

expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later; and

4. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(m) To demonstrate financial responsibility through a surety bond:

1. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the latest Circular 570 of the U.S. Department of the Treasury;

2. The surety bond must be worded as specified in Appendix B, and a copy of the surety bond maintained at the facility at all times;

3. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate sums;

4. The owner or operator who uses a surety bond to meet the requirements of (a) above must establish a standby trust fund when the surety bond is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department;

5. The surety(ies) may cancel the bond by sending written notice of cancellation by certified mail to the principal and the Department, provided, however, that the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal or the date of receipt of the notice of cancellation by the Department, whichever is later, as evidenced by the return receipt; and

6. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(n) To demonstrate financial responsibility through a letter of credit:

1. The issuing agency must be an entity that has the authority to issue letters of credit in the State and whose

letter-of-credit operations are regulated and examined by a State agency;

2. The letter of credit must be worded as specified in Appendix B, and a copy of the letter of credit maintained at the facility at all times;

3. The owner or operator who uses a letter of credit to meet the requirements of (a) above must establish a standby trust fund when the letter of credit is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department;

4. The letter of credit must be irrevocable with a term specified by the issuing institution, and must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator and the Department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice or on the date when the Department receives the notice, whichever is later, as evidenced by the return receipt; and

5. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(o) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code:

1. Naming an owner or operator as debtor, the owner or operator shall notify the Department by certified mail of such commencement; or

2. Naming the provider of financial assurance as debtor, the provider shall notify the owner or operator by certified mail of such commencement, and the owner or operator shall then notify the Department.

(p) An owner or operator will be deemed to be without the required demonstration of financial responsibility in the event of commencement of bankruptcy or other incapacity of his or her provider of financial assurance. Within 30 days after receiving notice of such an event, the owner or operator shall submit to the Department an alternate demonstration of financial responsibility.

Amended by R.1996 d.252, effective June 3, 1996.

See: 27 N.J.R. 2337(a), 27 N.J.R. 2882(a), 28 N.J.R. 2858(a).

Deleted provisions relating to operators unable to demonstrate financial responsibility and to authority to establish alternate minimum amounts of financial responsibility.

Recodified from 7:1E-4.5 and amended by R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Former N.J.A.C. 7:1E-4.4, "Discharge cleanup and removal plan", recodified to 7:1E-4.3.

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Rewrote (a), (g) and (h).

#### Case Notes

Spill Act provision allowing injured person to bring claim directly against "the bond, the insurer, or any other person providing evidence of financial responsibility" did not authorize direct action by injured party against insurer. *Caldwell Trucking PRP Group v. Spaulding Composites, Co., Inc.*, D.N.J. 1995, 890 F. Supp. 1247.

Portion of regulation requiring a description of a facility's approach to compliance with subchapter standards invalid as to those standards involving design and construction of major facilities. *GATX Terminals Corp. v. Dept. of Environmental Protection*, 173 N.J.Super. 531, 414 A.2d 980 (App.Div.1980), reversed 86 N.J. 46, 429 A.2d 355 (1981).

#### 7:1E-4.5 Preparation and submission of plans

(a) The owner or operator of a major facility shall prepare a DPCC plan and a DCR plan in accordance with N.J.A.C. 7:1E-4.2 and 4.3. The DPCC and DCR plans shall be prepared and submitted as a single document.

(b) The owner or operator of an existing major facility shall submit a DPCC plan and a DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at the address in (h) below. Such plans shall be submitted no later than the following dates:

1. By February 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least 300,000 gallons, but less than one million gallons;

2. By August 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least one million gallons, but less than four million gallons;

3. By February 1, 1993, all facilities with a storage capacity for hazardous substances of all kinds of four million gallons or greater;

4. By August 1, 1993, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 80,000 gallons, but less than 200,000 gallons, or for hazardous substance of all kinds of at least 200,000 gallons, but less than 300,000 gallons;

5. By February 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 40,000 gallons, but less than 80,000 gallons; and

6. By August 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum and petroleum products of at least 20,000 gallons, but less than 40,000 gallons.

(c) If a facility becomes a major facility because of the addition of a substance to the list of hazardous substances in Appendix A, the owner or operator shall submit a DPCC and DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the

Department at the address in (h) below, no more than 180 days from the effective date of the addition to Appendix A.

(d) The owner or operator of a new major facility or of an existing facility that plans to increase its storage capacity to such an extent that it meets the definition of a major facility shall submit a DPCC plan and a DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at the address in (h) below at least 180 days prior to the anticipated operational date of the facility as a major facility. The owner or operator shall receive approval and implement the approved plans prior to operating the facility as a major facility.

(e) Within 60 calendar days of receipt of a DPCC and a DCR plan, the Department shall notify the owner or operator in writing as to whether all information required by (a) above to begin technical review of the plans has been submitted. A list of additional information required will be included if the plans are deemed incomplete.

(f) Unless time is extended by the Department for good cause shown, such additional information as outlined in this subchapter as the Department may require shall be submitted within 30 days of receipt of the Department's request. If additional information requested by the Department is not submitted within the 30-day period, the Department may deny approval of the plan without prejudice to resubmission.

(g) One copy of a DPCC and DCR plan, which must include an original certification pursuant to N.J.A.C. 7:1E-4.11, shall be submitted to the Department for approval. Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved DPCC and DCR plan shall be submitted to the Department. Copies shall be sent to:

Bureau of Release Prevention  
New Jersey Department of Environmental  
Protection  
PO Box 424  
Trenton, New Jersey 08625-0424  
Attention: Plan Submittal

Petition for Rulemaking: Seeking to extend deadline for submitting maps.

See: 24 N.J.R. 1122(d).

Amended by R.1996 d.252, effective June 3, 1996.

See: 27 N.J.R. 2337(a), 27 N.J.R. 2882(a), 28 N.J.R. 2858(a).

Recodified from 7:1E-4.6 and amended by R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Former N.J.A.C. 7:1E-4.5, "Financial responsibility", recodified to 7:1E-4.4.

Amended by R.2000 d.352, effective August 21, 2000.

See: 31 N.J.R. 3561(a), 32 N.J.R. 3091(a).

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Rewrote (d); deleted former (e); recodified former (f) through (h) as (e) through (g); in (f), inserted "for good cause shown"; and in (g), substituted "and" for "or" two times, and substituted "Release" for "Discharge" in the address.

**Case Notes**

While new major facilities must meet the standards of the discharge prevention regulations, existing facilities have a reasonable time to meet the standards. *GATX Terminals Corp. v. Dept. of Environmental Protection*, 86 N.J. 46, 429 A.2d 355 (1981).

**7:1E-4.6 Approval and conditional approval of plans**

(a) The Department shall act to approve or deny approval of a complete submission of a DPCC and DCR plan, pursuant to N.J.A.C. 7:1E-4.5, within 180 days of receipt.

(b) The Department may conditionally approve a plan if the map required pursuant to N.J.A.C. 7:1E-4.2(b)7 is not in the format prescribed by N.J.A.C. 7:1E-4.10(c) or if the maps required pursuant to N.J.A.C. 7:1E-4.2(b)8 or 9 are incomplete or are not in the format prescribed by N.J.A.C. 7:1E-4.10. The Department shall grant such conditional approval if the Department determines that:

1. The plan otherwise satisfies all of the requirements of this subchapter; and
2. The owner or operator is making a good faith effort to provide complete, acceptable maps.

(c) The conditional approval under (c) above shall set forth a date on which the conditional approval will expire unless the owner or operator has provided maps which satisfy the requirements of N.J.A.C. 7:1E-4.10.

(d) The owner or operator shall demonstrate financial responsibility pursuant to N.J.A.C. 7:1E-4.4 by the time the Department acts to deny or approve a DPCC or DCR plan pursuant to (a) above. If the owner or operator demonstrates to the satisfaction of the Department that none of the methods of financial responsibility set forth in N.J.A.C. 7:1E-4.4 is practicable to him or her, and that a good faith effort has been made to secure financial responsibility in the full aggregate amount, the Department shall:

1. Conditionally approve the plan; or
2. Establish an alternate minimum amount of financial responsibility pursuant to N.J.A.C. 7:1E-4.4(b).

(e) A conditional approval under (e) above shall set forth a date on which the conditional approval will expire unless the owner or operator has demonstrated financial responsibility in compliance with the requirements of N.J.A.C. 7:1E-4.4.

(f) Implementation of the DPCC and DCR plans shall begin immediately upon receipt of the Department's approval.

(g) The major facility shall keep a copy of the approved or conditionally approved plan onsite at all times.

Amended by R.1996 d.252, effective June 3, 1996.  
See: 27 N.J.R. 2337(a), 27 N.J.R. 2882(a), 28 N.J.R. 2858(a).  
Recodified from 7:1E-4.7 and amended by R.1996 d.462, effective October 7, 1996.  
See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).  
Former N.J.A.C. 7:1E-4.6, "Preparation and submission of plans", recodified to 7:1E-4.5.

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Rewrote (a); deleted former (b); recodified former (c) through (g) as (b) through (f); rewrote (b); deleted former (h); and recodified former (i) as (g).

**Case Notes**

Comparison of regulation to similar federal regulations as basis for guidance in determining authority of Department of Environmental Protection. *GATX Terminals Corp. v. Dept. of Environmental Protection*, 86 N.J. 46, 429 A.2d 355 (1981).

**7:1E-4.7 Denial or revocation of approval of plans**

(a) The Department shall state in writing its reasons for denying or revoking approval of any DPCC and DCR plans.

(b) The Department may revoke its approval of a DPCC and DCR plan if the owner or operator fails to comply with an approved schedule for bringing the facility into compliance with the requirements of these rules, or submits to the Department false or willfully misleading information.

(c) If the Department denies or revokes approval of a plan, the owner or operator shall have 30 days within which to submit an acceptable plan.

(d) The owner or operator of a major facility who is aggrieved by any decision of the Department to deny or revoke approval of a DPCC and DCR plan has the right to a hearing before the Department, pursuant to the procedure outlined in N.J.A.C. 7:1E-6.

Recodified from 7:1E-4.8 and amended by R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Former N.J.A.C. 7:1E-4.7, "Approval and conditional approval of plans", recodified to 7:1E-4.6.

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Section was "Denial or revocation of approval of DPCC or DCR plans or amendments". Substituted "DPCC and DCR" for "DPCC or DCR" throughout; in (a), deleted "or amendments thereto" following "plans"; in (b), substituted "facility" for "facility's plan"; and in (d), deleted "or amendment thereto" following "plan".

**7:1E-4.8 Amendment of plans**

(a) Written notice of proposed new construction or installation, substantial modification or replacement of any above-ground storage tank, other aboveground enclosed storage space, any appurtenant structures, or leak detection or other monitoring, prevention, or safety systems or devices shall be provided to the Department at the address in N.J.A.C. 7:1E-4.5(h) at least 60 days prior to the commencement of construction, installation or modification. The notice shall contain information on what new construction, installation, substantial modification or replacement is being proposed along with a preliminary schedule for the proposed work. This provision does not apply to construction, installation or modification contained in a schedule for upgrading in an approved DPCC plan.

(b) Within 30 days of any modification that necessitates a change in a plan, except those delineated in (e) below, the owner or operator of a major facility having an approved DPCC and DCR plan shall amend the DPCC and DCR plan to reflect such changes, and shall certify the amendments pursuant to N.J.A.C. 7:1E-4.11, prior to submission to the Department for approval. The amendment shall consist of only those pages of the DPCC and DCR plan requiring changes.

(c) The Department shall act to approve or deny approval of an amendment within 60 days of receipt of an administratively complete submission.

(d) Within 30 days of receipt of approval, a second copy of the approved amendment shall be submitted to the Department.

(e) Changes to the following information shall be reported to the Department at the address in N.J.A.C. 7:1E-4.5(h) within 30 days, but shall not be considered plan amendments subject to the certification and approval requirements of this section:

1. Name and mailing address of the facility, if the change is not the result of a change of ownership;
2. Facility and personnel telephone numbers;
3. Name and business address of the owner's or operator's registered agent;
4. Employee names that are included in the DPCC or DCR plan; and
5. New or revised financial responsibility documents.

Recodified from 7:1E-4.9 and amended by R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Former N.J.A.C. 7:1E-4.8, "Denial or revocation of approval of DPCC or DCR plans or amendments", recodified to 7:1E-4.7.

Amended by R.2001 d.355, effective October 1, 2001.

See: 33 N.J.R. 1255(a), 33 N.J.R. 3518(a).

In (c), inserted "administratively complete" preceding "proposed".

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Section was "Amendment of plans by owners or operators". Rewrote (a) through (d).

#### 7:1E-4.9 Plan renewals

(a) At least once every three years following approval or conditional approval of the DPCC and DCR plans, the owner or operator shall renew the DPCC and DCR plans. One copy of the renewal shall be submitted to the Department at the address in N.J.A.C. 7:1E-4.5(h) at least 180 days prior to the expiration date of the DPCC and DCR plans.

(b) The plan renewal shall consist of revised plans or a certification that the existing plans on file with the Department are current, including all exemptions pursuant to N.J.A.C. 7:1E-4.10(g) and alternative measures pursuant to N.J.A.C. 7:1E-1.11(e). A revised plan may be required at the

time of renewal so as to incorporate into the plan all amendments adopted since the approval, conditional approval, or last renewal.

(c) Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved renewal shall be submitted to the Department.

(d) Any change in an approved DPCC plan or DCR plan necessitated by amendments to this chapter shall be incorporated into the plan when the plan is renewed.

(e) All renewals shall be certified pursuant to N.J.A.C. 7:1E-4.11.

(f) Any DPCC or DCR plan which is not submitted for renewal in accordance with (a) above within three years of the date of approval, conditional approval, or last renewal, shall be considered expired.

New Rule, R.1996 d.462, effective October 7, 1996.

See: 28 N.J.R. 2730(a), 28 N.J.R. 4424(b).

Former N.J.A.C. 7:1E-4.9, "Amendment of plans by owners or operators", recodified to 7:1E-4.8.

Administrative change.

See: 32 N.J.R. 1796(a).

Amended by R.2000 d.352, effective August 21, 2000.

See: 31 N.J.R. 3561(a), 32 N.J.R. 3091(a).

Rewrote (d).

Amended by R.2007 d.93, effective April 2, 2007.

See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Rewrote the section.

#### 7:1E-4.10 Mapping criteria

(a) General site plans, required pursuant to N.J.A.C. 7:1E-4.2(b)7, shall:

1. Accurately reflect the current facility, including the property boundary, delineating and identifying, by labeling or other means, storage tanks, small container storage areas, process buildings, loading or unloading areas, marine transfer areas, any other structures, and all facility fencing and gates;

2. Be drawn to a scale in the range of one inch equals 30 to one inch equals 200 feet, such that it is sufficient to delineate all items to be mapped and is appropriate for the size of the facility. If labels or other items on the general site plan are illegible, the scale should be changed or inserts should be used; and

3. Be certified by a licensed land surveyor in accordance with N.J.S.A. 45:8-27, et seq., and N.J.A.C. 13:40.

(b) Drainage and land use maps, required pursuant to N.J.A.C. 7:1E-4.2(b)8, shall include the land area within 1,000 feet of the facility's boundary and shall:

1. Employ current basemaps at a scale equal to or larger than one inch equals 600 feet, and appropriate for the size of the facility;

2. Show the facility boundary;