

In (a), amended Department phone number and in (e)3, substituted "50" for "500" preceding "parts per million". Amended by R.2007 d.93, effective April 2, 2007. See: 38 N.J.R. 4285(a), 39 N.J.R. 1253(a).

Rewrote (c)5 and (d); in the introductory paragraph of (e), substituted "A" for "For the purposes of this section, a"; in (e)1, inserted "Facility"; and rewrote (e)1iii.

Case Notes

Commencing transfer operations of leaking gasoline in severe weather conditions that increased risk of discharge warranted civil administrative penalties. Department of Environmental Protection v. Stolt-Nielsen, 95 N.J.A.R.2d (EPE) 157.

7:1E-5.4 Notification of aircraft discharges

(a) In the case of a discharge of a hazardous substance used as fuel from an aircraft into the airspace over the lands or waters of New Jersey, any person responsible for a discharge shall notify the Department at (877) WARN DEP (927-6337). In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

(b) Any person responsible for a discharge who notifies the Department pursuant to (a) above shall report:

1. The person causing the discharge;
2. The amount of hazardous substance discharged;
3. The time the discharge occurred;
4. The location in the aircraft flight path of the discharge;
5. The wind speed and direction; and
6. The area likely to be affected by the discharge.

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

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

In (a), amended Department phone number.

7:1E-5.5 Notification of malfunctions in discharge detection systems

(a) The owner or operator of a major facility shall immediately notify the Department at (877) WARN DEP (927-6337) of any malfunction of a discharge detection or other discharge monitoring, prevention or safety system or device. In the event that this number is inoperable, any owner or operator of a major facility shall immediately notify the State Police at (609) 882-2000.

(b) Notification received by the Department pursuant to (a) above within 15 minutes of the time that the owner or operator knew, or reasonably should have known, of the occurrence of a malfunction shall be considered immediate. It shall be presumed that notification received by the Department more than 15 minutes after the owner or operator knew, or reasonably should have known, of the malfunction is not immediate. The owner or operator may rebut this presumption by satisfying the requirements of N.J.A.C. 7:1E-5.6.

(c) Within two hours of the initial notification, the owner or operator of a major facility shall notify the Department that one of the following situations exists:

1. The malfunction has been repaired;
2. An alternate discharge detection system has been activated for the equipment utilizing the malfunctioning system; or
3. The equipment protected by the discharge detection system has been taken out of service.

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

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

In (a), amended Department phone number.

7:1E-5.6 Justification of delay

(a) The Department, at its discretion, may determine that a period of longer than 15 minutes for initiating the notification of the Department of a discharge is immediate if the person responsible for the discharge can show, by clear and convincing evidence, that the notification of the Department was initiated as soon as possible or reasonable and that notification within 15 minutes was impossible or unreasonable because of:

1. Essential immediate response activities;
2. The circumstances under which the discharge occurred;
3. The circumstances under which the discharge was first discovered; or
4. Some other valid cause or reason.

(b) A person who does not initiate the notification of the Department of a discharge within 15 minutes and who desires to establish that the notification was as immediate as reasonably possible under the circumstances in which the discharge occurred, shall submit a sworn affidavit so attesting with the written confirmation report required by N.J.A.C. 7:1E-5.8. This affidavit shall set forth the circumstances of the discharge to establish that the notification of the Department was as immediate as reasonably possible under the circumstances in which the discharge occurred. The affidavit shall be signed by the person or persons required to sign any certifications pursuant to N.J.A.C. 7:1E-4.11, and shall include, but not be limited to, the following information:

1. The address of the facility at which the discharge occurred;
2. The date and time at which the discharge began and the date and time at which it ceased;
3. The name, job title, affiliation, business telephone number and business address of the individual who first discovered the discharge;
4. The date, the time, and the circumstances under which the discharge was first discovered;

5. The reason(s), if any, why the discharge was not immediately discovered;
6. The date and time which the discharge was first reported to the Department;
7. The name, business telephone number, and business address of the individual who first notified the Department of the discharge;
8. Any reason why initiation of notification of the Department within 15 minutes of the onset of the discharge was impossible or unreasonable; and
9. A demonstration that initiation of notification was carried out as soon as possible or reasonable.

7:1E-5.7 Discharge response

- (a) Any person responsible for a discharge shall:
 1. Take immediate action to stop the discharge;
 2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by either:
 - i. Following the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; or
 - ii. Remediating the discharge pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and
 3. Coordinate such actions with the Department.
- (b) No person shall apply chemicals to a discharge without the prior approval of the Department or the federal on-scene coordinator under the National Oil and Hazardous Substances Pollution Contingency Plan pursuant to 40 CFR 300, unless such application is necessary to prevent or mitigate a situation that poses a serious and imminent threat to human life. In any such situation of imminent threat to human life, the owner or operator shall make reasonable efforts to secure the approval of the Department or the federal on-scene coordinator before applying chemicals. Approval to apply chemicals may be obtained verbally, including by telephone. Application of chemicals pursuant to a DCR plan approved by the Department shall be deemed to have prior approval. Unauthorized use of chemicals shall be regarded as a discharge in violation of N.J.A.C. 7:1E-1.11.
- (c) Upon learning that a discharge of a hazardous substance has occurred, the Department may:
 1. Act to contain, mitigate, clean up and remove the discharge; or
 2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:
 - i. Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and

- ii. The Technical Rules for Site Remediation, N.J.A.C. 7:26E.

(d) The Department, at its discretion, may observe, supervise or participate in any aspect of containment, or cleanup and removal activities. In the exercise of its supervisory power, the Department may order any person to cease cleanup and removal activities and other discharge-related operations if it determines that the person is not capable of properly containing, cleaning up or removing a discharge, or if the Department determines that person is failing to conduct cleanup operations in a proper and expeditious manner.

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

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

Rewrote (a) and (c).

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

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

Deleted former (a)2i; recodified former (a)2ii as (a)2i; in (a)2i, deleted "the action plan in" following "Following" and substituted "or" for "and" at the end; added new (a)2ii; and in (b), inserted "Oil and Hazardous Substances Pollution".

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (a)2ii, substituted "Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C" for "Technical Rules for Site Remediation, N.J.A.C. 7:26E"; and in (c)2i, substituted "Administrative Requirements for" for "The Department Oversight of".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

Case Notes

Coverage under policy for damages insured became "legally obligated to pay" extended to costs of cleaning up environmental contamination for which Spill Compensation and Control Act imposed liability, even before issuance of agency directive or commencement of lawsuit making insured liable for those costs. *Metex Corp. v. Federal Ins. Co.*, 290 N.J.Super. 95, 675 A.2d 220 (A.D.1996).

Initial Decision (2006 N.J. AGEN LEXIS 300) adopted, which concluded that a penalty of \$20,000 was warranted for respondents' violation of N.J.A.C. 7:1E-5.7(a) by failing to remove and remediate discharged petroleum product from an underground storage tank on their property; although respondents had expended funds to retain environmental consultants and to investigate the contamination, they had failed to properly and completely clean up the contamination. *N.J. Dep't of Env'tl. Prot. v. Palermo's Thriftway Market*, OAL Dkt. No. EWR 402-02, 2006 N.J. AGEN LEXIS 550, Final Decision (May 26, 2006), aff'd per curiam, No. A-5560-05T5, 2007 N.J. Super. Unpub. LEXIS 2742 (App.Div. February 6, 2007).

7:1E-5.8 Confirmation report and recordkeeping

(a) Any owner or operator of a transmission pipeline or of a major facility who has notified the Department of a discharge from a regulated portion of the transmission pipeline or from a regulated portion of the major facility pursuant to N.J.A.C. 7:1E-5.3 shall send to the Department a written confirmation report within 30 days of said notification.

(b) (Reserved)

(c) Any person required to submit a confirmation report pursuant to (a) above shall include the following in the confirmation report:

1. The name, address and telephone number of the individual that reported the discharge pursuant to N.J.A.C. 7:1E-5.3;

2. The name, address and telephone number of the individual submitting the confirmation report if different from the individual identified in (c)1 above, and the relationship between said persons, such as employer-employee, or contractor-client;

3. The name, address and telephone number of each owner and operator of the facility at which the discharge occurred, or the vessel or vehicle from which the discharge occurred;

4. The Communications Center number, assigned by the Department when the discharge was reported pursuant to N.J.A.C. 7:1E-5.3(a);

3. The measures taken by the violator to mitigate the effects of the current offense and to prevent future offenses;

4. The deterrent effect of the penalty; or

5. Other specific circumstances of the violator or offense.

(c) The Department may assess a civil administrative penalty, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-9, for a person's violation of an obligation to cleanup and remove a discharge pursuant to N.J.A.C. 7:1E-5.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), inserted "(c) below and" preceding the N.J.A.C. references; added (c).

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

In (c), substituted "Sites rules" for "Sites rule" and deleted ".4 and 10.5" following "N.J.A.C. 7:26C-10".

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (c), substituted "Administrative Requirements for the Remediation" for "Department Oversight" and updated the first N.J.A.C. reference.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 300) adopted, which concluded that a penalty of \$20,000 was warranted for respondents' violation of N.J.A.C. 7:1E-5.7(a) by failing to remove and remediate discharged petroleum product from an underground storage tank on their property; although respondents had expended funds to retain environmental consultants and to investigate the contamination, they had failed to properly and completely clean up the contamination. N.J. Dep't of Env't. Prot. v. Palermo's Thriftway Market, OAL Dkt. No. EWR 402-02, 2006 N.J. AGEN LEXIS 550, Final Decision (May 26, 2006), aff'd per curiam, No. A-5560-05T5, 2007 N.J. Super. Unpub. LEXIS 2742 (App.Div. February 6, 2007).

7:1E-6.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any DPCC plan, DCR plan, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, regulation, plan, order or directive pursuant thereto.

(b) Each time the violator submits inaccurate or false information to the Department shall be an additional, separate, and distinct offense.

(c) Each day from the day that the violator knew or had reason to know that he or she had submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

(d) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, for each act or omission, is up to \$20,000 for the first offense, up to \$40,000 for the second offense, and up to \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, for each act or omission, is up to \$1,000 for the first offense, up to \$2,000 for the second offense, and up to \$5,000 for the third and each subsequent offense.

(e) A violation under this section is non-minor and therefore not subject to a grace period.

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

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

Added new (c); recodified former (c) as (d); and added (e).

7:1E-6.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, vessel or place, except private residences, by an authorized Department representative.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, vessel, or place, except private residences, by an authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section is up to \$10,000 for the first offense, up to \$20,000 for the second offense, and up to \$50,000 for the third and each subsequent offense.

(d) A violation under this section is non-minor and therefore not subject to a grace period.

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

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

In (b), inserted "vessel,"; and added (d).

7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) Civil administrative penalties for offenses described in (c)2 below shall not be assessed until the time allotted under the applicable schedule for upgrading approved by the Department has expired.

(b) Civil administrative penalties for offenses described in (c)2 below shall apply to major facilities only. All other civil administrative penalties shall apply to all persons.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section

on the basis of the provision violated and the frequency of the violation. Violations identified as minor or non-minor in accordance with N.J.S.A. 13:1D-125 et seq. are set forth in this section. The Department will provide a grace period for any violation identified as minor, in accordance with N.J.A.C. 7:1E-6.9. The number of each of the following paragraphs corresponds to the number of the corresponding subchapter in N.J.A.C. 7:1E.

1. The violations of N.J.A.C. 7:1E-1, General Provisions, and the civil administrative penalties for each violation are as set forth in the following table, unless modified by (d) below. In no case shall the assessed penalty be less than zero or more than the statutory limit.

<u>Citation</u>	<u>Minor³</u>	<u>Minor Days⁴</u>
N.J.A.C. 7:1E-1.11(a)	NM	

Base Penalty for each Violation

<u>Gallons</u>	<u>Penalty</u>
>0-9	\$ 500
10-55	\$ 1,000
56-499	\$ 2,000
500-999	\$ 3,000
1,000-4,999	\$ 5,000
5,000-9,999	\$ 7,500
10,000-19,999	\$ 10,000
20,000-29,999	\$ 15,000
30,000-39,999	\$ 20,000
40,000-49,999	\$ 25,000
50,000-59,999	\$ 30,000
60,000-69,999	\$ 35,000
70,000-79,999	\$ 40,000
80,000-89,999	\$ 45,000
90,000-99,999	\$ 50,000

<u>Gallons</u>	<u>Penalty</u>
100,000-149,999	\$ 75,000
150,000-199,999	\$ 100,000
200,000-299,999	\$ 200,000
300,000-399,999	\$ 400,000
400,000-499,999	\$ 800,000
500,000-599,999	\$ 1,000,000
600,000-699,999	\$ 2,000,000
700,000-799,999	\$ 3,000,000
800,000-899,999	\$ 4,000,000
900,000-999,999	\$ 5,000,000
1,000,000-1,999,999	\$ 6,000,000
2,000,000-2,999,999	\$ 7,000,000
3,000,000-3,999,999	\$ 8,000,000
4,000,000-4,999,999	\$ 9,000,000
5 million or greater	\$10,000,000

The base penalty shall be reduced or increased by applying the following factors¹:

Area of Impact:

Into waters of the State	-30% increase from base
Off the facility but not into waters of the State	-No change from base
Contained on the facility and not into waters of the state	-30% reduction from base

Discharge History (Number of discharges not contained on the facility within the previous 12 months):

Five or more discharges	-100% increase from base
1-4 discharges	-50% increase from base
Zero discharges	-No change from base

¹ The penalty for each violation is calculated by summing the base penalty and the resultant percentage of the base penalty for each of the applicable factors.

2. The violations of N.J.A.C. 7:1E-2, Prevention and Control of Discharges at Major Facilities, and the civil administrative penalty amounts for each violation are as set forth in the following table, unless revised pursuant to (d) below:

<u>Category of Offense²</u>	<u>Citation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third or Subsequent Offense</u>	<u>Minor³</u>	<u>Minor Days⁴</u>
No secondary containment for an aboveground storage tank	2.2(a)1	\$10,000	\$20,000	\$50,000	NM	
Failure to surface the base underlying a storage tank with impermeable material	2.2(a)2	\$ 5,000	\$10,000	\$15,000	NM	
Failure to equip a pipe with remotely activated or readily accessible valves	2.2(a)3	\$ 2,000	\$ 4,000	\$10,000	M	90
Improper design of heating coil system	2.2(c)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to equip storage with devices capable of detecting overfills and initiating shutdown mechanisms	2.2(d)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to equip storage tanks with a high liquid level pump cutoff device	2.2(d)1	\$ 5,000	\$10,000	\$25,000	M	30
Failure to equip storage tanks with direct communication	2.2(d)2	\$ 5,000	\$10,000	\$25,000	M	30
Failure to equip storage tanks with fast response systems	2.2(d)3	\$ 5,000	\$10,000	\$25,000	M	30
Failure to attend storage tanks of 2,000 gallons or less during filling	2.2(e)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to direct overfill or vent lines into appropriate holding areas	2.2(f)	\$10,000	\$20,000	\$50,000	NM	
Failure to locate mobile or portable storage tanks in areas protected by secondary containment	2.2(g)	\$ 5,000	\$10,000	\$25,000	NM	