

CHAPTER 1E

DISCHARGES OF PETROLEUM AND OTHER
HAZARDOUS SUBSTANCES

Authority

N.J.S.A. 58:10-23.11, 58:10-46 through 50, 13:1K-1
et seq. and 13:1D-125 through 133.

Source and Effective Date

R.2001 d.355, effective August 31, 2001.
See: 33 N.J.R. 1255, 33 N.J.R. 3518(a).

Chapter Expiration Date

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, expires on August 31, 2006.

Chapter Historical Note

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was adopted as R.1977 d.115, effective March 31, 1977. See: 9 N.J.R. 68(c), 9 N.J.R. 217(c).

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was readopted as R.1985 d.377, effective July 15, 1985. See: 17 N.J.R. 865(a), 17 N.J.R. 1759(a). Pursuant to Executive Order No. 66(1978), Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, expired on July 15, 1990.

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was adopted as new rules by R.1990 d.398, effective August 6, 1990. See: 22 N.J.R. 1651(a), 22 N.J.R. 2284(a).

Subchapter 5, Hazardous Substance Discharge: Reports and Notices, was recodified from N.J.A.C. 7:1-7 by R.1990 d.457, effective September 17, 1990. See: 22 N.J.R. 1457(a), 22 N.J.R. 2965(a).

Public Notice: Notice to adopt rules concerning petroleum and other hazardous substances. See: 23 N.J.R. 2507(a).

Subchapter 7, Confidentiality Claims, Subchapter 8, Confidentiality Determinations, Subchapter 9, Disclosure and Use of Confidential Information, and Subchapter 10, Treatment of Confidential Information, were adopted as new rules by R.1992 d.186, effective April 20, 1992. See: 23 N.J.R. 2848(a), 24 N.J.R. 1484(a).

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was repealed and Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was adopted as new rules by R.1991 d.465, effective September 3, 1991, operative September 11, 1991. See: 23 N.J.R. 1335(a), 23 N.J.R. 2656(a).

Pursuant to Executive Order No. 66(1978), Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was readopted as R.1996 d.462, effective September 3, 1996. As part of R.1996 d.462, Appendix C, Mapping and Digital Data Standards, was recodified to N.J.A.C. 7:1 Appendix A. See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

Chapter 1E, Discharges of Petroleum and Other Hazardous Substances, was readopted as R.2001 d.355, effective August 31, 2001. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:1E-1.1 Scope

(a) This chapter covers the discharge of hazardous substances as defined in this chapter. These rules set forth guidelines and procedures to be followed by all persons in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design and maintenance requirements for owners and operators of major facilities and transmission pipelines which handle hazardous substances.

(b) This subchapter prescribes the provisions that are generally applicable. The following shall govern how certain terms are defined for use in this chapter, which persons are subject to this chapter, and the Department's rights of access for determining compliance with this chapter and the Act.

Amended by R.1996 d.252, effective June 3, 1996.
See: 27 N.J.R. 2337(a), 27 N.J.R. 2882(a), 28 N.J.R. 2858(a).
In (a) deleted exception for discharges pursuant to permit.

Case Notes

Terms defined in Spill Compensation and Control Act regulations were not void for vagueness. In re Adoption of N.J.A.C. 7:1E, 255 N.J.Super. 469, 605 A.2d 733 (A.D.1992).

Spill Compensation and Control Act regulations which required reporting of discharges were constitutional. In re Adoption of N.J.A.C. 7:1E, 255 N.J.Super. 469, 605 A.2d 733 (A.D.1992).

Spill Compensation and Control Act regulations which did not specify discharge quantity were not unconstitutional on their face. In re Adoption of N.J.A.C. 7:1E, 255 N.J.Super. 469, 605 A.2d 733 (A.D.1992).

7:1E-1.2 Construction

(a) These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed so as to permit the Department to discharge its statutory functions under the Act.

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

7:1E-1.3 Severability

If any section, subsection, 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.

7:1E-1.4 Relationship to Federal and State Law

These rules are not intended to and do not relieve any person of the duty to comply with all other applicable laws, ordinances, rules, regulations or orders of governmental authorities governing activities regulated hereunder, including rules or regulations of the New Jersey Department of Environmental Protection, New Jersey Department of the Treasury, and other appropriate State, Federal and local agencies.

Case Notes

The Environmental Cleanup Responsibility Act (ECRA) is not preempted by the provision of the Bankruptcy Code; debtor permitted to abandon property as burdensome and cease operations on other property to prevent continuing losses, without complying with ECRA. In the Matter of Borne Chemical Co., Inc., 54 B.R. 126 (Bkrcty.Ct.N.J. 1984).

7:1E-8.3 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:1E-8.2(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:1E-8.4:

1. Measures taken by the claimant to prevent disclosure of the information to others, including evidence that the information is not contained in materials which are routinely available to the general public, including without limitation initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

2. The extent to which the information has been disclosed to others and whether it was disclosed to other persons either by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding), and the precautions taken to prevent further disclosure;

3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position or national security, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. Evidence that no law, regulation (including, without limitation, N.J.A.C. 7:1E-8.10 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information;

6. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

7. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

Amended by R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

7:1E-8.4 Time for submission of substantiation

(a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:1E-8.2(a)1.

(b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time, provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

(c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:1E-8.5 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:1E-8.2 and 8.3, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1E-8.3, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1E-10. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:1E-8.6 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:1E-8.7 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1E-8.5(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:1E-8.8 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:1E-8.9 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which characteristics would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:1E-8.10 Classes of information which are not confidential information

(a) Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, the following types of information are not confidential information:

1. The name, address and business telephone number of the owner or operator of a transmission pipeline, or of the registered agent of such owner or operator;
2. The name, address and business telephone number of a facility and of its owner or operator and the registered agent of such owner or operator;

3. Schedules of integrity testing for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)4, and information concerning the methods of testing;

4. Test reports for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)5;

5. Information contained in documentation of employee training, evaluation and qualifying activities required to be maintained under N.J.A.C. 7:1E-2.12(d);

6. The storage capacity of a facility, the transfer capacity of a facility, and the types of hazardous substances present at a facility;

7. Discharge cleanup information required to be submitted under N.J.A.C. 7:1E-3.4;

8. Lists of standard operating procedures required to be submitted under N.J.A.C. 7:1E-4. 2(d)10;

9. Information concerning procedures for mobilizing equipment in the event of a discharge;

10. Names and titles of response coordinators and other persons authorized to hire contractors and release funds for discharge response, containment, cleanup and removal;

11. Information concerning proposed methods of disposal of material gathered during cleanups;

12. Housekeeping and maintenance records required to be made available under N.J.A.C. 7:1E-4.2(f)6;

13. The locations of environmentally sensitive areas;

14. Certifications required under N.J.A.C. 7:1E-4.11, and the identity of any person signing such a certification;

15. Information which the Department is required to report under N.J.A.C. 7:1E-5.9; and

16. Information contained in an administrative order or notice of civil administrative penalty assessment under N.J.A.C. 7:1E-6.3.

Amended by R.1996 d.462, effective October 7, 1996.
See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

SUBCHAPTER 9. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**Source and Effective Date**

R.1992 d.186, effective April 20, 1992.
See: 23 N.J.R. 2848(a), 24 N.J.R. 1484(a).

7:1E-9.1 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other state agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:1E-10.1 and 10.2, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

7:1E-9.2 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause more than nominal damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:1E-9.3 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:1E-8.4, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:1E-8.5(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:1E-9.4 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:1E-9.1, 9.2 or 9.3, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;