

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

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

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

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

#### 7:31-2.14 Annual report

Each registrant with an approved risk management program shall submit on or before each anniversary of the initial approval of its risk management program an annual report meeting the requirements of N.J.A.C. 7:31-3.13.

#### 7:31-2.15 Release of information by insurance carriers

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

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

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

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

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

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

New Rule, R.1988 d.378, effective August 1, 1988.

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

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

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

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

#### 7:31-2.16 Fees

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5, shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (b), (c) and (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

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

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

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

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

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

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

iv. The estimated TCPA program operating expenses; and

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

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

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

i. Determine the sum of hazard units at all sites or systems registered as of October 1 of the current fiscal year; and

ii. Multiply the sum of hazard units by the inventory derived fee unit rate specified at (l)3 below;

4. Subtract the contribution of the inventory derived fee determined in (c)3 above from the net money required as determined in (c)2 above to determine the sum of base fee plus facility derived fee contribution needed;

5. Determine the facility derived fee contribution based on the following data and steps:

i. Determine the number of facilities in EHS service registered as of October 1 of the current fiscal year; and

ii. Calculate the facility derived fee rate which equals the sum of salaries plus fringe of the Risk Assessment Section staff plus the percent of the TCPA program operating expenses assigned to that staff divided by the number of facilities;

6. Subtract the contribution of the facility derived fee determined in (c)5ii above from the remainder from (c)4 above to determine the base fee contribution needed;

7. Determine the base fee unit rate by dividing the base fee contribution needed from (c)6 above by the total number of registrants; and

8. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted facility-derived and base fee unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (b), (c) and (i) through (m) below in accordance with the bill received from the Department.

(e) Each registrant registering a new EHS facility or increasing the EHS inventory or both at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, in accordance with the bill received from the Department.

(f) The annual fees are assessed on the basis of the calendar year and shall not be prorated or refunded.

(g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.

1. This bill shall include the base fee and additional fees calculated based on data from the registrant's registration form on file with the Department as of the previous October 1—the number of facilities reported in Section E, or determined by the Department, and the inventory reported in Section D.

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection  
Bureau of Revenue  
Division of Financial Management, Planning and General Services  
CN 417  
Trenton, New Jersey 08625

(i) For the purpose of calculating fees, "inventory" as used in (j), (k), (l) and (m) below means the maximum quantity for each EHS reported by the registrant on Section D of the registration form it submitted to the Department as part of its initial registration and its subsequent annual report in compliance with N.J.A.C. 7:31-2.5 and 2.14.

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

(k) (Reserved)

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

1. The inventory of each EHS is divided by the registration quantity for that EHS as set forth in Table I in N.J.A.C. 7:31-2.3;

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

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

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

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

(o) The annual fee for each registrant who has temporarily discontinued use, handling, storage or generation of the particular EHS at the site and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 shall be 25 percent of the base fee.

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

(q) Each registrant submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-5.5(d) shall submit a fee of \$350.00 for the review of its claim at the time it submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

(r) Each registrant submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-5.6 shall submit a fee of \$350.00 for the review of its petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

Correction: Deleted "State's" from (f).

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

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

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

Added (n).

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

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

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

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

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

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

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

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

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

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

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

### 7:31-2.17 Required signatures and certifications

(a) All registration forms, risk management program checklists, exemption requests, annual exemption reaffirmations, petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information shall not be complete until they contain the following signatures and certifications:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

i. The certification at (a)1 above shall be signed by the highest ranking individual with overall responsibility for the information contained in the certified documents;

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

i. The certification at (a)2 above shall be signed by the official, as follows:

(1) For a corporation, by a person authorized to execute the documents listed in (a) above on behalf of the corporation by resolution of the corporation's board of directors or by a provision in the corporation's by-laws;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(3) For a municipality, by the mayor or other official authorized by the local governing body to bind the municipality;

(4) For a county, by the county executive or other official authorized by the board of chosen freeholders to bind the county;

(5) For the State, by the agency head or person designated by the agency head; or

(6) For any other public agency, by a principal executive officer or other official authorized by the public agency's governing body to bind the agency.

(b) Notwithstanding the provisions of (a) above, the certification contained in (a)1 above shall be the only certification required if the individual required in (a)1i above to sign the certification is the same individual required in (a)2i above to sign the certification at (a)2 above.

(c) All other reports required by this chapter, the summary risk management program statements, the risk management programs, annual reports, reports of safety review, hazard analysis and risk assessment, confidentiality claim forms and substantiation forms in support of confidentiality claims, and other information requested by the Department shall not be deemed submitted to the Department unless signed by a person described in (a)1i above, and the person who signs the reports shall make the certification set forth in (a)1 above.

(d) All consent agreements and consent agreement addenda shall not be deemed executed unless signed by the highest ranking corporate, partnership or government official or official at the site with sufficient responsibility to effect the items agreed.

(e) Each item of correspondence with the Department from a registrant shall not be deemed submitted unless signed by the registrant's responsible manager or any person of the registrant staff whose name is included in the current registration form of the registrant.

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

(a): Added text "petitions to withhold . . . or security information".  
(b): Added text "confidentiality claim forms . . . of confidentiality claims".

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

### 7:31-2.18 Criteria for selecting independent consultants

(a) A registrant required to nominate consultants capable of performing an EHSARA on its facility and submit their names to the Department shall initially obtain proposals from at least three consultants.

(b) The registrant shall not submit the name and proposal of any consultant who:

1. Is owned or controlled by the registrant or by a firm which owns or controls both the registrant and the consultant or owns or controls the registrant;

2. Was the designer of any EHS facility at the site;

3. Is debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State;

4. Fails to state in its written proposal that it will not subcontract any of the work involved in the EHSARA unless provided in writing by the Department; or

5. Fails to state in its written proposal that it will not change the staff named to do any of the work involved in the EHSARA unless approved in writing by the Department.

(c) (Reserved)

(d) Each proposal shall explain in a clear and concise manner how the consultant is going to address each task in the registrant's workplan.

(e) Each proposal shall demonstrate the consultant's ability to perform the EHSARA set forth in N.J.A.C. 7:31-4 and shall include:

1. The consultant's qualifications in:

i. Process engineering;

ii. Safety engineering;

iii. Preparation of operating procedures;

iv. Preparation or review of maintenance procedures;

v. Preparation or review of safety procedures;

vi. Preparation or review of operator training programs;

vii. Performance or review of accident investigations;

viii. Performance of hazard analyses;

ix. Performance of risk assessments;

x. Preparation or review of emergency response plans;

xi. Performance of audits of risk management programs;

xii. Knowledge of state of the art; and

xiii. With respect to each of the above qualifications, the following:

(1) Name of consultant's client; if the client's name cannot be divulged, then a description of the client;