

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7:1G-6.10 Request for trade secret information

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

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

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

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

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

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

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

(a) If the Department denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the Department's determination to file with the Department a written request for an administrative hearing on the determination. Such request shall be filed with the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, P.O. Box 402, Mail Code 401-07, 401 East State Street, Seventh Floor, Trenton, New Jersey 08625-0402.

(b) (Reserved)

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

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

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

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

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

Administrative Correction and change to (a).

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

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

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

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

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

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

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

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

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

(b) An officer or employee of the State may be granted access to trade secret information protected by this subchapter, only in accordance with this section, upon a demonstration to the satisfaction of the department that such request is in connection with the official duties of the officer or employee under any law for the protection of public health.

1. An officer or employee of the State designated by the head of an agency may make a written request to the department for information on a pending or approved trade secret claim. Such request shall state:

- i. Name, title, program, division and department of the officer or employee;
- ii. The officer or employee's need for the information and its connection with official duties;
- iii. The reason why the information cannot be obtained from other sources; and
- iv. The public health law for which the information is needed.

2. If the department proposes to release trade secret information to an officer or employee of the State, the department shall notify, in writing and by certified mail, return receipt requested, the employer who submitted the trade secret claim of the intent to release such information.

(c) A contractor of the State and its employees may be granted access to trade secret information protected by this subchapter if the Department determines that such disclosure is necessary for the completion of any work contracted for in connection with the implementation of the Act, and that the requirements of (c)1 through 3 below have been satisfied. Such approval shall restrict access to the trade secret information to persons approved by the Department. Employers shall be notified of this determination by the Department prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:

1. The contractor has submitted a plan to the Department which describes measures for adequately protecting trade secret information from unauthorized disclosure, and such plan has been approved by the Department;

2. The contractor has provided written documentation demonstrating, to the satisfaction of the Department, that the contractor maintains Professional Liability Insurance or suitable indemnity insurance and Comprehensive General Liability Insurance in forms and in amounts to be set by the Department; and

3. In addition to the requirement of (e) below, the contractor has signed an agreement developed by the Department, protecting trade secret information from unauthorized disclosure. The agreement shall include a provision whereby the contractor assumes liability for any damages to an employer resulting from the intentional or negligent release of trade secret information by the contractor and its employees.

(d) The department shall provide any information for which a trade secret claim is pending or has been approved to a physician or osteopath when such information is needed for medical diagnosis or treatment. The physician or osteopath who will receive confidential information shall be required to sign an agreement developed by the department protecting the confidentiality of the information disclosed. This agreement shall include a provision prohibiting the physician or osteopath from revealing the trade secret information to any person. Where feasible the employer shall be notified prior to disclosure of the information.

(e) Any person granted access to trade secret information pursuant to N.J.A.C. 7:1G-6.15 shall sign an agreement developed by the department protecting the confidentiality of the information prior to receipt of the information.

(f) Any person who receives trade secret information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

1. Keeping the information confidential from unauthorized persons;
2. Keeping any records containing trade secret information in a locked file cabinet or safe, when not in use;
3. Using the information only for the use approved by the department;
4. Not reproducing the trade secret information; and
5. Returning all material on which the trade secret information has been recorded to the department within 30 days or when finished using the information, whichever is sooner.

(g) For emergency public health or medical purposes, the department may waive the requirements of (b)1 (written request by State officer or employee), (b)2 (notice to employer prior to release of trade secret information), and (e) (signing a confidentiality agreement prior to receipt of trade secret information) above, and shall follow the procedures set forth in (g)1 and 2 below, if the department determines that waiver of said requirements is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment or is necessary for an emergency medical diagnosis or treatment by a physician or osteopath.

1. If trade secret information is conveyed verbally, in person or by telephone, the contents of a confidentiality agreement developed pursuant to (e) above, shall be read to the persons receiving such information.

2. Any person receiving oral or written trade secret information pursuant to this subsection shall sign a confidentiality agreement developed pursuant to (e) above, within 72 hours of receipt of such information.

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

7:1G-6.16 Penalties for unauthorized disclosure of trade secret information

(a) Any officer or employee of the State, contractor of the State, physician or osteopath, or employee of a county health department, county clerk, or designated county lead agency, local fire department, or local police department, or any other person who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(b) Disclosure of trade secret information by any contractor or agent of the department or its employees in violation of the Act shall constitute grounds for debarment, suspension, and disqualification from contracting with the department.

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

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SUBCHAPTER 7. ISSUANCE OF ADMINISTRATIVE
ORDERS AND NOTICES OF CIVIL
ADMINISTRATIVE PENALTY ASSESSMENT

7:1G-7.1 Authority and scope

(a) This subchapter is promulgated to provide for the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments and to establish a schedule and procedures for the assessment of Civil Administrative Penalties as provided in the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.S.A. 34:5A-31(a) and (b) and (d).

(b) Pursuant to N.J.S.A. 34:5A-31(a), the Commissioner or his or her designee is authorized to issue an Administrative Order and Notice of Civil Administrative Penalty Assessment whenever any employer is in violation of the Act or any rule or regulation promulgated pursuant to the Act. The Commissioner is authorized to issue a Civil Administrative Penalty of not more than \$2,500 for each violation, and additional penalties of not more than \$1,000 for each day during which a violation continues after the compliance date of an Administrative Order from the Commissioner to cease such violation pursuant to N.J.S.A. 34:5A-31(d).

(c) This subchapter shall govern the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments for violations of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or of any rule or regulation issued pursuant to this Act by the Department of Environmental Protection.

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

7:1G-7.2 (Reserved)

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

7:1G-7.3 Procedures for the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments

(a) The Commissioner may issue an Administrative Order upon finding that an employer is in violation of N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto. Such an order shall:

1. Specify the provision or provisions of the Act, the rule or regulation adopted pursuant thereto of which the employer is in violation;
2. Cite the action which caused the violation;
3. Require compliance with the provision of the Act or the rules or regulations adopted pursuant thereto of which the employer is in violation; and
4. Give notice to the employer of the right to an adjudicatory hearing on the matters contained in the order and specify the procedures for requesting an adjudicatory hearing.

(b) A Notice of Civil Administrative Penalty Assessment may be issued separately or as part of an Administrative Order issued pursuant to N.J.S.A. 34:5A-31(b) requiring the alleged violator to take necessary action to comply with the Worker and Community Right to Know Act or a rule or regulation issued pursuant to the Act. Such Notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;
2. A concise statement of the facts alleged to constitute a violation;
3. A statement of the amount of the administrative penalty to be imposed; and
4. A statement of the employer's right to an adjudicatory hearing and notice of the procedure for requesting an adjudicatory hearing.

(c) The alleged violator shall have 20 calendar days from receipt of the Administrative Order and/or Notice of Civil Administrative Penalty Assessment within which to deliver a written request for an adjudicatory hearing to:

Office of Legal Affairs
Attention: Adjudicatory Hearings
Department of Environmental Protection
P.O. Box 402
Mail Code 401-07
401 East State Street, Seventh Floor
Trenton, New Jersey 08625-0402

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

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

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

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

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

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

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

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

7:1G-7.4 Compromise of penalties

(a) At his or her discretion, the Commissioner or his or her authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, in the

following circumstances and on the following terms and conditions:

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

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

7:1G-7.5 Alternative remedies

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

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

7:1G-7.6 (Reserved)

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

7:1G-7.7 Penalties

(a) This section establishes penalties for violations of the Act and this chapter. Violations are identified as minor or non-minor in accordance with N.J.S.A. 13:1D-125 et seq.

(b) The following violations are non-minor:

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

3. Failure of an employer to transmit a copy of the Community Right to Know Survey for each covered facility by March 1 of the year following the reporting year to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$500.00 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100.00 per day.

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

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

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

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

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

(c) The following violations are minor:

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

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

(d) The Department shall provide a grace period of 30 days for any violation identified as minor under (c) above, provided the following conditions are met:

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

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

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

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

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

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

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

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