

**CHAPTER 31**

**TOXIC CATASTROPHE PREVENTION ACT PROGRAM**

**Authority**

N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., particularly 26:2C-8.

**Source and Effective Date**

R.1993 d.358, effective June 18, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 31, Toxic Catastrophe Prevention Act Program, expires on June 18, 1998.

**Chapter Historical Note**

Chapter 31, Toxic Catastrophe Prevention Act Program, except Subchapter 5, was adopted as R.1988 d.272, effective June 20, 1988, but operative July 21, 1988. See: 19 N.J.R. 1687(a), 20 N.J.R. 1356(a). Subchapter 5, Confidentiality and Trade Secrets, was adopted as R.1988 d.378, effective August 1, 1988. See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

Pursuant to Executive Order No. 66(1978), Chapter 31 was readopted as R.1993 d.358. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS

**7:31-1.1 Scope and applicability**

(a) This chapter shall constitute the rules for the Department's Toxic Catastrophe Prevention Act Program.

(b) All owners or operators of sites required to register with the Department because they handle, use, manufacture, store or have the capability to generate an extraordinarily hazardous substance in at least the registration quantity established for such substance or chemical compound on the Extraordinarily Hazardous Substance List set forth in Table I of N.J.A.C. 7:31-2.3, are subject to, and shall comply with, the provisions of this chapter and the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

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

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.1995 d.205, effective April 17, 1995.  
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

**7:31-1.2 Construction**

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

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

**7:31-1.3 Purpose**

(a) The general purpose of this chapter is to protect the public from catastrophic accidents from chemical releases of extraordinarily hazardous substances to the environment by anticipating the circumstances that could result in such releases and requiring precautionary and preemptive actions to prevent such releases.

(b) In order to achieve this general purpose, this chapter establishes:

1. The extraordinarily hazardous substance list which, among other things, is used to determine the facilities subject to the Toxic Catastrophe Prevention Act program;
2. The procedures to be followed by owners or operators subject to the program;

3. The minimum requirements for an acceptable risk management program;

4. The requirements for an extraordinarily hazardous substance risk reduction work plan and accident risk assessment;

5. The criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment;

6. Fees for the administration of the TCPA Program;

7. The requirements for emergency response plans;

8. The reporting requirements for owners and operators subject to the Toxic Catastrophe Prevention Act Program; and

9. Administrative penalties for those facilities which violate the Act, this chapter or any order or consent agreement issued pursuant thereto.

**7:31-1.4 Program information**

Unless otherwise specified, any questions concerning the TCPA Program should be directed to:

Assistant Director  
Release Prevention and Emergency Response Element  
Division of Environmental Quality  
New Jersey Department of Environmental Protection  
CN 027  
Trenton, New Jersey 08625

**7:31-1.5 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Abnormal condition" means any deviation in the operation of an EHS facility from that prescribed in the standard operating procedure for normal operating ranges, which, if not corrected, could result in an EHS accident.

"Act" or "TCPA" means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

"Acute toxicity concentration" or "ATC" means a minimum lethal concentration which is greater than the Threshold Limit Value (TLV) or the Short Term Exposure Limit (STEL), as defined by the American Conference of Governmental Industrial Hygienists, and equivalent to the lowest of the following three categories: one-tenth of the median lethal concentration ( $LC_{50}$ ); or one times the lowest lethal concentration ( $LC_{L0}$ ) of test data for any mammalian species in test periods up to eight hours; or the Immediately Dangerous to Life and Health (IDLH) concentration.  $LC_{50}$ ,  $LC_{L0}$ , IDLH, TLV, and STEL have been defined by the U.S. Department of Health and Human Services in the "Registry of Toxic Effects of Chemical Substance" (RTECS) and the National Institute of Occupational Safety and Health (NIOSH) "Pocket Guide to Chemical Hazards".

“Agent of the Department” means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.

“ANSI” means the American National Standards Institute.

“Audit” means an annual review of the registrant’s risk management program conducted by an audit team to assess the overall implementation and effectiveness of the risk management program to insure that all risk management program elements are in place, up-to-date, and being executed as planned.

“Audit team” means those persons who perform the audits of the registrant’s risk management program.

“Budget-expenditure variance” means the difference, either positive or negative, between the gross expenditures and the spending plan (budget) of the same fiscal year of the TCPA program. Where budget exceeds expenditures, this difference is positive.

“CAS #” means a number assigned by the Chemical Abstracts Service Division of the American Chemical Society to identify a specific compound.

“Claimant” means any person who submits a confidentiality claim under this chapter.

“Commissioner” means the Commissioner of the Department of Environmental Protection or the person delegated to act on his behalf.

“Confidential copy” means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.

“Confidential information” means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the facility or compromise the security of the facility or its operations; consisting of non-privileged trade secret information, proprietary information and non-privileged security information.

“Confidentiality claim” or “claim” means a written request made by a registrant pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.

“Consensus standard” means a standard adopted by national organizations which publish standard engineering practices developed by a process including peer review and public comment which results in a standard which reflects agreement among participants with diverse interests and expertise.

“Consequence analysis” means the determination of the potential consequence of an EHS release on the surrounding population, using dispersion analysis to compute concentrations of EHSs and, at a minimum, identifying potential populations exposed to at least the acute toxicity concentration (ATC) for each EHS.

“Criteria for design and operation” means any code, consensus or governmentally mandated standard applicable to the particular EHS facility’s design and operation. It also includes documented guidelines, practices or procedures adopted by the registrant when codes and standards are nonexistent or need supplementation. These guidelines, practices or procedures shall be based on sound engineering practices supported by documentation demonstrating their successful application to the particular EHS service.

“Department” means the New Jersey Department of Environmental Protection.

“Dispersion analysis” means the calculation, by means of a model acceptable to the Department, of the ambient concentrations of an EHS after its release, taking into account the physical and chemical states and properties of the EHS, the release scenario and the geographical, topographical, geological and meteorological characteristics of the environment, which will influence the migration, movement, dispersion, or degradation of the EHS in the environment.

“EHS accident” means an unplanned, unforeseen or unintended incident, situation, condition, or set of circumstances which directly or indirectly results in an EHS release.

“EHS equipment” means that equipment within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation, EHS release detection equipment, and EHS shipping container handling equipment.

“EHS facility” means a facility in EHS service.

“EHS facility emergency response team” means those personnel responsible for responding to an emergency at a particular EHS facility. The specific duties for which an EHS operator is responsible as part of the EHS facility emergency team may be limited to emergency shutdown, notification of an emergency to supervisors or the site emergency response team, and use of emergency protective equipment.

“EHS operator” means an employee who is directly involved with an EHS and qualified and trained in the operations of EHS equipment or procedures.

“EHS procedure” means a step of an operation involving a registered EHS, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

“EHS release” means a discharge or emission of an EHS into the environment, excluding discharges or emissions occurring pursuant to and in compliance with the conditions of any State permit or a regulation promulgated pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

“EHS service” means the handling, use, manufacture, storage or generation of a registered EHS.

“Electrical one-line diagram” means a diagram including legend of the electrical power distribution system that could contribute to an EHS release showing such items as power consumers, the chain of supply back through starters, distribution centers, substations to the main feeder, emergency power supply, and connections to various components. For complex systems, the one-line diagram may be a group of drawings.

“Emergency condition” means any situation at a facility during which an EHS release is in progress or will occur because no preventive measures would be effective.

“Emergency response team” means those employees at the site appointed by the registrant who are responsible for implementing the site’s emergency response plan in the event of an EHS accident.

“Employee” means any person allowed or permitted to work by a registrant, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the registrant.

“Equipment failure” means any event associated with EHS equipment which results in an EHS accident even though the equipment is being maintained and operated in accordance with the approved risk management program.

“Equivalent EHS equipment” means EHS equipment that, while not identical to existing EHS equipment, performs the same function in the same configuration as reliably as the existing EHS equipment it replaces.

“Existing EHS equipment” means all EHS equipment that is not new EHS equipment.

“External forces and events” means forces of nature or sabotage or such events as neighboring fires or explosions, neighboring EHS releases, electric power failures, and intrusions of external transportation vehicles such as aircraft, ships, trucks or automobiles.

“Extraordinarily hazardous accident risk” means a potential for an EHS release which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability.

“Extraordinarily hazardous substance accident risk assessment” or “EHSARA” means a review and safety evaluation of those operations at a facility which involve the generation, storage, or handling of an extraordinarily hazardous substance.

“Extraordinarily hazardous substance” or “EHS” means any substance or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-2.3.

“Extraordinarily Hazardous Substance List” means the list of substances and chemical compounds set forth in Table I of N.J.A.C. 7:31-2.3.

“Extraordinarily Hazardous Substance Risk Reduction Work Plan” or “work plan” means the document developed by the Department for each facility at which is generated, stored, or handled an extraordinarily hazardous substance; setting forth the scope and detail of the EHSARA to which the facility will be submitted.

“Facility” means a building, equipment, and contiguous area covered by a process flow diagram and standard operating procedures, and under common area management. EHSs in a contiguous process flow under common area management shall be viewed as in a single facility. EHSs in a non-contiguous process flow shall be viewed as in separate facilities. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

“Fact sheet” means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared by the New Jersey Department of Health pursuant to N.J.S.A. 34:5A-1 et seq.

“Failure mode and effects analysis” or “FMEA” means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and the effect of the failure on the system with respect to an EHS release. The failure and effects are determined in a study of updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned. The results of the FMEA are reported for a unit or system of an EHS facility on an FMEA table. The results entered on a FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

“Fault tree analysis” or “FTA” means the analysis of the logic diagram constructed from a study of the updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release. The combinations are determined by solving the fault tree logic diagram for the minimal cut sets, that is, the smallest combination of equipment or procedural failures, which if all occur, will result in the “top event”, that is the EHS release. The table is also entered with a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. The analysis of the logic diagram includes the identification of “minimal cut sets”. When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability or frequency of occurrence of the EHS release.

“Hazard analysis” means a systematic identification of the potential conditions that may result in an EHS accident.

“Hazard and operability study” or “HAZOP” means a systematic study of updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The study is performed by a multidisciplinary team to identify hazard or operability problems that would result in an EHS accident. Deviations from the design value of key parameters (flow, temperature, composition, time, quantity, etc.) of each segment of the EHS facility and its procedures are studied using guide words (such as, more of, less of, none of, part of, more than and other) to control the examination and evaluation. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the system, the procedures of its operation and maintenance, and the related codes, standards and practices. In addition, the study team shall have technical expertise to answer most questions of the review without resorting to further expertise. The study team shall include a study leader specifically qualified for his or her leadership role by training or previous experience in HAZOP studies and a team secretary who shall record the results of the study. Persons who occupy these study team positions shall be technically trained and be available for the duration of the study. Results of the HAZOP study shall be reported by tabulation for a unit by key equipment, such as vessels or pipelines, and process parameter. The results are entered on the table as follows: guide word, causes of the deviation, consequences of the deviation in terms of a potential EHS release, the criticality based on the quantity or rate of potential release and the suggested action in terms of equipment or procedure to mitigate the deviation.

“Hazard unit” means the measure of inventory of an EHS expressed as multiples of its registration quantity, determined in accordance with N.J.A.C. 7:31-2.16(l).

“Human error” means human action or omission deviating from any established procedures of the registrant which results or could result in an EHS accident.

“Inventory” means the substance balance at the site confirmed by the book value balance, computed after each transaction or at the end of the registrant’s accounting day. The book value balance is computed by the standard accounting method: beginning balance, plus receipts, minus shipments or usage, equals ending balance. All balances whether book values or physical values are summations or physical counts of all material contained in shipping containers, storage vessels and in process equipment and piping.

“Material safety data sheet” or “MSDS” means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared pursuant to 29 CFR 1910.1200(g).

“Modification” means any change in existing EHS equipment or procedures which are directly involved with an EHS, including additions or deletions. Modification does not include routine maintenance or replacement in kind.

“Material deficiency” means the failure of a registrant’s risk management program to meet each of the requirements of N.J.A.C. 7:31-3.

“NFPA” means National Fire Protection Association.

“New EHS equipment” means any equipment to be placed into EHS service or any EHS equipment to be placed into new EHS service after the operative date of this chapter. New EHS equipment remains new EHS equipment until all reviews and approvals required by this chapter for the particular piece of new EHS equipment have been completed and the equipment has been placed into EHS service.

“Non-contiguous EHS equipment” means EHS equipment that is not connected to other EHS equipment by piping through which an EHS flows, and that the Department has determined is sufficiently separated from other exempt EHS equipment to preclude combined off-site consequences.

“Operating alternative” means an alternative procedure, schedule or process chemistry or a combination thereof.

“Person” means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.

“Petition to withhold privileged trade secret or security information” or “petition” means a written request made by a registrant pursuant to this chapter to withhold from disclosure to the Department certain information which is privileged trade secret or security information.

“Petitioner” means any person who submits a petition to withhold privileged trade secret or security information under this chapter.

“Piping and instrument diagram” or “P & ID” means one or more detailed diagrams including legends and citations of referenced documents, showing: every item of EHS equipment and its identification number (including installed spare equipment); every pipe including size, flow direction, identification number and indication of ANSI piping specification and break between piping specifications; symbols and identification of every instrument including instrument function to show trips and interlocks represented in accordance with Instrument Society of America standards or a standard adequate for the conduct of a safety review or hazard analysis with an appropriate symbol legend shown; every valve; the failsafe position of control valves or non-hand operated valves in the case of instrument air or power failure; steam traps; representation of insulation or heat tracing of piping, EHS equipment and instruments; sizes of all important equipment nozzles with location shown schematically to reflect function and elevation, such as, drains, vents, flushing connections and steam connections; references to inter-facing with other diagrams describing process, service, treatment, disposal, or utility systems; data on type, size, and set pressures of every relief valve and relieving device; instruments to monitor early detection of abnormal conditions or an EHS release; where critical, the relative elevations between equipment and of key piping; notes or symbols on such items as slope of critical piping to avoid pockets, or, where critical, symmetrical piping; notes on each item of EHS equipment, such as, material of construction, design temperature, design pressure, design thermal duty of heat exchangers, design capacity and dynamic head of rotating equipment, etc.

“Privileged trade secret or security information” means trade secret or security information which the Department has determined the registrant is entitled to withhold from and not disclose to the Department; consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or state law or regulation, and which has never been released to any person other than the registrant’s employees involved in its use.

“Process chemistry” means the chemical reactions which are relevant to possible scenarios of EHS release, including information on raw materials, intermediates, products, and waste products.

“Process flow diagram” means a diagram including a legend of a facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. A process flow diagram includes, or references, a block flow diagram that depicts the receipt, handling and storage steps at the site of shipping containers of the EHS.

“Public copy” means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.

“Registered EHS” means an EHS which is handled, used, manufactured or stored, or is capable of being generated within one hour, at a site in a quantity equal to or greater than the registration quantity for that EHS in Table I of N.J.A.C. 7:31-2.3.

“Registrant” means an owner or operator of a site who has registered one or more facilities in EHS service at that site with the Department pursuant to the Act or this chapter.

“Registration quantity” means the minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a single site that determines whether or not an owner or operator must register under the program.

“Reliability study” means the determination of the probability of a piece of EHS equipment performing its required function in the desired manner under all relevant conditions and on the occasion or during the time intervals when it is required to so perform. It includes the analysis of the failure of EHS equipment to perform its normal required function.

“Replacement in kind” means the replacement of existing EHS equipment with identical or equivalent EHS equipment, and installation according to criteria for design and operation.

“Responsible manager” means the member of the registrant’s management who is responsible for the management of the registrant’s risk management program at the site and who shall possess sufficient corporate authority and technical background to adjudicate issues relating to the execution of the risk management program based on information

provided by manufacturing, engineering, maintenance, safety and environmental representatives.

“Risk assessment” means the evaluation of the results of quantitative analyses to facilitate development of an effective risk reduction plan. The quantitative analyses shall consist of an estimate of the quantity, rate and duration of EHS released, a dispersion analysis, a consequence analysis, and an estimate of the probability or frequency of the undesired event.

“Risk assessment section” means all Department personnel responsible for the implementation and compliance of registrants’ risk management programs, including the review of summary risk management program statements, the detailed review of the risk management programs, the creation and implementation of work plans, review of submittals to construct and operate new EHS facilities of owners or operators, review of submittals to exempt EHS facilities, and periodic inspections of risk management programs.

“Risk management program” or “RMP” means the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks, including, but not limited to, requirements for safety review of design for new and existing equipment, requirements for standard operating procedures, requirements for preventive maintenance programs, requirements for operator training and accident investigation procedures, requirements for risk assessment for specific pieces of equipment or operating alternatives, requirements for emergency response planning, and internal or external audit procedures to ensure programs are being executed as planned.

“Risk reduction plan” means the plan developed as a result of a hazard analysis, risk assessment or EHSRA which identifies the deficiencies or risk reduction measures, recommends corrective actions, and provides for scheduling and implementation of remedial actions.

“Routine maintenance” means the repair or replacement in kind of existing EHS equipment to provide continuity of operation.

“Safety procedures” means the rules of conduct to safeguard personnel at a site from injury or ill effect on health.

“Security information” means information the release of which could either compromise the physical security of the facility or its operations, or adversely affect national security.

“SIC code” means the most recent revision of the standard industrial classification code published by the Office of Management and Budget, Executive Office of the President of the United States, that designates industry groups.

“Site” means the entire plot of contiguous land upon which the registrant operates or locates one or more facilities.

“Site emergency response team” means those personnel identified in the emergency response plan that respond to an emergency on the site which involves an EHS. Functions for which the site emergency response team shall be responsible include alarm identification and response, response to an EHS release, use of emergency protective equipment, rescue procedures, evacuation procedures, medical assistance, action plans for dealing with specific scenarios, and specifically assigned emergency response duties. Registrants may arrange with outside providers for any portion of these functions as needed.

“Site plan” means a diagram of the site showing exact locations to scale of all units or areas, warehouses, buildings, roads, access ways, walkways, parking areas, fences, gates and property lines plus the EHS facility and area handling an EHS.

“Standard operating procedures” or “SOP” means the documents setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the facility.

“State of the art” means up-to-date technology that, when applied to a registrant’s EHS equipment or procedures, will result in a significant reduction of risk. The technology represents an advancement in reduction of risk and shall have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain at reasonable cost or otherwise available at reasonable cost commensurate with the reduction of risk achieved.

“Substantiation” means the written submittal on a Department provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.

“Tabletop exercise” means an activity in which the participants are gathered informally to describe actions to be taken to respond to a pre-planned simulated EHS release scenario based upon the site emergency response plan as if it were an actual release, to include documents relevant to the EHS release scenario such as site plans, equipment arrangement plans and local street maps referenced by the participants during the exercise.

“TCPA program operating expense” means the normal TCPA program operating items such as postage, telephone, travel supplies and data management systems.

“Total spending plan of the TCPA program” means the total annual estimated cost of TCPA operations approved by the Department for the fiscal year beginning July 1.

“Trade secret” means a formula, process, device or compilation which a registrant uses in its business and which gives it an opportunity to obtain an advantage over competitors who do not know or use it.

“Wastewater treatment system” means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage, pumping and discharge facilities under control of the operator of such system and used primarily in connection with such system.

“Water treatment system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, pumping or distribution facilities under control of the operator of such system and used primarily in connection with such system.

“What If Checklist” means a method of hazard analysis based on a systematic study of updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The study is performed by a multidisciplinary team to identify hazards or operability problems that could result in an EHS accident. The study is composed of a comprehensive list of questions prepared in advance from study of the documents by team members either in conference or independently usually corresponding to their individual background. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall include a person assigned to lead the study and a person to record the results who are technically trained and will be available for the duration of the study. Results of the study shall be reported for a unit on a table. The results are entered on the table as follows: the “what if” question and its corresponding consequence/hazard, the criticality based on the quantity or rate of the potential release and the recommended action in terms of equipment or procedure to mitigate the consequence/hazard.

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

Amended by R.1988 d.378, effective August 1, 1988.  
 See: 20 N.J.R. 350(a), 20 N.J.R. 1913(a).  
 Added definitions.  
 Amended by R.1993 d.358, effective July 19, 1993.  
 See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

**7:31-1.6 Severability**

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

**SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES**

**7:31-2.1 Scope and applicability**

(a) This subchapter establishes programmatic requirements, prohibitions and procedures applicable to all facilities subject to the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

(b) This subchapter is applicable to all owners or operators of facilities required by the Act or this chapter to register with the Department because they handle, use, manufacture, store or have the capability to generate one or more of the substances or chemical compounds listed in N.J.A.C. 7:31-2.3.

**7:31-2.2 Purpose**

(a) This subchapter is promulgated for the following purposes:

1. To establish an extraordinarily hazardous substance list;
2. To establish the procedures and time schedules each owner or operator, or registrant shall follow to comply with the Act and this chapter;
3. To establish the fee schedule;
4. To establish the penalty schedule;
5. To establish the standard for initial evaluation of risk management programs by the Department;
6. To establish the procedures and standards for reviewing proposed new EHS facilities and modifications to existing EHS facilities;
7. To establish the requirements for the registrant's annual report to the Department; and
8. To establish the criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment.

**7:31-2.3 Extraordinarily hazardous substance list**

(a) The substances and chemical compounds listed in Table I below shall constitute the Department's extraordinarily hazardous substance list:

TABLE I

Name of Extraordinarily Hazardous Substance	CAS #	Registration Quantity in Pounds
<b>PART I</b>		
Hydrogen chloride (HCl)	7647-01-0	2,000
Hydrochloric acid		
36 percent by weight or more HCl	7647-01-0	5,600
Allyl chloride	107-05-1	2,000
Hydrogen cyanide	74-90-8	500
Hydrogen fluoride (HF)	7664-39-3	500
Hydrofluoric acid		
70 percent by weight or more HF	7664-39-3	700
Chlorine	7782-50-5	500
Phosphorus trichloride	7719-12-2	500
Hydrogen sulfide	7783-06-4	500
Phosgene	75-44-5	100
Bromine	7726-95-6	100
Methyl isocyanate	624-83-9	100
Toluene-2,4-diisocyanate	584-84-9	100
	or	
	26471-62-5 (mixture with Toluene-2,6-diisocyanate)	
<b>PART II</b>		
Acetaldehyde	75-07-0	4,900
Acrolein	107-02-8	200
Acrylonitrile	107-13-1	2,300
Allylamine	107-11-9	1,200
Ammonia (NH <sub>3</sub> )	7664-41-7	5,200
Ammonia (aqueous)		
28 percent by weight or more NH <sub>3</sub>	1336-21-6	19,000
Arsine	7784-42-1	60
bis (Chloromethyl) ether	542-88-1	80
Boron tribromide	10294-33-4	10,000
Boron trichloride	10294-34-5	1,700
Boron trifluoride	7637-07-2	200
Bromine chloride	13863-41-7	800
Bromine pentafluoride	7789-30-2	1,300
Carbon monoxide (CO)		
10 percent by volume or more CO	630-08-0	12,000
Carbonyl fluoride	353-50-4	1,700
Chlorine dioxide	10049-04-4	500
Chlorine pentafluoride	13637-63-3	500
Chlorine trifluoride	7790-91-2	600
Chloromethyl methyl ether	107-30-2	300
Chloropicrin	76-06-2	900
Chloroprene	126-99-8	12,000
Crotonaldehyde	123-73-9	450
Cyanogen	460-19-5	1,300
Cyanogen chloride	506-77-4	200
Diazomethane	334-88-3	300
Diborane	19287-45-7	60
Dichloroacetylene	7572-29-4	125
Dichlorosilane	4109-96-0	2,000
Diethylamine	109-89-7	9,600
Dimethylamine	124-40-3	6,600

1,1-Dimethylhydrazine	57-14-7	800	Tellurium hexafluoride	7783-80-4	175
Epoxypropane	75-56-9	7,700	Tetrafluorohydrazine	10086-47-2	3,800
Ethylamine	75-04-7	7,500	Tetramethyl lead	75-74-1	800
Ethylene oxide	75-21-8	2,700	Tetranitromethane	509-14-8	900
Ethylenimine	151-56-4	800	Thionyl chloride	7719-09-7	250
Ethyl mercaptan	75-08-1	13,000	Titanium tetrachloride	7550-45-0	600
Fluorine	7782-41-4	450	Trichlorosilane	10025-78-2	2,700
Formaldehyde (gas)	50-00-0	175	Trifluorochloroethylene	79-38-9	7,300
Furan	110-00-9	200	Trimethoxysilane	2487-90-3	1,100
Hexafluoroacetone	684-16-2	3,300	Trimethylamine	75-50-3	11,000
Hydrogen bromide (HBr)	10035-10-6	2,900	Trimethylchlorosilane	75-77-4	1,400
Hydrobromic acid 62 percent by weight or more HBr	10035-10-6	4,800	Vinyl trichlorosilane	75-94-5	7,700
Hydrogen selenide	7783-07-5	125			
Isopropylamine	75-31-0	3,300			
Ketene	463-51-4	50			
Methacrylaldehyde	78-85-3	1,300			
Methyl acrylonitrile	126-98-7	175			
Methylamine	74-89-5	2,300			
Methyl bromide	74-83-9	1,800			
Methyl chloride	74-87-3	12,000			
Methyl chloroformate	75-22-1	350			
Methyl dichlorosilane	75-54-7	27,000			
Methyl fluoroacetate	453-18-9	90			
Methyl fluorosulfate	421-20-5	50			
Methylhydrazine	60-34-4	125			
Methyl iodide	74-88-4	2,900			
Methyl mercaptan	74-93-1	2,400			
Methyl vinyl ketone	78-94-4	10			
Nickel carbonyl	13463-39-3	125			
Nitric acid (HNO <sub>3</sub> ) 94.5 percent by weight or more HNO <sub>3</sub>	7697-37-2	450			
Nitrogen Oxides					
Nitrogen dioxide (NO <sub>2</sub> ) 10 percent by volume or more	10102-44-0	200			
Nitric oxide 10 percent by volume or more	10102-43-9	125			
Nitrogen tetroxide 10 percent by volume or more	10544-72-6	200			
Nitrogen trioxide 10 percent by volume or more	10544-72-7	175			
Nitrogen trifluoride	7783-54-2	10,000			
Oleum 65 percent by weight or more free sulfur trioxide (SO <sub>3</sub> )	8014-95-7	800			
Osmium tetroxide	20816-12-0	4,500			
Oxygen difluoride	7783-41-7	10			
Ozone	10028-15-6	15			
Pentaborane	19624-22-7	15			
Perchloromethyl mercaptan	594-42-3	125			
Perchloryl fluoride	7616-94-6	2,900			
Phosphine	7803-51-2	30			
Phosphorus trifluoride	7783-55-3	34,000			
Phosphoryl chloride	10025-87-3	800			
Propylamine	107-10-8	11,000			
Selenium hexafluoride	7783-79-1	700			
Stibine	7803-52-3	250			
Sulfur dioxide (SO <sub>2</sub> ) 10 percent by volume or more SO <sub>2</sub>	7446-09-5	4,600			
Sulfur monochloride	10025-67-9	2,800			
Sulfur pentafluoride	5714-22-7	175			
Sulfur tetrafluoride	7783-60-0	150			
Sulfur trioxide	7446-11-9	500			
Sulfuryl fluoride	2699-79-8	22,000			

(b) For those mixtures not specified in (a) above which contain EHS, the registration quantity shall be calculated using the weight percent of EHS contained in the mixture. When the weight of the total mixture times the weight percent is equal to or greater than the registration quantity for that EHS, the owner or operator must register.

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

#### 7:31-2.4 Prohibitions

(a) No owner or operator of a site shall handle, use, manufacture or store or have the capability to generate within one hour, the registration quantity or greater of an EHS listed in N.J.A.C. 7:31-2.3 unless registered pursuant to the Act and this chapter with the Department.

(b) (Reserved)

(c) No owner or operator of a site shall construct a new EHS facility or no registrant with an established risk management program shall utilize an existing facility for a new EHS service unless the owner or operator or registrant has:

1. Registered with the Department pursuant to N.J.A.C. 7:31-2.5;
2. Complied with the requirements of N.J.A.C. 7:31-2.10; and
3. Received written Departmental approval to construct the new EHS facility or to utilize an existing facility for a new EHS service.

(d) No registrant of a new EHS facility shall begin operating that facility until the Department and the registrant have executed an administrative consent agreement containing an approved risk management program.

(e) No registrant with an approved risk management program shall operate a new EHS facility or utilize an existing facility for a new EHS service:

1. Before submitting to the Department:
  - i. An amendment to the RMP description prepared in accordance with N.J.A.C. 7:31-3.12;
  - ii. An update of Sections D and E of the registrant's registration form;

iii. The documentation required by N.J.A.C. 7:31-2.10(b); and

iv. The fee required by N.J.A.C. 7:31-2.16(e).

2. Before receiving written Departmental approval to operate the EHS facility.

(f) No registrant shall implement a modification to existing EHS equipment or procedures at its site without completing the requirements of its established risk management program as determined by the Department or its approved EHSARA workplan and managing the modification in accordance with N.J.A.C. 7:31-3.15;

(g) No registrant shall handle, use, manufacture, generate or store an EHS, except in a manner which complies with the Act and this chapter.

(h) No registrant with an approved risk management program shall handle, use, manufacture, store or generate an EHS except in a manner which complies with the approved risk management program.

(i) No owner or operator of a facility shall fail to provide the Department with any information required to be submitted to the Department pursuant to the Act or this chapter or both.

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

#### 7:31-2.5 Registration

(a) Each owner or operator of a site handling, using, manufacturing or storing at least the registration quantity of an EHS, or who has the capability to generate, within one hour, at least the registration quantity of an EHS on the EHS list in Table I in N.J.A.C. 7:31-2.3, shall register with the Department on TCPA Registration Form (STP-010) (registration form) available from the Department. All forms can be obtained from:

Chief, Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
Division of Environmental Safety, Health and Analytical Programs  
CN 424  
Trenton, New Jersey 08625

(b) Each owner or operator of a site which has handled, used, manufactured, stored or generated at least the registration quantity of one or more of the EHSs included in Table I of N.J.A.C. 7:31-2.3 at the same site and plans to handle, use, manufacture, store or generate such substances in the future, may register all the substances with the Department on the forms available from the Department.

(c) Each owner or operator of a site which will handle, use, manufacture or store an EHS in at least the registration

quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, or which will have the capability of generating an EHS within one hour in at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, planning to construct a new EHS facility shall register with the Department at least 90 days prior to construction and comply with the requirements of N.J.A.C. 7:31-2.10(a). In Section D of the registration form the registrant shall record the maximum inventory of the EHS expected during the year.

(d) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing EHS facility for a new EHS service, shall submit an updated registration form at least 90 days prior to the scheduled placing of the equipment into EHS service and comply with the requirements of N.J.A.C. 7:31-2.10(b).

(e) Each registrant shall submit:

1. By no later than August 22, 1993, completed Sections A, C, D and E of the TCPA Registration Form (STP-010); and

2. Updated Sections A and C of the registration form and any other affected section, exclusive of items 1, 2 and 3 of section F, to the Department within 30 days after a change occurs which makes those sections of the registration form incorrect, including, but not limited to, any changes in the registrant's maximum EHS inventory.

(f) Each registrant shall indicate on its registration form whether or not it has a risk management program.

1. A registrant which indicates that it has an RMP shall submit the RMP to the Department for review in accordance with N.J.A.C. 7:31-2.6.

2. A registrant which indicates that it does not have an RMP shall assist the Department in the preparation of the required work plan in accordance with N.J.A.C. 7:31-2.9.

(g) Each registrant shall provide the following information in the appropriate section of the registration form:

1. Section A of the registration form shall contain:

i. Legal name of owner or operator of the EHS site;

ii. The nature of the registrant's business;

iii. The identification number assigned by the Department's Air Pollution Enforcement Data System (APEDS) for the facility or the Employer Identification Number issued by the New Jersey Department of Labor if APEDS is not available;

iv. The site's geographic address;

v. The site's mailing address;

- vi. The name, title and telephone number of the responsible manager;
  - vii. The site's tax lot and block number;
  - viii. The SIC code for the site; and
  - ix. The number of facilities at the site as identified in Section D.
2. Section B of the registration form shall contain responses to the following questions:
- i. Does the site handle, use, manufacture, store or generate at any time any of the EHSs listed in Table I of N.J.A.C. 7:31-2.3; and
  - ii. For those sites with an EHS, does the site handle, use, manufacture, or store at least the registration quantity established for that EHS, or does it generate within one hour at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3.
3. Section C of the registration form shall contain the names, titles, certifications and signatures of the signatories as required by N.J.A.C. 7:31-2.17.
4. Section D of the registration form shall contain the inventory of EHSs or the quantity of EHS capable of being generated in one hour for each facility on the site.
5. Section E of the registration form shall contain the process description of and principal equipment used with each EHS at the site, by facility according to the definition of facility in N.J.A.C. 7:31-1.5.
6. Section F of the registration form shall contain:
- i. Answers to the questions regarding the registrant's risk management program, safety reviews and hazard analyses;
  - ii. An identification of the major elements included in the registrant's RMP;
  - iii. An identification of any risk reduction efforts and safety measures undertaken by the registrant to minimize the risks of an accidental release at the site;
  - iv. An identification of the position titles, expertise and affiliation of the persons involved with the development of the risk management program; and
  - v. A description and profile of the area surrounding the site, including the population and proximity to water supplies.
7. Section G of the registration form shall identify the insurance carriers underwriting the site's environmental liability and workers compensation insurance policies including the address of the carrier, the type of policy, the amount of insurance and limitations or exclusions to the policy.

8. The initial registration form submittal shall be accompanied by a USGS Topographic map with a scale of 1:24,000 indicating the location of each facility registered in Section D of the registration form.

(h) The Department will suspend from registration a registrant who submits a registration form showing a negative answer to question 2 of Section B (above at (g)2ii) of the registration form.

(i) A registrant with an established or approved risk management program who temporarily discontinues use, handling or generation of an EHS at particular EHS equipment, or stores it at less than the registration quantity, may remain a registrant with respect to that EHS provided the Department and the registrant execute a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 and the registrant pays an annual fee as required by N.J.A.C. 7:31-2.16(o).

(j) An owner who has leased portions of a site to one or more than one facility operator, each handling, using, manufacturing, storing or having the capability of generating within one hour less than the registration quantity of an EHS in its (their) respective facility(ies), shall register, separately or jointly with the facility operator(s), the EHS on the site, if the sum of EHS quantity in all facilities is greater than or equal to the registration quantity. Alternatively, all facility operators at that site shall register jointly.

Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).  
Administrative Correction.  
See: 25 N.J.R. 4792(b).

#### Case Notes

Registration of chlorine under Pesticide Control Act; additional registration required under Toxic Catastrophe Prevention Act; penalty assessed. Department of Environmental Protection and Energy v. AGL Welding Supply Co., Inc., 92 N.J.A.R.2d (EPE) 4.

#### 7:31-2.6 Risk management program procedures

(a) No risk management program of a registrant shall be approved by the Department until it meets all the requirements of N.J.A.C. 7:31-3. Approval of a RMP shall be made by the signing of a consent agreement as described in (h) below or by the registrant's implementation of requirements of an administrative order issued pursuant to either (i) below or N.J.A.C. 7:31-2.9(k).

(b) Each registrant with an EHS listed in Part I of Table I in N.J.A.C. 7:31-2.3, who has indicated on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department within 60 days after the operative date of this chapter.

(c) Each registrant with an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, who indicates on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department by June 30, 1989.

(d) Each submitted summary risk management program statement will be initially reviewed to determine if the registrant has a risk management program that meets the standard established in N.J.A.C. 7:31-2.7(b).

(e) The review of each established risk management program accepted for further review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department. Each registrant shall submit upon the request of the Department the following documentation:

1. A description of each program element which includes the registrant's policies, standards and procedures for that program element and the persons or positions responsible for ensuring their implementation;
2. A catalog listing the documents required by N.J.A.C. 7:31-3.3(c) and their location at the site; and
3. An updated risk management program checklist for the site prepared in accordance with N.J.A.C. 7:31-3.14.

(f) Upon completion of its review of a registrant's risk management program, the Department will develop, and send to the registrant, a draft consent agreement which will contain:

1. The portions of the registrant's risk management program which are approvable;
2. Any portions of the registrant's risk management program that are materially deficient;
3. Any proposed actions that must be taken to correct the material deficiencies; and
4. The proposed time schedule for taking the actions to correct the deficiencies.

(g) Within 60 days after the registrant receives the draft consent agreement pursuant to (f) above, the registrant shall either sign and return the consent agreement to the Department, thereby indicating its acceptance of the requirements, or submit its proposals to correct any deficiencies.

(h) If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement. For the registrant, the consent agreement shall be signed by its representative identified at N.J.A.C. 7:31-2.17(d) and for

the Department by the Chief of the Bureau of Release Prevention or his or her supervisor.

(i) If the registrant has not signed a consent agreement within 120 days of the registrant's receipt of the draft consent agreement identified at (f) above on the measures necessary to correct the deficiencies or omissions in the risk management program, the Department shall:

1. Prepare and send to the registrant an administrative order incorporating the approvable portions of the risk management program, the actions required to bring the risk management program into compliance with N.J.A.C. 7:31-3, and the time schedule to implement the required actions; and
2. Advise the registrant of its rights to an adjudicatory hearing pursuant to N.J.A.C. 7:31-6.3(b).

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

#### Case Notes

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.

#### 7:31-2.7 Initial evaluation of the risk management program

(a) In order to determine if a registrant has an established risk management program, the Department shall review the RMP description, and the reports of safety reviews, hazard analyses and risk assessments of existing EHS equipment and procedures included in the summary risk management program statement (see N.J.A.C. 7:31-3.12) submitted by the registrant for compliance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

(b) Each registrant whose summary risk management program statement contains at least one report of a safety review prepared in the past two years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.4, and at least one report of a hazard analysis and, where required, risk assessment prepared in the past four years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.9, shall be notified that it has an established RMP and it is accepted for further review in accordance with the procedure beginning at N.J.A.C. 7:31-2.6(e).

(c) Each registrant whose summary risk management program statement does not meet the standard established in (b) above shall be notified in writing that it does not have an established risk management program and that it shall follow the procedures in N.J.A.C. 7:31-2.9 for developing and implementing an extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan.

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

### 7:31-2.8 Transfer of risk management program

(a) In the event of the transfer of the site, or facility(ies) at a site, to a new owner or operator, or the change in name of the existing owner or operator, the new owner or operator shall, before operating EHS equipment, adopt the existing, or obtain a new, approved RMP for the site.

(b) A new owner or operator shall adopt an existing approved RMP by registering in accordance with N.J.A.C. 7:31-2.5(e) and (g) and, subsequent to registering, executing an addendum, prepared in accordance with N.J.A.C. 7:31-2.6(f) through (i), to the consent agreement that was previously signed by the Department and the former owner or operator.

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

### 7:31-2.9 Extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

(a) Each registrant who indicated on the registration forms that it did not have a risk management program, or who does not have an established risk management program as determined by the Department pursuant to N.J.A.C. 7:31-2.7, shall assist the Department in developing a work plan.

(b) A registrant assisting the Department in the development of the required work plan shall compile the list of documents of site data required by N.J.A.C. 7:31-4.4 and submit them to the Department:

1. Within 30 days after receipt of a request for the data from the Department for registrants who indicated on their registration form that they did not have a risk management program; or
2. Within 30 days after receipt of notice of the determination by the Department that it does not have an established risk management program;

(c) Upon review of the documents submitted by the registrant, the Department will schedule a meeting with the registrant for the purpose of:

1. Reviewing any other documents the registrant is required to bring to the meeting with the Department;
2. Identifying any other documents the registrant must submit to the Department;
3. Discussing and adapting the work plan to be developed in accordance with the requirements of N.J.A.C. 7:31-4 to the registrant's EHS equipment and procedures;
4. Explaining the consultant selection process as described in (e) below to the registrant;

5. Determining any limits on the scope or details of the work plan;

6. Identifying the members of the registrant's staff who will assist in the work of the EHSARA under the direction of the independent consultant or the Department;

7. Setting an end-date of the EHSARA that will be included in the registrant's request for proposal to independent consultants; and

8. Reviewing the instructions to bidders to be included in the registrant's request for proposal document to which the work plan will be attached.

(d) The Department will authorize one of the following types of personnel to perform the extraordinarily hazardous substance accident risk assessment:

1. Department personnel;
2. A consultant hired by the Department and paid by the registrant; or
3. An independent consultant nominated by the registrant, chosen by the Department and hired and paid by the registrant.

(e) Each registrant authorized to nominate three consultants as candidates to perform the EHSARA shall submit the names and proposals of three consultants, who meet the requirements set forth in N.J.A.C. 7:31-2.18 and are willing and able to perform the EHSARA in accordance with the schedule set forth in the work plan, to the Department within 60 days after receipt of the finalized work plan from the Department pursuant to (c) above;

(f) The Department, within 15 days after receipt of the names and proposals from the registrant, shall:

1. Select one of the consultants to perform the extraordinarily hazardous substance accident risk assessment; or
2. After determining that none of the consultants' proposals submitted by the registrant meet the requirements in N.J.A.C. 7:31-2.18, direct the registrant to submit, within 60 days, the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the extraordinarily hazardous substance accident risk assessment.

(g) The registrant shall execute a contract with the consultant chosen by the Department within 45 days after receipt of the name of the consultant from the Department.

(h) The consultant or Department shall perform the extraordinarily hazardous substance accident risk assessment and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to (c) above. Members of the registrant's staff may participate in the work preparatory to the EHSARA.

(i) Upon completion of the extraordinarily hazardous substance accident risk assessment, the consultant or the Department shall prepare in accordance with the schedule in the work plan an EHSARA report in accordance with N.J.A.C. 7:31-4.6, including its recommendations to reduce risks.

(j) The original EHSARA report shall be submitted to the Department and a copy of the EHSARA report shall be submitted to the registrant.

(k) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the registrant. The administrative order shall direct the registrant to implement the risk reduction plan which shall include:

1. A list of risks that must be reduced;
2. The actions the registrant is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 and the schedule within which the registrant shall complete the actions; and
3. A statement that the registrant has an established risk management program.

(l) Any registrant aggrieved by the administrative order issued pursuant to (k) above may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:31-6.3(b).

(m) Upon implementation of the risk reduction plan as required by the administrative order, the established RMP will be reviewed in accordance with N.J.A.C. 7:31-2.6(e) through (i).

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

#### Case Notes

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.

#### 7:31-2.10 New EHS facilities

(a) Each owner or operator of a site planning to construct a new EHS facility, or a registrant with an established risk management program planning to utilize an existing facility for a new EHS service, shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(c);
2. Submit a Summary Risk Management Program Statement for the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.12 to the Department at least 90 days prior to construction of the EHS facility;

3. Submit to the Department the documentation as required by N.J.A.C. 7:31-2.6(e) as applicable at least 90 days prior to the date the equipment is scheduled to be placed into EHS service;

4. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(d), in accordance with the bill issued by the Department; and

5. Place the equipment into EHS service as represented by the latest revision of process flow diagrams, standard operating procedures, criteria for design and operation and other pertinent drawings and documents. The safety review and risk assessment shall be updated prior to placing the equipment in EHS service, if those drawings and documents differ from those reviewed and reported on in the original reports to the Department.

(b) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing facility for a new EHS service shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(d);

2. Submit a revised RMP description meeting the requirements of N.J.A.C. 7:31-3.12(a)1, a report of a safety review of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.4, and a report of a hazard analysis and a report of a risk assessment of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.9 at least 90 days prior to the scheduled placing of the equipment into EHS service. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department; and

3. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(e).

(c) Prior to placing equipment into EHS service, the registrant shall enter into a consent agreement or consent agreement addendum, for that equipment with the Department and complete any items of the consent agreement or consent agreement addendum, for that equipment needed prior to EHS service.

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

#### 7:31-2.11 Modification to EHS equipment and procedures

A registrant with an established or approved risk management program as determined by the Department planning to implement a modification to an existing EHS facility at its site shall manage the modification (change) in accordance with N.J.A.C. 7:31-3.15.

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

### 7:31-2.12 Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute except for those parts or portions of any materials, equipment, documents and records which contain either privileged trade secret or security information or confidential information for which the registrant has submitted a petition in accordance with N.J.A.C. 7:31-5.6, or a claim in accordance with N.J.A.C. 7:31-5.4, and which petition or claim has not been denied by the Department. Those parts or portions of any materials, equipment, documents and records containing privileged trade secret or security information shall be treated as provided in (b)1 below, and those parts or portions containing confidential information shall be treated as provided in (b)2 below. Such right of inspection shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) At the commencement of an inspection by the Department, a registrant may identify those materials, equipment, documents and records at the site which contain either privileged trade secret or security information or confidential information for which an appropriate petition or claim has been asserted and which has not been denied by the Department.

1. Those parts or portions of any materials, equipment, documents and records at the site which contain privileged trade secret or security information need not be disclosed to or submitted to the Department. Any such materials, areas, documents or records disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged trade secret or security information thereafter. The fact that such trade secret or security information has been disclosed to or submitted to the Department shall not prohibit the registrant from asserting a confidentiality claim concerning such information.

2. Those parts or portions of any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or submitted to the Department during an inspection, including all negatives and prints of photographs, and shall be labelled "confidential". In order to assert a confidentiality claim, a properly completed claim form must be submitted to the Department at the same time any such confidential information is submitted or disclosed to the Department. These materials, equipment, documents and records shall not be disclosed by the Department to other persons except in accordance with the provisions of this chapter.

(c) The Department plans to perform an RMP inspection at a registrant's site to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan at a frequency appropriate to the administration of the program.

(d) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.

(e) After an RMP inspection, the Department will identify material deficiencies found and include actions to correct the deficiencies in a draft addendum to the consent agreement to be signed by the Department and the registrant. The Department will send the draft addendum to the registrant and the registrant shall enter into agreement with the Department in accordance with the procedures for entering into consent agreements as detailed in N.J.A.C. 7:31-2.6(g) through (i).

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

The rule that was printed 6-20-88 had not been adopted and was printed in error. This section should have been (Reserved).  
Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

### 7:31-2.13 Prevention of catastrophic accidents

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

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

1. A requirement that the owner or operator or registrant immediately submit a site's risk management program to the Department for review;
2. A requirement that the owner or operator or registrant perform a safety review, hazard analysis or risk assessment;
3. A requirement that the owner or operator or registrant immediately take risk reduction actions or implement a risk reduction plan;

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

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

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

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

#### 7:31-2.14 Annual report

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

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

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

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

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

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

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

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

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

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

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

#### 7:31-2.16 Fees

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

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

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

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

- i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;
- ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
- iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

iv. The estimated TCPA program operating expenses; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) (Reserved)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (n).

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

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

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

Recodified existing (n) and (o) as (o) and (p).

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

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

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

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

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

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

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

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

Public Notice: Annual TCPA Fee Schedule Report, FY 1998.

See: 29 N.J.R. 5334(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (Reserved)

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

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

1. The consultant's qualifications in:

i. Process engineering;

ii. Safety engineering;

iii. Preparation of operating procedures;

iv. Preparation or review of maintenance procedures;

v. Preparation or review of safety procedures;

vi. Preparation or review of operator training programs;

vii. Performance or review of accident investigations;

viii. Performance of hazard analyses;

ix. Performance of risk assessments;

x. Preparation or review of emergency response plans;

xi. Performance of audits of risk management programs;

xii. Knowledge of state of the art; and

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

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

- (2) Name of client's contact person, if available;
- (3) Date and duration of work;
- (4) Names of consultant's employees who performed the work;
- (5) Schedule of the work; and
- (6) Brief description of the work.

2. The qualifications and experience of additional staff who may be assigned on an as needed basis; and

3. The level of effort to be dedicated and schedule for performing each workplan task item including:

- i. Names of staff assigned;
- ii. Expected starting and completion dates;
- iii. Estimated personhours; and
- iv. Scope and extent of usage of collateral items such as computer use, outside consultants, etc.

(f) The resumes of the consultant or the consultant's staff who are to be committed to the work plan agreed to by the registrant and the Department shall be submitted to the Department and shall demonstrate that the consultant or the consultant's staff implementing the workplan has the following qualifications, at a minimum:

1. At least one previous project in each of the 12 areas of experience listed in (e)1 above;
2. Key staff members each having at least five years of professional experience and one key staff member who is a licensed professional engineer;
3. A task force leader with at least 36 months of accumulated experience as a project manager of multidisciplinary technical teams;
4. A technical leader of the hazard analysis and risk assessment portions of the work who has at least 12 months aggregate experience at such work; and
5. Any assisting staff shall have at least three years of professional work experience and at least six months accumulated experience on the type of work involved in the portion of the EHSARA to which they will contribute.

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

#### 7:31-2.19 Exemptions for non-contiguous EHS equipment

(a) A registrant may request that non-contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 provided that the following conditions are met:

1. The non-contiguous equipment has only the capability to contain or generate in one hour less than the registration quantity of the EHS as listed in N.J.A.C. 7:31-2.3; and

2. The registrant demonstrates to the satisfaction of the Department:

i. By dispersion and consequence analyses in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d) that a release of the contained or generated quantity of the EHS, alone or in combination with any concurrent releases from other exempt non-contiguous EHS equipment, will not result in the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending beyond the site boundary; or

ii. That the concentration of the EHS in the EHS equipment is below the ATC for that EHS as established by the Department.

(b) The request for exemption shall include:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries;

2. The results of the hazard analysis and the dispersion and consequence analysis utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

(c) The request for exemption and supporting documents shall be submitted either:

1. With the initial or subsequent updated registration forms; or
2. With the summary risk management program statement.

(d) The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

(e) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(f) The Department shall reserve the right to rescind any exemption granted prior to the adoption of these rule amendments if the exemption is deemed inappropriate.

Correction: Added (b) to section.  
See: 20 N.J.R. 1743(c).  
Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

**7:31-2.20 Exemptions for contiguous EHS equipment**

(a) A registrant may request that contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 (except N.J.A.C. 7:31-3.6) provided that the following conditions are met:

1. The contiguous equipment has only the capability to contain or generate in one hour or have a maximum flow in one hour of less than the registration quantity of the EHS listed in N.J.A.C. 7:31-2.3;

2. The registrant demonstrates to the satisfaction of the Department:

i. By dispersion and consequence analyses in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d), that a release of the EHS, alone or in combination with any concurrent releases from other exempt EHS equipment, will not result in the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending beyond the site boundary; or

ii. The concentration of the EHS in the EHS equipment is below the ATC for that EHS as established by the Department; and

3. The contiguous equipment is maintained in accordance with the provisions of N.J.A.C. 7:31-3.6, Preventive maintenance.

(b) The request for exemption shall include:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries;

2. The results of the hazard analysis and the dispersion and consequence analyses utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

(c) The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

(d) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(e) The Department shall reserve the right to rescind any exemption granted prior to July 19, 1993, if the exemption is deemed inappropriate under this chapter as operative July 19, 1993.

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

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**SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM**
**7:31-3.1 Scope and applicability**

(a) This subchapter establishes the Department's minimum requirements for an approvable risk management program.

(b) All risk management programs shall meet the requirements of this subchapter before being approved by the Department. A registrant with a risk management program designated either established or approved by the Department on the effective date of this rule as readopted shall revise its risk management program to meet the requirements of this subchapter by January 1, 1994.

(c) Risk management programs that do not comply with the requirements of this subchapter shall not be approved by the Department.

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

**7:31-3.2 Purpose**

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing minimum requirements for risk management programs.

**7:31-3.3 Risk management program**

(a) Each registrant's risk management program shall, at a minimum, include:

1. Safety review of design for new and existing EHS facilities;
2. Standard operating procedures;
3. Preventive maintenance program;
4. Operator training;
5. Accident investigation procedures;
6. Risk assessments for specific pieces of EHS equipment or operating alternatives;
7. Emergency response planning; and
8. Internal or external risk management program audit procedures.

(b) Each registrant with a risk management program shall appoint a responsible manager for each site who shall be responsible for insuring compliance with the risk management program, the Act and this chapter. The responsible manager shall be the individual who submits all reports to the Department.

(c) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated documentation including revision dates covering process information involving EHSs in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Process chemistry;
2. Report of book value balance of inventory of each extraordinarily hazardous substance for the past 12 months as reconciled each month with the physical inventory;
3. Reports of hazard analyses, risk assessments and safety reviews of new and existing equipment performed during the previous six calendar years;
4. Accident investigation procedures, records and reports covering EHS accidents for the past six calendar years;
5. Updated process flow diagram of each EHS facility;
6. Updated piping and instrumentation diagrams;
7. Standard operating procedures;
8. Site-wide safety procedures;
9. Emergency response program and plan;
10. Description of the EHS operator training program including job classifications and job descriptions for EHS operators and its records for the service period of the employees;
11. Annual calendar year tabulation of EHS operator training conducted for the last three calendar years;
12. Topographic maps;
13. Site plan;
14. EHS equipment specifications including instrument and piping specifications;
15. National Electrical Code classification diagrams for the EHS facility and the adjoining areas on the site which can pose a threat of EHS release due to electrical sparking which may cause an explosion or fire;
16. Electrical one line diagrams;
17. Fire water system piping diagrams for the site;
18. Sewer system piping diagrams for the site;
19. Criteria for design and operation used at the site;

20. Preventive maintenance program and records covering EHS equipment throughout service life;

21. Annual calendar year tabulations of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested for the last three calendar years; and

22. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years.

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

#### 7:31-3.4 Safety review of new and existing facilities

(a) All new EHS facilities shall be designed, installed and operated in accordance with the criteria for design and operation.

(b) The requirements for safety review of design of new EHS facilities shall include:

1. Comparison of the following information describing the EHS equipment and operations with criteria for design and operation:
  - i. Process description and process chemistry;
  - ii. Process flow sheets;
  - iii. Piping and instrumentation diagrams;
  - iv. Facility location map, site plans and equipment layout;
  - v. Electrical one-line diagrams;
  - vi. Electrical classification drawing;
  - vii. Specifications of safety relief devices and interlocks and controls;
  - viii. Specifications for materials of construction;
  - ix. EHS inventories;
  - x. EHS equipment specifications;
  - xi. External forces and events data;
  - xii. Firewater system piping diagrams;
  - xiii. Sewer system piping diagrams; and
  - xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 15;
2. Documentation of the safety review and its findings; and
3. A report of the safety review of design of new EHS facilities. The report may be prepared by the designers and shall:
  - i. Contain a list of the criteria for design and operation upon which the design is based;

ii. Identify the new EHS facility, the EHS equipment items reviewed, the drawings and documents reviewed, the date(s) of the review, the date of issue of the report and the name position and affiliation of the persons who performed the review; and

iii. Explain where the design of the new EHS facility deviates from the listed consensus standards of the criteria for design and operation and the reasoning for such a deviation.

(c) There shall be an annual safety review performed on all existing EHS equipment and procedures each calendar year no sooner than six months or longer than 18 months from the previous safety review.

(d) The requirements for the annual safety review shall include:

1. A visual inspection of the EHS equipment or review of up-to-date inspection records against process flow diagrams, piping and instrument diagrams, electrical one line diagrams, electrical classification, and sewer and fire system piping diagrams to determine whether the diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments, and location, function and size of valves. Deviations found shall constitute an unauthorized modification and shall be immediately discontinued from service until the requirements of this chapter for a modification are satisfied;

2. A visual inspection of the EHS equipment or review of up-to-date inspection records against design documents to determine whether safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning or capable of functioning as designed. EHS safety systems or devices found to be inoperable shall be returned to operational status immediately;

3. A review of actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications against design documents to determine whether the actual conditions are within the limits of the design criteria of individual equipment items. Deviations found shall be immediately discontinued;

4. An inspection of the EHS equipment and procedures and interviews of site personnel to determine whether actual conditions reflect standard operating procedures. Deviations found to be unauthorized shall be immediately discontinued;

5. Documentation of the deviations of procedure or equipment found by (d)1 through 4 above;

6. A report of the results of the safety review by the registrant shall be written and shall:

i. Identify the facility in EHS service;

ii. Identify the EHS equipment, procedures, drawings and documents reviewed;

iii. Describe the deviations found and the corresponding actions taken pursuant to (d) above; and

iv. Identify the name, position and affiliation of the persons who performed the review, the date(s) of the review, and the date of issue of the report; and

7. Distribution of the report to the responsible manager.

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

### 7:31-3.5 Standard operating procedures

(a) The standard operating procedures shall be written in English in a manner understandable by EHS operators and shall also be written in the language of fluency of EHS operators not fluent in English.

(b) A copy of the standard operating procedures and a copy of the Material Data Safety Sheets or fact sheets shall be readily available to EHS operators except that procedures for emergency shutdown shall also be readily available in hard copy.

(c) The standard operating procedures shall include, but not be limited to:

1. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures;

2. Procedures and conditions for normal operations;

3. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions;

4. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions;

5. Pre-startup procedures covering, at a minimum, testing for leak tightness prior to placing into EHS service;

6. Startup procedures including conditions to be maintained during startup;

7. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of equipment to be maintained after shutdown;

8. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activation points indicated;

9. Sampling procedures addressing apparatus and specific steps involved in the taking of samples;

10. Safety procedures related to each specific operation in the standard operating procedures;

11. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion and prior to placement of equipment in EHS service;

12. Logsheets and checklists where appropriate to the operation;

13. A statement as to the number of EHS operators required to meet safety needs for each operation with requirements for shift coverage; and

14. A requirement that an EHS operator be in attendance at the EHS site, be able to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage, or generation except:

i. During chlorination of water using chlorine vapor out of a supply vessel, if the Department determines that chlorine monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident and the online supply vessel capacity is less than 2,100 pounds;

ii. During EHS storage requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an accident, and a risk assessment demonstrates that an EHS operator is not necessary onsite during the specified activity; or

iii. During storage not requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station.

(d) Modifications to the standard operating procedures shall be made in accordance with N.J.A.C. 7:31-3.15.

(e) Modifications to the standard operating procedures shall be incorporated into the standard operating procedure prior to their implementation.

(f) A current table of contents of each EHS standard operating procedures listing the items of (c) above, the documents in which those items are located and the location of such documents with corresponding latest dates of issue and issue identification number shall be maintained, filed and distributed to the responsible manager.

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

### 7:31-3.6 Preventive maintenance program

(a) The preventive maintenance program shall be written, be kept at the site and include all preventive maintenance program documents. Requirements of the preventive maintenance program shall include, but not be limited to, the following:

1. Identification of all EHS equipment to be included in the preventive maintenance program;

2. A procedure insuring that only modifications approved pursuant to N.J.A.C. 7:31-3.15 are made and that communications are maintained between the maintenance, product, safety and engineering departments;

3. Schedules for internal and external inspections of EHS equipment at intervals necessary to prevent the failure of the equipment. Internal inspections may include radiography, ultrasonics and acoustics emissions, or other methods, when these methods have proven equal or superior to visual internal inspections when evaluating internal integrity of piping and vessels. Schedules for inspections shall be based on equipment histories, suppliers recommendations, standards of the industry as available or corrosion rates of the construction materials;

4. Inspection or testing of all pressure safety devices in EHS service at least as frequently as the frequency set forth in the criteria for design and operation applicable to the particular EHS involved. In the absence of frequencies in the criteria for design and operation, inspections or tests shall be performed, at a minimum, once each calendar year;

5. Checks for proper operation of all safety instrumentation in EHS service such as interlocks, pressure, temperature and flow alarms and shut down devices at least as frequently as recommended in the criteria for design and operation for the particular EHS involved. In the absence of frequencies in the criteria for design and operation, checks for proper operation shall be performed annually and after extended shutdowns, or more frequently as conditions require;

6. Procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment;

7. Testing of standby emergency equipment such as power generators, fire pumps and lighting as frequently as specified in the criteria for design and operation. In the absence of frequencies in the criteria for design and operation, testing shall be done weekly;

8. Training on codes and practices pertinent to the particular extraordinarily hazardous substance including materials of construction, material safety data sheets and EHS accident reports for employees assigned to perform maintenance work on equipment in extraordinarily hazardous substance service. This is in addition to the standard maintenance training existing at the site;

9. Procedures to insure that work on or near EHS equipment performed by contractors will be done in accordance with the requirements of the preventive maintenance program and N.J.A.C. 7:31-3.17;

10. Use of permits and check lists for all EHS equipment entries, lockouts, welding and burning operations.

11. Documentation and centralized filing at the site of all inspection, maintenance and testing reports, and training information; and

12. 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 perform equipment reliability studies.

(b) A tabulation of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested during the previous calendar year shall be prepared by the registrant, filed at the site and submitted to the responsible manager.

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

#### 7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, include the following:

1. A written job description which includes the duties and responsibilities for each position and the education, experience and training necessary to qualify for the position;

2. Procedures to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position;

3. Specified time periods of in-house training for each position covering orientation, specific EHS training and on-the-job training, trainee evaluation, final qualification and periodic refresher training. A procedure shall be established for tracking the progress of each EHS operator at regular intervals. In addition, the maximum period of time for each training program shall be established within which the EHS operator must achieve qualified status; and

4. Procedures to insure that work done by contractors to assist as EHS operators shall be in accordance with the requirements of the standard operating procedures and N.J.A.C. 7:31-3.17.

(b) The training which EHS operators will receive shall, at a minimum, include:

1. General orientation and initial training of new employees before assignment to EHS equipment and EHS procedures which shall include instruction on the general site rules and practices, safety procedures and equipment, and emergency procedures;

2. Classroom training for newly assigned EHS operators on specific EHS activities. This training shall cover the details of standard operating procedures and safety training specific to an EHS including a detailed review of the EHS material safety data sheets or fact sheets, the safe handling practices for the EHS, the hazards of the operations involving the EHS, and emergency procedures regarding fires, explosions and leaks;

3. On-the-job training for newly assigned EHS operators shall include, but not be limited to, the following:

i. Equipment familiarization;

ii. Operating data collection and entry;

iii. Actual equipment startup and shutdown;

iv. Control and adjustment of operating conditions; and

v. The application of the standard operating procedure to actual conditions; and

4. Refresher training at least once each calendar year which shall present an overview and updated information on the standard operating procedures, EHS material safety data sheets, safe handling of the EHS, EHS emergency Procedures and review of EHS accident reports.

(c) The EHS operator's performance will be evaluated by a supervisor having operational and technical knowledge of the facility. The evaluation will be based on both oral and written tests on the standard operating procedures and a demonstration by the trainees of their ability to perform the job. The employee must qualify within the established maximum period established for training in each EHS position.

(d) The training program shall specify the qualifications required for the personnel responsible for training EHS operators.

(e) Documentation of all training, evaluations and qualifying activities for each employee receiving EHS operator training shall be kept at the site.

(f) A tabulation of EHS operator training performed during the previous calendar year shall be prepared by the registrant, filed and submitted to the responsible manager. The tabulation shall include identification of EHS operators trained, their job titles and facility designation, subjects covered and training dates.

Correction: Substituted "include" for "including" in (a).  
See: 20 N.J.R. 1743(c).  
Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

#### 7:31-3.8 EHS accident investigation procedures

(a) There shall be written procedures for investigating all EHS accidents which shall include the following:

1. The identification by title or position of personnel responsible for investigating the accident and reporting the findings of the EHS accident investigation;
  2. The schedule for initiating EHS accident investigations, key milestones and projected completion dates;
  3. The preparation of a written report on all EHS accidents;
  4. The record keeping requirements including a requirement to retain EHS accident reports for a minimum of six years;
  5. The methods of implementing recommendations for risk reduction resulting from analysis of EHS accident investigations including:
    - i. Procedures for management review of EHS accident reports. The review shall result in the evaluation of the recommendations of actions or alternatives associated with the prevention of accident recurrence;
    - ii. Procedures for implementing EHS accident investigation recommendations, including assignment of personnel responsible;
    - iii. Procedures for establishing a timetable for implementing recommendations for risk reduction;
    - iv. Procedures to ensure that recommendations are implemented such as the use of status reports on implementation of risk reduction measures; and
    - v. Procedures for evaluating the need for employee retraining or reassignment based on the record of employee errors; and
  6. Review of EHS accident reports as part of the EHS operator training refresher course and maintenance training course.
- (b) All EHS accident reports shall be written and shall include, at a minimum, the following:
1. The date, time, and location of the EHS accident;
  2. The identity, amount and duration of the EHS release or potential EHS release;
  3. The equipment, materials, procedures or personnel involved;
  4. A detailed description of the EHS accident in chronological order providing all the facts related to the EHS accident;
  5. The consequences of the EHS accident including the number of evacuees, injured and fatalities, and the impact on the community;
  6. An identification of basic and contributory causes, either direct or indirect, of the EHS accident and a determination of whether the EHS accident was caused by human error, a procedural inadequacy or equipment failure;
  7. Recommended actions to be implemented to prevent a recurrence which shall include the following, as appropriate:
    - i. Where human error was determined to be the cause, retraining or reassignment of employees involved in the accident;
    - ii. Equipment redesign based on considerations of state of the art or revisions of preventive maintenance procedures when the cause of the EHS accident was determined to be due to equipment failure; and
    - iii. Revisions to standard operating procedures or training procedures when the cause of the EHS accident was determined to be due to following inappropriate operating or training procedures;
  8. Schedule for implementation of recommended actions; and
  9. Signatures and position titles of the investigators.
- (c) EHS accident investigation records shall include:
1. A separate file of all EHS accident reports for the Toxic Catastrophe Prevention Act Program;
  2. A monthly list updating the implementation status of all active recommendations for corrective action;
  3. An updated record of human errors including a list of each employee of the registrant or contractors or any other person who directly or indirectly contributed to an EHS accident caused by human error; and
  4. An end of calendar year summary report which shall be prepared, filed on site, distributed to the responsible manager, and shall consist of:
    - i. A list containing a brief description of each EHS accident;
    - ii. A categorization of EHS accidents as being caused by human error, procedural inadequacies or equipment failure;
    - iii. A schedule for implementation of corrective actions; and
    - iv. A statement of progress on corrective action to date.

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

**7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives**

(a) A risk assessment shall be conducted on each new EHS facility, each new EHS operating alternative or each required modification to EHS equipment and procedures identified at N.J.A.C. 7:31-3.15.

(b) A risk assessment shall be conducted on existing EHS equipment or operating alternative at least once every five

calendar years no sooner than 54 months or no later than 66 months from the previous hazard analysis satisfying the requirements of (c) below.

(c) Each risk assessment shall include a hazard analysis performed in accordance with the following:

1. The method of the hazard analysis shall be singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis, What If/Check List or any alternative method demonstrated to the Department as being equivalent to or better than any of the above four methods. The alternative method shall be a systematic examination of both human and equipment failure that may result in an EHS accident performed by a team from a review of updated issues of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, standard operating procedures, maintenance procedures, accident investigations and results of equipment reliability studies.

2. The hazard analysis shall be conducted by a team. The team shall consist of personnel trained to perform the hazard analysis method and knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have the technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall be comprised of members of the registrant's staff, employees of an outside consulting firm chosen by the registrant or both. The team shall include a person assigned to lead the study and a person to record the results, both of whom are technically trained and will be available for the duration of the study.

3. Results of the study for a unit or system shall be reported in tabular form. The results entered on the table shall include the release point and corresponding scenario of potential basic (initiating) and intermediate event sequences, the corresponding estimated quantity or rate and duration, and the recommended action, if any, in terms of equipment or procedure to mitigate the consequences.

4. The hazard analysis team shall:

i. Identify for all EHS equipment, the points of possible EHS releases, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuous EHS release, either of steady or non-steady state, and corresponding cause of the EHS release. Estimates of the quantity or rate and duration of a release shall be based on actual release mechanisms, and shall reflect the operating procedures and mitigation equipment and procedures, planned for new or modified EHS facilities or in place at existing facilities; and

ii. Identify release scenarios from a review of EHS equipment failure data, equipment reliability data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis.

(d) A registrant shall perform a dispersion/consequence analysis, for the maximum release rate or quantity scenario identified in (c)4i and (c)4ii above, and for each successively lower release rate or quantity scenario, until all scenarios are determined for which the concentration criteria as determined in (d)2 and (d)4 below are exceeded off-site. As to procedure, the registrant shall:

1. Select an atmospheric dispersion model with the capability to accept inputs as required in (d)3 and 4 below;

2. Determine the concentration criterion for modeling downwind distance of the plume or cloud from the following:

i. For release duration of one hour or greater, use the ATC of the substance being modeled; and

ii. For release duration of less than one hour, except for hydrogen cyanide, ketene, arsine, methyl chloroformate, methyl dichlorosilane, methyl fluoroacetate, nickel carbonyl, phosphorous trifluoride, sulfur monochloride, thionyl chloride and trimethylchlorosilane, use a concentration giving an equivalent dose which is equal to the ATC of the substance that may be released, divided by the release duration in hours, using a minimum allowable limit of one-quarter hour. For those EHSs listed above, use the ATC;

3. Input the following parameters into the dispersion model:

i. Estimates of release parameters obtained in accordance with (c)4i and (c)4ii above;

ii. Meteorological parameters of F-stability and wind speed of two meters per second at 10 meters elevation for ground-level releases and elevated releases affected by gravity or of A-stability and wind speed of two meters per second for elevated, high flowrate, buoyant releases, whichever stability yields the greatest downwind distance;

iii. Elevation of the source of release;

iv. Other scenario specific parameters such as release temperature; and

v. The surface roughness or rural/urban dispersion coefficients, as appropriate to the model selected, in the downwind direction;

4. Determine the downwind distance of the plume or cloud at one meter height (ground level) using:

i. The concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness; and

ii. Five times the concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness;

5. Determine whether or not each concentration criterion as obtained in (d)2 above extends beyond the site boundary; and

6. Repeat steps (d)1 through 5 above until a release scenario is modeled for which the concentration criteria obtained in (d)2 and 4 above do not extend beyond the site boundary.

(e) For each release scenario identified at (d)5 and 6 above as indicating that five times the concentration criterion extends beyond the site boundary, the registrant shall:

1. Perform an evaluation of state of the art, including alternate processes, procedures or equipment which would reduce frequency or consequences of an EHS release;

2. Develop a risk reduction plan utilizing state of the art risk reduction measures which will reduce the frequency or consequence of the release;

3. Develop a schedule for its implementation in each instance; and

4. Document all estimates and analyses performed as part of the risk assessment.

(f) For each release scenario identified at (d)5 and 6 above as indicating that one times the concentration criterion extends beyond the site boundary, the registrant shall either:

1. Perform a state-of-the-art evaluation in accordance with (e)1 and 2 above; or

2. Determine the frequency of release occurrence:

i. If less than  $10^{-4}$  per year, no further assessment is required; but

ii. If greater than or equal to  $10^{-4}$  per year, perform a state-of-the-art evaluation in accordance with (e)1 and 2.

(g) The registrant shall prepare a report of the risk assessment for each new EHS facility, each new EHS operating alternative or each required modification to EHS equipment and procedures, identified at N.J.A.C. 7:31-3.15 or for existing EHS equipment or operating alternatives which shall be kept at the site. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed the hazard analysis and the dispersion/consequence analysis, and the dates each was performed;

2. Summarize on one spreadsheet each potential EHS release identified in (c)1 and 2 above, the rate, duration

or quantity. For those scenarios modeled in accordance with (d) above, summarize the downwind distances of the plume or cloud, the concentration defining the downwind distances and the respective distances to the property line. For those release scenarios identified in (f) above, summarize the frequency of release occurrence in releases per year;

3. For each potential EHS release identified in (e) and (f) above, evaluate and summarize each feature incorporated in the constructed facility or the recommended risk reduction plan that reflects current state-of-the-art and the lowered possible risk commensurate with the neighboring environment;

4. Explain why any potential EHS release identified in (e) and (f) above is not addressed in the risk reduction plan; and

5. Provide at a minimum the following information obtained from dispersion/consequence analysis as required at (d) above:

i. Ground level coordinates of the downwind distance contour around the release point connecting points determined at (d)4 above, for the one and five times concentration criteria, for the maximum release scenario and the minimum release scenario that indicates a concentration criterion that extends off-site; and

ii. Identification by compass direction within the downwind distance contour determined at (g)5i above of off-site centers of residential areas, commercial areas, major highways, and areas of sensitive populations, such as hospitals, schools and nursing homes.

(h) Each report of risk assessment shall be submitted to the responsible manager.

(i) The responsible manager shall implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures are implemented.

Correction: Deleted possible from (c)2i; deleted "or will be ..." from (d)2.

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

Repeal and New Rule, R.1993 d.358, effective July 19, 1993.

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

### 7:31-3.10 Emergency response program

(a) Each registrant shall develop and implement a written emergency response program which shall include, at a minimum:

1. Preparation and distribution of copies of the emergency response plan;

2. Emergency response training for all site employees including schedules for initial and annual refresher training during each calendar year in:

- i. Alarm identification and response;
  - ii. Response to EHS accidental release;
  - iii. Use of required emergency response equipment; and
  - iv. Evacuation procedures;
3. Emergency response training for the site wide and the EHS facility emergency response teams as it applies to their function including a schedule for initial training and annual refresher training during each calendar year or training whenever the team member's responsibilities or designated actions under the emergency response plan change or whenever the emergency response plan is changed, in the areas of:
- i. Alarm identification and response;
  - ii. Response to EHS release;
  - iii. Use of emergency protective equipment;
  - iv. Rescue procedures;
  - v. Evacuation procedures;
  - vi. Medical assistance;
  - vii. Action plans for dealing with specific EHS accidental release scenarios; and
  - viii. Specifically assigned emergency response duties;
4. Emergency response exercises for each registered facility and the site, including, but not limited to:
- i. A schedule which will require the registrant's emergency response plan to be demonstrated in at least two exercises each calendar year at each registered facility. For any two exercises at facilities at the site, it shall be assumed that the ATC of the EHS extends beyond the site boundary, and the site emergency response team shall participate at a strength appropriate to demonstrate the plan;
  - ii. A minimum of one exercise other than a tabletop exercise each calendar year, for each registered facility and for the site; and
  - iii. A requirement that the scenario demonstrated in an exercise shall not duplicate the scenario of the immediately previous exercise demonstrated at that particular registered facility.
5. A written assessment of the emergency response plan after each implementation or emergency response exercise, including, but not limited to:
- i. The adequacy of the emergency response plan;
  - ii. The implementation of the emergency response plan;
  - iii. The performance of the personnel participating in the exercise and a list of their names;
  - iv. The adequacy of treatment of exposed personnel at the site and at offsite facilities; and
  - v. The recording of events;
6. A written assessment, after each implementation or emergency response exercise, of the adequacy or need for emergency response equipment including, but not limited to:
- i. Emergency response communications systems;
  - ii. Emergency power and lighting systems;
  - iii. The distribution of the emergency response plans, plot plans, and maps of the surrounding community;
  - iv. EHS detection systems;
  - v. Self contained breathing apparatus;
  - vi. Fire fighting equipment;
  - vii. Medical supplies;
  - viii. Personnel protective equipment; and
  - ix. Equipment necessary to reduce the quantity or duration of EHS releases, such as capping devices, leak repair kits and spill containment;
7. Preparation of a remedial action plan and a schedule for completion to correct any inadequacies identified in the assessment at (a)5 and 6 above of the emergency response plan or equipment;
8. The installation of a meteorological station owned by the registrant capable of providing, at a minimum, a continuous record of wind speed and direction for the site;
9. The procurement, of onsite hand held or mobile EHS detection equipment where commercially available; and
10. The establishment of a program to coordinate the site's emergency response plan with the emergency response plan of the local emergency planning committee.
- (b) Each registrant shall have a written emergency response plan that includes, but is not limited to, the following:
- 1. A description and location of the extraordinarily hazardous substances at the site;
  - 2. A list, updated every six months, of the emergency response equipment and supplies and their location at the site;
  - 3. The names and titles of the site emergency coordinator and alternates selected by the registrant, who shall be responsible for emergency response coordination with State and local agencies on a 24 hour basis;

4. An organization chart showing key site individuals making up the site's emergency response team with their titles, emergency positions and primary and backup telephone numbers;

5. An organization chart showing offsite contract or mutual aid responders to an emergency at the site identifying their emergency roles, the respective organization, telephone numbers, the expected time it will take each responder to arrive at the site after notification and the job title of the site person to whom each shall report;

6. An organization chart showing governmental responders to an emergency at the site, identifying their emergency roles, the respective organization and the job title of the site person to whom each shall report;

7. A description of the site's emergency notification system which shall include the following requirements for reporting EHS accidents:

i. Designation of emergency operators, on a 24 hour basis, at the site or central control station, by job title to be notified in case of an EHS accident or imminent EHS accident at the site, and the internal procedures to be followed in making that notification;

ii. Immediate notification of the Department's emergency communications center at 609-292-7172 by the emergency operator of an EHS accident or imminent EHS accident at the site. The notification shall include the following information:

- (1) Name and address of site of the EHS accident;
- (2) Name, position, and telephone number of caller;
- (3) The time of, or anticipated time, of the EHS accident and the projected duration;
- (4) The chemical name of the EHS released;
- (5) The actual quantity or, if not known, the estimated quantity and whether it will have an off-site impact; and
- (6) Weather conditions, including wind direction and speed and expected off-site effects, if any;

iii. In addition to the information required by (c)7ii above, the emergency operator shall state that the notification is:

- (1) An ALERT or that an EHS accident is imminent and will probably occur;
- (2) A SITE EMERGENCY or that an EHS accident has occurred which will probably not have an off-site impact; or
- (3) A GENERAL EMERGENCY or that an EHS accident has occurred which will probably have an off-site impact; and

iv. The site emergency coordinator shall be prepared to provide the Department's emergency communications center with an update which shall include the following information:

- (1) Name and address of site of the EHS accident;
- (2) Name, position and telephone number of caller;
- (3) Location of the point of EHS release, a description of the source, cause and type of EHS accident, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;
- (4) Measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures; and
- (5) Update on weather conditions;

v. An accidental release of an EHS that does not present a potential for off-site impact; does not present a potential for, or actual, on-site injuries or fatalities; does not activate the registrant's emergency response plan shall be exempt from these notification requirements. Such accidents shall be recorded following the procedures established at N.J.A.C. 7:31-3.8, EHS accident procedures. This revision does not affect any other State or Federal notification requirement.

8. A description of the onsite hand held or mobile EHS monitoring equipment including the procedures for their use during an emergency;

9. A description of potential EHS accidents which would have offsite impacts, and the specific procedures to be followed by the response team to mitigate the effects of the accident;

10. Procedures for timely and appropriate notification of, and coordination with, the emergency coordinator for local emergency planning committee (LEPC), which procedures shall include:

- i. The name of the LEPC coordinator, his or her alternate and their respective telephone numbers;
- ii. The submittal of a copy of the registrant's "Emergency Response Guide," conforming to the Standard Format of the New Jersey State Police, if requested by the LEPC in whose jurisdiction the registrant is located; and

iii. The notification of the LEPC coordinator of the registrant's schedule of two emergency response exercises per year;

11. Procedures for treatment of exposed personnel including first aid at the site and medical treatment at offsite medical facilities;

12. A detailed plan of evacuation of on site personnel, including, but not limited to, the following:

- i. On site notification procedure capable of identifying areas to be evacuated;
  - ii. Map exhibits of primary and alternate routes of evacuation;
  - iii. Designation of primary and alternate assembly areas after evacuation; and
  - iv. Provisions for moving personnel to designated assembly areas;
13. A detailed plan for reentry and site recovery including, but not limited to, procedures and equipment for the safe cleanup and decontamination of the site and removal of waste materials; and
14. Procedures to insure that work performed by contractors hired by the registrant to assist during an emergency response incident will meet the requirements of the emergency response program and of N.J.A.C. 7:31-3.17.

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

#### **7:31-3.11 Audit requirements for risk management programs**

(a) The registrant shall conduct an annual audit of its risk management program for each site to insure that all elements of the program are being planned, scheduled, updated and executed in compliance with the Act, this chapter and the approved risk management program;

(b) The registrant shall prepare written requirements for auditing which shall include, at a minimum:

- 1. Audit scope and procedures including:
  - i. Completion of risk management program checklist during the final three months immediately preceding the anniversary date of the registrant's risk management program as required by N.J.A.C. 7:31-3.14;
  - ii. A list of deficiencies found in completing the check list;
  - iii. Recommendations for remedial actions;
  - iv. Submission of audit report to the responsible manager; and
  - v. Requirements for review and implementation of remedial actions, including schedule, by the facility; and
- 2. The audit team shall be employees of the registrant or its consultant or both. Only a minority of the members of the audit team may be involved in the day-to-day operation or management of the EHS facility being audited.

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

#### **7:31-3.12 Summary risk management program statement**

(a) The summary risk management program statement shall contain:

- 1. A description in brief of each program element which covers the registrant's policies, standards and procedures for that program element and identifies the persons or positions responsible for ensuring their implementation. The description of any program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.
- 2. The reports of the most recent safety review of design of new and existing EHS equipment meeting the requirements of N.J.A.C. 7:31-3.4 conducted during the previous two years;
- 3. The report of the most recent hazard analysis and risk assessment meeting the requirements of N.J.A.C. 7:31-3.9 performed on new and existing EHS equipment and operating alternatives within the past four years; and
- 4. A completed risk management program checklist for the site prepared in accordance with N.J.A.C. 7:31-3.14.

Correction: Deleted "s" from "reviews" in (a)2.  
See: 20 N.J.R. 1743(c).  
Amended by R.1993 d.358, effective July 19, 1993.  
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

#### **7:31-3.13 Annual reports**

(a) The annual report shall contain:

- 1. An update of the RMP description required to be submitted at N.J.A.C. 7:31-2.6(e)1 showing by additions or deletions any revisions to the risk management program;
- 2. An update of any portion of the TCPA registration form (STP-010);
- 3. A risk management program checklist for the site, prepared in accordance with N.J.A.C. 7:31-3.14, and completed during the previous 3 months;
- 4. A list of all safety reviews conducted in accordance with N.J.A.C. 7:31-3.4 during the previous 12 months;
- 5. Reports of hazard analyses or risk assessments required by N.J.A.C. 7:31-3.9(b), conducted during the previous 12 months which have not been previously submitted to the Department;
- 6. List of all hazard analyses or risk assessments required by N.J.A.C. 7:31-3.9(a) conducted during the previous 12 months, the report of which has not been previously submitted to the Department;
- 7. A copy of the end of year summary report regarding EHS accidents required by N.J.A.C. 7:31-3.8(c)4; and

8. Updated catalog of documents prepared pursuant to N.J.A.C. 7:31-3.3(c).

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

#### 7:31-3.14 Risk management program checklist

(a) Each registrant shall answer the questions on the Risk Management Program Checklist, STP-011, as set forth in Appendix I and made a part of these rules. It is available from the Department at the following address:

Chief, Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
Division of Environmental Safety, Health and Analytical Programs  
CN 424  
Trenton, New Jersey 08625

The Risk Management Program Checklist shall be submitted:

1. As part of the registrant's initial submittal of its risk management program as required by N.J.A.C. 7:31-3.12; and
2. As part of the registrant's annual report required by N.J.A.C. 7:31-3.13.

(b) The questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation using separate pages, if necessary.

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

#### 7:31-3.15 Management of modifications (change) to EHS equipment and procedures

(a) Prior to any modification in EHS equipment or procedures which had been the subject of TCPA safety review of new and existing facilities, hazard analysis or risk assessment prior to June 20, 1993, each registrant shall establish a written program to manage such modifications. The program shall require the registrant to:

1. Determine whether the change is major or minor by employing the following criteria: minor, that is, less than one times the concentration criterion beyond the site boundary, or major, that is, equal to or greater than one times the concentration criterion beyond the site boundary. Employment of the criteria shall be founded on consequences of the potential release as determined from dispersion analysis performed in accordance with N.J.A.C. 7:31-3.9(d) and shall, along with the documentation, be subject to review by the Department;
2. Identify the scope and the purpose of the change;

3. Compare and update any of the following documents, as may be affected by the change, with the registrant's criteria for design and operation:

- i. Process description and process chemistry;
- ii. Process flow diagrams;
- iii. Piping and instrumentation diagrams;
- iv. Facility location maps, site plans and equipment layout;
- v. Electrical one-line diagrams;
- vi. Electrical classification drawings;
- vii. Specifications of safety relief devices, and interlocks and controls;
- viii. EHS inventories;
- ix. EHS equipment specifications;
- x. External forces and events data;
- xi. Firewater systems piping diagrams;
- xii. Sewer system piping diagrams; and
- xiii. Standard operating procedures;

4. Determine the impact of the change on the following elements of the registrant's risk management program and update accordingly:

- i. Preventive Maintenance Program;
- ii. EHS operator training; and
- iii. Emergency response;

5. Authorize the change prior to implementation:

i. Where the impact of the change is minor, registrant staff charged with implementing the change shall complete a checklist report that the responsible manager or designee as indicated in the RMP shall sign affirming performance of requirements at (a)1, 2, 3 and 4 above; and

ii. For a major change in EHS equipment design or procedure, the registrant staff charged with implementing the change shall conduct a risk assessment on the items to be changed according to requirements at N.J.A.C. 7:31-3.9(c) through (i) the report of which shall be signed by the responsible manager affirming performance of requirements at (a)1, 2, 3 and 4 above. Documents and data from a previous risk assessment for a similar scenario and release quantity may be recertified and revalidated to meet the requirement. The report of risk assessment shall address the items of potential release introduced by the change; and

6. Complete all tasks prior to implementing the change.

(b) The following modifications would be exempt from the requirements at (a)5ii above:

1. Modifications based on findings of a risk assessment on the facility; and
2. Modifications resulting from the findings of an EHS accident investigation.

(c) Each registrant shall establish in writing a program to manage changes in risk management program administration. The program shall provide for the succession of line organization staff who implement individual elements of the site risk management program. It shall set forth for each position the qualifications of the successor, and the requirements for a transition period.

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

### 7:31-3.16 Obligations upon temporary discontinuance of EHS use, storage and handling

(a) The registrant which temporarily discontinues use, storage, handling and generation of a particular EHS at particular EHS equipment, or temporarily stores it at less than the registration quantity, shall continue activities required of the registrant by this chapter until the date a consent agreement, or consent agreement addendum, that is signed by the registrant, is signed by the Department which requires, at a minimum:

1. Performance of a safety review of the particular EHS equipment and procedures in accordance with the requirements of N.J.A.C. 7:31-3.4(d), 60 calendar days prior to bringing the EHS back on-site;
2. Performance of inspections, tests and checks for proper operation of the particular EHS equipment required by the site RMP, conforming to requirements of N.J.A.C. 7:31-3.6(a)3, 4, 5, 7 and 3.6(b), 30 calendar days prior to bringing the EHS back on-site; and
3. Performance of EHS operator training activities of the site RMP, conforming to N.J.A.C. 7:31-3.7(a)1, (b), (c), (d), (e) and (f), 10 calendar days prior to bringing the EHS back on-site.

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

### 7:31-3.17 Contractors and contractor employees

(a) The registrant shall include in its risk management program written procedures to insure that work done by persons not directly employed by registrant meets the applicable requirements of the risk management program. The procedures shall apply to specific activities involving the handling of EHSs by a contractor and/or its employees. Temporary employees, either directly hired by the registrant or furnished by a non-employer agency, are subject to the same requirements of this chapter that are applicable to permanent registrant employees.

(b) The procedures shall not apply to contractors providing incidental services which do not influence safety, such as janitorial work, food and drink services or other supply services.

(c) The procedures shall apply to the following activities performed by the contractor and/or its employees:

1. Maintenance or repair, turnaround, major renovation or specialty work on, or adjacent to, a facility handling an EHS;
2. Assistance as EHS operators in facilities handling EHSs; and
3. Assistance during an emergency response accident involving an EHS, including mitigating the release.

(d) The procedures shall require the contractor to inform, train and evaluate its employees, as applicable to individual assignments, concerning:

1. The requirements of the site's preventive maintenance program;
2. The applicable provisions of the facility standard operating procedure on EHSs; and
3. The applicable provisions of the site's emergency response plan required at N.J.A.C. 7:31-3.10(b).

(e) The procedures shall require that:

1. The registrant, when selecting a contractor, shall obtain information regarding contractor's safety performance and programs;
2. The registrant shall inform the contractors of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS;
3. The registrant shall explain to the contractors the applicable provisions of the site's emergency response plan;
4. The registrant shall develop and implement safe work practices consistent with N.J.A.C. 7:31-3.6(a)10 to control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHSs; and
5. The registrant shall periodically evaluate the performance of the contractors in fulfilling their obligations as required below:
  - i. The registrant shall request that the contractor assure that it and/or each of its employees is trained in work practices necessary to safely perform his or her job;

ii. The registrant shall request that the contractor assure that it and/or each of its employees is instructed in the known potential fire, explosion or toxic release hazards related to his or her job and the facility handling an EHS and the applicable provisions of the emergency response plan;

iii. The registrant shall request that the contractor document that it and/or each of its employees has received and understood the training requested by the registrant. The registrant shall request that the contractor prepare a record which contains the identity of its employee, the date of training and the means used to verify that the employee understood the training;

iv. The registrant shall request that the contractor assure that it and/or each of its employees follows the safety rules of the registrant including safe work practices set forth at N.J.A.C. 7:31-3.6(a)10; and

v. The registrant shall request that the contractor advise the registrant of any unique hazards presented by the contractor's work or of any hazards found by the contractor during its work.

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

## SUBCHAPTER 4. WORK PLAN REQUIREMENTS

### 7:31-4.1 Scope and applicability

(a) This subchapter establishes the Department's minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

(b) All work plans developed by the Department in conjunction with the registrant shall meet the minimum requirements of this subchapter.

### 7:31-4.2 Purpose

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing the minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

### 7:31-4.3 Extraordinarily Hazardous Substance Risk Reduction Work Plan

(a) Each work plan shall consist of the site data required by N.J.A.C. 7:31-4.4 and the detailed scope of work necessary to perform an extraordinarily hazardous substance accident risk assessment. The EHSARA will result in a recommended risk reduction plan that will include any deficiencies that when corrected will result in a risk management program;

(b) Each registrant's work plan shall at a minimum address each of the following:

1. Site data;
2. Scope of work with implementation schedule; and
3. Report of EHSARA including identification of findings, recommended risk reduction plan and implementation schedule.

### 7:31-4.4 Site data

The Registrant shall submit to the Department the lists of site documents set forth in N.J.A.C. 7:31-4.7.

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

#### 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.

### 7:31-4.5 Generic scope of work

(a) The scope of work in the work plan for each registrant required to have an EHSARA performed by a consultant or the Department shall include the following:

1. A general description of how the registrant uses EHSs at the site;
2. A requirement for the verification of the quantities and methods of handling all EHSs at the site against the registration submitted by the registrant;
3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:
  - i. A review of process description and process chemistry to define all the possible chemical reactions at the site that may cause or contribute to an EHS accident;
  - ii. A review or creation of the criteria for design and operation for the EHS equipment and procedures; and
  - iii. A review of EHS process flow diagrams, piping and instrument diagrams including those of process, utility or service units at the site that are interactive with the EHS piping and instrument diagrams, electrical one-line diagrams and site and plot plans for:
    - (1) Completeness as defined in N.J.A.C. 7:31-1.5 for each referred in (a)3iii above;
    - (2) Legibility;
    - (3) Uniformity of symbols;
    - (4) Drawing title; and
    - (5) Revision number and date;

4. A requirement for a safety review which shall meet the requirements of N.J.A.C. 7:31-3.4(d). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, electrical classification drawings, site plan, plot plan, sewer system piping diagrams, and fire water system piping diagrams incorporating drawing title, revision number, date, signature, etc., as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. Completion or creation of the standard operating procedures necessary to comply with the requirements of N.J.A.C. 7:31-3.5;

iii. A site plan review to determine at a minimum the following:

(1) Conformance of location of the EHS equipment with the criteria for design and operation relative to parameters of flammability, reactivity and toxicity;

(2) Accessibility for operations, maintenance and emergency response including corridors, roadways and walkways; and

(3) The measures and precautions designed for the purpose of protecting the facility from external forces and events and for the purpose of controlling EHS releases within the site;

iv. An electrical classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70;

v. A review of fire water and sewer system drawings to determine if these systems as built conform with current design practices;

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation with criteria for design and operation including, but not limited to:

(1) Pressure and temperature ratings;

(2) Materials of construction;

(3) Corrosion allowance;

(4) Safety relief devices and interlocks;

(5) Leak tightness and pressure testing; and

(6) Potential points of EHS releases due to failure of EHS equipment, such as, seal systems, packings, sight glasses, expansion joints and rotameters;

vii. A review and detailed analysis of any EHS accidents that occurred in the past six years for the purpose of identifying problem areas;

viii. A determination of the nature and age of EHS equipment and an examination of their physical integrity by visual inspection for evidence of deterioration or distortion by processes such as corrosion, erosion, vibration and fluid leaks; and

ix. An examination of the EHS equipment for evidence of inadequate equipment and piping supports;

5. A requirement for a hazard analysis, meeting the requirements of N.J.A.C. 7:31-3.9 on EHS equipment or operating alternatives using the method of analysis specified in the work plan by the Department;

6. A requirement for risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 on specific pieces of EHS equipment or operating procedures;

7. A requirement for a review of the registrant's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.6;

8. A requirement for review of the registrant's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.7;

9. A requirement for review of the registrant's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.8;

10. A requirement for review of the registrant's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.10;

11. A requirement for review of the registrant's audit program by comparing the registrant's internal documents, correspondence and standard forms with the risk management program checklist required by N.J.A.C. 7:31-3.11; and

12. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

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

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

#### 7:31-4.6 EHSARA report

(a) The consultant or the Department shall, upon completion of the requirements of the scope of work, prepare an EHSARA report.

(b) The EHSARA report shall contain, but not be limited to, the following:

1. The findings of the verification required by N.J.A.C. 7:31-4.5(a)2;
2. The findings of the review required by N.J.A.C. 7:31-4.5(a)3;
3. The findings of the safety reviews required by N.J.A.C. 7:31-4.5(a)4 including any deficiencies that are identified by the reviews performed pursuant to N.J.A.C. 7:31-4.5(a)4iii through ix;
4. The reports of the hazard analyses and risk assessments required by N.J.A.C. 7:31-4.5(a)5 and 6;
5. The findings of the reviews required by N.J.A.C. 7:31-4.5(a)7 through 11; and
6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (b)1 through 5 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(c) The report required by (a) above shall be submitted to the Department and the registrant at the same time.

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

#### 7:31-4.7 Site documentation

(a) The list of site documents required at N.J.A.C. 7:31-3.3(c), if existing, shall be submitted by the registrant prior to the registrant's meeting with the Department to establish the work plan. Lists of documents shall be grouped by operating or utility unit or area in EHS service at the site giving their document number, name, the EHS involved, most recent revision number and date, file location at the site, and code of sheet size according to ANSI Y14.1-1980 (A, B, C, D, or E) or Deutsches Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0).

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

#### 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.

## SUBCHAPTER 5. CONFIDENTIALITY AND TRADE SECRETS

### 7:31-5.1 Scope and applicability

(a) This subchapter constitutes the rules for the assertion, substantiation, review, and appeal of confidentiality claims and petitions to withhold privileged trade secret or security information, and establishes the principles, guidelines and procedures governing the internal management and disclosure of confidential information provided to the Department pursuant to this chapter.

(b) All registrants asserting a confidentiality claim or a petition to withhold privileged trade secret or security information shall follow the procedures set forth in this subchapter.

(c) The Department, its employees and its agents shall strictly adhere to the procedures established by this subchapter for maintaining the confidentiality and security of confidential information and for the disclosure of confidential information.

### 7:31-5.2 General provisions

(a) All information collected by or originated by the Department in connection with the Act, this chapter or the TCPA program shall be made available to the public in accordance with N.J.S.A. 47:1A-1 et seq. except as otherwise provided in this subchapter.

(b) The Department shall protect from disclosure to the public any confidential information obtained pursuant to the Act or this chapter.

(c) Confidential information, supplied to the Department, will be disclosed only to the employees or agents of the Department and only on a need-to-know basis for the purposes of carrying out or enforcing the provisions of the Act or this chapter, or for use in civil or criminal proceedings, if so ordered by a court.

(d) A registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. A registrant may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the summary risk management statement with the Department pursuant to N.J.A.C. 7:31-2.6(b) and (c) and 2.10, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-5.4 and 5.6, respectively. If the space provided for responses on De-

partment forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All the forms can be obtained from:

Chief, Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
Division of Environmental Safety, Health and Analytical Programs  
CN 424  
Trenton, New Jersey 08625

(e) The registrant shall initially submit or disclose only the confidential copy of documents containing confidential information to the Department. The public copy which shall have deleted all confidential information and be available for public disclosure shall be submitted to the Department only upon the Department's receipt of a request for the public disclosure of the information or if the Department otherwise decides to determine whether the information is entitled to confidential treatment. The confidential copy shall be for the Department's record and shall include all necessary information.

(f) Any confidential information supplied to the Department shall be sent by certified mail, return receipt requested, by personal delivery, or by other means that provides verification of delivery, the date of delivery, and the name of the person who receives the document at the Department.

(g) A properly completed and submitted petition to withhold privileged trade secret or security information or any subsequent interim decisions by the Department concerning such petition shall not exempt the registrant from compliance with the requirements of the Act or this chapter, except that the registrant will not be required to provide the Department with the trade secret or security information claimed as privileged, unless the petition is finally denied.

(h) No employees or agents of the Department are authorized to sign a confidentiality agreement or other non-disclosure agreement, and any such agreement so executed will be of no force or effect as to the Department.

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

### 7:31-5.3 Exclusions from confidential information and privileged trade secret or security information

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1. The name of the registrant, its address, and the name and location of its EHS facilities;

2. The chemical or common name, Chemical Abstract Services number, United States Department of Transportation identification number, extraordinarily hazardous substance name or other identifying name for the substances listed in Table I in N.J.A.C. 7:31-2.3, or any regulation promulgated under the Act;

3. Information required to be publicly disclosed pursuant to any other Federal or state act or regulation;

4. Information supplied to the Department by a registrant contained within the Toxic Catastrophe Prevention Act registration form, STP-010, with the exception of information contained in section E of the registration form;

5. Information required to be publicly disclosed pursuant to a court order or ruling;

6. Information which is patented;

7. Information which is published or available through any public source;

8. Information which is known to persons outside the registrant's business, who are not bound by a confidentiality agreement or other duty to keep the information confidential;

9. Information which is determined not to be confidential information pursuant to this chapter;

10. Information required to be submitted to the Department appearing on the Risk Management Program checklist form, established pursuant to N.J.A.C. 7:31-3.14 and which is set forth in Appendix I;

11. Information required to be included in the registrant's emergency response plan pursuant to N.J.A.C. 7:31-3.10(b); and

12. Information submitted or disclosed to the Department by a registrant which is not marked or which does not display in bold type or stamp the word "Confidential" on the top of each page.

(b) At a minimum the following information required to be submitted or disclosed to the Department pursuant to the Act or this chapter shall not be considered privileged trade secret or security information regardless of any petition either pending or approved:

1. Hazard analysis records;
2. Safety review records;
3. Risk analysis records;
4. EHS accident records;
5. Process flow and piping and instrumentation diagrams;
6. Standard operating procedures;
7. Preventive maintenance procedures;

8. Inspection reports;
9. Safety and emergency procedures;
10. Training records and procedures; and
11. Criteria for design and operation.

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

#### 7:31-5.4 Confidentiality claims

(a) Any registrant required to submit or disclose to the Department any information pursuant to the Act or this chapter which in the registrant's opinion constitutes confidential information, may assert a confidentiality claim by following the procedures set forth in this section.

(b) Any registrant asserting a confidentiality claim shall do so in writing on a form provided by the Department at the time the registrant provides or discloses confidential information to the Department.

(c) Any registrant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit a confidential copy of the document to the Department along with a properly executed confidentiality claim form. The confidential copy shall contain all the information required by the Act or this chapter including any information which the claimant requests to be treated as confidential. A second copy, the public copy, which shall be identical to the confidential copy except that it shall contain no information which the claimant requests to be treated as confidential, shall be submitted to the Department only if the Department receives a request for public disclosure of the information or if the Department decides to determine whether the information is entitled to confidential treatment. The public copy can be a photocopy of the confidential copy, with the allegedly confidential information blacked out. When a public copy is required, the Department shall notify the claimant by certified mail, return receipt requested, that it must submit the public copy and the required fee, along with the confidentiality claim substantiation form as required by N.J.A.C. 7:31-5.5(d), to the Department within 30 days. If the public copy, required fee or the confidentiality claim substantiation form is not received by the Department within the 30 day time limit, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant that its claim will be considered abandoned and the confidential copy shall be treated as public information, unless the public copy, required fee or substantiation form is received by the Department within 10 days of receipt of the Department's notice.

(d) The top of each page of the confidential copy containing any information which the claimant desires to be treated as confidential shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(e) All parts of the text of the confidential copy which the claimant requests to be treated as confidential shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the information claimed as confidential and the underscoring or highlighting is reproducible on photocopying machines. Information not so marked will be treated as public and may be disclosed without notice to the claimant.

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
Division of Environmental Safety, Health and Analytical Programs  
CN 027  
Trenton, New Jersey 08625

The outer envelope shall bear no marking indicating the confidential nature of its contents.

(g) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, by personal delivery or by other means which will provide verification of delivery, the date of delivery and the name of the person who receives the document at the Department. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided in (f) above.

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification as specified in N.J.A.C. 7:31-2.17(c). Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification as specified in N.J.A.C. 7:31-2.17(c).

(i) For information which in the registrant's opinion constitutes confidential information and which is merely disclosed to the Department during an inspection at the EHS facility, only one copy, the confidential copy, need be revealed to the Department at that time. A properly executed confidentiality claim form for the information disclosed shall be submitted to the Department at the time of such disclosure. The second copy, the public copy, will be submitted to the Department only if it becomes necessary for the Department to make a confidentiality determination concerning the information claimed as confidential which is disclosed during an inspection. Any information disclosed

to the Department during an inspection which is not properly marked and identified as confidential information will not be considered confidential or be treated as such by the Department.

(j) If upon receipt of the public copy, the Department becomes aware of an apparent error or omission on the part of a claimant in failing to delete information from the public copy which it identified as being confidential by underscoring or highlighting on the confidential copy, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant of the apparent error or omission. The letter shall advise the claimant that the claim as to all information not deleted on the public copy will be considered abandoned and the public copy will be treated as public information, unless the Department receives a corrected public copy within 10 days of receipt of the Department's notice.

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

#### 7:31-5.5 Determination of confidentiality claims

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;
2. Decides to determine whether information in its possession is entitled to confidential treatment; or
3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Whenever the Department is required to or decides to make a determination whether information is entitled to confidential treatment, the Department shall first make a determination that the information claimed as confidential has not been the subject of a prior confidentiality determination by the Department concerning the same facility, or if it has, that the prior determination upheld the registrant's claim. If such a prior determination held that the confidentiality claim was invalid, the Department shall notify the claimant by registered mail, return receipt requested, that the information claimed as confidential is the subject of a prior determination concerning the confidentiality of the same information in which it was held that such claim was invalid and the Department will treat the information as public information.

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. 7:31-2.16(g) for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1. The reasons why the information needs to be treated as confidential;
2. The extent to which disclosure of the information would result in damage to the claimant, including a description of the damage, and an explanation of the relationship between disclosure and the damage;
3. The period of time for which confidential treatment is desired by the claimant (for example, until a certain date, until the occurrence of a specified event, or permanently);
4. The measures taken by the claimant to guard against undesired disclosure of the information to others, and claimant's intention to continue such measures and any new measures the claimant intends to implement in the future to protect the information;
5. The extent to which the information has been published or otherwise disclosed to others, including employees, and the precautions taken in connection therewith;
6. Prior confidentiality determinations concerning the information made by the Department, another agency or a court, and a copy of such determination;
7. Whether the information is patented and, if so, identification of the patent and an explanation why the patent:
  - i. Does not connect the claimant with the confidential information; and
  - ii. Does not protect the claimant from competitive harm.
8. The ease or difficulty with which the information could be discovered through reverse engineering and an estimate of the cost;
9. Whether any Federal or state statute or regulation requires the public disclosure of the information, and a copy thereof; and
10. For security information, a description of the adverse impact disclosure would have on either the facility's security or its operations.

(e) Failure of a claimant to furnish the public copy, the confidentiality claim substantiation form or to pay the required fee within 10 days of receipt of the Department's second notice provided in accordance with N.J.A.C. 7:31-5.4(c), waives the claimant's confidentiality claim and the information will be treated as public information.

(f) The registrant may assert a confidentiality claim for any confidential information contained in its substantiation form submitted to the Department pursuant to (d) above. To claim this material as confidential, the claimant shall clearly designate those portions of the substantiation form claimed as confidential in accordance with the procedures provided in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the claimant.

1. The claimant shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c). The certification on the substantiation form shall be executed as provided in N.J.A.C. 7:31-5.4(h).

(g) The substantiation form shall be enclosed in envelopes as specified in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein. To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(h) The Department may extend the time limit for submitting substantiation pursuant to (d) above to not more than 60 days upon receipt of a request in writing for good cause shown.

(i) After receiving the substantiation, the Department shall make a final confidentiality determination in accordance with the criteria set forth in (j) below.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, and shall advise the claimant of its right to request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. 7:31-6.3(b). The notice shall also advise the claimant that the Department shall make the information available to the public on the 30th day following receipt by the claimant of the written notice, unless the Department has received a timely written request for an adjudicatory hearing to contest such decision.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The claimant shall be notified of the Department's determination by regular mail. The notice shall state the basis for the determination and that it constitutes final agency action.

(j) If the claimant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted shall be treated as confidential:

1. The claimant has established a reasonable basis for treating the information as confidential;

2. Except for security information, the claimant has shown that disclosure of the information would be likely to cause damage to its competitive position;

3. The claimant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

4. The claimant has shown that reasonable measures have been taken to protect the confidentiality of the information and that the claimant intends to continue to take such measures;

5. The information is not, and has not been, available or otherwise disclosed to persons other than employees, except under a confidentiality or non-disclosure agreement, without the claimant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to a person not involved in the proceeding);

6. Any prior confidentiality determinations concerning the information made by the Department, another agency or a court approved or upheld the registrant's confidentiality claim;

7. The information is not the subject of a patent, or if patented, the patent does not connect the claimant with the confidential information and does not protect the claimant from competitive harm;

8. The confidential information is not readily discoverable through reverse engineering;

9. No statute or regulation requires public disclosure of the information; and

10. For security information, the claimant has shown that disclosure of the information would likely have an adverse effect on the security of the facility or its operations.

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

#### **7:31-5.6 Petitions to withhold privileged trade secret or security information**

(a) Any registrant required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the registrant believes must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the

procedures set forth in this section and by paying the fee set forth in N.J.A.C. 7:31-2.16(r). Any registrant of a facility submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any registrant petitioning the Department for the right to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of filing the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information and pay the fee set forth in N.J.A.C. 7:31-2.16(r) for review of its petition and substantiation in accordance with the following:

1. A petitioner whose summary risk management program statement is accepted for further review in accordance with N.J.A.C. 7:31-2.6(e) shall submit its substantiation and fee within 30 days of receipt of a written request by the Department.

2. A petitioner whose risk management is determined to be unacceptable shall submit its substantiation and fee at the time it submits the site data as required by N.J.A.C. 7:31-2.9(b)2, that is, within 30 days after receipt of notice that its risk management program is unacceptable.

3. A petitioner who does not have a risk management program shall submit its substantiation and fee at the same time it submits its petition to withhold privileged trade secret or security information, that is, within 30 days after receipt of a request for the site data from the Department in accordance with N.J.A.C. 7:31-2.9(b)1.

4. A petitioner who creates new privileged trade secret or security information shall submit its substantiation and fee within 30 days after receipt of a written request by the Department.

(c) The substantiation shall include, but need not be limited to, the following:

1. Identification of the specific use of the trade secret and an explanation why it is of interest to competitors and should be treated as a privileged trade secret. Such identification shall include, but not be limited to, the following:

- i. A description of the specific use of the trade secret, identifying the product, process, or activity in which it is used;

- ii. If the petitioner's company or facility has been linked to the trade secret in publications or other information available to the public, an explanation why this knowledge does not eliminate the justification for trade secrecy;

- iii. If the trade secret is unknown outside of the petitioner's company, an explanation how competitors could deduce this information from any disclosure required under the Act or this chapter; and

- iv. An explanation why the trade secret information sought to be withheld would be valuable to competitors;

2. A description of the specific measures taken to safeguard the confidentiality of the trade secret or security information;

3. Identification of any and all persons, including employees of the facility, to whom the trade secret or security information has been disclosed, including a copy of any signed confidentiality agreement requiring the person to refrain from disclosing the information sought to be withheld, or a description of any other methods used to ensure the confidentiality of the trade secret or security information. Officers or employees of the United States government to whom the information was disclosed for use in national defense purposes are not to be identified;

4. An indication of the number of and location of all documents which contain the allegedly privileged trade secret or security information;

5. A list of all local, state and Federal government entities to which the trade secret or security information has been disclosed. For each entity, whether a confidentiality claim for the information was asserted and whether the government entity granted or denied that claim shall be indicated;

6. A description of the harm to the petitioner's competitive position that would likely result from disclosure of the trade secret, including an estimate of the potential loss in sales or profitability;

7. A description of the extent to which the trade secret information is discoverable through the process of reverse engineering, including a description of the factors which influence the cost of discovering the trade secret by reverse engineering and a rough estimate of the cost of such discovery;

8. Identification of any patent to which the trade secret or petitioner's use of the trade secret is subject and an explanation why the patent:

- i. Does not connect the petitioner with the trade secret; and

ii. Does not protect the petitioner from competitive harm;

9. A description of how disclosure of the trade secret or security information would likely affect the security of the facility or national defense; and

10. Any other relevant information to assist the Department in determining the validity of the petition to withhold privileged trade secret or security information.

(d) The certification on the bottom of the petition and substantiation form shall contain the signatures and two part certification specified in N.J.A.C. 7:31-2.17(a).

(e) The registrant petitioning to withhold privileged trade secret or security information may claim as confidential any confidential information contained in the substantiation form by following the procedures set forth in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the petitioner.

(f) The petitioner shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c).

(g) The Department may request supplemental information from the petitioner in support of its petition and substantiation to withhold trade secret or security information. The Department may specify the kind of information to be submitted, and the petitioner may submit any additional detailed information which further supports the information previously supplied to the Department in the petitioner's initial substantiation within 30 days of receipt of the Department's request. The petitioner may claim as confidential any confidential information included in the supplemental information, and shall clearly designate those portions of the supplemental information claimed as confidential in the manner described in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public information and may be disclosed without notice to the petitioner. A petitioner submitting supplemental information shall include a certification which shall contain the signatures and two part certification specified in N.J.A.C. 7:31-2.17(a). If supplemental information is submitted by the petitioner and the petitioner claims portions of it as confidential information, then the petitioner shall initially submit to the Department only the confidential copy of the supplemental information as prescribed in N.J.A.C. 7:31-5.4(c).

(h) The confidential copy of any petition to withhold privileged trade secret or security information, and the substantiation form or supplemental information which contains confidential information shall be enclosed in envelopes in accordance with the procedures set forth in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein.

(i) To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(j) A petitioner shall update information submitted to the Department regarding a pending or approved petition within 30 days of the petitioner's knowledge or receipt of new information which could affect the petition to withhold privileged trade secret or security information.

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

#### **7:31-5.7 Determinations of petitions to withhold privileged trade secret or security information**

(a) Upon receipt of a petition to withhold privileged trade secret or security information, the Department shall first make a determination that the information petitioned to be withheld as privileged trade secret or security information has not been the subject of a prior determination by the Department of a petition to withhold the same information concerning the same facility, or if it has, that the prior determination upheld the registrant's petition to withhold the information.

1. If such a prior determination held that the petition to withhold the trade secret or security information was invalid, the Department shall notify the petitioner that the information petitioned to be withheld from the Department is the subject of a prior determination concerning the withholding of the same information in which it was held that such petition was invalid, and the Department shall require the petitioner to submit or disclose the information to the Department.

(b) Failure of a petitioner to furnish timely substantiation or to pay the required fee waives its petition to withhold privileged trade secret or security information and the Department will require the petitioner to submit or disclose the information to the Department. Failure to furnish substantiation or to pay the required fee does not affect the registrant's right to assert a confidentiality claim concerning the same information.

(c) If the Department determines that the petition to withhold privileged trade secret or security information is not the subject of a prior determination, the Department shall determine whether the petitioner has presented sufficient support for its petition to withhold privileged trade secret or security information in its substantiation. A petition to withhold such information as privileged will be considered sufficient if, assuming all the information contained in the substantiation is true, this supporting information meets the criteria set forth in (d) below.

(d) A substantiation submitted under N.J.A.C. 7:31-5.6 will be determined to be sufficient to support a petition to withhold privileged trade secret or security information if the substantiation asserts specific facts to support the following conclusions:

1. The petitioner has established that the information sought to be withheld as privileged trade secret or security information is entitled to protection as confidential information in accordance with the criteria in N.J.A.C. 7:31-5.5(j)1 through 10;

2. The petitioner has not disclosed the information sought to be withheld to any other person other than to the petitioner's employees involved in its use, or, if the information relates to national security, to officers or employees of the United States government; and

3. The petitioner is not required by any state or Federal law or regulation to disclose the information to any governmental entity or agency, regardless of any right of the petitioner to make a claim or confidentiality upon disclosing the information to such governmental entity or agency.

(e) If the petition does not meet the criteria for sufficiency set forth in (d) above, the Department shall notify the petitioner in writing of this fact by certified mail (return receipt requested). The notification shall include the reasons for the Department's initial decision that the petition is insufficient, and shall inform the petitioner of its right to submit in writing supplemental information to the Department within 30 days of receipt of the notice in accordance with N.J.A.C. 7:31-5.6(g) to support the facts asserted in its substantiation. The notification may specifically request supplemental information in particular areas relating to the petition and shall inform the petitioner of its right to claim as confidential, any confidential information contained in any supplemental information it submits, and will include a reference to N.J.A.C. 7:31-5.4(d) and (e) as the source for the proper procedures for making such confidentiality claim.

(f) Upon receipt of supplemental information or after the 30 day period to submit supplemental information has expired, the Department shall determine whether the petition meets the standard of sufficiency set forth in (d) above.

1. If after receipt of supplemental information, the Department determines that the petition is sufficient, the Department will make a final determination concerning the petition to withhold trade secret or security information in accordance with (g) below.

2. If after the expiration of the 30 day period specified in (e) above, no supplemental information has been received by the Department, and the Department makes a final determination that the petition is still insufficient, the Department will notify the petitioner by certified mail (return receipt requested) that its petition is considered abandoned. The notice shall state the basis for the determination and will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's determination. A determination that a petition to withhold privileged trade secret or security information is insufficient does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the determination of insufficiency concluded that the information sought to be withheld is not confidential information.

(g) Once a petition has been determined to be sufficient under (d) or (f)1 above, the Department will determine whether the petition to withhold trade secret or security information will be granted or denied.

1. The petitioner will be notified by regular mail that its petition has been granted if the Department determines that the information submitted in support of the petition is true and that the information sought to be withheld is a trade secret or security information which meets the following criteria:

i. The information is trade secret or security information entitled to be treated as confidential information in accordance with the criteria established in N.J.A.C. 7:31-5.5(j)1 through 10;

ii. The information has never been released to any person other than to the petitioner's employees who are involved in its use, or, if the information relates to national security, to officers or employees of the United States government;

iii. The information is not otherwise required to be disclosed by any Federal or state law or regulation to any governmental entity or agency, regardless of any right by the petitioner to make a claim of confidentiality upon disclosing the information to any such governmental entity or agency; and

iv. The information is not included on the list provided at N.J.A.C. 7:31-5.3(b).

2. If the Department determines that the information submitted in support of the petition is not true or that the information sought to be withheld is not a trade secret or security information which is entitled to be treated as privileged in accordance with the criteria set forth in (g)1 above, the petitioner shall be notified by certified mail (return receipt requested) that its petition has been denied. The notification shall state the basis for the determination, and shall advise the petitioner of its right to request an adjudicatory hearing in accordance with the procedures specified at N.J.A.C. 7:31-6.3(b). Unless a request for an adjudicatory hearing is received within the time limit specified by N.J.A.C. 7:31-6.3(c), the Department will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's denial of its petition. A denial of a petition to withhold privileged trade secret or security information does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the denial concluded that the information sought to be withheld is not confidential information.

#### **7:31-5.8 Maintaining the confidentiality and security of confidential information**

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to only those Department employees and agents whose activities necessitate such access and as provided at N.J.A.C. 7:31-5.9.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into compilations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the registrant who supplied it to the Department.

(d) Only those Department employees who are designated as records custodians in accordance with (1) below, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:31-5.4(f).

(e) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:31-5.5 shall be stored by the Department or its agents only in locked cabinets.

(f) Any record made or maintained by Department employees or agents which contains confidential information shall be treated as confidential in accordance with the provisions of this section.

(g) Confidential information shall not be publicly disclosed by the Department and shall not be communicated over telecommunications networks, including but not limited to telephones, computers connected by modems, or electronic mail systems.

(h) Any document, which contains confidential information and is transmitted by the Department to the registrant or to any authorized person, shall be sent by certified mail or by other means that requires a verification of receipt, the date of receipt, and the name of the person who receives the document.

(i) The Department's contact regarding confidential information shall be the registrant's responsible manager.

(j) Any document prepared by the Department for the registrant which contains confidential information shall display the word "CONFIDENTIAL" in bold type or stamp on the top of each page. The envelope containing this document shall be addressed to the registrant's responsible manager and shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(k) No persons other than the Commissioner and his or her designated employees or designated agents or an administrative law judge conducting a hearing on the confidentiality of information pursuant to N.J.S.A. 52:14F-1 et seq., shall have access to confidential information and such access shall be on a need-to-know basis only. Said designated representatives of the Commissioner shall be employees or agents of

the Department and such designations shall be made in writing.

(l) The Commissioner shall designate employees to act as records custodians of all confidential information gathered pursuant to the Act or this chapter. These designated employees shall be responsible for acknowledging and recording the receipt of confidential information from a registrant, for tracking and recording all confidential information given to Department-designated employees or agents or an administrative law judge, for maintaining and upkeeping the confidential information file and storage area and for establishing any other methods deemed appropriate to protect the confidentiality of information through internal procedures or guidelines.

(m) Any confidential information added to a computerized data base shall only be added to computers which are:

1. Capable of being locked during periods of non-use by means of a lock and key mechanism, or by the use of passwords or levels of security clearances, or by other means that restrict access only to authorized Department personnel;
2. Are not tied to another computer system by means of a communications network; and
3. Are kept within an office capable of being locked when not being used by an authorized person.

(n) Any confidential information submitted to the Department which becomes obsolete or is no longer needed by the Department for the implementation of the Act or this chapter shall be returned to the registrant.

#### **7:31-5.9 Disclosure of confidential information**

(a) The Department may disclose confidential information to a person other than a Department employee, agent or administrative law judge only as provided in this section.

(b) The Department may disclose confidential information to any other governmental agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
2. The request sets forth the official purpose for which the information is needed;
3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
4. The other governmental agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the

Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless;

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

ii. The other agency has obtained the consent of the affected registrant to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) The Department may disclose confidential information to an agent of the Department and to an agent's employees when the agent is assisting in implementing the Act, its activities necessitate such access, and the requirements of (c)1 below have been satisfied. Any such disclosure of confidential information shall be restricted to a person approved in writing by the Department.

1. An agent shall not receive any confidential information unless:

i. It has submitted a plan to the Department which describes measures for adequately protecting confidential information from unauthorized disclosure, and such plan has been approved by the Department;

ii. It has provided written documentation demonstrating, to the satisfaction of the Department, that it maintains professional liability insurance and comprehensive general liability insurance in amounts to be set by the Department; and

iii. In addition to the requirement of (c)2 below, it has signed an agreement developed by the Department, protecting confidential information from unauthorized disclosure. The agreement shall include a provision whereby the agent assumes liability for any damages to the registrant resulting from the intentional or negligent release of confidential information by the agent and its employees.

2. Any person granted access to confidential information pursuant to this section shall sign an agreement developed by the Department protecting the confidentiality of the information prior to receipt of the information.

3. Any person who receives confidential information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

i. Keeping the information confidential from unauthorized persons;

ii. Keeping any records containing confidential information in a locked file cabinet or safe, when not in use;

iii. Using the information only for the use approved by the Department;

iv. Not reproducing the confidential information; and

v. Returning all material on which the confidential information has been recorded to the Department within 30 days after finishing using the information.

(d) Except as otherwise provided in (e) below, the Department shall notify in writing the registrant who supplied the confidential information of:

1. Its disclosure to another agency or agent of the Department;

2. The date on which disclosure was made;

3. The name of the agency or agent to which disclosed; and

4. A description of the information disclosed.

(e) The Department may disclose any confidential information to any other person if it has obtained the written consent of the registrant's responsible manager to such disclosure.

1. The giving of consent by a registrant to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

(f) The Department may use confidential information in a civil or criminal proceeding, if permitted by a court.

#### 7:31-5.10 Wrongful access or disclosure

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee or agent who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee or agent shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Disclosure by an agent in violation of this subchapter or the contractual provisions described in N.J.A.C. 7:31-5.9(c) shall constitute grounds for debarment or suspension as provided in "Debarment, Suspension and Disqualification from Department Contracting", N.J.A.C. 7:1-5, in addition to whatever other remedies may be available to the Department at equity or law.

(g) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

**7:31-5.11 Use of confidential information in rulemaking, reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs, and enforcement proceedings**

Notwithstanding any other provisions of this subchapter, the Department may use confidential information in the development of the TCPA program rules, in the review and preparation of documents approving or withholding approval of extraordinarily hazardous substance accident risk assessment reports and risk management programs, and in the preparation of enforcement documents and during enforcement proceedings.

**SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS**

**7:31-6.1 Authority and purpose**

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., including violations of any rule, consent agreement or administrative order issued pursuant to the Toxic Catastrophe Prevention Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order or a written notice from the Department withholding approval of a new EHS facility or rejecting a modification.

(b) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 13:1K-30 or any other statute, in connection with the violation for which the assessment is levied.

**7:31-6.2 Procedures for issuance of administrative orders and assessment of civil administrative penalties and payment of such penalties**

(a) For violation of the Act or any rule, consent agreement, information request, access request, or order promulgated or issued pursuant to the Act, the Department shall, by issuance of an administrative order and/or notice of civil administrative penalty assessment, notify the violator using certified mail (return receipt requested) or personal service. The Department may, in its discretion, require cessation of violation and/or assess a civil administrative penalty for more than one offense in a single administrative order and/or notice of civil administrative penalty assessment or in multiple administrative orders and/or notices of civil administrative penalty assessment. This administrative order and/or notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, consent agreement, information request, or access request, or order violated;
2. Concisely state the facts which constitute the violation;
3. For any violation still continuing, order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed, if any; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:31-6.3.

(b) Payment of the civil administrative penalty is due and compliance with the terms of an administrative order is required upon receipt by the violator of the Department's final order in a contested case or when an administrative order and/or a notice of civil administrative penalty assessment otherwise becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:31-6.3, the administrative order and/or notice of civil administrative penalty assessment becomes a notice of final order on the 21st calendar day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request, an administrative order and/or notice of civil administrative penalty assessment becomes a final order upon the violator's receipt, by certified mail or personal service, of notice of such denial; or
3. If an adjudicatory hearing is conducted, an administrative order and/or notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) Any person who violates any provision of N.J.S.A. 13:1K-22 through 13:1K-26 or any rule, regulation, or order

promulgated or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full is subject, upon order of the court, to a civil penalty not to exceed \$10,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with cost in a summary proceeding before the Superior Court and pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

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

### 7:31-6.3 Procedures to request an adjudicatory hearing

(a) Within 20 calendar days from receipt of an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Toxic Catastrophe Prevention Act, the violator may request an adjudicatory hearing to contest such administrative order and/or penalty assessment by submitting a written request to the Department which shall include the following information except as provided in (b) below:

1. The name, address, and telephone number of the violator, and its authorized representative, if any;
2. The Department's identification number for the EHS facility as specified in section A of the registrant's registration form (if applicable);
3. The violator's defenses to each of the Department's findings of fact stated in short and plain terms;
4. An admission or denial of each of the Department's findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
5. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
6. An estimate of the time required for the hearing (in days and/or hours); and
7. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) Within 20 calendar days from receipt of an administrative order issued by the Department pursuant to N.J.A.C. 7:31-2.6(i) or N.J.A.C. 7:31-2.9(k), or of a written notice from the Department withholding approval of a new EHS facility or rejecting a modification, or of a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information, issued pursuant to the Toxic Catastrophe Prevention Act, the registrant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the registrant, and its authorized representative, if any;
2. The Department's identification number for the EHS facility as specified in section A of the registrant's registration form;
3. The registrant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;
4. Information supporting the registrant's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(c) A request for an adjudicatory hearing shall be sent to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402. A hearing request not received within 20 days after receipt by the registrant or violator of the notice of a civil administrative penalty assessment and/or an administrative order and/or a written notification from the Department withholding approval of a new EHS facility or rejecting a modification and/or a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information, shall be denied by the Department.

(d) During the pendency of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9(k), the timetable for compliance with those conditions being appealed in the order shall be suspended.

(e) If the violator fails to include all the information required by (a) or (b) above, the Department may deny the hearing request.

(f) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

Office of Legal Affairs  
 New Jersey Department of Environmental Protection  
 CN 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).

**7:31-6.4 Civil administrative penalty determination**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$10,000 for the first offense, not more than \$20,000 for the second offense, and up to \$50,000 for the third and each subsequent offense for each violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order issued pursuant thereto.

(b) 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.

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

(d) The Department shall determine the amount of the civil administrative penalty for violations of the Toxic Catastrophe Prevention Act and rule, consent agreement and administrative order issued pursuant thereto 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

Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense
1. Failure to register a new or existing EHS facility as set by the total hazard units at the facility	2.4(a)			
a. Less than 25 hazard units		5,000	10,000	25,000
b. 25 and more hazard units		10,000	20,000	50,000
2. Construction of a new EHS facility or utilization of an existing facility for a new EHS service without Departmental approval, when required	2.4(c)	10,000	20,000	50,000

Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense
3. Startup of a new EHS facility without an approved risk management program	2.4(d)	10,000	20,000	50,000
4. For a site with an approved RMP, placing a new EHS facility into service or to utilize an existing facility for a new EHS service without Departmental approval	2.4(c)	5,000	10,000	25,000
5. Failure to complete the requirements of an established RMP or its approved EHSARA work plan and performing a safety review and hazard analysis prior to modifying an existing EHS facility, each requirement	2.4(f)	2,500	5,000	12,500
6. Failure to handle, use, manufacture, generate or store an EHS in compliance with the Act and rules, each requirement	2.4(g)	2,500	5,000	12,500
7. Failure to comply with the requirements of an approved RMP, each requirement	2.4(h)	2,500	5,000	12,500
8. Failure to provide information requested by the Department	2.4(i)	2,000	4,000	10,000
9. Failure to submit an updated registration form, STP-010, within 30 days after a change occurs which makes any section of the form incorrect or incomplete	2.5(c)			
a. Failure to report a change in responsible manager		5,000	10,000	25,000
b. Failure to report increased hazard units on form STP-010, Section D		5,000	10,000	25,000
1. Less than 25 hazard units		5,000	10,000	25,000
2. 25 and more hazard units		10,000	20,000	50,000
c. Failure to report any other change		1,000	2,000	5,000
10. Failure to comply with conditions of a consent agreement addendum setting forth requirements of N.J.A.C. 7:31-3.16, each condition	2.5(i)	2,500	5,000	12,500
11. Failure to submit summary risk management program statement on time	2.6(b)			
a. Less than 30 days		1,000	2,000	5,000
b. 30 through 59 days		2,500	5,000	12,500
c. More than 59 days		5,000	10,000	25,000
12. Failure to provide a description of each program element	2.6(c)1	2,000	5,000	10,000
13. Failure to return signed consent agreement/addendum or to submit proposals to correct any deficiencies in the draft consent agreement/addendum within 60 days of receipt of the draft consent agreement/addendum	2.6(g) or 2.12(c)	5,000	10,000	25,000
14. Failure to comply with conditions of a consent	2.6(h), 2.9(k)	2,500	5,000	12,500

Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense	Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense
agreement or administrative order, each condition	2.12(c)				29. Failure to provide information or grant access to Department employees or agents during an emergency condition	2.12(a)	10,000	20,000	50,000
15. Failure of a new owner or operator of an existing EHS facility to adopt or obtain an approved risk management program before operating EHS equipment	2.8(a) 2.8(b)	5,000	10,000	25,000	30. Failure to submit an annual report on time	2.14			
16. Failure to submit site data as required by N.J.A.C. 7:31-4.4	2.9(b)				a. Less than 30 days		1,000	2,000	5,000
a. By registrants who indicated they did not have an RMP	2.9(b)1	2,500	5,000	12,500	b. 30 through 59 days		2,000	4,000	10,000
b. Registrants who did not have an established RMP, as determined by the Department	2.9(b)2	2,500	5,000	12,500	c. More than 59 days		5,000	10,000	25,000
17. Failure to nominate 3 consultants to perform the EHSARA on time	2.9(c)	5,000	10,000	25,000	31. Failure to authorize an insurance carrier to release information requested by the Department within 30 days of the request	2.15(d)	5,000	10,000	25,000
18. Failure to nominate on time an additional 3 consultants, upon determination of the inadequacy of the first 3	2.9(f)2	5,000	10,000	25,000	32. Failure to pay any annual fee	2.16	5,000	10,000	25,000
19. Failure to execute contract with chosen consultant within 45 days of receipt of notification of the name of the consultant	2.9(g)	5,000	10,000	25,000	33. Failure to properly certify documents	2.17	5,000	10,000	25,000
20. Failure to initiate an EHSARA according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000	34. 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	2.18(b)	2,000	4,000	10,000
21. EHSARA not performed by consultant according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000	35. Failure to operate an EHS facility, to which the Department has granted an exemption from N.J.A.C. 7:31-3, according to information provided to the Department to obtain an exemption	2.19	5,000	10,000	25,000
22. Failure of owner or operator to make available for Department review a report of EHSARA in accordance with the schedule of the work plan when a consultant hired by the owner or operator prepares the report of EHSARA	2.9(i)	5,000	10,000	25,000					
23. Failure to implement a risk reduction plan as directed by the issuance of an administrative order	2.9(k)	5,000	10,000	25,000					
24. Failure of owner or operator to submit a summary risk management program statement at least 90 days prior to construction of a new EHS facility	2.10(a)2	5,000	10,000	25,000					
25. Failure to update the safety review and risk assessment to reflect latest revision of pertinent documents prior to placing equipment in EHS service	2.10(b)	5,000	10,000	25,000					
26. Failure to manage the change of existing EHS equipment and procedures in accordance with N.J.A.C. 7:31-3.15	2.11(a)	2,500	5,000	12,500					
27. Failure to grant access to Department employees or agents for inspections	2.12(a)	5,000	10,000	25,000					
28. Failure to assist Department employees in performances of all aspects of any inspection	2.12(a)	5,000	10,000	25,000					

(e) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:31 for which no penalty amount is specified under N.J.A.C. 7:31-6.4(d). The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:31-6.4(d) 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

2. The factors listed in (h) below;

(f) The civil administrative penalty for each offense set forth in (d) above subsequent to the third offense shall be \$50,000 per offense;

(g) If the registrant has not committed the same offense within a three year period of an offense, the next penalty 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.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above under N.J.A.C. 7:31-2.4(f), 2.4(g), 2.4(h), 2.5(i), 2.6(h), 2.9(k), 2.12(e) and 2.11(a) to assess a civil administrative penalty amount no greater than the maximum penalty 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; and/or

7. Any other mitigating, extenuating or aggravating circumstances.

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

#### 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.



- i. Process chemistry? \_\_\_\_\_
- ii. Report of inventory of each extraordinarily hazardous substance for the past 12 months? \_\_\_\_\_
- iii. Reports of hazard analyses, risk assessments, safety reviews of new and existing equipment performed during the previous six calendar years. \_\_\_\_\_
- iv. Accident investigation procedures, records and reports covering EHS accidents for the past six calendar years? \_\_\_\_\_
- v. Updated process flow diagram of each EHS facility with appropriate dates indicated? \_\_\_\_\_
- vi. Updated piping and instrumentation diagrams? \_\_\_\_\_
- vii. Standard operating procedures? \_\_\_\_\_
- viii. Site wide safety procedures? \_\_\_\_\_
- ix. Emergency response program and plan? \_\_\_\_\_
- x. Description of the EHS operator training program including job classifications and job descriptions for EHS operators and its records? \_\_\_\_\_
- xi. Annual calendar year tabulation of EHS operator training conducted for the last three calendar years? \_\_\_\_\_
- xii. Topographic maps? \_\_\_\_\_
- xiii. Site plan? \_\_\_\_\_
- xiv. EHS equipment specifications including instrument and piping specifications? \_\_\_\_\_
- xv. National Electrical Code classification diagrams for the EHS facility and adjoining areas? \_\_\_\_\_
- xvi. Electrical one line diagrams? \_\_\_\_\_
- xvii. Fire water system piping diagrams for the site? \_\_\_\_\_
- xviii. Sewer system piping diagrams for the site? \_\_\_\_\_
- xix. Criteria for design and operation used at the site? \_\_\_\_\_
- xx. Preventive maintenance program and records covering EHS equipment? \_\_\_\_\_
- xxi. Annual calendar year tabulations of EHS equipment inspected and tested versus scheduled for the last three calendar years? \_\_\_\_\_
- xxii. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years? \_\_\_\_\_

**SAFETY REVIEW**

The following are the questions on safety review of new and existing facilities (See N.J.A.C. 7:31-3.4):

	Yes	No	Comments
1. Are all new EHS facilities designed, installed and operated in accordance with the criteria for design and operation?	_____	_____	_____
2. Have the criteria for design and operation been identified for each new EHS facility, and have they been compared with the following information describing the EHS equipment and operations:			
i. Process description and process chemistry?	_____	_____	_____
ii. Process flow sheet?	_____	_____	_____
iii. Piping and instrumentation diagrams?	_____	_____	_____
iv. EHS facility location maps, site plans and equipment layout?	_____	_____	_____
v. Electrical one-line diagrams?	_____	_____	_____
vi. Electrical classification drawing?	_____	_____	_____
vii. Specifications of safety relief devices and interlocks and controls?	_____	_____	_____
viii. Specifications for materials of construction?	_____	_____	_____
ix. EHS inventories?	_____	_____	_____
x. EHS equipment specifications?	_____	_____	_____
xi. External forces and events data?	_____	_____	_____
xii. Firewater system piping diagrams?	_____	_____	_____
xiii. Sewer system piping diagrams?	_____	_____	_____
xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2,3,4,6,7,8,9,10,11,12,14 and 15?	_____	_____	_____
3. Has the identification and comparison required in 2 above been documented?	_____	_____	_____
4. Has a report of the result of each safety review of design of each new EHS facility been prepared?	_____	_____	_____
i. Does each report contain a list of the criteria for design and operation upon which the design is based?	_____	_____	_____
ii. Does each report identify the new EHS facility, the EHS equipment items reviewed, the drawings and documents reviewed, the date(s) of the review, the date of issue of the report, and the name, position and affiliation of the persons who performed the review?	_____	_____	_____
iii. Does each report explain where the design of the new EHS facility deviates from the listed consensus standards of the criteria for design and operation?	_____	_____	_____
iv. Does each report explain the reasoning upon which an intended deviation from the listed consensus standard is based?	_____	_____	_____

The following are the questions on safety review of existing EHS equipment (See N.J.A.C. 7:31-3.4):

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Has a safety review of all existing EHS equipment and procedures been performed each calendar year no sooner than six months or no longer than 18 months from the previous safety review?</li> </ol>   | <p>_____</p> <p>_____</p> <p>_____</p>                           |
| <ol style="list-style-type: none"> <li>2. Has each safety review included:                     <ol style="list-style-type: none"> <li>i. A visual inspection of the EHS equipment or review of up-to-date inspection records to determine if process flow diagrams, piping and instrument diagrams, electrical one line diagrams, electrical classification, and sewer and fire system piping diagrams reflect actual conditions with respect to EHS equipment runs and sizes of pipe, location and function of instruments, and location, function and size of valves?</li> <li>ii. A visual inspection of the EHS equipment or review of up-to-date inspection records against design document to determine if safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning as designed?</li> <li>iii. A review to determine if actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications are within the limits of the current design criteria of individual equipment items?</li> <li>iv. Inspection of the EHS equipment and procedures and interviews of site personnel to determine if standard operating procedures reflect actual conditions?</li> </ol> </li> </ol> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
| <ol style="list-style-type: none"> <li>3. Have the deviations of procedure or EHS equipment found by each safety review been documented?</li> </ol>  | <p>_____</p> <p>_____</p> <p>_____</p>                           |
| <ol style="list-style-type: none"> <li>4. Have deviations found as a result of the visual inspections or reviews specified in 2i, iii and iv above been immediately discontinued?</li> </ol>   | <p>_____</p> <p>_____</p> <p>_____</p>                           |
| <ol style="list-style-type: none"> <li>5. Have the safety systems found to be inoperable during the inspection specified in 2ii above been immediately returned to operational status?</li> </ol>  | <p>_____</p> <p>_____</p> <p>_____</p>                           |
| <ol style="list-style-type: none"> <li>6. Has a report of the results of each safety review been prepared and does it:                     <ol style="list-style-type: none"> <li>i. Identify the facility in EHS service?</li> <li>ii. Identify the EHS equipment, procedures, drawings and documents reviewed?</li> <li>iii. Describe the deviations found and the corresponding actions taken pursuant to (2) above?</li> </ol> </li> </ol>   | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |

iv. Identify the name, position and affiliation of the persons who performed the review, the date(s) of the review and the date of issue of the report?

\_\_\_\_\_

7. Has the report been distributed to the responsible manager?

\_\_\_\_\_

**STANDARD OPERATING PROCEDURES**

The following are the questions on Standard Operating Procedures (See N.J.A.C. 7:31-3.5):

1. Are the standard operating procedures written in English and in language of fluency understandable by EHS operators?

\_\_\_\_\_

2. Are there versions of each of the standard operating procedures written in the language of fluency of EHS operators not fluent in English?

\_\_\_\_\_

3. Is a copy of each standard operating procedure and a copy of the material safety data sheets or fact sheets readily available to EHS operators?

\_\_\_\_\_

i. Are procedures for emergency shutdown available in hard copy?

\_\_\_\_\_

4. Does each standard operating procedure include:

i. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures?

\_\_\_\_\_

ii. Procedures and conditions for normal operations?

\_\_\_\_\_

iii. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions?

\_\_\_\_\_

iv. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions?

\_\_\_\_\_

v. Pre-start procedures covering testing for leak tightness prior to charging the EHS?

\_\_\_\_\_

vi. Startup procedures including conditions to be maintained during startup?

\_\_\_\_\_

vii. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of EHS equipment to be maintained after shutdown?

\_\_\_\_\_

viii. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activations points indicated?

\_\_\_\_\_

ix. Sampling procedures addressing apparatus and specific steps involved in the taking of samples?

\_\_\_\_\_

x. Safety procedures related to each specific operation in the standard operating procedures?

\_\_\_\_\_

- xi. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion prior to placing equipment in EHS service? \_\_\_\_\_
  - xii. Log sheets and checklists where appropriate to the operation? \_\_\_\_\_
  - xiii. A statement as to the number of EHS operators required to meet safety need for each operation with requirements for shift coverage? \_\_\_\_\_
  - xiv. A requirement that an EHS operator be in attendance at the EHS site and be able to acknowledge alarms and take corrective action at all time during specified activities of EHS handling, use, manufacture, storage or generation? \_\_\_\_\_
5. Have modifications to the standard operating procedures been made in accordance with N.J.A.C. 7:31-3.15? \_\_\_\_\_
  6. Have modifications been incorporated in the standard operating procedure before being implemented? \_\_\_\_\_
  7. Has a current table of contents of each EHS standard operating procedures listing the items of 4 above, the documents in which those items are located and the location of such documents with corresponding latest dates of issue and issue identification number been maintained, filed and distributed to the responsible manager? \_\_\_\_\_

**PREVENTIVE MAINTENANCE**

The following are the questions for the preventive maintenance program (See N.J.A.C. 7:31-3.6):

1. Have the preventive maintenance program documents been written, filed at the site, and are they available for inspection by the Department? \_\_\_\_\_
2. Has all EHS equipment needed to be included in the preventive maintenance program been identified? \_\_\_\_\_
3. Have all modifications been approved pursuant to N.J.A.C. 7:31-3.15? \_\_\_\_\_
4. Have the internal and external inspection of EHS equipment prescribed by the preventive maintenance program been performed as scheduled? \_\_\_\_\_
  - i. Are the frequencies of inspection sufficient to prevent the failure of the equipment? \_\_\_\_\_
5. Have the inspections or tests prescribed by the preventive maintenance program for pressure safety devices in EHS service been performed as scheduled? \_\_\_\_\_
6. Has the safety instrumentation in EHS service been checked for proper operation, as prescribed by the preventive maintenance program? \_\_\_\_\_
7. Have the procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment prescribed by the preventive maintenance program been followed? \_\_\_\_\_
8. Have emergency power supply systems been tested in accordance with the schedule prescribed by the criteria for design and operation? \_\_\_\_\_
9. Has the training of the employees assigned to perform maintenance work on EHS equipment been performed in accordance with the requirements of the preventive maintenance program? \_\_\_\_\_
10. Have the procedures to insure that work on or near EHS equipment performed by contractors is done in accordance with the requirements of the preventive maintenance program and N.J.A.C. 7:31-3.17 been followed? \_\_\_\_\_
11. Have the permits and check lists for all EHS equipment entries, lockouts, and welding and burning operations required by the preventive maintenance program been used? \_\_\_\_\_
12. Have all inspection reports and preventive maintenance testing and training information been filed in a centralized location as required by the preventive maintenance program? \_\_\_\_\_
13. Has the record keeping system prescribed by the preventive maintenance program been followed? \_\_\_\_\_

**OPERATOR TRAINING**

The following are the questions for the EHS operator training program (See N.J.A.C. 7:31-3.7):

1. Has the training program for EHS operators been written? \_\_\_\_\_
2. Has a job description been written for each EHS operator position which includes the duties and responsibilities, the education, experience and training necessary to qualify for that position? \_\_\_\_\_
3. Have the evaluation procedures prescribed by the EHS operator training program to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position been used? \_\_\_\_\_

4. Have the time periods prescribed by the EHS operator training program for in house training for each position been followed?
  - i. Has the plan established for tracking the training progress of each EHS operator at regular intervals prescribed by the EHS operator training program been followed?
  - ii. Has the maximum period of time been established within which the EHS operator must achieve qualified status and is it being followed?
5. Have established procedures been followed to insure that work done by contractors to assist as EHS operators is in accordance with the requirements of the standard operating procedure and with N.J.A.C. 7:31-3.17?
6. Has the training EHS operators received during the previous 12 months included:
  - i. For new employees, general orientation and initial training as prescribed by the EHS operator training program?
  - ii. For newly assigned EHS operators, the training on specific extraordinarily hazardous substance activities prescribed by the EHS operator training program?
  - iii. For newly assigned EHS operators, the on-the-job training as prescribed by the EHS operator training program?
  - iv. The refresher training prescribed by the EHS operator training program?
7. Have the evaluations of EHS operators included oral and written tests?
8. Have EHS operators qualified within the maximum periods established for training in each EHS position?
9. Do all personnel responsible for training and evaluating EHS operators meet the qualifications prescribed for instructors and evaluators by the EHS operator training program?
10. Have all training, evaluations and qualifying activities been documented as prescribed by the EHS operator training program?
11. Has a tabulation of EHS operator training performed during the previous calendar year been prepared, filed and submitted to the responsible manager?

ACCIDENT INVESTIGATION

The following are the questions for EHS accident investigation program (See N.J.A.C. 7:31-3.8):

1. Have the written procedures for investigating all EHS accidents prescribed by the accident investigation program been followed for each accident?
2. Were the EHS accident investigations completed within the time frame prescribed by the EHS accident investigation program?
3. Is there a written accident investigation report of each EHS accident that occurred during the past calendar year?
4. Did management review each EHS accident report completed during the past calendar year?
5. Did management implement the recommendations in each EHS accident investigation report?
6. Is there a requirement to include the review of EHS accident reports in operator refresher training and maintenance training?
7. Does each EHS accident report include:
  - i. The date, time and location of the EHS accident?
  - ii. The identity, amount and duration of the release or potential EHS release?
  - iii. The EHS equipment, materials, procedures and personnel involved?
  - iv. A detailed chronological description of the accident including all the facts related to the EHS accident?
  - v. The consequences of the EHS accident including the number of people injured or killed and the impact on the community?
  - vi. The identity of the basic and contributory causes of the EHS accident?
  - vii. The determination of whether the EHS accident was caused by human error, equipment failure, or procedural inadequacy?
  - viii. Recommend actions addressing human error, equipment failure or procedural inadequacy to be implemented to prevent a recurrence?
  - ix. Schedule for implementation of recommended actions?
  - x. Signatures and position titles of the investigators?

- 8. Do the EHS accident investigation records include:
  - i. A separate file of EHS accident reports for the Toxic Catastrophe Prevention Act program? \_\_\_\_\_
  - ii. A monthly list on which the implementation status of all active recommendations for corrective action is updated? \_\_\_\_\_
  - iii. An updated list of employees of the registrant or contractors or any other person who directly or indirectly contributed to EHS accidents? \_\_\_\_\_
  - iv. End of calendar year summary reports consisting, at a minimum, of the following:
    - (1) A list and brief description of each EHS accident? \_\_\_\_\_
    - (2) An identification of the cause of each EHS accident as human error, equipment failure, or procedural inadequacy? \_\_\_\_\_
    - (3) A consolidated schedule of implementation and completion status covering all EHS accidents? \_\_\_\_\_

**RISK ASSESSMENT**

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (See N.J.A.C. 7:31-3.9):

- 1. Was a risk assessment conducted on each EHS facility, each new EHS operating alternative or each required modification to EHS equipment and procedures identified at N.J.A.C. 7:31-3.15? \_\_\_\_\_
- 2. Was a risk assessment conducted on existing EHS equipment or operating alternative at least once every five calendar years no sooner than 54 months or no later than 66 months from the previous hazard analysis satisfying the requirements of N.J.A.C. 7:31-3.9(c)? \_\_\_\_\_
- 3. Did each risk assessment include a hazard analysis performed in accordance with N.J.A.C. 7:31-3.9(c)? \_\_\_\_\_
- 4. Was a dispersion/consequence analysis performed for the maximum release rate or quantity scenario identified in (3) above and for each successively lower release rate or quantity scenario in accordance with N.J.A.C. 7:31-3.9(d)? \_\_\_\_\_
- 5. For each release scenario at (4) above as indicating that five times the concentration criterion extends beyond the site boundary:
  - i. Was an evaluation of state of the art performed? \_\_\_\_\_
  - ii. Was a risk reduction plan developed utilizing state of the art risk reduction measures? \_\_\_\_\_

- iii. Was a schedule developed for its implementation? \_\_\_\_\_
- iv. Were all estimates and analyses performed as part of the risk assessment properly documented? \_\_\_\_\_
- 6. For each release scenario identified in (4) above as indicating that one times the concentration criterion extends beyond the site boundary:
  - i. Was either a state of the art evaluation performed in accordance with (5) above? or \_\_\_\_\_
  - ii. Was the frequency of release occurrence determined? \_\_\_\_\_
  - iii. If the frequency was greater than or equal to 10<sup>-4</sup> per year, was a state of the art evaluation performed? \_\_\_\_\_
- 7. Was a report of the risk assessment prepared for each new EHS facility or modification or existing EHS facility in accordance with N.J.A.C. 7:31-3.9(g)? \_\_\_\_\_
- 8. Was each report of risk assessment submitted to the responsible manager? \_\_\_\_\_
- 9. Did the responsible manager implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures were implemented? \_\_\_\_\_

**EMERGENCY RESPONSE**

The following are the questions for emergency response planning (See N.J.A.C. 7:31-3.10):

- 1. Has the approved written emergency response program been updated to reflect changes approved by the responsible manager during the calendar year? \_\_\_\_\_
- 2. Have the copies of the distributed emergency response plan been maintained in an up-to-date condition? \_\_\_\_\_
- 3. Has the scheduled initial and refresher emergency response training for all site employees been performed during the calendar year? \_\_\_\_\_
  - i. Did the emergency response training include:
    - (1) Alarm identification and response? \_\_\_\_\_
    - (2) Response to EHS accidental release? \_\_\_\_\_
    - (3) Use of required emergency response equipment? \_\_\_\_\_
    - (4) Evacuation procedures? \_\_\_\_\_
- 4. Has the scheduled initial and refresher emergency response training for the site-wide and EHS facility emergency response teams been performed during the calendar year? \_\_\_\_\_

- 5. Has emergency response training been performed whenever a team member's responsibilities or designated actions have changed or when the emergency response plan changed? \_\_\_\_\_
- i. Did emergency response training in (4) and (5) above include:
    - (1) Alarm identification and response? \_\_\_\_\_
    - (2) Response to EHS accidental release? \_\_\_\_\_
    - (3) Use of emergency protective equipment? \_\_\_\_\_
    - (4) Rescue procedures? \_\_\_\_\_
    - (5) Evacuation procedures? \_\_\_\_\_
    - (6) Medical assistance? \_\_\_\_\_
    - (7) Action plans for dealing with specific EHS accident release scenarios? \_\_\_\_\_
    - (8) Training in specific assigned emergency response duties? \_\_\_\_\_
- 6. Have the scheduled emergency response exercises for each registered facility and the site been performed during the calendar year in accordance with N.J.A.C. 7:31-3.10(a)4? \_\_\_\_\_
- 7. Has there been a written assessment of the emergency response plan after each implementation or emergency response exercise including but not limited to:
  - i. The adequacy of the emergency response plan? \_\_\_\_\_
  - ii. The implementation of the emergency response plan during the two exercises and any emergencies that occurred during the calendar year? \_\_\_\_\_
  - iii. The performance of the personnel participating in the two exercises and any emergencies that occurred during the calendar year? \_\_\_\_\_
  - iv. The adequacy of first aid and medical treatment procedures during the two exercises and any emergency that occurred during the calendar year? \_\_\_\_\_
  - v. The adequacy of the recording of events? \_\_\_\_\_
- 8. Has there been a written assessment of the adequacy or need for emergency response equipment after each implementation or emergency response exercise including but not limited to:
  - i. Emergency response communications system? \_\_\_\_\_
  - ii. Emergency power and lighting systems? \_\_\_\_\_
  - iii. The distribution of the emergency response plans, plot plans and maps of the surrounding community? \_\_\_\_\_
  - iv. EHS detection system? \_\_\_\_\_
  - v. Self-contained breathing apparatus? \_\_\_\_\_
  - vi. Fire fighting equipment? \_\_\_\_\_

- vii. Medical supplies? \_\_\_\_\_
- viii. Personal protective equipment? \_\_\_\_\_
- ix. Equipment necessary to reduce the quantity or duration of EHS release, such as capping devices, leak repair kits and spill containment? \_\_\_\_\_
- 9. Was a remedial action plan prepared with a schedule for completion to correct any inadequacies identified in (7) and (8) above? \_\_\_\_\_
- 10. Has the meteorological station been properly maintained in working condition? \_\_\_\_\_
- 11. Has the site's emergency response plan been coordinated with the emergency response plan of the local emergency planning committee during the calendar year? \_\_\_\_\_
- 12. Has a written emergency response plan been prepared in accordance with N.J.A.C. 7:31-3.10(b) and is it maintained at the site? \_\_\_\_\_
- 13. Has the list of the emergency response equipment and supplies and their location at the site been updated in the last six months? \_\_\_\_\_
- 14. Are the titles of the site emergency coordinator and alternates current? \_\_\_\_\_
- 15. Is the designation of emergency operators required by N.J.A.C. 7:31-3.10(b)7i current? \_\_\_\_\_
- 16. Has the Department's emergency communications center been notified immediately for each EHS accident or imminent EHS accident at the site as prescribed by the plan? \_\_\_\_\_
- 17. Has each accidental release been properly evaluated to determine if it should be reported in accordance with N.J.A.C. 7:31-3.10(b)7v, and all releases properly recorded? \_\_\_\_\_
- 18. Have the written procedures been implemented for timely and appropriate notification of, and coordination with, the emergency response coordinator for the local emergency response planning committee (LEPC)?
  - i. Names and telephone numbers of coordinators? \_\_\_\_\_
  - ii. Submittal of "Emergency Response Guide" if requested by the LEPC? \_\_\_\_\_
  - iii. Notification of coordinators of schedule of emergency response exercise? \_\_\_\_\_

**AUDIT REQUIREMENTS**

The following are the questions on Audit Requirements (See N.J.A.C. 7:31-3.11)

- 1. Was an annual audit of the risk management program conducted in accordance with N.J.A.C. 7:31-3.11(a)? \_\_\_\_\_

- 2. Was a written report prepared which includes as a minimum:
  - i. Completion of the risk management checklist established under N.J.A.C. 7:31-3.14? \_\_\_\_\_
  - ii. A list of deficiencies found in completing the checklist? \_\_\_\_\_
  - iii. Recommendations for remedial action? \_\_\_\_\_
  - iv. Submission of audit report to the responsible manager? \_\_\_\_\_
  - v. Requirements for review and implementation of remedial actions, including schedule, by the facility? \_\_\_\_\_
- 3. Was the audit team an independent consultant? \_\_\_\_\_
- 4. Was the audit team employees of the registrant, a majority of whom are not involved in day-to-day operations? \_\_\_\_\_

ANNUAL REPORTS

The following are the questions on Annual Reports (N.J.A.C. 7:31-3.13)

- 1. Was an annual report prepared and did it contain:
  - i. An update of the RMP description prepared in conformance with N.J.A.C. 7:31-3.12(a)1? \_\_\_\_\_
  - ii. A complete update of Section D of the registration form? \_\_\_\_\_
  - iii. A risk management program checklist for the site completed during the previous 3 months? \_\_\_\_\_
  - iv. A list of all safety reviews conducted during the previous 12 months? \_\_\_\_\_
  - v. Reports of risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? \_\_\_\_\_
  - vi. A list of all risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? \_\_\_\_\_
  - vii. A copy of the end of year summary report of EHS accidents? \_\_\_\_\_
  - viii. Updated catalog of documents prepared pursuant to N.J.A.C. 7:31-3.3(c)? \_\_\_\_\_

MANAGEMENT OF CHANGE

The following are the questions on Management of Modifications (Change) to EHS equipment and procedures (See N.J.A.C. 7:31-3.15)

- 1. Has the written program been established to manage modification that conforms to the requirements of N.J.A.C. 7:31-3.15? \_\_\_\_\_
- 2. For each modification (change) did you:
  - i. Categorize the proposed change as minor or major? \_\_\_\_\_
  - ii. Identify the scope and purpose of the change? \_\_\_\_\_
  - iii. Compare the change with the criteria for design and operation and update the documents as outlined in N.J.A.C. 7:31-3.15(a)3? \_\_\_\_\_
  - iv. Determine the impact of the changes on the following elements of the risk management program and update them accordingly?
    - a. Preventive Maintenance Program \_\_\_\_\_
    - b. EHS Operator Training \_\_\_\_\_
    - c. Emergency Response \_\_\_\_\_
  - v. Properly authorize the change prior to implementation? \_\_\_\_\_
  - vi. Complete all tasks prior to implementing the change? \_\_\_\_\_
- 3. Has a written program been established to manage changes in the risk management program administration that conforms to N.J.A.C. 7:31-3.15(c)? \_\_\_\_\_

CONTRACTORS

The following are questions on contractors and contractor employees (See N.J.A.C. 7:31-3.17)

- 1. Have written procedures been included in the risk management program to insure that work done by persons not directly employed by you meet the applicable requirements of the risk management program in conformance with N.J.A.C. 7:31-3.17? \_\_\_\_\_
- 2. For each occurrence when a contractor was used did you:
  - i. Obtain information regarding the contractor's safety performance and programs? \_\_\_\_\_
  - ii. Inform the contractor of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS? \_\_\_\_\_
  - iii. Explain to the contractor the applicable provisions of the site's emergency response plan? \_\_\_\_\_
  - iv. Properly control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHS's? \_\_\_\_\_
  - v. Evaluate the performance of the contractor in compliance with N.J.A.C. 7:31-3.17(e)5? \_\_\_\_\_

APPENDIX II

DEQ-080  
1/88

New Jersey Department of Environmental Protection  
Division of Environmental Quality  
CN 027, Trenton, NJ 08625

OFFICIAL USE

TOXIC CATASTROPHE PREVENTION ACT

REGISTRATION FORM

SECTION A

- 1. Legal Name of Registrant \_\_\_\_\_
- 2. Nature of Business \_\_\_\_\_
- 3. NJ Employer ID # \_\_\_\_\_ APEDES # (if any) \_\_\_\_\_  
NJPDES # (if any) \_\_\_\_\_ PWS # (if any) \_\_\_\_\_
- 4. Facility Location \_\_\_\_\_  
No. \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_
- 5. Registrant's Mailing Address \_\_\_\_\_  
No. \_\_\_\_\_ Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- 6. Name of Responsible Manager \_\_\_\_\_ Title \_\_\_\_\_ Tele # ( ) \_\_\_\_\_
- 7. Name of Plant Contact \_\_\_\_\_ Tele # ( ) \_\_\_\_\_
- 8. Title \_\_\_\_\_

SECTION B

- 1. Does this site or water treatment system use, manufacture, store, handle or generate at any time an Extraordinarily Hazardous Substance (EHS) listed in Table I of N.J.A.C. 7:31-2.3 as a raw material, intermediate, final product, by-product or waste product?  
 Yes  No If "No", sign the certification below. If "Yes", proceed to Question 2.
- 2. Does this site or water treatment system use, manufacture, store, handle or generate within any one hour period an Extraordinarily Hazardous Substance (EHS) as a raw material, intermediate, final product, by-product, or waste product equal to or in excess of the minimum reportable quantities indicated in Table I or N.J.A.C. 7:31-2.3?  
 Yes  No If "No", sign the certification below. If "Yes", complete this registration form and sign the certification below.

SECTION C - CERTIFICATIONS

Highest Ranking Official of Site/Water Treatment System

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (Print) \_\_\_\_\_ Title \_\_\_\_\_

Principal Executive Officer, General Partner or Proprietor, Ranking Elected Official

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (Print) \_\_\_\_\_ Title \_\_\_\_\_



**SECTION E**

Complete this section for each EHS and facility listed in Section D. Make additional copies of this page if necessary.

1. Facility Name or Designation \_\_\_\_\_ Facility Location \_\_\_\_\_

Indicate the EHS for which the following process description and equipment list applies: \_\_\_\_\_

2. **PROCESS DESCRIPTION** — Provide a general description of the process involved in the manufacture, storage, handling or generation of the EHS. Indicate typical and maximum operating conditions (i.e. temperatures and pressures) relative to the EHS. PROVIDE A SIMPLIFIED FLOW SHEET.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. **EHS EQUIPMENT** — Complete the following table for each major piece of EHS equipment directly involved in the use, manufacture, storage, handling, or generation of the EHS as described in Section E2. Equipment should include all storage and process vessels, as well as the number and size of drums, cylinders and shipping containers.

Equipment Description	Designation	Maximum Capacity (lbs.)	Distance to Nearest Property Line (ft.)	Age of Equipment (yrs.)	Comments
1.					
2.					
3.					
4.					
5.					
6.					
7.					

4. Indicate the four-digit SIC Code for the facility \_\_\_\_\_

**SECTION F**

Make additional copies of this page or provide attachments if necessary.

1. Does the site or water treatment system have an existing Risk Management Program (RMP) as described in N.J.A.C. 7:31?  
 Yes  No

2. Identify any risk reduction efforts and safety measures employed by the registrant to minimize the risks of an accidental release of an EHS from the equipment listed in Section E3.

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3. Identify the position titles and expertise of the persons involved with the development of the Risk Management Program.

Position Title	Expertise	Company Affiliation	Relationship to Registrant

4. Provide a description of the area surrounding each facility listed in Section E, including location of other companies, residential areas and major highways. Indicate proximity to schools, hospitals, nursing homes and public water supplies if located within a two mile radius.

Provide a USGS Topographic Map of the area indicating the location of each facility listed in Section E, unless previously submitted to the department.

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**SECTION G**

INSURANCE CARRIERS - Identify those insurance carriers underwriting the registrant's environmental liability and worker's compensation insurance policies.

Name	Address	Type of Policy	Amount of Insurance	Limitations or Exclusions