

(g) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs  
New Jersey Department of Environmental Protec-  
tion  
PO Box 402  
Trenton, New Jersey 08625-0402  
Attention: Hearing Request

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

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

Added text in (b) "or of a . . . or security information." and added text in (c) "and/or an . . . or security information."

Administrative change in (c).

See: 23 N.J.R. 3325(b).

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

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

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

In (a), deleted "except as provided in (b) below" at the end of the introductory paragraph, and rewrote 2; rewrote (b) and (c); and in (d), changed N.J.A.C. reference.

#### 7:31-11.4 Civil administrative penalty determination

(a) Each violation of the Toxic Catastrophe Prevention Act or any rule, consent agreement or administrative order issued pursuant thereto, shall constitute an additional, separate and distinct offense.

(b) If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for the offenses described in Table II below on the basis of the category of offense and the frequency of the violation as follows:

TABLE II  
Penalty in U.S. Dollars By Offense Category

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
1. Failure to provide information requested by the Department	N.J.A.C. 7:31-8.2(c)	1,000	2,000	5,000
2. Failure to authorize an insurance carrier to release information requested by the Department within 30 days of the request	N.J.A.C. 7:31-1.12(d)	2,000	4,000	10,000
3. Failure to pay any annual fee	N.J.A.C. 7:31-1.11(a)	one-third of fee	one-third of fee	one-third of fee
4. 40 CFR 68.15—with changes specified at N.J.A.C. 7:31-1.1(c)5				
(a) Failure to develop a management system with a document plan	40 CFR 68.15(a)	2,000	4,000	10,000
(b) Failure to assign a qualified person or position that has overall responsibility for development, implementation and integration of PM program	40 CFR 68.15(b)	1,000	2,000	5,000
(c) Failure to document names and define organization charts	40 CFR 68.15(c)	1,000	2,000	5,000
5. 40 CFR 68.22 with changes specified at N.J.A.C. 7:31-2.1(c)2				
(a) Failure to use correct parameters for offsite consequence analysis	40 CFR 68.22(a) with changes specified at N.J.A.C. 7:31-2.1(c)2	500	1,000	2,500
6. 40 CFR 68.25				
(a) Failure to analyze all required worst case release scenarios for the stationary source	40 CFR 68.25(a)	4,000	8,000	20,000
7. 40 CFR 68.28				
(a) Failure to analyze alternative release scenarios	40 CFR 68.28(a)	4,000	8,000	20,000
8. 40 CFR 68.30				
(a) Failure to define offsite impact—population	40 CFR 68.30(a)	500	1,000	2,000
9. 40 CFR 68.33				
(a) Failure to define offsite impact—environment	40 CFR 68.33(a)	500	1,000	2,000
10. 40 CFR 68.36(a)				
(b) Failure to update offsite consequence analysis within six months if endpoint distance changes by a factor of two or more	40 CFR 68.36(b)	2,000	4,000	10,000
11. 40 CFR 68.39				
(a) Failure to maintain offsite consequence analysis documentation	40 CFR 68.39(a)	2,000	4,000	10,000
12. 40 CFR 68.42				

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(a) Failure to include all required data in five year accident history	40 CFR 68.42(a)	2,000	4,000	10,000
13. 40 CFR 68.48—with changes specified at N.J.A.C. 7:31-3.1(c)1				
(a) Failure to compile and maintain up-to-date safety information	40 CFR 68.48(a) with changes specified at N.J.A.C. 7:31-3.1(c)1	2,000	4,000	10,000
(b) Failure to ensure process is designed in compliance with recognized and generally accepted good engineering practices	40 CFR 68.48(b)	5,000	10,000	25,000
(c) Failure to update safety information after a change has occurred	40 CFR 68.48(c) with changes specified at N.J.A.C. 7:31-3.1(c)2	500	1,000	2,500
14. 40 CFR 68.50				
(a) Failure to conduct a hazard review of the hazards associated with the regulated substance, process and procedures	40 CFR 68.50(a)	4,000	8,000	20,000
(b) Failure to document the results of the hazard review and ensure that problems identified were resolved in a timely manner	40 CFR 68.50(c)	2,000	4,000	10,000
(c) Failure to update the hazard review at least once every five years	40 CFR 68.50(d)	2,000	4,000	10,000
(d) Failure to update the hazard review when any major change in the process occurred	40 CFR 68.50(d)	4,000	8,000	20,000
(e) Failure to resolve all issues identified in the hazard review before startup of the changed process	40 CFR 68.50(d)	4,000	8,000	20,000
15. 40 CFR 68.52—with changes specified at N.J.A.C. 7:31-3.1(c)3				
(a) Failure to prepare written standard operating procedures	40 CFR 68.52(a)	1,000	2,000	5,000
(b) Failure to update the standard operating procedures when a major change had occurred and prior to startup of the changed process	40 CFR 68.52(c)	1,000	2,000	5,000
16. 40 CFR 68.54—with changes specified at N.J.A.C. 7:31-3.1(c)4				
(a) Failure to ensure the present operators or newly assigned operators have been trained or tested competent in the operating procedures	40 CFR 68.54(a)	2,000	4,000	10,000
(b) Failure to provide refresher training at least every three years or more often if changes have occurred to the standard operating procedures	40 CFR 68.54(b)	1,000	2,000	10,000
(c) Failure to provide training in any updated or new procedure prior to startup of a process after a major change	40 CFR 68.54(d)	1,000	2,000	5,000
17. 40 CFR 68.56				
(a) Failure to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment	40 CFR 68.56(a)	1,000	2,000	5,000
(b) Failure to properly train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process	40 CFR 68.56(b)	2,000	4,000	10,000
(c) Failure to ensure that contract maintenance employees are properly trained to perform the maintenance procedures	40 CFR 68.56(c)	2,000	4,000	10,000
(d) Failure to properly perform or cause to be performed inspections and tests on process equipment that follow good engineering practices at a frequency consistent with applicable manufacturers recommendations, industry standards or codes, good engineering practices, or prior operating experience	40 CFR 68.56(d)	2,000	4,000	10,000
18. 40 CFR 68.58—with changes specified at N.J.A.C. 7:31-3.1(c)5 and 6				

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(a) Failure to certify that compliance with N.J.A.C. 7:31-3 has been evaluated at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed and that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.48(a)and(b)	40 CFR 68.58(a) with changes specified at N.J.A.C. 7:31-3.1(c)5	5,000	10,000	25,000
(b) Failure to conduct a compliance audit with at least one person knowledgeable in the process	40 CFR 68.58(b)	1,000	2,000	5,000
(c) Failure to develop a complete compliance audit report	40 CFR 68.58(c) with changes specified at N.J.A.C. 7:31-3.1(c)6	1,000	2,000	5,000
(d) Failure to document an appropriate response to each of the compliance	40 CFR 68.58(d)	1,000	2,000	5,000
(e) Failure to retain the two most recent compliance audit reports	40 CFR 68.58(e)	1,000	2,000	5,000
19. 40 CFR 68.60—with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8				
(a) Failure to initiate an EHS accident investigation within 48 hours of the EHS accident occurrence	40 CFR 68.60(b) with changes specified at N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000
(b) Failure to prepare a summary at the conclusion of the EHS accident investigation	40 CFR 68.50(c) with changes specified at N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000
(c) Failure to promptly address and resolve the EHS accident investigation findings and recommendations and to document resolutions and corrective actions	40 CFR 68.60(d)	2,000	4,000	10,000
(d) Failure to review the findings of the EHS accident investigation with all affected personnel whose job tasks are affected by the findings	40 CFR 68.60(e)	1,000	2,000	5,000
(e) Failure to retain EHS accident investigation summaries for five years	40 CFR 68.60(f)	2,000	4,000	10,000
State provisions added to the Federal provisions				
20. N.J.A.C. 7:31-3.2—Emergency Response Program				
(a) Failure to comply with the emergency response requirements of N.J.A.C. 7:31-5	N.J.A.C. 7:31-3.2(a)	2,000	4,000	10,000
21. N.J.A.C. 7:31-3.3—Triennial Report				
(a) Failure to submit a triennial report on or before each third anniversary of the initial approval of the risk management program	N.J.A.C. 7:31-3.3(a)	1,000	2,000	5,000
(b) Failure to provide all required information in the triennial report	N.J.A.C. 7:31-3.3(b)	500	1,000	2,500
22. N.J.A.C. 7:31-3.4—New Covered Process construction and new EHS Service				
(a) Failure to submit required documentation at least 90 days prior to construction of a new Program 2 covered process at a stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)1	2,000	4,000	10,000
(b) Failure to receive written Department approval before proceeding with construction for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)2	6,000	12,000	30,000
(c) Failure to submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service an update of the documentation required at N.J.A.C. 7:31-3.4(a)1 for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)3	2,000	4,000	10,000
(d) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 2 covered process at stationary source for which there is no previously approved RMP	N.J.A.C. 7:31-3.4(a)4	one-third of fee	one-third of fee	one-third of fee

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(e) Failure to submit required documentation at least 90 days prior to placing the equipment into EHS service for existing equipment to be utilized for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-3.4(b)1	2,000	4,000	10,000
(f) Failure to submit to the Department the fees required by N.J.A.C. 7:31-11.1 for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-3.4(b)2	one-third of fee	one-third of fee	one-third of fee
(g) Failure to update required documentation at least 90 days prior to placing equipment into EHS service for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-3.4(c)1	2,000	4,000	10,000
(h) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-3.4(c)2	one-third of fee	one-third of fee	one-third of fee
(i) Failure to enter into a consent agreement or consent agreement addendum, or to complete all items of the consent agreement or consent agreement addendum, as specified prior to placing EHS equipment into service for a new Program 2 covered process being constructed or existing equipment to be utilized for a new Program 2 covered process	N.J.A.C. 7:31-3.4(d)	5,000	10,000	25,000
23. 40 CFR 68.65—with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4				
(a) Failure to compile written process safety information	40 CFR 68.65(a)-(d) with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4	2,000	4,000	10,000
24. 40 CFR 68.67—with changes specified at N.J.A.C. 7:31-4.1(c)5 through 7				
(a) Failure to perform an initial hazard analysis with risk assessment on processes covered by N.J.A.C. 7:31-4—Program 3 Prevention Program that conforms to the requirements outlined in 40 CFR 68.67(a) with changes specified at N.J.A.C. 7:31-4.1(c)6	40 CFR 68.67(a) with changes specified at N.J.A.C. 7:31-4.1(c)6	5,000	10,000	25,000
(b) Failure to use an approved methodology in performing the hazard analysis with risk assessment	40 CFR 68.67(b)	2,000	4,000	10,000
(c) Failure to address all required items in the process hazard analysis with risk assessment	40 CFR 68.67(c)	1,000	2,000	5,000
(d) Failure to perform the process hazard analysis with risk assessment with a properly composed team	40 CFR 68.67(d)	1,000	2,000	5,000
(e) Failure to establish a system to promptly address and document the team's findings and recommendations	40 CFR 68.67(e)	2,000	4,000	10,000
(f) Failure to update and revalidate the hazard analysis with risk assessment every five years after the completion of the initial process hazard analysis with risk assessment	40 CFR 68.67(f) with changes specified at N.J.A.C. 7:31-4.1(c)7	2,000	4,000	10,000
(g) Failure to retain the process analysis with risk assessment and updates or revalidation for each process covered by this section, as well as documented resolution of recommendation, for the life of the process	40 CFR 68.67(g)	2,000	4,000	10,000
State provisions added to the Federal provisions				
25. N.J.A.C. 7:31-4.2—Process Hazard Analysis With Risk Assessment For Specific Pieces of EHS Equipment or Operating Alternatives				
(a) Failure to perform the process hazard analysis with risk assessment using the correct parameters and methods	N.J.A.C. 7:31-4.2(b)	5,000	10,000	25,000

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(b) Failure to perform an evaluation of risk reduction measures to significantly reduce the frequency or consequence of each potential offsite release scenario	N.J.A.C. 7:31-4.2(c)	2,000	4,000	10,000
(c) Failure to maintain documentation of the process hazard analysis with risk assessment	N.J.A.C. 7:31-4.2(d)	2,000	4,000	10,000
(d) Failure to prepare a report of the process hazard analysis with risk assessment	N.J.A.C. 7:31-4.2(e)	2,000	4,000	10,000
26. 40 CFR 68.69—with changes specified at N.J.A.C. 7:31-4.1(c)8				
(a) Failure to develop and implement written standard operating procedures	40 CFR 68.69(a)	1,000	2,000	5,000
(b) Failure to make standard operating procedures readily accessible to employees who work in or maintain a process	40 CFR 68.69(b)	1,000	2,000	5,000
(c) Failure to review standard operating procedures as often as necessary to reflect current practices	40 CFR 68.69(c)	1,000	2,000	5,000
(d) Failure to certify annually that these standard operating procedures are current and accurate	40 CFR 68.69(c)	1,000	2,000	5,000
(e) Failure to develop and implement safe work practices in conformance with 40 CFR 68.69(d)	40 CFR 68.69(d)	2,000	4,000	10,000
State provisions added to the Federal provisions				
27. N.J.A.C. 7:31-4.3—Standard Operating Procedures				
(a) Failure to include required information in standard operating procedures	N.J.A.C. 7:31-4.3(b)	500	1,000	2,500
28. 40 CFR 68.71—with changes specified at N.J.A.C. 7:31-4.1(c)9				
(a) Failure to provide initial training in compliance with 40 CFR 68.71(a)1 or 2	40 CFR 68.71(a)	2,000	4,000	10,000
(b) Failure to provide refresher training at least every three years or more often if necessary to assure that employees understand and adhere to the current operating procedures	40 CFR 68.71(b)	1,000	2,000	5,000
(c) Failure to ascertain that each employee involved in operating a process has received and understood the required training	40 CFR 68.71(c)	500	1,000	2,500
(d) Failure to prepare a record containing the identity of the employee trained, date of training and means used to verify that the employee understood the training	40 CFR 68.71(c)	2,000	4,000	10,000
State provisions added to the Federal provisions				
29. N.J.A.C. 7:31-4.4 EHS Operator Training				
(a) Failure to provide written job descriptions which include the duties and responsibilities for each EHS operator position	N.J.A.C. 7:31-4.4(a)	500	1,000	2,500
(b) Failure to specify the qualifications required for the personnel responsible for training EHS operators	N.J.A.C. 7:31-4.4(b)	500	1,000	2,500
30. 40 CFR 68.73—with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11				
(a) Failure to include all EHS equipment of the covered process in the mechanical integrity/preventive maintenance program	40 CFR 68.73(a) with changes specified at N.J.A.C. 7:31-4.1(c)11	1,000	2,000	5,000
(b) Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment	40 CFR 68.73(b)	2,000	4,000	10,000
(c) Failure to properly train each employee involved in maintaining the on-going integrity of the process equipment	40 CFR 68.73(c)	2,000	4,000	10,000
(d) Failure to perform inspections and tests on the process equipment as required	40 CFR 68.73(d)(1)	1,000	2,000	5,000
(e) Failure to follow recognized and generally accepted good engineering procedures for inspections and tests	40 CFR 68.73(d)(2)	1,000	2,000	5,000
(f) Failure to maintain the frequency of inspections and tests of process equipment consistent with applicable manufacturer's recommendations and good engineering practices or more frequently if determined necessary by prior operating experience	40 CFR 68.73(d)(3)	1,000	2,000	5,000

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(g) Failure to properly document each inspection and test performed on process equipment	40 CFR 68.73(d)(4)	500	1,000	2,500
(h) Failure to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner	40 CFR 68.73(e)	2,000	4,000	10,000
(i) Failure to assure that equipment as it is fabricated is suitable for the process application for which it will be used	40 CFR 68.73(f)(1)	1,000	2,000	5,000
(j) Failure to make appropriate checks and inspections to assure that equipment is installed properly and is consistent with design specifications, and the manufacturer's instructions	40 CFR 68.73(f)(2)	1,000	2,000	5,000
(k) Failure to assure that maintenance materials, spare parts or equipment are suitable for the process application for which they will be used	40 CFR 68.73(f)(3)	1,000	2,000	5,000
State provisions added to the Federal provisions				
31. N.J.A.C. 7:31-4.5 Mechanical Integrity/Preventive Maintenance Program				
(a) Failure to implement a system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to determine frequency of inspections and tests	N.J.A.C. 7:31-4.5(b)	2,000	4,000	10,000
32. 40 CFR 68.75—with changes specified at N.J.A.C. 7:31-4.1(c)12				
(a) Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment or procedures or change to stationary sources that affect a covered process	40 CFR 68.75(a)	2,000	4,000	10,000
(b) Failure to address all requirements prior to any change	40 CFR 68.75(b) with changes specified at N.J.A.C. 7:31-4.1(c)12	1,000	2,000	5,000
(c) Failure to properly inform or train employees affected by the change prior to start-up of the process or affected part of the process	40 CFR 68.75(c)	1,000	2,000	5,000
(d) Failure to update process safety information prior to startup of the process or the effected part of the process	40 CFR 68.75(d)	1,000	2,000	5,000
(e) Failure to update standard operating procedures or practices prior to startup of the process or the affected part of the process	40 CFR 68.75(e)	1,000	2,000	5,000
State provisions added to the Federal provisions				
33. N.J.A.C. 7:31-4.6 Management of Change				
(a) Failure to identify the associated release scenarios and changes in rate, duration or quantity for any change in the covered process or procedure that results in an increase in rate, duration or quantity, or release frequency	N.J.A.C. 7:31-4.6(b)	1,000	2,000	5,000
(b) Failure to analyze the release scenario associated with the change in accordance with parameters and methods provided at N.J.A.C. 7:31-4.2 to determine whether a criterion endpoint defined at N.J.A.C. 7:31-4.2(b)3iv extends beyond the stationary source boundary	N.J.A.C. 7:31-4.6(b)	2,000	4,000	10,000
(c) Failure to maintain documentation and prepare a report of hazard analysis with risk assessment required by N.J.A.C. 7:31-4.2(d) and (e) for a release scenario due to a change that results in a criterion endpoint extending beyond the site boundary	N.J.A.C. 7:31-4.6(c)	4,000	8,000	20,000
(d) Failure to establish and implement required procedures for temporary changes	N.J.A.C. 7:31-4.6(d)	2,000	4,000	10,000
34. 40 CFR 68.77				
(a) Failure to perform a pre-startup safety review of a new stationary source or for a modified stationary source when the modification is significant enough to require a change in the process safety information	40 CFR 68.77(a)	2,000	4,000	10,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(b) Failure of the pre-startup safety review to confirm all requirements prior to introducing an EHS to a process State provisions added to the Federal provisions	40 CFR 68.77(b)	2,000	4,000	10,000
35. N.J.A.C. 7:31-4.7 Safety Review: Design and Pre-startup				
(a) Failure to conduct a safety review of design for each new EHS facility prior to construction	N.J.A.C. 7:31-4.7(b)	2,000	4,000	10,000
(b) Failure to prepare a report for a safety review of design	N.J.A.C. 7:31-4.7(c)	1,000	2,000	5,000
(c) Failure to prepare a pre-startup safety review report	N.J.A.C. 7:31-4.7(e)	1,000	2,000	5,000
36. 40 CFR 68.79—with changes specified at N.J.A.C. 7:31-4.1(c)13 and 14				
(a) Failure of owner or operator to certify that they have evaluated compliance with the provisions of this section at least every year to verify that the procedures and practices developed under the standards are adequate and are being followed and that the process technology and equipment, as built and operated, are in accordance with 40 CFR 68.65(c) and (d)	40 CFR 68.79 with changes specified at N.J.A.C. 7:31-4.1(c)13	4,000	8,000	20,000
(b) Failure to conduct the compliance audit by at least one person knowledgeable in the process	40 CFR 68.79(b)	1,000	2,000	5,000
(c) Failure to develop a report of the compliance audit	40 CFR 68.79(c) with changes specified at N.J.A.C. 7:31-4.1(c)4	1,000	2,000	5,000
(d) Failure to promptly determine and document an appropriate response to each of the findings of the compliance audit or failure to document that deficiencies found in the compliance audit have been corrected	40 CFR 68.79(d)	1,000	2,000	5,000
(e) Failure to retain the two most recent compliance audit reports	40 CFR 68.79(c)	1,000	2,000	5,000
State provisions added to the Federal provisions				
37. N.J.A.C. 7:31-4.9 Annual Reports				
(a) Failure to submit an annual report to the Department on or before the anniversary date	N.J.A.C. 7:31-4.9(a)	1,000	2,000	5,000
(b) Failure to include all required information in the annual report	N.J.A.C. 7:31-4.9(b)	500	1,000	2,500
38. 40 CFR 68.81—with changes specified at N.J.A.C. 7:31-4.1(c)14 through 21				
(a) Failure to investigate an EHS accident	40 CFR 68.81(a) with changes specified at N.J.A.C. 7:31-4.1(c)16	2,000	4,000	10,000
(b) Failure to initiate an EHS accident investigation within 48 hours following the EHS accident	40 CFR 68.81(b) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(c) Failure to establish the proper EHS accident investigation team	40 CFR 68.81(c) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(d) Failure to prepare a complete EHS accident report at the conclusion of the investigation	40 CFR 68.81(d) with changes specified at N.J.A.C. 7:31-4.1(c)15 and 17 through 21	1,000	2,000	5,000
(e) Failure to establish a system to promptly address and resolve the EHS accident report findings and recommendations	40 CFR 68.81(e) with changes specified at N.J.A.C. 7:31-4.1(c)15	2,000	4,000	10,000
(f) Failure to properly document the resolutions and corrective actions	40 CFR 68.81(e) with changes specified at N.J.A.C. 7:31-4.1(c)15	1,000	2,000	5,000
(g) Failure to review the report with all affected personnel whose job tasks are relevant to the EHS accident findings	40 CFR 68.81(f)	1,000	2,000	5,000
(h) Failure to retain the EHS accident report for five years	40 CFR 68.81(g) with changes specified at N.J.A.C. 7:31-4.1(c)15	2,000	4,000	10,000

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
39. 40 CFR 68.83				
(a) Failure to develop a written plan of action regarding the implementation of employee participation required by this section	40 CFR 68.83(a)	2,000	4,000	10,000
(b) Failure to consult with employees and their representatives on the conduct and development of a process hazard analysis with risk assessment and/or development of the other elements of process safety management in this rule	40 CFR 68.83(b) with changes specified at N.J.A.C. 7:31-4.1(c)22	1,000	2,000	5,000
(c) Failure to provide to employees and their representatives access to a process hazard analysis with risk assessment and/or to all other information required to be developed under this rule	40 CFR 68.83(c) with changes specified at N.J.A.C. 7:31-4.1(c)22	2,000	4,000	10,000
40. 40 CFR 68.85				
(a) Failure to issue a hot work permit for hot work operations conducted on or near a covered process	40 CFR 68.85(a)	1,000	2,000	5,000
(b) Failure to document all requirements in the hot work permit	40 CFR 68.85(b)	500	1,000	2,000
41. 40 CFR 68.87				
(a) Failure to obtain and evaluate information regarding contractor's safety performance and programs	40 CFR 68.87(b)(1)	2,000	4,000	10,000
(b) Failure to inform contractor of known fire, explosion or toxic release hazard related to the contractor's work and the process	40 CFR 68.87(b)(2)	2,000	4,000	10,000
(c) Failure to explain to the contractor the applicable provisions of 40 CFR 68 Subpart E—Emergency Response	40 CFR 68.87(b)(3)	1,000	2,000	5,000
(d) Failure to develop and implement safe work practices consistent with 40 CFR 68.69(d) to control entrance, presence and exit of the contractor in covered process areas	40 CFR 68.87(b)(4)	1,000	2,000	5,000
(e) Failure to periodically evaluate the performance of the contractor in fulfilling obligations as specified in this section	40 CFR 68.87(b)(5)	2,000	4,000	10,000
(f) Failure to assure that each contract employee is trained in the work practices necessary to perform the job	40 CFR 68.87(c)(1)	2,000	4,000	10,000
(g) Failure to assure that each contract employee is instructed in known potential fire, explosion or toxic release hazards related to the job	40 CFR 68.87(c)(2)	2,000	4,000	10,000
(h) Failure to document that each contract employee has received and understood the training required by this section	40 CFR 68.87(c)(3)	1,000	2,000	5,000
(i) Failure to assure that each contract employee follows the safety rules of the stationary source which includes the safe work practices required by 40 CFR 68.69(d)	40 CFR 68.87(c)(4)	2,000	4,000	10,000
(j) Failure to advise the owner or operator of any unique hazards presented by the contractor's work or of any hazards found by the contractor	40 CFR 68.87(c)(5)	2,000	4,000	10,000
State provisions added to the Federal provisions				
42. N.J.A.C. 7:31-4.8 Emergency Response Program				
(a) Failure to establish an emergency response element of the risk management program in accordance with N.J.A.C. 7:31-5	N.J.A.C. 7:31-4.8(a)	4,000	8,000	20,000
43. N.J.A.C. 7:31-4.10 Obligations Upon Temporary Discontinuance of EHS Use, Storage and Handling				
(a) Failure to continue activities required of the registrant by this chapter until a consent agreement or consent agreement addendum is signed by the registrant and by the Department or to comply with the requirements of that consent agreement or consent agreement addendum for covered processes that are temporarily discontinued	N.J.A.C. 7:31-4.10(a)	2,000	4,000	10,000
44. N.J.A.C. 7:31-4.11—New Covered Processes—Construction and New EHS Service				

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
(a) Failure to submit required documentation at least 90 days prior to construction of a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)1	2,000	4,000	10,000
(b) Failure to receive written Department approval before proceeding with construction for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)2	6,000	12,000	30,000
(c) Failure to submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service an update of the documentation required at N.J.A.C. 7:31-4.11(a)1 for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)3	2,000	4,000	10,000
(d) Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)4	4,000	8,000	20,000
(e) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(a)5	one-third of fee	one-third of fee	one-third of fee
(f) Failure to submit required documentation at least 90 days prior to placing the equipment into EHS service for existing equipment to be utilized for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)1	2,000	4,000	10,000
(g) Failure to conduct a pre-startup review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)2	2,000	4,000	10,000
(h) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 to utilize existing equipment for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program	N.J.A.C. 7:31-4.11(b)3	one-third of fee	one-third of fee	one-third of fee
(i) Failure to submit required documentation at least 90 days prior to placing equipment into EHS service for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)1	2,000	4,000	10,000
(j) Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)2	2,000	4,000	10,000
(k) Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11 for a new Program 3 covered process being constructed or existing equipment to be utilized for a new Program 3 covered process at a stationary source that has a previously approved risk management program	N.J.A.C. 7:31-4.11(c)3	one-third of fee	one-third of fee	one-third of fee
(l) Failure to enter into a consent agreement or consent agreement addendum and to complete all items of the consent agreement or consent agreement addendum prior to placing EHS equipment into service for a new Program 3 covered process being constructed or existing equipment to be utilized for a new program 3 covered process	N.J.A.C. 7:31-4.11(d)	6,000	12,000	30,000

45. 40 CFR 68.90—with changes specified at N.J.A.C. 7:31-5.1(c)1 and 2

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third and each Subsequent Offenses</u>
(a) Failure to comply with alternative emergency response requirements for Program 2 covered processes for which employees will not respond to an emergency	40 CFR 68.90(b) with changes specified at N.J.A.C. 7:31-5.1(c)1 and 2	1,000	2,000	5,000
46. 40 CFR 68.95—with changes specified at N.J.A.C. 7:31-5.1(c)3 and 4				
(a) Failure to develop an emergency response plan	40 CFR 68.95(a)(1)	4,000	8,000	20,000
(b) Failure to provide procedures for the use of emergency response equipment and for its inspection, testing and maintenance	40 CFR 68.95(a)(2)	1,000	2,000	5,000
(c) Failure to provide initial and annual refresher emergency response training for all employees in relevant procedures	40 CFR 68.95(a)(3)	1,000	2,000	5,000
(d) Failure to provide procedures to review and update, as appropriate, the emergency response plan	40 CFR 68.95(a)(4)	1,000	2,000	5,000
(e) Failure to coordinate the emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003	40 CFR 68.95(c)	1,000	2,000	5,000
State provisions added to the Federal provisions				
47. N.J.A.C. 7:31-5.2—Emergency Response Program				
(a) Failure to provide initial and annual refresher emergency response training for all employees in relevant procedures	N.J.A.C. 7:31-5.2(b)1	1,000	2,000	5,000
(b) Failure to complete at least one emergency response exercise each calendar year	N.J.A.C. 7:31-5.2(b)2	2,000	4,000	10,000
(c) Failure to complete a written assessment of the ER plan and of the adequacy or need for ER equipment after each ER plan implementation or each ER exercise	N.J.A.C. 7:31-5.2(b)3	1,000	2,000	5,000
(d) Failure to describe and implement the emergency notification system	N.J.A.C. 7:31-5.2(b)4	2,000	4,000	10,000
48. 40 CFR 68.150—with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2				
(a) Failure to submit a single RMP that includes the information required by 40 CFR 68.155 through 68.185 prior to June 21, 1999	40 CFR 68.150(a) with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2	2,500	5,000	12,500
(b) Failure to submit the first RMP prior to three years after the date on which a regulated substance is first listed under 40 CFR 68.130	40 CFR 68.150(b)2	2,500	5,000	12,500
(c) Failure to submit the first RMP prior to the date on which a regulated substance is first present above a threshold quantity in a process	40 CFR 68.150(b)3	2,500		5,000
49. 40 CFR 68.190—with changes specified at N.J.A.C. 7:31-7.1(c)3 through 5				
(a) Failure to review, update as specified in 40 CFR 68.190(b), and submit the RMP in a method and format to a central point specified by EPA prior to June 21, 1999	40 CFR 68.190(a) with changes specified at N.J.A.C. 7:31-7.1(c)3 and 4	1,000	2,000	5,000
(b) Failure to revise, update and submit the RMP in accordance with the conditions required at 40 CFR 68.190(b) and (c)	40 CFR 68.190(a) with changes specified at N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000
State provisions added to the Federal provisions				
50. N.J.A.C. 7:31-7.2—TCPA Risk Management Plan Submission				
(a) Failure to submit all required information for the TCPA RMP	N.J.A.C. 7:31-7.2(a)	1,000	2,000	5,000
(b) Failure to submit updates for maximum EHS inventory changes	N.J.A.C. 7:31-7.2(b)	1,000	2,000	5,000
51. N.J.A.C. 7:31-7.4—Transfer of Risk Management Program				
(a) Failure of a new owner or operator to adopt an existing, or obtain a new, approved risk management program	N.J.A.C. 7:31-7.4(a) and (b)	2,000	4,000	10,000

Categories of Offense	Cite	First Offense	Second Offense	Third and each Subsequent Offenses
52. 40 CFR 68.200—with changes specified at N.J.A.C. 7:31-8.1(c)1 (a) Failure to maintain records supporting the implementation of this chapter for five years unless otherwise provided in N.J.A.C. 7:31-4	40 CFR 68.200(a) with changes specified at N.J.A.C. 7:31-8.1(c)1	2,000	4,000	10,000
53. 40 CFR 68.220—with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 (a) Failure to provide the Department access to the stationary source, supporting documentation, and any area where an accidental release could occur in accordance with N.J.A.C. 7:31-8.2 (b) Failure to comply with the requirements of a consent agreement or administrative order for a risk management program and RMP	40 CFR 68.220(h) with changes specified at N.J.A.C. 7:31-8.1(c)5	2,000	4,000	10,000
54. Failure to submit stationary source data for work plan	N.J.A.C. 7:31-9.1(c)	2,000	4,000	10,000
55. Failure to nominate on time three consultants to perform the EHSARA	N.J.A.C. 7:31-9.3(b)	2,000	4,000	10,000
56. Failure to nominate on time an additional three consultants, upon determination of the inadequacy of the first three	N.J.A.C. 7:31-9.4(d)1	2,000	4,000	10,000
57. Failure to execute contract with chosen consultant within 45 days of receipt of notification of the name of the consultant	N.J.A.C. 7:31-9.4(e)	2,000	4,000	10,000
58. Failure to perform an EHSARA according to the schedule in the work plan	N.J.A.C. 7:31-9.4(f)	2,000	4,000	10,000
59. Failure of owner or operator's consultant to prepare and submit for Department review a report of EHSARA in accordance with the work plan schedule when a consultant hired by the owner or operator prepares the report of EHSARA	N.J.A.C. 7:31-9.5(b)	2,000	4,000	10,000
60. Failure of consultant to obtain approval in writing from the Department to subcontract any of the work of the EHSARA or to change the staff named to do any of the work of the EHSARA	N.J.A.C. 7:31-9.3(c)4	750	1,500	3,750

(d) The Department may assess a civil administrative penalty for a violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order adopted or issued pursuant thereto, for which no penalty amount is specified under (c) above, according to the following:

1. Not more than \$10,000 for the first offense;
2. Not more than \$20,000 for the second offense; and
3. Not more than \$50,000 for the third and each subsequent offense.

(e) The Department may, in its discretion, adjust the penalty amount determined pursuant to (d) above to assess a civil administrative penalty based on any or all of the following factors:

1. The amount of the penalty established under (c) above for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping completeness, reporting completeness or performance of risk management program requirements) and the nature

and extent of the extraordinarily hazardous accident risk likely to result from the type of violation; and/or

2. The factors listed in (g) below.

(f) If the owner or operator has not committed the same offense within the three year period preceding the pending offense, the penalty for the pending offense will be assessed at the frequency of violation level of the prior offense. The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section to assess a civil administrative penalty amount no greater than \$10,000 for the first offense, \$20,000 for the second offense and \$50,000 for the third and each subsequent offense, based upon any or all of the following factors:

1. The nature of the violation;
2. The nature and extent of the extraordinarily hazardous accident risk;

3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident risks in addition to those minimally required by applicable statute or rule;

4. The compliance history of the violator;

5. The number of times and the frequency with which the violation occurred;

6. The severity of the violation;

7. Any other mitigating, extenuating or aggravating circumstances; and/or

8. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed.

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

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

Amended by R.1998 d.355, effective July 20, 1998.

See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Rewrote the section.

#### Case Notes

Municipal water utility failed to timely file site documentation; penalty assessed. Department of Environmental Protection and Energy v. North Brunswick Water Works. 92 N.J.A.R.2d (EPE) 121.

Late filing of summary risk management program statement; de minimis violation. Division of Environmental Quality v. Middlesex Water Company. 92 N.J.A.R.2d (EPE) 62.

Failure of municipal utilities authority to timely submit Summary Risk Management Program Statement was one-time event. Department of Environmental Protection and Energy v. Gloucester Township Municipal Utilities Authority. 92 N.J.A.R.2d (EPE) 57.

Utility operating sewerage treatment facility utilizing liquid chlorine could not be penalized for failing to enter into administrative consent agreement. Camden County Municipal Utilities Authority v. New Jersey Department of Environmental Protection and Energy. 92 N.J.A.R.2d (EPE) 41.