculations of the reduction or increase in multimedia releases from each targeted production process, by medium, after recycling and treatment, in comparison to the base year;

(6) A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the process-level five-year goals for each targeted production process reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)5. Quantities of co-products sold by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving use reduction or nonproduct output reduction goals; and

(7) An identification of the pollution prevention techniques used to achieve each reduction reported under (c)2ii(1) through (5) above; and

3. A reassessment of the industrial facility's five-year goals for reductions reported in the facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(e)3 and 5, if applicable.

Amended by R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

In (b)6i, substituted "An estimate" for "A comprehensive financial analysis"; and in (c)1 and 2, substituted "base year" for "previous year" throughout.

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Rewrote (a)1 and (b); in (c), substituted "(f)4i through iv" for "(c)4i through iv" following "N.J.A.C. 7:1K-" in 1, deleted iii and iv, and recodified former v.-vi. as iii.-iv.

7:1K-4.4 Targeting of sources or production processes

(a) In regard to targeting of sources or production processes, the following cases are applicable:

1. The owner or operator of a priority industrial facility may choose to focus the industrial facility's pollution prevention planning resources of Pollution Prevention Plan by targeting for Part II pollution prevention planning those sources or production processes where significant progress can be made in the reduction of hazardous substances used, generated as non product output, or released at the industrial facility.

2. The owner or operator of a priority industrial facility shall target for Part II pollution prevention planning all sources or production processes that use or generate persistent, bioaccumulative, toxic (PBT) chemicals as non-product output at the industrial facility, if the facility level quantities are above the reporting thresholds contained at 40 CFR 372.

(b) Pursuant to (a)1 above, after preparing Part I of a Pollution Prevention Plan but prior to preparing Part II of a Pollution Prevention Plan, the owner or operator of a priority

industrial facility may identify, for targeting purposes, sources or production processes which contribute:

1. Ninety percent or more of the total use of all hazardous substances at the industrial facility; or
2. Ninety percent or more of the total nonproduct output generated at the industrial facility; or
3. Ninety percent or more of the total multi-media environmental releases at the industrial facility; or
4. (Reserved)

(c) Once an industrial facility has identified the sources or production processes that meet the targeting criteria in (a) above, the industrial facility shall complete Part II of a Pollution Prevention Plan for each hazardous substance used, generated as nonproduct output, or released at the targeted source or production process.

(d) If an industrial facility does not identify targeted production processes using the criteria above, the industrial facility shall complete the requirements for Part II of a Pollution Prevention Plan for all sources and production processes at the industrial facility.

(e) If the owner or operator of a priority industrial facility decides to modify the industrial facility's targeting decision following the completion of the industrial facility's Pollution Prevention Plan and Plan Summary, the owner or operator shall modify the industrial facility's Pollution Prevention Plan and Plan Summary to reflect the new targeted sources and processes and shall submit the modified Pollution Prevention Plan Summary to the Department within 90 days of making such modifications, as required by N.J.A.C. 7:1K-3.9(a) 6.

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

Renumbered former (b) through (d) as (c) through (e); and in (e), changed N.J.A.C. reference.

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

Added (a); recodified former (a) as (a)1; added (a)2; in (b), substituted "Pursuant to (a)1 above, after" for "After" preceding "preparing Part I".

7:1K-4.5 Part II of a Pollution Prevention Plan

(a) Part II of a Pollution Prevention Plan shall contain, at a minimum, the following information:

1. A narrative description of each targeted production process, and of each targeted source that is not grouped within a targeted production process, including a description of the process, lines, methods, activities or techniques used in the process or source;
2. Inventory data, in pounds, for the annual quantities, either in pure form or contained in a mixture, determined by direct measurement or calculations and estimates using best engineering judgment, of each hazardous substance generated as nonproduct output at each source within each targeted production process;

3. If determined to be necessary by the industrial facility, detailed process-level inventory data for each targeted production process or specific targeted production processes;

4. An identification, for each targeted production process and targeted source, of available pollution prevention options, including procedures, technologies and equipment, that may substantially reduce the use and generation of hazardous substances;

5. A feasibility analysis of pollution prevention options identified under (a)4 above, including:

i. A technical analysis of specific pollution prevention options identified under (a)4 above; and

ii. An estimate of the costs in order to determine potential savings, realized by investments in pollution prevention options compared to the costs of using hazardous substances, generating hazardous substances as nonproduct output, and releasing hazardous substances as determined in N.J.A.C. 7:1K-4.3(b)6, including, at a minimum:

- (1) Storage and handling costs;
- (2) Monitoring, tracking and reporting costs;
- (3) Treatment costs;
- (4) Transportation and disposal costs;
- (5) Manifesting and labeling costs;
- (6) Permit fees;
- (7) Liability insurance costs, if the industrial facility is covered by liability insurance;
- (8) Raw material costs;
- (9) Safety and health compliance costs; and

(10) Optional: Additional costs which may be considered are found in the Pollution Prevention Planning Guidance Document published by the Department. The Pollution Prevention Planning Guidance Document describes the total cost assessment method of capital budgeting for industrial facilities who choose to apply total cost assessment to their sources and production processes;

6. For each targeted production process, a description of pollution prevention options the owner or operator of the industrial facility intends to implement during the next five years;

7. For the industrial facility, the five-year numeric goal for reducing the use of each hazardous substance (Note: The facility-level goals to be reported in (a)6 and 7 are the same as those reported in the Plan Summary pursuant to N.J.A.C. 7:1K-5.1(e)3i and ii.);

8. For the industrial facility, the five-year numeric goal for reducing the generation of each hazardous substance as nonproduct output;

9. For each targeted production process, the five-year numeric goal for reducing the use of each hazardous substance per unit of product, as defined in N.J.A.C. 7:1K-1.5 (Note: The process-level goals to be reported in (a)8 and 9 are the same goals reported in the Plan Summary pursuant to 7:1K-5.1(b)5ii and iii.);

10. For each targeted production process, the five-year numeric goal for reducing the generation of each hazardous substance as nonproduct output per unit of product, as defined in N.J.A.C. 7:1K-1.5;

11. A schedule for implementing the pollution prevention options identified in (a)5 above, including at a minimum:

i. Start date for construction or other activities which may require pre-approval from the Department through the issuance of permits or other approvals, if applicable; and

ii. Completion date for implementing the pollution prevention options identified under (a)5 above;

12. A quantitative description of the impact that the industrial facility's implementation of individual pollution prevention techniques is expected to have on post-treatment multimedia releases of hazardous substances by the industrial facility, reported by medium; and

13. A description of the valuation methods used by the owner or operator of the industrial facility to determine not to install or utilize each option, identified under (a)4 above, that would have resulted in a greater percentage reduction in the use of hazardous substances per unit of product or the generation of nonproduct output per unit of product than the options identified at (a)5i above.

(b) An industrial facility is not required to include information on the product, co-product or intermediate product of a production process in developing the industrial facility's use reduction and NPO reduction goals pursuant to (a) above.

(c) An industrial facility filing a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary is not required to include information on hazardous substances listed on the Raw Material Substitution Certification in developing the industrial facility's use reduction goals pursuant to (a) above. See N.J.A.C. 7:1K-4.6.

Amended by R.1994 d.51, effective February 7, 1994.

See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

In (a), substituted "An estimate" for "A comprehensive financial analysis" at the beginning of 5ii, and made internal reference changes in 13.

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In (a)5ii, substituted "in order to determine potential" for "or" preceding "savings,"; rewrote (a)5ii(8); added (a)5ii(9); recodified former (a)5ii(9) as (a)5ii(10); in (a)12, added "and" to the end of the paragraph; in (a)13, deleted "; and" and added "." at the end of the paragraph; deleted (a)14.

7:1K-4.6 Procedure for development of a Raw Material Substitution Certification

(a) Following completion of a Parts I and II of a Pollution Prevention Plan, an owner or operator of a priority industrial facility may choose to file with the Department a Raw Material Substitution Certification listing the individual hazardous substances used in specific targeted production processes at the facility for which the owner or operator of the industrial facility has determined through preparation and completion of a Pollution Prevention Plan that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels by replacing the substance with a different raw material in the specific production process.

(b) The procedure for developing and filing a Raw Material Substitution Certification is as follows:

1. A Raw Material Substitution Certification shall consist of:

i. A list of the individual hazardous substances used in specific targeted production processes at the facility for which the owner or operator of the priority industrial facility has determined through preparation and completion of a Pollution Prevention Plan that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels by replacing the substance with a different raw material in the specific production process;

ii. A certification by the highest ranking corporate official with direct operating responsibility at the industrial facility that reads as follows:

"I certify that Parts I and II of the Pollution Prevention Plan have been completed for the specific combination of hazardous substances and production processes for which this Raw Material Substitution Certification is being claimed and that through completion of the Pollution Prevention Plan this industrial facility has determined that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels by replacing the substance with a different raw material in the specific production process.";

iii. A description of whether pollution prevention methods other than raw material substitution, have been considered for that specific combination of hazardous substances and production processes listed under (b)1i above. Examples of other pollution prevention methods include: product reformulation, production process re-

design or modification, in-process recycling, and improved operation and maintenance; and

iv. A brief narrative summary of the technical and economic analysis conducted by the industrial facility in Part II of the Pollution Prevention Plan showing that the hazardous substances listed under (b)1i above cannot be substituted within the targeted production processes listed under (b)1i above; and

2. The owner or operator of the industrial facility shall file a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary.

(c) An industrial facility filing a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary is not required to include information on hazardous substances listed on the Raw Material Substitution Certification in developing the industrial facility's use reduction goals pursuant to N.J.A.C. 7:1K-4.5(a) 6, 7 and 10.

7:1K-4.7 Out-of-process recycling

(a) The owner or operator of a priority industrial facility may include a description of on-site, out-of-process recycling activities in the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary if pollution prevention strategies are not reasonably available to the industrial facility for specific hazardous substance(s) in specific production process(es).

(b) The owner or operator of the industrial facility shall include in the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary a brief technical and economic analysis of whether pollution prevention strategies are reasonably available to the industrial facility for the specific hazardous substance(s) in specific production processes identified and a schedule for implementing on-site, out-of-process recycling activities for the specific hazardous substances in specific production process(es) covered by the out-of-process recycling. However, any out-of-process recycling activities reported by the industrial facility in its Pollution Prevention Plan or Pollution Prevention Plan Summary pursuant to this section shall not be included in the industrial facility's use reduction or nonproduct output reduction goals.

Amended by R.1994 d.51, effective February 7, 1994.
 See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).
 Amended by R.2000 d.118, effective March 20, 2000.
 See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).
 Rewrote the section.

7:1K-4.8 Departmental access to Pollution Prevention Plans

The owner or operator of a priority industrial facility shall maintain a copy of the Pollution Prevention Plan for the

industrial facility at the industrial facility, where it shall be available for inspection by the Department.

7:1K-4.9 Pollution Prevention Process-Level Data Worksheet in the Pollution Prevention Plan

(a) An owner or operator of a priority industrial facility shall include in a Pollution Prevention Plan a P2-115, Pollution Prevention Process-Level Data Worksheet, available from the Department (at the address in (a)1 below), for recording key process-level data elements required for each process in the Pollution Prevention Plan. These include type and units of product, process-level use and nonproduct output (NPO), and data components needed to compute use and NPO. The worksheet(s) shall include base year data and shall be annually updated and included in the Plan. At the discretion of the Department, an owner or operator may include in the Pollution Prevention Plan an alternate version of this worksheet, such as an electronic spreadsheet, as developed by the facility. The worksheet shall be included in the Pollution Prevention Plan by the next submittal to the Department of a Release and Pollution Prevention Report (RPPR), or by the next revision of the P2 Plan, whichever occurs first.

1. The worksheet may be obtained at the following address:

Office of Pollution Prevention and Right to Know
 Department of Environmental Protection
 Mail Code 22-03C
 PO Box 420
 Trenton, New Jersey 08625-0420
 (609) 777-0518, or
 by internet: <http://www.nj.gov/dep/opppc/>

New Rule, R.2000 d.118, effective March 20, 2000.
 See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).
 Amended by R.2005 d.317, effective September 19, 2005.
 See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In (a), added "P2-115," preceding "Pollution Prevention Process-Level" and added "P2" following "revision of the" in the introductory paragraph; in the contact information in (a)1, substituted "Right to Know" for "Permit Coordination", changed the PO Box number from "423" to "443", changed the zip code from "08625-0423" to "08625-0443", and added the email address.

7:1K-4.10 Retention of Pollution Prevention Plans, Plan Summaries and Progress Reports at the site

An owner or operator of a priority industrial facility shall retain Pollution Prevention Plans, Plan Summaries and Progress Reports at the site for a minimum of five years beyond the end of the previous cycle.

New Rule by R.2005 d.317, effective September 19, 2005.
 See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

**SUBCHAPTER 5. POLLUTION PREVENTION PLAN
SUMMARY**

7:1K-5.1 Pollution Prevention Plan Summary reporting requirements

(a) The owner or operator of a priority industrial facility is required to:

1. Beginning with reporting year 2005, prepare and submit to the Department electronically using the Department's on-line reporting website located at <http://www.nj.gov/dep/online/> by the deadline specified at N.J.A.C. 7:1K-3.1, a Pollution Prevention Plan Summary summarizing the industrial facility's Pollution Prevention Plan; and

2. Revise, update or modify the industrial facility's Pollution Prevention Plan Summary thereafter in accordance with N.J.A.C. 7:1K-3.6, 3.8 and 3.9.

(b) If it is a hardship for an owner or operator of a priority industrial facility to submit a Pollution Prevention Plan Summary electronically, the employer may request approval from the Department to submit the Pollution Prevention Plan Summary in paper form. The Department shall approve such a request provided that:

1. The request is submitted no later than July 1 of the submittal year;

2. The owner or operator of a priority industrial facility explains:

i. The grounds for the hardship that electronic submittal would impose; and

ii. The effort(s) the owner or operator of a priority industrial facility will make to ensure the facility's ability to make electronic submittals in the future; and

3. The owner or operator of a priority industrial facility makes every effort to become able to submit the form electronically in future years; and

(c) The owner or operator of a priority industrial facility that is claiming confidentiality under N.J.A.C. 7:1K-8.2(b) for any part of the Pollution Prevention Plan Summary must submit a paper copy of the confidential Pollution Prevention Plan Summary to the Department.

(d) The Department shall approve, on a case-by-case basis, an extension of a reporting deadline if a facility is unable to electronically file its Pollution Prevention Plan Summary due to a malfunction in the Department's electronic reporting system. The Department shall not approve any extension due to a malfunction in a facility's electronic information technology system, unless the facility verifies the malfunction in writing and promptly files the report by other means.

(e) A Pollution Prevention Plan Summary shall consist, at a minimum, of the following:

1. Administrative information:

i. The name of the industrial facility;

ii. The address of the industrial facility;

iii. The location of the industrial facility, using the industrial facility's centroid coordinate in New Jersey State Plane Feet;

iv. Relevant facility identification numbers assigned to the industrial facility by any State or Federal agency;

v. The name and business telephone number of the owner or operator of the industrial facility, and of the highest ranking corporate official at the industrial facility; and

vi. The name and business telephone number of the non-management employee representative at the Industrial facility.

2. Certification:

i. A written certification, signed by the owner or operator of the industrial facility that reads as follows:

"I certify under penalty of law that a Pollution Prevention Plan has been prepared for this industrial facility and that the Plan is available at the facility for inspection by the Department. I further certify that the information submitted in this Pollution Prevention Plan Summary is true, accurate and complete to the best of my knowledge.";

3. Facility-level information:

i. Five-year numeric goals for reducing the use of each hazardous substance;

ii. Five-year numeric goals for reducing the generation of each hazardous substance as nonproduct output (Note: The facility-level goals to be reported in (e)3i and ii are the same as those to be included in the Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.5(a)6 through 9.);

iii. A list of permits issued by the Department to the industrial facility for the use or multimedia release of hazardous substances, the discharge of pollutants, and the emission of pollutants or air contaminants including, but not limited to, permits issued pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Environmental Cleanup and Responsibility Act, N.J.S.A. 13:1K-6 et seq.; the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.; the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.;

iv. Optional: A priority industrial facility may include information on pollution prevention strategies implemented at the facility prior to 1987, provided that

7:1K-7.4 Reporting findings of the pilot program; potential for expanding the program

(a) By March 1, 1996, the Department shall prepare and submit to the Governor and the Legislature a report analyzing the facility-wide permit program, evaluating the ability of the Department to conduct and expand the facility-wide permit program, and proposing, if warranted, a schedule to expand the applicability of the facility-wide permit program.

(b) The Department shall not issue more than 15 facility-wide permits without specific authorization by law.

SUBCHAPTER 8. CONFIDENTIALITY CLAIMS**7:1K-8.1 Confidentiality of Pollution Prevention Plans**

(a) The owner or operator of a priority industrial facility required to prepare a Pollution Prevention Plan under this chapter shall maintain a confidential copy of the industrial facility's Pollution Prevention Plan at the industrial facility for inspection by the Department. Employees of the Department are required to handle confidential information, including the confidential copy of an industrial facility's Pollution Prevention Plan, in accordance with N.J.A.C. 7:1K-11.

(b) If the Department requires a Pollution Prevention Plan to be submitted for review pursuant to N.J.A.C. 7:1K-3.9, 3.10, 3.11, 3.12 or 3.13, the owner or operator of the industrial facility may assert a confidentiality claim for information which he or she believes in good faith to be confidential information by filing a confidentiality claim in accordance with the procedure at N.J.A.C. 7:1K-8.2.

Amended by R.2000 d.118, effective March 20, 2000.

See: 31 N.J.R. 4187(a), 32 N.J.R. 1001(a).

In (b), changed N.J.A.C. reference.

7:1K-8.2 Procedure for making a claim for information contained in Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports

(a) Any person required to submit information to the Department under this chapter, or to allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department, at the address provided in N.J.A.C. 7:1K-8.4(b), a confidential copy and, upon the Department's request, a preliminary public copy of a Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may

disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL". The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:1K-8.3.

7:1K-8.3 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:1K-8 through 11. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:1K-8.4(a), be directed to the designee.

7:1K-8.4 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices relating to confidentiality claims under N.J.A.C. 7:1K-8 through 11 to the person designated by the claimant pursuant to N.J.A.C. 7:1K-8.3, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:1K-9.3(a)1ii;
2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:1K-9.5(a);
3. Notices of disclosure under N.J.A.C. 7:1K-10.3; and

4. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:1K-10.6.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Office of Pollution Prevention and Right to Know
Department of Environmental Protection
Mail Code 22-03C
PO Box 420
Trenton, New Jersey 08625-0420

Amended by R.2005 d.317, effective September 19, 2005.
See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).

In the contact information in (b), substituted "Right to Know" for "Permit Coordination", changed the PO Box number from "423" to "443", changed the zip code from "08625-0423" to "08625-0443".

SUBCHAPTER 9. CONFIDENTIALITY DETERMINATIONS

7:1K-9.1 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:1K-11, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:1K-11.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:1K-9.2 Notice to claimant of request for confidentiality determination

Upon receipt of a request to inspect or copy records containing information which is the subject of a claim pursuant to N.J.A.C. 7:1K-9.1(a)1, the Department shall notify the industrial facility in writing of its receipt of the request within 15 working days of receiving the request.

New Rule, R.1994 d.51, effective February 7, 1994.
See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

7:1K-9.3 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;

ii. That the claimant is required to substantiate the claim in accordance with N.J.A.C. 7:1K-9.4;

iii. The address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation pursuant to N.J.A.C. 7:1K-9.5(a);

v. The method for requesting a time extension under N.J.A.C. 7:1K-9.5(b); and

vi. That the claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1K-9.5 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1K-9.4, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1K-9.6. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1K-9.6.

Amended by R.1994 d.51, effective February 7, 1994.
See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

7:1K-9.4 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and has notified the claimant pursuant to N.J.A.C. 7:1K-9.3(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted by N.J.A.C. 7:1K-9.5:

1. Measures taken by the claimant to prevent disclosure of the information to others;

i. The violator's defenses to each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment stated in short and plain terms; and

ii. An admission or denial of each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends in good faith to deny only a part or a qualification of a finding, the alleged violator shall specify so much of it as is true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the alleged violator denies, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;

3. If a confidentiality determination is being appealed:

i. A concise statement of each factual or legal question alleged to be at issue and its relevance to the Department's confidentiality determination; and

ii. A concise statement of the claimant's or applicant's position on each factual or legal question alleged to be at issue;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order or notice of civil administrative penalty assessment being challenged, or within 45 days after receipt by the claimant of a confidentiality determination, the Department shall deny the hearing request.

(d) If the violator or claimant fails to include all the information required by (d) above, the Department may deny the hearing request. The Department may grant the violator or claimant an additional 10 days to correct deficiencies in an incomplete adjudicatory hearing request.

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

Amended by R.2005 d.317, effective September 19, 2005.

See: 37 N.J.R. 984(a), 37 N.J.R. 3637(c).
In (a), rewrote address.

7:1K-12.4 Civil administrative penalty determination— general

(a) The Department may assess a civil administrative penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense and not more than \$15,000 for the third and each subsequent offense against each violator for each violation of the Act.

(b) Each violation of the Act constitutes a distinct and separate offense.

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

(d) The Department may, in its discretion, assess a civil administrative penalty on the basis of one or more of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the offense(s);
3. The measures taken by the violator to mitigate or remediate the effects of the current offense or to prevent future offenses;
4. The deterrent effect of the penalty; or
5. Other specific mitigating or extenuating circumstances of the violator or offense.

(e) Notwithstanding the provisions of N.J.A.C. 7:1K-12.5 through 12.7, the Department may compromise the amount of a civil administrative penalty assessed under this subchapter on the basis of one or more of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the offense(s);
3. The measures taken by the violator to mitigate or remediate the effects of the current offense and to prevent future offenses; or
4. Other mitigating or extenuating circumstances of the violator or the offense, documented in a manner acceptable to the Department;

5. Any other terms or conditions acceptable to the Commissioner.

(f) 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.

7:1K-12.5 Civil administrative penalties for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record or other document submitted or maintained under the Act or any rule, administrative order, or permit issued pursuant to the Act.

(b) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of \$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$1,000 for the first offense, \$2,500 for the second offense, and \$5,000 for the third and each subsequent offense.

(c) Penalties for false certification or false reporting may include the criminal penalties set forth at N.J.S.A. 2C:28-3.

7:1K-12.6 Civil administrative penalties for frivolous confidentiality claims

(a) The Department may assess a civil administrative penalty against each violator who submits a confidentiality claim pursuant to N.J.A.C. 7:1K-9 which is determined by the Department to be frivolous.

(b) The civil administrative penalty for offenses described in this section, per act or omission, shall be in the amount of \$1,000 for the first offense, \$2,500 for the second offense, and \$5,000 for the third and each subsequent offense.

New Rule, R.1994 d.51, effective February 7, 1994.
See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

7:1K-12.7 Civil administrative penalties for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any industrial facility by any authorized Department representative.

(b) The amount of the civil administrative penalty for offenses described in this section shall be \$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for the third and each subsequent offense.

Recodified from 7:1K-12.6 by R.1994 d.51, effective February 7, 1994.
See: 25 N.J.R. 1849(a), 26 N.J.R. 842(a).

Prior 7:1K-12.7, Civil administrative penalties for failure to comply, repealed.

7:1K-12.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) This section establishes penalties for violations of the Act and this chapter. Violations are identified as minor or non-minor in accordance with N.J.S.A. 13:1D-125 et seq.

(b) The following violations are non-minor:

1. Failure to prepare a Pollution Prevention Plan as required by N.J.A.C. 7:1K-3.1(a) through (e). The penalty for this violation shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third offense and each subsequent offense.

2. Failure to prepare a Pollution Prevention Plan as required by N.J.A.C. 7:1K-3.7(a) every five years by July 1 beginning with the fifth year following the initial base year. The penalty for this violation shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third offense and each subsequent offense.

3. Failure to comply with an administrative order issued pursuant N.J.A.C. 7:1K-12.2, addressing administrative completeness of a Pollution Prevention Plan, Pollution Prevention Plan summary or Pollution Prevention Plan Progress report. The penalty for this violation shall be up to \$1,000 for the first offense, up to \$5,000 for the second offense, and up to \$10,000 for the third and each subsequent offense.

(c) The following violations are minor:

1. Failure to submit a Pollution Prevention Plan Summary as required by N.J.A.C. 7:1K-3.1(a) through (e) by July 1. If the violation is not corrected pursuant to (e) below, the penalty for this violation shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third and each subsequent offense.

2. Failure to submit a Pollution Prevention Plan Progress Report as required by N.J.A.C. 7:1K-3.1(a) through (e) by July 1. If the violation is not corrected pursuant to (e) below, the penalty for this violation shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third offense and each subsequent offense.

3. Failure to prepare and submit a Pollution Prevention Plan Summary as required by N.J.A.C. 7:1K-3.7(b) by July 1 beginning with the fifth year following the initial base year. If the violation is not corrected pursuant to (e) below, the penalty for this violation shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third offense and each subsequent offense.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor under (c) above, provided the following conditions are met: