

"Facility" means the building, equipment and contiguous area at a single location used for the conduct of business. For the purpose of this chapter, "Facility" shall not include a research and development laboratory.

"Hazard Code" means a number assigned by the Department to represent each hazard category established by the US Environmental Protection Agency pursuant to the Superfund Amendments and Reauthorization Act (SARA), Title III.

"Hazardous substance" means any substance defined by the State Department of Health in N.J.A.C. 8:58-9.

"Hazardous waste" means any solid waste defined as hazardous waste by the Department pursuant to P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.)

"Input" means the total of starting inventory, quantity produced on site, quantity brought on site, and quantity recycled out of process and reused on site.

"Inventory range" means the upper and lower limits of the quantity of a hazardous substance used, stored or manufactured on site.

"Inventory range code" is a representation of an inventory range for reportable hazardous substances.

"Local Emergency Planning Committee" means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

"Mixture" means a combination of two or more substances not involving a chemical reaction.

"Output" means the total of quantity consumed, quantity shipped off site as (or in) product, ending inventory, quantity recycled out of process and reused on site, quantity destroyed through on site treatment, quantity destroyed through on-site energy recovery, air emissions, water discharges, quantity disposed of on site, and other off site transfers.

"Person" includes an individual, corporation, company, partnership, firm, association, trust, estate, public or private institution, group, society, joint stock company, municipality, county, all political subdivisions of this State or any agency or instrumentality thereof, including health department, any agency or instrumentality of the State and any legal successor, representative agent or agency of the foregoing.

"Pilot plant" means pilot facility as that term is defined at N.J.S.A. 13:1D.

"Release and Pollution Prevention Report" means the reporting form which is used to fulfill the environmental release and pollution prevention reporting requirements of the environmental survey, formerly known as Part II of the environmental survey.

"Research and development (R & D) laboratory" means a specially designated area, including pilot plants, used pri-

marily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which environmental hazardous substances are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Community Right to Know Survey, "primarily" means greater than 50 percent.

"Right to Know Survey" means a survey prepared by the Department of Health and completed by a public sector employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.

"Special health hazard substance" means any substance defined by the State Department of Health in N.J.A.C. 8:59-10.

"Special health hazard substance list" means the list of substances defined by the State Department of Health in N.J.A.C. 8:59-10.

"Superfund Amendments and Reauthorization Act" or "SARA" means the Federal Act (PL 99-499) establishing the "Emergency Planning and Community Right to Know Act of 1986" at Title III (42 USC 11001).

"Technically qualified person" in a research and development (R & D) laboratory means a person who has a bachelors degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to the hazardous substances used in the R & D laboratory.

"Trade secret" means any formula, plan, pattern, process, production data, information, or compilation of information, which is not patented, which is known only to an employer and certain other individuals, and which is used in the fabrication and production of an article of trade or service, and which gives the employer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the federal government as necessary for national defense purposes. The chemical name and the Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors.

"Trade secret claim" means a written request, made by an employer pursuant to N.J.S.A. 34:5A-15, to withhold the public disclosure of information on the grounds that the disclosure would reveal a trade secret.

"Trade secret docket number" means a code number temporarily or permanently assigned to the identity of information on the Community Right to Know Survey or Release and Pollution Prevention Report by the Department of Environmental Protection.

"Transmit" means to send via first-class mail or otherwise distribute.

"Unstaffed site" means a remotely operated site, not contiguous to any other staffed sites and at which no full-time or part-time employees are assigned at any time except for maintenance or emergency repair. An unstaffed site includes, but is not limited to, a cellular telephone tower, telecommunications relay box, switching box, telephone pole, and well station.

"Unusually hazardous" means likely to explode due to a highly volatile nature, a propensity to produce toxic fumes, or a tendency to react with water or common firefighting chemicals and any other property which the Department of Environmental Protection determines will make a substance an uncommon danger to firefighters and the surrounding community in the event of its exposure to a fire.

Amended by R.1984 d.437, effective October 1, 1984.

See: 16 N.J.R. 1854(a), 16 N.J.R. 2530(a).

Substantially amended.

Amended by R.1993 d.386, effective August 2, 1993.

See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

Amended by R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

Administrative Correction.

See: 26 N.J.R. 1337(a).

Amended by R.1994 d.349, effective July 18, 1994.

See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).

Special amendment, R.2004 d.7, effective December 4, 2003 (to expire August 15, 2004).

See: 36 N.J.R. 212(a).

Rewrote "Employer".

Administrative correction.

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

Adopted concurrent amendment, R.2004 d.328, effective July 29, 2004, changes effective September 7, 2004.

See: 36 N.J.R. 212(a), 36 N.J.R. 4121(a).

Rewrote "Employer".

Amended by R.2005 d.27, effective January 18, 2005.

See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Added "Input", "Output", and "Unstaffed site".

Amended by R.2006 d.167, effective May 1, 2006.

See: 37 N.J.R. 3896(a), 38 N.J.R. 1829(a).

In the table in the definition of "Employer", inserted codes 488510, concerning freight transportation arrangement, 488991, concerning packing and crating, 488999, concerning all other support activities for transportation, and 517211, concerning paging.

Administrative change.

See: 40 N.J.R. 619(a).

Administrative change.

See: 45 N.J.R. 2476(a).

7:1G-1.3 Burden of proof for exemptions

(a) A person claiming that they qualify for any exemption under this chapter or that they are not otherwise subject to the rules of this chapter shall demonstrate and appropriately document entitlement to such exemption.

(b) Employers claiming that a certain chemical, hazardous substance, or mixture is not an EHS, as designated or delineated in N.J.A.C. 7:1G-2, shall, at a minimum, submit in support of such claim, a Material Safety Data Sheet (MSDS) for the substance or mixture in question.

(c) Employers shall, upon request, make available information to the Department to verify any statement made on the

Community Right to Know Survey, Release and Pollution Prevention Report or in a request for an exemption. This information may include, but is not limited to: purchase records, sales records, production records, inventory records, or other business records or documents utilized by the employer or person. The employer shall make this information available to the Department within 30 days of notification.

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.4 Certification

An employer shall submit a Community Right to Know Survey and/or Release and Pollution Prevention Report, or a Research and Development laboratory exemption to the Department which shall include an original certification signed by the employer or a duly authorized representative, which states the following:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments, 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."

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.5 Department right of entrance and inspection

Pursuant to N.J.S.A. 13:1D-9 and 34:5A-29b, the Department shall have the authority to enter any business premises or building during normal hours or other reasonable time to determine compliance with the rules and regulations of the Department hereunder. Failure to permit such inspection after presentation of official credentials is an offense punishable under N.J.S.A. 2C:29-1.

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.6 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

7:1G-1.7 Revisions to North American Industry Classification System Codes for purposes of definition of "employer"

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of "employer" at N.J.A.C. 7:1G-1.2 is based, the

Department shall modify the NAICS codes in the definition as necessary to ensure that, as required by N.J.S.A. 13:1D-139, the generally equivalent universe of employers continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or exceptions to the NAICS codes as required to maintain the regulated universe as of August 15, 2003. The Department shall publish in the

New Jersey Register a notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to the definition.

Special New Rule, R.2004 d.7, effective December 4, 2003 (to expire August 15, 2004).
See: 36 N.J.R. 212(a).

Administrative correction.
 See: 36 N.J.R. 2762(b).
 Adopted concurrent new rule, R.2004 d.328, effective July 29, 2004.
 See: 36 N.J.R. 212(a), 36 N.J.R. 4121(a).

**SUBCHAPTER 2. ENVIRONMENTAL HAZARDOUS
 SUBSTANCE LIST**

**7:1G-2.1 Designation of environmental hazardous
 substances**

(a) The list of EHSs shall be comprised of the substances listed below:

1. Toxic Chemicals on the list at 40 CFR 372.65 established by the United States Environmental Protection Agency for reporting pursuant to SARA Title III section 313, incorporated herein by reference, as from time to time supplemented or amended;

2. Extremely Hazardous Substances on the list at 40 CFR 355 Appendix A designated under SARA Title III section 302, established by the United States Environmental Protection Agency for reporting, incorporated herein by reference, as from time to time supplemented or amended;

3. Chemicals designated as selected substances at Appendix A of this chapter, incorporated herein by reference, for Industrial Survey Project reporting.

4. Unusually Hazardous Substances defined at N.J.A.C. 7:1G-1.2 and listed below by the Department pursuant to N.J.S.A. 52:27D-223:

Chemical	CAS Number
Saran	8013-77-2
PVC (Chloroethylene, polymer)	9002-86-2
Lopac	9003-54-7

5. Any hazardous substance added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K-3.6; and

6. Regulated Substances on the list at 40 CFR 68.130 established by the United States Environmental Protection Agency for accidental release prevention under Section 112(r) of the Federal Clean Air Act Amendments, incorporated herein by reference, as from time to time supplemented or amended.

(b) Chemical inventory reporting on the Community Right to Know Survey shall include all EHSs listed at (a)1 through 6 above.

(c) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of substances described at (a)1 and 5 above.

Amended by R.1984 d.416, effective September 17, 1984.
 See: 16 N.J.R. 1861(a), 16 N.J.R. 2432(a).

Added amitrol, 1,1-dimethyl hydrazine, hexachlorocyclopentadiene, vinylidene chloride.
 Amended by R.1988 d.89, effective February 16, 1988.
 See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).

Added bromine, chlorine, hydrogen chloride, hydrogen fluoride, hydrogen sulfide, methyl isocyanate and phosphorus trichloride.
 Petition for Rulemaking: Three pigments excluded from list: C.I. Pigment Blue 15, Phthalocyanine Blue CAS No. 147-14-8, C.I. Pigment Green 7, Phthalocyanine Green CAS No. 1328-53-6 and C.I. Pigment Green 36, Phthalocyanine Green CAS No. 14302-13-7.

See: 24 N.J.R. 2636(a), 24 N.J.R. 3440(c).
 Amended by R.1993 d.408, effective August 16, 1993.
 See: 25 N.J.R. 2166(a), 25 N.J.R. 3754(a).
 Amended by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
 Amended by R.1994 d.349, effective July 18, 1994.
 See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).
 Amended by R.1994 d.576, effective November 21, 1994.
 See: 26 N.J.R. 2833(a), 26 N.J.R. 4606(a).
 Public Notice: Petition for rulemaking.
 See: 27 N.J.R. 4010(b).
 Public Notice: Copper phthalocyanine compounds.
 See: 27 N.J.R. 5054(a).
 Amended by R.1997 d.191, effective May 19, 1997.
 See: 29 N.J.R. 725(a), 29 N.J.R. 2274(a).

Case Notes

Asbestos tort defendants were jointly and severally liable. *Stevenson v. Keene Corp.*, 254 N.J.Super. 310, 603 A.2d 521 (A.D.1992), appeal granted 130 N.J. 2, 611 A.2d 643, affirmed 131 N.J. 393, 620 A.2d 1047.

7:1G-2.2 (Reserved)

Amended by R.1988 d.89, effective February 16, 1988.
 See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).
 Added 34 Halogens and 35 Inorganic Acids.
 Repealed by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
 Section was "chemical group and group numbers".

**SUBCHAPTER 3. COMMUNITY RIGHT TO KNOW
 SURVEY**

**7:1G-3.1 Completion of Community Right to Know
 Portion of the Environmental Survey**

(a) An employer shall complete and submit to the Department a Community Right to Know Survey for each facility covered by the rules indicating if EHSs were present during the reporting period and whether the EHSs met or exceeded the threshold quantities for reporting listed in (b) below.

(b) A threshold of 500 pounds or the Federal SARA 302 threshold planning quantity, whichever is lower, shall apply to all EHSs present in aggregate at the facility at any one time.

These thresholds for reporting do not apply to container labeling pursuant to N.J.A.C. 8:59.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the

Department, which shall include, but is not limited to, the following:

1. The chemical name, Chemical Abstracts Service registry number, if available, and the EHS number and USDOT number, if available, of each EHS which is present at the facility in a pure state or mixture;

2. For reporting, EHSs shall be grouped according to container type and location within the facility;

3. For EHSs present in the pure state, the quantity of each, in pounds, in terms of daily maximum and average daily amount, and the hazard code for the EHS;

4. EHSs in mixtures shall be reported as follows:

i. Each EHS comprising more than one percent of a mixture (or .1 percent if the EHS is carcinogenic as defined at 29 CFR 1910.1200(d)4 of the Occupational Safety and Health Standard) shall be reported with its quantity determined by multiplying the weight percent of the EHS by the mass, in pounds, of the entire mixture.

ii. EHSs in mixtures in the following generic categories may be reported using the generic name and the quantity of the entire mixture: gasoline, new and used petroleum oil, and hazardous waste;

5. The major methods of storage, including container type, temperature, pressure conditions, and locations shall be reported including the number of days the EHS was present onsite during the calendar year at the facility; and

6. If no EHS is present in a mixture, and the mixture is subject only to reporting pursuant to the Federal requirements of Section 312 of SARA (40 CFR 370), a product name may be used to report the substance.

7. Quality control samples of substances that are elsewhere reported on the Community Right to Know Survey may be listed as a single entry: "samples of reported substances."

(d) An employer or owner or operator of any facility subject to Federal hazardous chemical reporting under Section 312 of SARA (40 CFR 370) shall submit a completed Community Right to Know Survey to the Department to satisfy these requirements.

Repeal and New Rule, R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

Section was "Completion of Environmental Survey".
Amended by R.1994 d.349, effective July 18, 1994.

See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).

Amended by R.1994 d.576, effective November 21, 1994.

See: 26 N.J.R. 2833(a), 26 N.J.R. 4606(a).

Amended by R.2005 d.27, effective January 18, 2005.

See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Rewrote (b).

Case Notes

Employer's failure to timely return environmental survey required by right to know law warrants penalty. NJDEP v. Barclay Texaco, Inc., 96 N.J.A.R.2d (EPE) 47.

Employer's failure to timely complete and return survey form with respect to use of propane warranted imposition of fine. Department of Environmental Protection v. Amlack, 95 N.J.A.R.2d (EDE) 86.

Operator of nonprescription drug business was liable for penalty; Worker and Community Right to Know Survey requirements. Division of Environmental Quality v. VJS, Incorporated. 92 N.J.A.R.2d (EPE) 137.

Failure to timely file Worker and Community Right to Know Survey. Division of Environmental Quality v. Bob's Auto Sales, Inc. 92 N.J.A.R.2d (EPE) 113.

7:1G-3.2 Reporting exemptions

(a) EHSs meeting any of the following criteria are exempt from chemical inventory reporting on the Community Right to Know Survey:

1. EHSs present at a facility in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C. 7:1G-3.1(b);

2. EHSs located within a research and development laboratory as defined in N.J.A.C. 7:1G-1.2 and used for R & D activities are exempt from reporting on the Community Right to Know Survey provided the employer has obtained a research and development laboratory exemption from the Department, which may be obtained in accordance with the following procedure:

i. The employer shall submit to the Department for evaluation and approval a completed research and development laboratory exemption application, on forms approved by the Department, containing the following information:

(1) The facility name, location and New Jersey Employer Identification Number;

(2) An 8½ x 11 inch map of the facility indicating the designated research and development area(s) of the facility. The map should indicate if R & D activities are limited to specific locations within the facility or if the entire facility is dedicated to R & D activities;

(3) The percentage of total work hours devoted to R & D activities in the designated area;

(4) Written verification from the local fire department that an acceptable communications program has been established with them to assist in responding to emergencies at the research and development laboratory;

(5) A description of the technical qualifications of each supervisor of the R & D laboratory area(s) or a certification by the supervisor of the research and development laboratory operations at the facility that each research and development laboratory is under the direct supervision of a technically qualified person; and

(b) If it is a hardship for an employer to submit an RPPR electronically, the employer may request approval from the Department to submit the RPPR in paper form. The Department shall approve such a request provided that:

1. The request is submitted no later than March 1 of the submittal year;
2. The employer explains:
 - i. The grounds for the hardship that electronic submittal would impose; and
 - ii. The effort(s) the employer will make to ensure the facility's ability to make electronic submittals in the future; and
3. The employer makes every effort to become able to submit the form electronically in future years.

(c) 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 RPPR 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.

New Rule, R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G-5.4 (Reserved)

Repealed by R.1988 d.89, effective February 16, 1988.
See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).

Repealed section dealing with waiver of N.J.A.C. 7:1G-5.1, 5.2 and 5.3.

SUBCHAPTER 6. TRADE SECRETS

7:1G-6.1 Authority

(a) This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, L. 1983, c.315, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-15 and 30, and N.J.S.A. 13:1D-9.

(b) This subchapter is a jointly adopted rule of the Department of Environmental Protection and the Department of Health (see N.J.A.C. 8:59-3).

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G-6.2 Purpose

(a) Trade secret claims will be filed or maintained by employers who are subject to the Act to maintain the confidentiality of information requested on the Right to Know

Survey or the environmental survey and for the names of substances on container labels. It is the purpose of this subchapter to prescribe:

1. The procedures and guidelines for filing trade secret claims and maintaining trade secret information;
2. The information required by the department for determination of a trade secret claim;
3. The methods for maintaining the confidentiality and security of trade secret information;
4. The criteria for determination of a trade secret claim;
5. The procedure for requesting trade secret information;
6. The procedures for appeal of a determination of a trade secret claim; and
7. The procedures and guidelines for the disclosure of trade secret information.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G-6.3 Definitions

"Department" means, for the purposes of this subchapter, both the New Jersey Department of Health and the New Jersey Department of Environmental Protection, unless otherwise indicated.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G-6.4 General provisions

(a) Except as provided in N.J.A.C. 7:1G-6.15, the Department shall not disclose any trade secret claim and supporting information, that is pending or has been approved. This non-disclosure requirement shall apply to trade secret claims for substances which were subsequently deleted from the environmental hazardous substances list.

(b) An employer shall report the information for which a trade secret claim is being made to the appropriate Department in accordance with N.J.A.C. 8:59-3.6 (7:1G-6.6), or maintain this information in accordance with the provisions of N.J.A.C. 8:59-3.6.

(c) On the Right to Know Survey and the environmental survey which the employer sends to county and local government agencies and which the employer retains on file at the facility for inspection by an enforcement officer or employees, the employer shall conceal or omit information claimed to be a trade secret, and shall note on the surveys where information has been claimed to be a trade secret.

(d) Any Right to Know Survey or environmental survey shall only be made available to the public with trade secret

information concealed as required in subsection (c) above indicating pending or approved trade secret claim status.

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program
New Jersey Department of Health
PO Box 368
Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

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

(f) The top of each page of any document containing the information for which a trade secret claim is being made and submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type or stamp. If the documents submitted in support of the trade secret claim are to be kept confidential, they shall be similarly stamped.

(g) The outside of the envelope containing the information claimed to be a trade secret and any other envelopes containing information in support of such claim submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(h) The department shall determine the validity of a trade secret claim when a request is made by any person for the disclosure of the information for which the trade secret claim was made and at any time that the department deems appropriate. Employers shall be notified before the department makes its determination and shall be provided 30 days to submit any information pursuant to N.J.A.C. 7:1G-6.6 except when the employer has filed a trade secret claim prohibited by N.J.A.C. 7:1G-6.5. The department shall make its determination on a trade secret claim in accordance with the criteria in 7:1G-6.9. The department may approve a trade secret claim based on information provided pursuant to 7:1G-6.6.

(i) The department may revoke an approved trade secret claim upon the receipt of new information from any person regarding the information previously submitted by an employer pursuant to N.J.A.C. 7:1G-6.8. In the event of such revocation, N.J.A.C. 7:1G-11 and 13 shall apply in the same manner as where the department rejects a trade secret claim.

(j) Nothing in these regulations shall be construed as prohibiting the incorporation of trade secret information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons outside the department, not otherwise having knowledge of such information, to deduce from it the trade secret information, or the identity of the employer who supplied it to the department.

(k) Any failure by an employer to submit additional information relevant to the trade secret claim requested by the department or to allow inspection of its facility by the department for purposes of determining the validity of a trade secret claim shall constitute valid cause for denial of the trade secret claim.

(l) Compliance with this subchapter does not constitute satisfaction of Federal trade secret claim requirements for substances exceeding the Federal reporting thresholds of Title III of the Superfund Amendments and Reauthorization Act.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.1993 d.408, effective August 16, 1993.
See: 25 N.J.R. 2166(a), 25 N.J.R. 3754(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Case Notes

Occupational Safety and Health Act preempts the state Right to Know Law concerning employees in the manufacturing sector; the mandated disclosure of trade secrets under the Right to Know Law are not takings of property rights which trigger a right to compensation (citing former N.J.A.C. 7:1G-5 and 7:1G-12); Court of Appeals limited preemption to only pertain to protection of employees' health and safety in the manufacturing sector. *New Jersey State Chamber of Commerce v. Hughey*, 600 F.Supp. 606 (D.N.J.1985), affirmed in part, reversed in part 774 F.2d 587 (3rd Cir.1985).

7:1G-6.5 Prohibited claims

(a) A trade secret claim may not be made to the Department of Environmental Protection for the following information:

1. The name and Chemical Abstracts Service number or United States Department of Transportation identification number of any substance listed on the Special Health Hazard Substance List (N.J.A.C. 8:59-10), which meets the criteria established pursuant to N.J.A.C. 8:59-10;
2. Any information required to be publicly disclosed pursuant to any other act;

(f) Except as provided in N.J.A.C. 8:59-3.15 (7:1G-6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over pre-hearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of Environmental Protection or the Department of Health pursuant to N.J.A.C. 1:21.

(g) All documents containing information regarding a trade secret claim shall be stored in a locked file or safe in a locked office in the department. The file or safe and office containing such documents shall be locked when not being used by authorized persons.

(h) Persons authorized to use trade secret documents pursuant to (f) above shall do so in the office in which the trade secret documents are stored, unless authorized to remove the documents by the Commissioner or his designated representative. All trade secret documents which are removed shall be returned to the office in which the documents are stored each day by the end of the regular workday. The department shall maintain a log of persons who use documents containing trade secret information. The log shall include the person's name, title, and name of the document used, and the time of commencing and finishing use of the document. No trade secret document shall be delivered between offices by persons who are not authorized to handle said documents. Such documents shall not be duplicated unless necessary for purposes of N.J.A.C. 7:1G-6.15 or if the department determines that it is absolutely necessary to carry out its responsibilities under the Act. If so duplicated, the document shall be marked as a copy, but treated as if it was an original document. The copy shall be destroyed immediately after completion of the use for which it was intended.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).
In (f), amended the N.J.A.C. reference.

7:1G-6.8 Decision-making agency on a trade secret claim

(a) The Department of Health is authorized to approve or deny a trade secret claim concerning:

1. Information reported on the Right to Know Survey.
2. Labeling a container with the chemical name and Chemical Abstracts Service number of the substance in the container.

(b) The Department of Environmental Protection is authorized to approve or deny a trade secret claim concerning information reported on an environmental survey.

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health and the Department of Environmental Protection.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G-6.9 Criteria for determination of the validity of a trade secret claim

(a) Any formula, plan, pattern, process, production data, information, or compilation of information shall be considered a trade secret if the employer establishes that its secrecy is certified by an appropriate official of the federal government as necessary for national defense purposes, or if the employer establishes that:

1. It is not patented;
2. It is known only to the employer and certain other individuals;
3. It is used in the research and development or production of an article or of a mixture; and
4. It gives the employer possessing it a competitive advantage over businesses who do not possess it.

(b) The chemical name and Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors, or is included in a formula or process that meets the criteria of (a) above.

(c) In determining whether a trade secret claim meets the requirements of (a) or (b) above, the Department shall consider information provided by the employer or any other person, including the information in (c)1 through 6 below:

1. The extent to which the information for which the trade secret claim is made known outside the employer's business;
2. The extent to which the information is known by employees and others involved in the employer's business;
3. The extent of measures taken by the employer to guard the secrecy of the information;
4. The value of the information to the employer or the employer's competitor;
5. The amount of effort or money expended by the employer in developing the information;
6. The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G-6.10 Request for trade secret information

(a) Any person may submit, at any time, a written request for the disclosure of information for which a trade secret claim is pending or has been approved, to the appropriate Department at the address provided in N.J.A.C. 8:59-3.4 (7:1G-6.4). The request shall state the requestor's name, address, and affiliation, and may include information concerning the validity of a pending or approved trade secret claim. The names of the employees making requests for trade secret information on a Right to Know Survey or a label shall be kept confidential.

(b) A request for disclosure of an approved trade secret may be submitted only if accompanied by new significant information not previously submitted concerning the invalidity of the trade secret claim.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G-6.11 Notification of determination of the validity of a trade secret claim

(a) Upon making a determination on the validity of a trade secret claim, the department shall notify the employer and the requestor of the determination by certified mail, return receipt requested. The notice shall state that the employer has 45 days from receipt of the department's determination to file a written request with the department for an administrative hearing on the determination.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G-6.12 (Reserved)**7:1G-6.13 Appeal of determination**

(a) If the Department denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the Department's determination to file with the Department a written request for an administrative hearing on the determination. Such request shall be filed with the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, P.O. Box 402, Mail Code 401-04L, 401 East State Street, Seventh Floor, Trenton, New Jersey 08625-0402.

(b) (Reserved)

(c) If a request for an administrative hearing is made pursuant to (a) above, the department shall refer the matter to the Office of Administrative Law for a hearing thereon.

(d) Within 45 days of receipt of the administrative law judge's initial decision containing a recommendation on a matter referred to in (c) above, the Department shall affirm, reject, or modify the recommendation. The Department shall inform the employer of its decision on the administrative law judge's recommendation by certified mail return receipt

requested. The Department's action shall be considered final agency action for purposes of the "Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq., and shall be subject only to judicial review as provided in the Rules of Court.

(e) In the event that the department determines, pursuant to (d) above, that the trade secret claim is not valid, the employer shall have 45 days from receipt of the department's determination to notify the department, in writing, that it has filed to appeal the department's decision in the courts. If the employer does not so notify the department, the department shall disclose the information for which the trade secret claim was made in the manner set forth in N.J.A.C. 7:1G-6.14.

(f) Special rules applicable to trade secret claim appeals are set forth at N.J.A.C. 1:21.

Administrative Correction and change to (a).
See: 23 N.J.R. 3325(b).
Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Administrative correction.
See: 46 N.J.R. 75(a).

7:1G-6.14 Disclosure of information determined not to be a trade secret

(a) After a trade secret claim has been denied and all appeals and the right to bring an appeal have been exhausted, the Department shall take the following action:

1. Modify the employer's Right to Know Survey or environmental survey, as the case may be, on file with the Department to substitute the omitted information for the trade secret docket or registry number and add the information wherever else appropriate; and

2. Direct the employer to modify the Right to Know Survey or environmental survey on file at his facility to include the information for which the trade secret claim was denied and add the information wherever else appropriate; to send modified copies of the revised Right to Know Survey or environmental survey to the appropriate Department and all county and local agencies that are required by law, rule or regulation to receive the survey containing this information; and to replace the trade secret registry number with the chemical name and Chemical Abstracts Service number on its fact sheets and container labels, if applicable.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G-6.15 Restricted access to trade secret information retained by the Department

(a) Except as provided in (b) through (g) below and N.J.A.C. 7:1G-6.7 or when so ordered by a court, no person shall willingly and knowingly disclose and no person shall willingly and knowingly receive trade secret information protected by this subchapter without the employer's written consent.

(d) The party requesting an adjudicatory hearing shall, in its request for a hearing, furnish the Department with the following:

1. A statement of the legal authority and jurisdiction under which the hearing or action to be taken is to be held;
2. A reference to the particular sections of the statutes and rules involved;
3. A short and plain statement of the matters of fact and law asserted; and
4. The provisions of the order or notice of assessment to which the party objects, the reasons for such objections, and any alternative provisions proposed.

(e) If a hearing request is not timely received by the Department, the Department shall deny the request.

(f) If a request is incomplete the Department may deny the hearing request. An additional 10 days to correct deficiencies in an incomplete filing may be granted by the Department.

(g) The adjudicatory hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(h) After an adjudicatory hearing, and upon finding that a violation has occurred, the Commissioner or his or her authorized representative may issue a final assessment of the amount of the penalty specified in the notice or such lesser amount as may be assessed pursuant to the provisions on compromise of N.J.S.A. 34:5A-31(d). If no hearing is requested or if the Department denies the request, the original Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a final order upon the 21st calendar day following its receipt.

(i) Payment of an assessed civil administrative penalty is due when a final order is issued by the Commissioner or the notice becomes a final order. If the alleged violator fails to pay the penalty to the Department or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 34:5A-31(e) for a civil penalty not to exceed \$2,500 for each day during which the violation continues.

Administrative change to (c).
 See: 23 N.J.R. 3325(b).
 Amended by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
 Administrative correction.
 See: 46 N.J.R. 75(a).

7:1G-7.4 Compromise of penalties

(a) At his or her discretion, the Commissioner or his or her authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, in the following circumstances and on the following terms and conditions:

1. Upon the posting by the violator of a performance bond or similar form of security in an amount and upon terms deemed satisfactory by the Commissioner;
2. On the basis of mitigating or extenuating circumstances;
3. Upon any other terms or conditions acceptable to the Commissioner or his or her authorized representative;
4. Any other circumstances or conditions acceptable to the Department.

Amended by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-7.5 Alternative remedies

Neither the issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment nor the payment of any such penalty shall be deemed to affect the availability to the Department of any enforcement provision provided for by N.J.S.A. 34:5A-31, or any other statute, in connection with the violation for which the assessment is levied.

Amended by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-7.6 (Reserved)

Repealed by R.1994 d.3, effective January 3, 1994.
 See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
 Section was "Records of assessments".

7:1G-7.7 Penalties

(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 of an employer to complete and submit to the Department a Community Right to Know Survey for each facility covered by this chapter by March 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.
2. Failure of an employer to report all EHSs as required under N.J.A.C. 7:1G-3.1 on the Community Right to Know Survey or Release and Pollution Prevention Report in accordance with N.J.A.C. 7:1G-3.1, 4.1 and 5.1. The penalty for this violation is based on the number of substances omitted, and is \$500.00 if 10 or fewer substances are omitted and is \$1,000 if more than 10 substances are omitted.
3. Failure of an employer to transmit a copy of the Community Right to Know Survey for each covered facility by March 1 of the year following the reporting year to the local fire and police departments, local emergency

planning committee, and the Right to Know County Lead Agency of the county in which the facility is located in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$500.00 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100.00 per day.

4. Failure of an employer to provide on the Community Right to Know Survey all information listed at N.J.A.C. 7:1G-3.1(c)1 through 5 for each Environmental Hazardous Substance (EHS) that meets or exceeds the thresholds listed in N.J.A.C. 7:1G-3.1(b). The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

5. Failure of an employer to retain a copy of the Community Right to Know Survey and/or Release and Pollution Prevention Report at each facility and make it available upon request to facility employees within five business days of the request in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

6. Failure of an employer to make available the Community Right to Know Survey and/or the Release and Pollution Prevention Report for the most recent Survey year to the Department, its local designees, or emergency responders in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$500.00 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100.00 per day.

7. Failure to provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey in accordance with N.J.A.C. 7:1G-4.1(c) and any pollution prevention information required pursuant to the Pollution Prevention Act on the RPPR in accordance with N.J.A.C. 7:1G-4.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

8. Failure of an employer to submit to the Department information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report within 30 days of notification or subsequent date specified by the Department in accordance with N.J.A.C. 7:1G-5.2. The penalty for this violation is \$500.00 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100.00 per day.

(c) The following violations are minor:

1. Failure of an employer to submit to the Department a completed Release and Pollution Prevention Report by July 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-4.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

2. Failure of an employer to submit a copy of the completed Release and Pollution Prevention Report by July 1 of the year following the reporting year to the county lead agency of the county in which the facility is located in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$500.00 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100.00 per day.

(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:

1. The violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency; and

3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for the same or a substantially same violation at the same facility within the preceding 12-month period.

(e) For any violation determined to be minor under (c) above and provided a grace period under (d) above, the following provisions apply:

1. The Department shall issue a notice of violation that:

i. Identifies the condition or activity that constitutes the minor violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects the violation and demonstrates to the Department that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.