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

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

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

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

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

7:31–1.10 Prevention of catastrophic accidents

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

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

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

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

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

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

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

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

Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).
Recodified from N.J.A.C. 7:31–2.13 and amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
In (b), deleted references to registrants throughout.

7:31–1.11 (Reserved)

Correction: Deleted "State's" from (f).
See: 20 N.J.R. 1743(c).
Amended by R.1988 d.378, effective August 1, 1988.
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).
Added (n).
Amended by R.1991 d.463, effective September 3, 1991.
See: 23 N.J.R. 818(a), 23 N.J.R. 2780(a).
In (a), added references to N.J.A.C. 7:31–2.5, "(i) through (m) below" for computation of fees and "(f) through (h) below" for billing and remittance. Deleted texts of (b) and (c); Reserved. In (d), deleted reference to (b) and (c); deleted "with the registration forms"; added "in accordance with the bill received from the Department". In (e), deleted "with the amended registration forms"; added "in accordance with the bill received from the Department". In (g), deleted references to calendar year 1988 and (f). In (h), added "Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee." In (j), the words "or" and "or both" replaced "and" as a clarification of what the fee applies to and the fee was revised to "$6,500". In (k), fee revised to "$6,500". In (*l*)3, revised inventory derived fee. In (m), added "except for (n) below". Added (n). Recodified existing (n) and (*o*) as (*o*) and (p).
Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1995.
See: 26 N.J.R. 5116(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1996.
See: 27 N.J.R. 5055(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1997.
See: 28 N.J.R. 5499(b).
Public Notice: Annual TCPA Fee Schedule Report, FY 1998.
See: 29 N.J.R. 5334(c).
Recodified from N.J.A.C. 7:31–2.16 and amended by R.1998 d.355, effective July 20, 1998 (to expire June 21, 1999).
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
In (a), (i), (*l*) and (*o*), changed N.J.A.C. references; in (h), substituted "in accordance with the remittance information contained on the bill" for an address at the end; in (q) and (r), changed N.J.A.C. references, and substituted "on the bill" for "in N.J.A.C. 7:31–2.16(h)" at the end of each; and added (s) through (u).
Public Notice: Annual TCPA Fee Schedule Report, FY 1999.
See: 30 N.J.R. 4478(b).
Repealed by R.2003 d.335, effective August 4, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).
Section was "Fees (effective until June 21, 1999)".

7:31–1.11A Fees

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

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

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

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

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

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

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

iv. The estimated TCPA program operating expenses; and

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

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

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

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

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

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

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

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

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

iii. Determine the value of the unit covered process derived fee in dollars per covered process by dividing (c)4ii above by (c)4i above;

5. Determine the total amount to be contributed by the base fee to the aggregate fee of each owner or operator. The determination shall be based on the following data and steps:

i. Determine the total number of stationary sources as of October 1 of the fiscal year during which the determination is made;

ii. Determine the contribution of the aggregate base fee to be collected as 20 percent of the net money required as determined at (c)2 above; and

iii. Determine the value of the base fee in dollars per owner or operator by dividing (c)5ii above by (c)5i above; and

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

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

(e) An owner or operator having previously registered EHSs who is registering a new covered process or increasing the EHS inventory shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i) below, in accordance with the bill received from the Department.

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

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

1. This bill shall include the base fee and fees calculated using inventory and covered process data from the owner or operator's Risk Management Plan on file with the Department as of the previous October 1.

(h) The owner or operator shall pay his or her fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any owner or operator who has not paid the annual fee by the due date shall be assessed a 25 percent late fee. The check or money order shall be submitted in accordance with the remittance information contained on the bill.

(i) For the purpose of calculating fees, "inventory" as used in this section means the maximum quantity for each EHS reported by the owner or operator of a covered process on the Risk Management Plan submitted to the Department in accordance with N.J.A.C. 7:31–7.

(j)-(*l*) (Reserved)

(m) The annual fee for the owner or operator of a stationary source shall be the sum of the base fee and the sum of the covered process derived fee for each covered process and the sum of each EHS inventory derived fee except as provided at (*o*) and (p) below.

(n) (Reserved)

(*o*) The annual fee for an owner or operator who has temporarily discontinued use, handling, storage or generation of all EHSs at the stationary source and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31–4.10 (for the Program 3 covered processes) shall be 25 percent of the base fee.

(p) The annual fee for an owner or operator who has obtained a temporary discontinuance in accordance with N.J.A.C. 7:31–4.10 for one or more EHSs, but has retained other EHSs at the stationary source that are registered in the most current Risk Management Plan in amounts that meet or exceed threshold quantities shall be the full base fee and the covered process and inventory fees for the registered EHSs.

(q) Each owner or operator submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31–10.5(d) shall submit a fee of $350.00 for the review of his or her petition at the time of submitting the petition substantiation form. The fee shall be submitted in accordance with the remittance information contained on the bill.

(r) Each owner or operator submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31–10.6 shall submit a fee of $350.00 for the review of his or her petition at the time of submitting the petition substantiation form. The fee shall be submitted in accordance with the remittance information contained on the bill.

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

New Rule, R.1998 d.355, effective June 21, 1999.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2000.
See: 31 N.J.R. 4342(a).
Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2001.
See: 32 N.J.R. 4478(c).
Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2002.
See: 34 N.J.R. 311(b).
Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2003.
See: 34 N.J.R. 4475(a).
Amended by R.2003 d.335, effective August 4, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).
In (c), substituted "October" for "December" in the introductory paragraph; in (g)1 and (i), substituted "Risk Management Plan" for "registration form"; rewrote (p); in (q) and (r), rewrote the second sentence.
Public Notice: Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 2004.
See: 36 N.J.R. 222(c).

7:31–1.12 Release of information by insurance carriers

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

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

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

1. Reports of inspections for compliance with mandated codes or standards;

2. Reports of safety and environmental inspections or audits;

3. Reports of inspections of fire protection equipment;

4. Reports of any additional studies conducted which evaluated the adequacy of the owner or operator's management of EHSs; and

5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

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

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

New Rule, R.1988 d.378, effective August 1, 1988.
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).
The rule that was printed 6–20–88 had not been adopted and was printed in error. This section should have been (Reserved). See: 20 N.J.R. 1743(a).
Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).
Recodified from N.J.A.C. 7:31–2.15 and amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
Substituted references to owners and operators for references to registrants throughout; and in (a), substituted a reference to stationary source inspection for a reference to site inspection.

SUBCHAPTER 2. HAZARD ASSESSMENT

7:31–2.1 Incorporation by reference

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

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

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

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

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

7:31–2.2 Reactive hazard substance (RHS) hazard assessment

(a) The owner or operator of a covered process in which an RHS or RHS mixture is used, handled, stored or generated shall perform and document a hazard assessment for the RHS in accordance with 40 CFR 68 Subpart B as incorporated by reference with changes at N.J.A.C. 7:31–2.1(c)1 and 2 and this section. As part of this hazard assessment:

1. The owner or operator shall consider the explosive/flammability hazard of the RHS.

2. For stationary sources that have multiple RHSs or RHS mixtures in covered process(es), the owner or operator shall report in the RMP the one worst-case release scenario that is estimated to create the greatest distance in any direction to the endpoint. The owner or operator shall report in the RMP additional worst-case release scenarios if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case scenario with the greatest endpoint distance.

3. The owner or operator shall identify, analyze, and report at least one alternative release scenario to represent all RHSs or RHS mixtures held in covered processes.

4. The owner or operator shall report in the RMP the RHS hazard assessment results in the RMP Offsite Consequence Analysis sections for flammable substances.

(b) The owner or operator shall use the following parameters and methods for the RHS hazard assessment:

1. Endpoint parameters: the endpoints for flammables listed at 40 CFR 68.22(a)(2);

2. Worst case release quantity: the maximum capacity of the largest process vessel containing an RHS or RHS mixture, not taking into account administrative controls that limit the maximum quantity;

3. A TNT-equivalent explosion method or any commercially or publicly available explosion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models upon request. When using a TNT-equivalent explosion method, the owner or operator shall use the following parameters:

i. The heat of reaction of the RHS or RHS mixture;

ii. One hundred percent of the potential heat release (heat of reaction) assumed to contribute to the explosion for an RHS mixture in a process vessel;