

**CHAPTER 31
TOXIC CATASTROPHE PREVENTION
ACT PROGRAM**

Authority

N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., 13:1D-125 et seq.,
13:1K-19 et seq. and 26:2C-1 et seq.

Source and Effective Date

R.2009 d.85, effective February 9, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

Chapter Expiration Date

Chapter 31, Toxic Catastrophe Prevention Act Program, expires on
February 9, 2014.

Chapter Historical Note

Chapter 31, Toxic Catastrophe Prevention Act Program, except Subchapter 5, was adopted as R.1988 d.272, effective June 20, 1988 (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, Toxic Catastrophe Prevention Act Program, was readopted as R.1993 d.358, effective June 18, 1993. See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.1998 d.355, effective June 18, 1998. A new Subchapter 2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new Subchapter 6, Extraordinarily Hazardous Substances, was adopted, with N.J.A.C. 7:31-6.3 recodified from former N.J.A.C. 7:31-2.3, and former Subchapter 6, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was recodified as Subchapter 11; Subchapter 7, Risk Management Plan and TCPA Program Submission, was adopted, with N.J.A.C. 7:31-7.4 recodified from former N.J.A.C. 7:31-2.8; Subchapter 8, Other Federal Requirements, was adopted, with N.J.A.C. 7:31-8.2 recodified from former N.J.A.C. 7:31-2.12; Subchapter 9, Work Plan/EHSARA, was adopted; and former Appendices I and II were repealed by R.1998 d.355, effective July 20, 1998. See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.2003 d.335, effective July 14, 2003. See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

Petition for Rulemaking. See: 40 N.J.R. 1935(a), 2570(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 31, Toxic Catastrophe Prevention Act Program, was extended by gubernatorial directive from July 14, 2008 to August 13, 2008. See: 40 N.J.R. 4806(a).

Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.2009 d.85, effective February 9, 2009. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1	Incorporation by reference
7:31-1.2	Construction
7:31-1.3	Purpose
7:31-1.4	Incorporation by reference of the Code of Federal Regulations
7:31-1.5	State definitions
7:31-1.6	Severability
7:31-1.7	Practice where these rules do not govern
7:31-1.8	Document availability
7:31-1.9	Prohibitions
7:31-1.10	Prevention of catastrophic accidents
7:31-1.11	(Reserved)
7:31-1.11A	Fees
7:31-1.12	Release of information by insurance carriers

SUBCHAPTER 2. HAZARD ASSESSMENT

7:31-2.1	Incorporation by reference
7:31-2.2	Reactive hazard substance (RHS) hazard assessment

**SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A
PROGRAM 2 TCPA RISK MANAGEMENT
PROGRAM**

7:31-3.1	Incorporation by reference
7:31-3.2	Emergency response
7:31-3.3	Triennial reports
7:31-3.4	(Reserved)
7:31-3.5	Hazard review report
7:31-3.6	Inherently safer technology review

**SUBCHAPTER 4. MINIMUM REQUIREMENTS FOR A
PROGRAM 3 TCPA RISK MANAGEMENT
PROGRAM**

7:31-4.1	Incorporation by reference
7:31-4.2	Process hazard analysis with risk assessment for specific pieces of EHS equipment or operating alternatives
7:31-4.3	Standard operating procedures
7:31-4.4	EHS operator training
7:31-4.5	Mechanical integrity/preventive maintenance program
7:31-4.6	Management of change
7:31-4.7	Safety reviews: design and pre-startup
7:31-4.8	Emergency response
7:31-4.9	Annual reports
7:31-4.10	Obligations upon temporary discontinuance of EHS use, storage and handling
7:31-4.11	New covered processes—construction and new EHS service
7:31-4.12	Inherently safer technology review

SUBCHAPTER 5. EMERGENCY RESPONSE

7:31-5.1	Incorporation by reference
7:31-5.2	Emergency response program

**SUBCHAPTER 6. EXTRAORDINARILY HAZARDOUS
SUBSTANCES**

7:31-6.1	Incorporation by reference
7:31-6.2	Threshold quantity determination
7:31-6.3	Extraordinarily hazardous substance list

SUBCHAPTER 7. RISK MANAGEMENT PLAN AND TCPA PROGRAM SUBMISSION

- 7:31-7.1 Incorporation by reference
- 7:31-7.2 TCPA risk management plan submission and updates
- 7:31-7.3 Risk management program and RMP—initial evaluation
- 7:31-7.4 Transfer of risk management program
- 7:31-7.5 Schedule for risk management program implementation

SUBCHAPTER 8. OTHER FEDERAL REQUIREMENTS

- 7:31-8.1 Incorporation by reference
- 7:31-8.2 Audits and inspections

SUBCHAPTER 9. WORK PLAN/EHSARA

- 7:31-9.1 Work plan preparation
- 7:31-9.2 Generic scope of work
- 7:31-9.3 Selection of consultants
- 7:31-9.4 Proposal requirements
- 7:31-9.5 EHSARA report

SUBCHAPTER 10. CONFIDENTIALITY AND TRADE SECRETS

- 7:31-10.1 Scope and applicability
- 7:31-10.2 General provisions
- 7:31-10.3 Exclusions from confidential information and privileged trade secret or security information
- 7:31-10.4 Confidentiality claims
- 7:31-10.5 Determination of confidentiality claims
- 7:31-10.6 Petitions to withhold privileged trade secret or security information
- 7:31-10.7 Determinations of petitions to withhold privileged trade secret or security information
- 7:31-10.8 Maintaining the confidentiality and security of confidential information
- 7:31-10.9 Disclosure of confidential information
- 7:31-10.10 Wrongful access or disclosure
- 7:31-10.11 Use of confidential information in rulemaking, reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs, and enforcement proceedings

SUBCHAPTER 11. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

- 7:31-11.1 Authority and purpose
- 7:31-11.2 Procedures for issuance of administrative orders and assessment of civil administrative penalties and payment of such penalties
- 7:31-11.3 Procedures to request an adjudicatory hearing
- 7:31-11.4 Civil administrative penalty determination
- 7:31-11.5 Grace period applicability; procedures

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart A, including all future amendments and supplements except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR Part 68 Subpart A are not incorporated by reference: 40 CFR 68.2, Stayed provisions; 40 CFR 68.10(b) and (e), Applicability; and 40 CFR 68.12(b) and (c), General requirements.

(c) The following provisions of 40 CFR 68 Subpart A are incorporated by reference with the specified changes:

1. 40 CFR 68.1, Scope:

i. In the first and second sentences, delete the word “part” and replace with “chapter.”

ii. Delete the phrase, “the petition process for adding or deleting substances to the list of regulated substances” and replace with the word “and”.

iii. Delete the phrase, “and the state accidental release prevention programs approved under section 112(r).”

iv. Delete the sentence, “The list of substances, threshold quantities and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)1.”

2. 40 CFR 68.3, Definitions:

i. At the definition of “covered process,” delete “a regulated substance present in more than a threshold quantity as determined under § 68.115” and replace with “an EHS present as determined under N.J.A.C. 7:31-6.3. A petroleum refining process unit having an EHS present is considered a single covered process.”

ii. At the end of the definition of “petroleum refining process unit,” add “Each petroleum refining process unit having an EHS present is a single covered process.”

iii. Replace the definition of “threshold quantity” with “Threshold quantity means the quantity specified for EHSs pursuant to N.J.A.C. 7:31-6.”

iv. At the definition of “regulated substance,” delete “any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.”, and replace with, “an EHS listed in Table I, Parts A, B, C, or D of N.J.A.C. 7:31-6.3(a) and (c).”

v. Replace the definition of “owner or operator” with “Owner or operator means any person who owns, leases, operates, controls, or supervises a facility (stationary source).”

3. 40 CFR 68.10, Applicability:

i. At 40 CFR 68.10(a), delete the introductory paragraph, and replace with, “An owner or operator of a facility (stationary source) that uses, manufactures, stores or has the capability of producing at least the threshold quantity of an EHS as determined under N.J.A.C. 7:31-6 shall comply with the requirements of this Chapter. Determination of whether a threshold quantity is present at the facility shall be made using the sum of the EHS inventory of all covered processes at the facility. The EHS inventory of a covered process shall be the greatest of the instantaneous static inventory of the EHS contained and stored, the hourly generation rate of the EHS,

or the amount of the EHS that can be released in one hour from any EHS equipment within a covered process. The owner or operator shall comply no later than the latest of the following dates:”. At 40 CFR 68.10(a)(3), delete the phrase, “above a threshold quantity in a process” and replace with “at or above a threshold quantity at the facility.”

ii. At 40 CFR 68.10(a)1, delete June 21, 1999 and add the following, “the schedule set forth in N.J.A.C. 7:31-7.5.”

iii. After 40 CFR 68.10(a)(1)-(3), add another item, “For new covered processes, in accordance with the requirements at N.J.A.C. 7:31-4.11.”

iv. Replace 40 CFR 68.10(c) with, “A covered process is subject to Program 2 requirements if it does not meet Program 3 requirements. However, any covered process that is subject to Program 2 requirements shall, on or after March 16, 2010, be subject to only Program 3 requirements.

v. At 40 CFR 68.10(d), delete the phrase “if the process does not meet the requirements of paragraph (b) of this section, and”.

4. 40 CFR 68.12, General requirements:

i. At 40 CFR 68.12(a), delete the word “part” and replace with “chapter,” and add “with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2” after “68.150” and add “(b)” after “40 CFR 68.185.”

ii. At 40 CFR 68.12(c), change the following:

(1) At 40 CFR 68.12(c), add “with changes specified at N.J.A.C. 7:31-1.1(c)3iv” after “§ 68.10(c).”

(2) At 40 CFR 68.12(c)(1), add “with changes specified at N.J.A.C. 7:31-1.1(c)5” after “§ 68.15.”

(3) At 40 CFR 68.12(c)(2), delete the semicolon at the end of the sentence and add “, with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2 and N.J.A.C. 7:31-2.2.”

(4) At 40 CFR 68.21(c)(3), insert the phrase “with changes specified at N.J.A.C. 7:31-3.1(c)1-10 and N.J.A.C. 7:31-3.2 through 3.5” after “68.60,” and delete the semicolon at the end of the sentence and add “with changes specified at N.J.A.C. 7:31-4.1(c)1-23 and N.J.A.C. 7:31-4.2 through 4.11.”

(5) At 40 CFR 68.12(c)(4), insert “with changes specified at N.J.A.C. 7:31-5.1(c)1-4 and N.J.A.C. 7:31-5.2” between “§ 68.95” and the semicolon.

iii. At 40 CFR 68.12(d), change the following:

(1) At 40 CFR 68.12(d), after “§ 68.10(d)” add “with changes specified at N.J.A.C. 7:31-1.1(c)3v.”

(2) At 40 CFR 68.12(d)(1), add “with changes specified at N.J.A.C. 7:31-1.1(c)5” after “§ 68.15.”

(3) At 40 CFR 68.12(d)2, delete the semicolon at the end of the sentence and add “, with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2.”

(4) At 40 CFR 68.12(d)(3), delete the semicolon and add “with changes specified at N.J.A.C. 7:31-4.1(c)1-24 and N.J.A.C. 7:31-4.2 through 4.12.”

(5) At 40 CFR 68.12(d)(4), insert “with changes specified at N.J.A.C. 7:31-5.1(c)1-4 and N.J.A.C. 7:31-5.2” after “of this part;”.

5. At 40 CFR 68.15, Management, add the text as indicated in (c)5i and ii below and delete the text as indicated in (c)5iii and iv below:

i. The management system shall include a documentation plan which shall: (1) provide a list identifying all documentation required by this chapter including the document title, identification number, and storage location; and (2) describe how the owner or operator of a covered process will store, maintain and update all documentation required by this chapter.

ii. The management system shall provide a means of tracking and recording the EHS inventory at the facility against the Risk Management Plan registration quantity to ensure that the EHS registration quantity of each registered covered process is not exceeded.

iii. At 40 CFR 68.15(a), delete the phrase “of a stationary source.”

iv. At 40 CFR 68.15(a), delete “Program 2 and Program 3.”

Repeal and New Rule, R.1998 d.355, effective July 20, 1998.

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

Section was “Scope and applicability”.

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (c), substituted “Table I, Parts A, B, C, or D of N.J.A.C. 7:31-6.3(a) and (c)” for “Table I, Parts A, B, and C of N.J.A.C. 7:31-6.3” in 2iv, rewrote 3ii, inserted “and N.J.A.C. 7:31-2.2” in 4ii(3), and amended the N.J.A.C. references in 4ii(4) and 4iii(4).

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In (b), inserted “and (e)” and “and (c)” in (c)2i, substituted “present” for “inventory that meets or exceeds the threshold quantity”, and inserted the last sentence; rewrote (c)2ii and (c)2iii; added (c)2v; rewrote (c)3i, (c)3ii, (c)3iii and (c)3iv; and rewrote (c)5.

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;
9. Administrative penalties for those facilities which violate the Act, this chapter or any order or consent agreement issued pursuant thereto; and
10. The incorporation by reference of specified provisions of the Federal Chemical Accident Prevention Provisions at 40 CFR Part 68.

Amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
In (b), added 10.

7:31-1.4 Incorporation by reference of the Code of Federal Regulations

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (CFR) is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, publications and all future amendments and supplements are also incorporated by reference.

(b) When a provision of 40 CFR Part 68 is incorporated by reference, all internal references contained therein are also incorporated by reference for the purposes of that provision, unless otherwise noted. Each internal reference to 40 CFR Part 68 shall be interpreted to include, in addition to the

Federal citation, any changes or deletions to that citation by the corresponding State subchapter. For example, all references within the CFR to 40 CFR Part 68 shall include the changes, additions and deletions which N.J.A.C. 7:31 makes to 40 CFR Part 68.

(c) Provisions of the CFR which are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation which was specifically entirely excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference.

(d) Federal statutes and regulations that are cited in 40 CFR Part 68 that are not specifically adopted by reference shall be used to assist in interpreting the Federal regulations in 40 CFR Part 68.

(e) In the event that there are inconsistencies or duplications in requirements in the provisions incorporated by reference from 40 CFR Part 68 and the rules set forth in this chapter, the provisions incorporated by reference from 40 CFR Part 68 shall prevail, except where the rules set forth in this chapter are more stringent.

(f) Nothing in these provisions incorporated by reference from the CFR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Commissioner.

(g) Any future additional Subparts of 40 CFR Part 68 are incorporated by reference.

Repeal and New Rule, R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
Section was "Program information".

7:31-1.5 State definitions

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

"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 (LC₅₀); 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. LC₅₀, 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".

7:31-2.2 Reactive hazard substance (RHS) hazard assessment

(a) The owner or operator of a covered process in which an RHS or RHS mixture is used, handled, stored or generated shall perform and document a hazard assessment for the RHS in accordance with 40 CFR 68 Subpart B as incorporated by reference with changes at N.J.A.C. 7:31-2.1(c)1 and 2 and this section. As part of this hazard assessment:

1. The owner or operator shall consider the explosive/flammability hazard of the RHS.

2. For stationary sources that have multiple RHSs or RHS mixtures in covered process(es), the owner or operator shall report in the RMP the one worst-case release scenario that is estimated to create the greatest distance in any direction to the endpoint. The owner or operator shall report in the RMP additional worst-case release scenarios if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case scenario with the greatest endpoint distance.

3. The owner or operator shall identify, analyze, and report at least one alternative release scenario to represent all RHSs or RHS mixtures held in covered processes.

4. The owner or operator shall report in the RMP the RHS hazard assessment results in the RMP Offsite Consequence Analysis sections for flammable substances.

(b) The owner or operator shall use the following parameters and methods for the RHS hazard assessment:

1. Endpoint parameters: the endpoints for flammables listed at 40 CFR 68.22(a)(2);

2. Worst case release quantity: the maximum capacity of the largest process vessel containing an RHS or RHS mixture, not taking into account administrative controls that limit the maximum quantity;

3. A TNT-equivalent explosion method or any commercially or publicly available explosion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models upon request. When using a TNT-equivalent explosion method, the owner or operator shall use the following parameters:

- i. The heat of reaction of the RHS or RHS mixture;
- ii. One hundred percent of the potential heat release (heat of reaction) assumed to contribute to the explosion for an RHS mixture in a process vessel;
- iii. One hundred percent of the potential heat release (heat of reaction) assumed to contribute to the explosion

for a N.J.A.C. 7:31-6.3 Table I, Part D Group I RHS in a storage vessel but 28 percent of the heat of combustion may be used as an approximation if the detailed heat of reaction data is not available; and

4. All other parameters and calculation methods specified at 40 CFR 68 Subpart B as incorporated with changes at N.J.A.C. 7:31-2.1(c)1 and 2.

(c) An owner or operator having an RHS mixture containing one or more toxic or flammable EHS(s) listed in N.J.A.C. 7:31-6.3(a) Table I, Parts A, B, or C in a process above the threshold quantity who registered only the toxic or flammable EHS pursuant to N.J.A.C. 7:31-7.2(a)3iv shall be exempt from the requirement of this section to perform an additional hazard assessment for the RHS mixture.

New Rule, R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In (b)3iii, substituted "One hundred" for "Twenty-eight", and inserted "but 28 percent of the heat of combustion may be used as an approximation if the detailed heat of reaction data is not available".

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A PROGRAM 2 TCPA RISK MANAGEMENT PROGRAM

7:31-3.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart C, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions are incorporated by reference with the specified changes:

1. 40 CFR 68.48(a), Safety information, at the end add the following:

- i. Process flow diagrams and piping and instrumentation diagrams.
- ii. Reactivity data applicable to the process in which an EHS is being used, handled, stored or generated that includes the following:

(1) Flash point up to 200 degrees Fahrenheit (and method used), flammable limits (lower explosive limit and upper explosive limit), extinguishing media, special fire fighting procedures, and unusual fire and explosion hazards;

(2) Thermal and chemical stability information: stability (unstable or stable), conditions to avoid for instability, incompatibility (materials to avoid), hazardous decomposition (products or byproducts), haz-

ardous polymerization (may occur or will not occur), and conditions to avoid for polymerization;

(3) Thermodynamic and reaction kinetic data including: heat of reaction, temperature at which instability (uncontrolled reaction, decomposition, and/or polymerization) initiates, and rate of energy release at that temperature;

(4) Incidental formation of byproducts that are reactive and unstable; and

(5) Information showing the identity of toxic or flammable EHSs capable of being generated for individual RHSs listed at N.J.A.C. 7:31-6.3(a), Table I, Part D, Group I due to inadvertent mixing with incompatible substances, decomposition, and self-reaction.

2. 40 CFR 68.48(c), Safety information, delete the words "a major" and replace with the word "any" before the word "change."

3. 40 CFR 68.52, Operating procedures, beginning of heading, add the word "Standard." Also, at 40 CFR 68.52(a), add after the first sentence "Operating procedures shall be written in English in a manner that the EHS operators of the process can understand. If the EHS operators do not understand English, the operating procedures shall be written in a language the operators can understand."

4. 40 CFR 68.54, Training, beginning of heading, add "EHS operator" before "training."

5. 40 CFR 68.58(a), Compliance audits, after the first sentence, add, "Also, the owner or operator shall verify that the process technology and equipment, as built and operated, are in accordance with the safety information prepared pursuant to 40 CFR 68.48(a) and (b) as incorporated at N.J.A.C. 7:31-3.1(c)1."

6. 40 CFR 68.58(c), Compliance audits, after the first sentence add, "The compliance audit report shall also include the scope, audit techniques, methods used and the names of the audit participants."

7. 40 CFR 68.60(a), Incident investigation, delete the words "incident which resulted in, or could reasonably have resulted in, a catastrophic release" and replace with "EHS accident or potential catastrophic event."

8. 40 CFR 68.60(b), (c)(1), (c)(3) and (c)(4), Incident investigation, delete the word "incident" and replace with "EHS accident or potential catastrophic event."

9. At 40 CFR 68.50(c), Hazard review, add, after "document," "in a hazard review report prepared in accordance with N.J.A.C. 7:31-3.5."

10. 40 CFR 68.58(d), Compliance audits, after the first sentence, add, "The owner or operator shall prepare and include in the report a written schedule for implementation of corrective actions or state that such actions have been completed."

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (c), rewrote 1, 3 and 5, and added 9 and 10.

7:31-3.2 Emergency response

The owner or operator of a Program 2 covered process shall comply with the emergency response requirements of N.J.A.C. 7:31-5.

7:31-3.3 Triennial reports

(a) The owner or operator shall submit a triennial report to the Department reflecting the risk management program activities for the 36 month period ending on the anniversary date within 90 days of the third anniversary date, and each subsequent third anniversary date. The anniversary date shall be the date of the signing of the initial consent agreement or the date of issuance of an administrative order by the Department designating the approval of the risk management program for the stationary source. The Department shall change the anniversary date upon receipt of a written request from the owner or operator provided the anniversary date has not been changed in the preceding 24 months.

(b) The triennial report shall contain:

1. An update, if applicable, of the supplemental TCPA program information as specified in N.J.A.C. 7:31-7.2(a), if this supplemental information was not previously reported in a revised Risk Management Plan submittal. If there were no changes in the supplemental information since the last Risk Management Plan submittal, the owner or operator shall state this in the triennial report;

2. A description of significant changes to the management system; if there were no changes in the management system since the last triennial report, the owner or operator shall state this in the triennial report;

3. The hazard review report required at N.J.A.C. 7:31-3.5 for each hazard review completed during the previous three years. If there were no hazard review reports completed since the last triennial report, the owner or operator shall state this in the triennial report;

4. A summary of EHS accidents that occurred during the previous three years. If no EHS accidents occurred since the last triennial report, the owner or operator shall state this in the annual report. The summary of EHS accidents shall include:

i. The EHS involved and amount released if these facts can be reasonably determined based on the information obtained through the investigation;

ii. The date and time of the EHS accident and identification of the EHS equipment involved; and

iii. The basic and contributory causes;

5. The compliance audit report and documentation for the previous three years ending on the anniversary date

prepared pursuant to 40 CFR 68.58(c) and (d) incorporated with changes at N.J.A.C. 7:31-3.1(c)6 and 10; and

6. Each inherently safer technology review report completed pursuant to N.J.A.C. 7:31-3.6(b) and (f) during the previous three years.

Amended by R.2003 d.335, effective August 4, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

Rewrote (b); deleted (c).

Amended by R.2008 d.121, effective May 5, 2008.
See: 39 N.J.R. 1351(a), 40 N.J.R. 2254(a).

In (b)4iii, deleted "and" from the end; in (b)5, substituted "; and" for the period at the end; and added (b)6.

7:31-3.4 (Reserved)

Amended by R.2008 d.121, effective May 5, 2008.
See: 39 N.J.R. 1351(a), 40 N.J.R. 2254(a).

Added (e).

Repealed by R.2009 d.85, effective March 16, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

Section was "New covered processes—construction and new EHS service".

7:31-3.5 Hazard review report

(a) The owner or operator shall prepare a hazard review report which includes:

1. Identification of the covered process;
2. The date the hazard review was performed;
3. The date of the completed hazard review report;
4. The names, positions, and affiliation of the hazard review participants;
5. Documentation of the hazards associated with the process and regulated substances;
6. Documentation of the opportunities for equipment malfunctions or human errors that could cause an accidental release;
7. Documentation of the safeguards used or needed to control the hazards or prevent equipment malfunction or human error;
8. Documentation of any steps used or needed to detect or monitor releases; and
9. Documentation on the implementation of recommended corrective actions that includes a schedule for implementations and resolution and the status for completing the corrective actions.

(b) The owner or operator shall retain all hazard review reports and documentation for the life of the covered process.

New Rule, R.2003 d.335, effective August 4, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

7:31-3.6 Inherently safer technology review

(a) By September 2, 2008, for each covered process at the stationary source, the owner or operator shall complete an

initial inherently safer technology review pursuant to (c) through (e), below and shall prepare and submit to the Department an inherently safer technology review report pursuant to (f) below. An inherently safer technology review report completed pursuant to the Best Practices Standards at TCPA/DPCC Chemical Sector Facilities, November 21, 2005 <http://www.nj.gov/dep/rpp/brp/>, prior to May 5, 2008 may be submitted to comply with this requirement.

(b) The owner or operator shall update the inherently safer technology review submitted pursuant to (a) above on the same schedule as the hazard review updates required by 40 CFR 68.50(d) incorporated at N.J.A.C. 7:31-3.1(a) are updated for each covered process at the stationary source, including each new covered process brought on line since the date of the previous inherently safer technology review. The owner or operator shall address the inherently safer technologies that have been developed since the last inherently safer technology review. Unless an update for a major change is required pursuant to 40 CFR 68.50(d), incorporated at N.J.A.C. 7:31-3.1(a), the first inherently safer technology review update shall not be required until two years after the date of the initial inherently safer technology review.

(c) Each inherently safer technology review required by this section shall be conducted by a team of qualified experts convened by the owner or operator, whose members shall have expertise in environmental health and safety, chemistry, design and engineering, process controls and instrumentation, maintenance, production and operations, and chemical process safety.

(d) Each inherently safer technology review required by this section shall identify available inherently safer technology alternatives or combinations of alternatives that minimize or eliminate the potential for an EHS release. Using any available inherently safer technology analysis method, this review shall include, at a minimum, an analysis of the following principles and techniques:

1. Reducing the amount of EHS material that potentially may be released;
2. Substituting less hazardous materials;
3. Using EHSs in the least hazardous process conditions or form; and
4. Designing equipment and processes to minimize the potential for equipment failure and human error.

(e) Each inherently safer technology review required by this section shall include a determination of whether each of the inherently safer technologies identified pursuant to (d) above is feasible. For purposes of this determination, feasible means capable of being accomplished in a successful manner, taking into account environmental, public health and safety, legal, technological, and economic factors.

(f) The owner or operator shall prepare and submit to the Department a report that documents each inherently safer

technology review required by this section. The report shall include:

1. An identification of the covered process that is the subject of the review; a list of the review team members with name, position, affiliation, responsibilities, qualifications and experience for each; the date of report completion; and the inherently safer technology analysis method used to complete the review;
2. The questions asked and answered to address the inherently safer technology principles and techniques pursuant to (d) above;
3. A list of inherently safer technologies determined to be already present in the covered process;
4. A list of additional inherently safer technologies identified;
5. A list of the additional inherently safer technologies selected to be implemented and a schedule for their implementation;
6. A list of the inherently safer technologies determined to be infeasible; and
7. A written explanation justifying the infeasibility determination for each inherently safer technology determined to be infeasible. The owner or operator shall substantiate the infeasibility determination using a qualitative and quantitative evaluation of environmental, public health and safety, legal, technological, and economic factors.

(g) An owner or operator may file a claim with the Department pursuant to N.J.A.C. 7:31-10 to withhold from public disclosure confidential information included in an inherently safer technology review report required to be submitted to the Department pursuant to this section.

New Rule, R.2008 d.121, effective May 5, 2008.
See: 39 N.J.R. 1351(a), 40 N.J.R. 2254(a).

SUBCHAPTER 4. MINIMUM REQUIREMENTS FOR A PROGRAM 3 TCPA RISK MANAGEMENT PROGRAM

7:31-4.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart D, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions of 40 CFR 68 Subpart D are incorporated by reference with the specified changes:

1. 40 CFR 68.65(c)(1)(i), before "process flow diagram" delete "block flow diagram or simplified."

2. 40 CFR 68.65(d)(1)i, at the beginning, add the words "Equipment specifications including" before the existing words "Materials of construction";

3. 40 CFR 68.65(d)(1), at the end, add the following:

- i. Electrical one-line diagrams relevant to the covered process and its potential releases;
- ii. Site plan;
- iii. Firewater system piping diagrams relevant to the covered process and its potential releases;
- iv. Sewer system piping diagrams relevant to the covered process and its potential releases; and
- v. External forces and events data.

4. 40 CFR 68.65(d)(2), after "good engineering" add "and operating".

5. 40 CFR 68.67, Process hazard analysis, in the heading, after "Process hazard analysis" add "with risk assessment for specific pieces of EHS equipment or operating procedures."

6. 40 CFR 68.67(a), add the following:

- i. In the first and second sentences, after the phrase "process hazard analysis" add the phrase "with risk assessment."
- ii. In the third sentence, after the phrase "process hazard analyses" add the phrase "with risk assessments."
- iii. In the third sentence, after the word "employees" add the phrase "and offsite public."
- iv. In the fourth sentence, after the phrase "process hazard analysis" add the phrase "with risk assessment."
- v. In the fifth sentence, after the citation "29 CFR 1910.119(e)" add the phrase "prior to June 21, 1999."
- vi. In the fifth sentence, after the phrase "initial process hazard analyses" add the phrase "with risk assessments."

7. 40 CFR 68.67(f), add the following:

- i. In the first sentence, after the first and the second occurrences of the phrase "process hazard analysis" add the phrase "(with risk assessment)."
- ii. In the first sentence, after the third occurrence of the phrase "process hazard analysis" add the phrase "with risk assessment."
- iii. In the second sentence after "29 CFR 1910.119(e)" add the phrase, "and the additional requirements of N.J.A.C. 7:31-4.2".

8. 40 CFR 68.69, Operating procedures, in the heading, add "Standard" before "operating procedures." Also, at 40 CFR 68.69(a), Operating Procedures, at the end of the

submission of updates to the Department shall be in accordance with 40 CFR 68.190(b) and N.J.A.C. 7:31-7.2.”

5. 40 CFR 68.190(b) Updates, after “§ 68.150” add “with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2.”

6. 40 CFR 68.190(c), after EPA, add “and the Department.”

7. 40 CFR 68.150(b)(3), delete “above a threshold quantity in a process” and replace with “at or above a threshold quantity at the facility.”

8. 40 CFR 68.160(b)(7), in the phrase, “For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process,” replace “above the threshold quantity in the process” with “at or above the threshold quantity at the facility.”

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (c), substituted “end” for “beginning” in 1, rewrote 2 and 4, and added 6.

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In the introductory paragraph of (c), deleted a comma following “Subpart G”; and added (c)7 and (c)8.

7:31-7.2 TCPA risk management plan submission and updates

(a) All owners or operators shall submit the following to the Department in a format to be specified:

1. All documents required by 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2;

2. The following supplemental TCPA program information:

i. Identification of the position titles, expertise and affiliation of the persons involved with the development of each element of the risk management program;

ii. A description and profile of the area in which the covered process is situated, including its proximity to population and water supplies;

iii. Identification of insurance carriers underwriting the stationary source’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; and

iv. Identification of the extraordinarily hazardous substances inventory at the covered process as end products, intermediate products, byproducts or waste products; and

3. The owner or operator shall identify and register each covered process having an individual RHS or an RHS mixture and provide the following information in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a):

i. For each individual RHS listed at N.J.A.C. 7:31-6.3(a), Table I, Part D, Group I, the owner or operator shall register the total amount of the individual RHS in the covered process.

ii. For each regulated RHS mixture identified pursuant to N.J.A.C. 7:31-6.3, the owner or operator shall register the maximum capacity of the process vessel containing the RHS mixture. Administrative controls that limit the maximum quantity in the reaction vessel shall not be taken into account. For a covered process that has multiple process vessels containing an RHS mixture at or above the threshold quantity, the owner or operator shall register the total combined capacity of the process vessels.

iii. For RHS mixtures, the heat of reaction range in calories/gram as listed at Table II of N.J.A.C. 7:31-6.3(c). If more than one RHS mixture is present in the process vessel at different times, the owner or operator shall register the RHS mixture having the highest heat of reaction range as shown on N.J.A.C. 7:31-6.3(c) Table II.

iv. For RHS mixtures containing one or more EHS(s) listed in Parts A, B, or C of N.J.A.C. 7:31-6.3(a) Table I, at or above the threshold quantity at the facility, an owner or operator shall register the EHS listed on Part A, B or C as a toxic or flammable substance, as applicable, and the RHS mixture.

(b) In addition to updates required by N.J.A.C. 7:31-7.1(c)3 through 5, all owners or operators shall submit a correction to the Department within 60 days of an increase in maximum inventory of a covered process.

(c) The owner or operator shall submit to the Department a Risk Management Plan correction within one month of a change in the qualified person or position.

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (a), substituted “All” for “Prior to June 21, 1999 all” in the introductory paragraph and added 2v and 3; in (b), substituted “60 days” for “six months”.

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In the introductory paragraph of (a), deleted “of a covered process” following “operators”; in (a)2iii, inserted “and” at the end; deleted (a)2v; in (a)3iii, deleted “of a mixture” following “calories/gram”; rewrote (a)3iv and (b); and added (c).

7:31-7.3 Risk management program and RMP—initial evaluation

(a) All RMPs submitted in accordance with this subchapter shall be reviewed by the Department to determine if they comply with the requirements of 40 CFR 68.150-185 with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 and 7.2.

(b) The RMPs and risk management programs of owners or operators that have an existing approved risk management program at their stationary source shall be audited or in-

spected in accordance with N.J.A.C. 7:31-8 for the covered processes that are already part of the approved risk management program and also for the newly regulated covered processes.

(c) The RMPs of owners or operators that do not have an approved risk management program at their facility shall be reviewed by the Department to determine whether the facility has an established risk management program. Owners or operators that have at least one process hazard analysis (for Program 3 covered processes) shall be determined to have an established risk management program and shall be notified and audited or inspected in accordance with N.J.A.C. 7:31-8.

(d) Approval of the risk management program for owners or operators who are audited pursuant to (c) above shall be the signing of the consent agreement or implementation of corrective actions required by the administrative order issued pursuant to N.J.A.C. 7:31-8.1(c)9.

(e) Owners or operators that do not have an approved risk management program at their facility and that the Department determines do not have an established risk management program shall be notified that they are subject to workplan in accordance with N.J.A.C. 7:31-9.

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

Rewrote (b) and (c); and in (e), substituted "facility" for "stationary source".

7:31-7.4 Transfer of risk management program

(a) In the event of the transfer of the covered process to a new owner or operator, change in ownership or the name of an owner or operator, the new owner or operator shall, before operating EHS equipment, adopt the existing, or obtain a new, approved TCPA Risk Management Program for the covered process.

(b) A new owner or operator shall adopt an existing approved TCPA Risk Management Program by submitting an updated registration in accordance with this subchapter and signing an addendum 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).

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

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

Rewrote the section.

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In (a) and (b), deleted "Program 2 or Program 3" preceding "TCPA".

7:31-7.5 Schedule for risk management program implementation

(a) Owners or operators having an approved risk management program shall comply with their approved risk management program for EHSs listed in N.J.A.C. 7:31-6.3, Table I, Parts A, B, C, or D until the risk management program is

revised to reflect the new requirements of this chapter, which shall be no later than March 16, 2010.

(b) All owners or operators of facilities having listed EHSs on N.J.A.C. 7:31-6.3(a), Table I, Part D, at or above threshold quantities, shall be in compliance with this chapter by September 30, 2004, except that all owners or operators having, as of March 16, 2009, reactive hazard substance mixtures subject to this chapter with functional group number 44 on N.J.A.C. 7:31-6.3(a), Table 1, Part D, Group II, and all owners or operators having, as of March 16, 2009, reactive hazardous substance mixtures subject to this chapter based on the calculation of the heat of reaction of the RHS mixture excluding solvents under N.J.A.C. 7:31-6.3(b)2, at or above threshold quantities shall be in compliance with this chapter no later than March 16, 2010.

(c) Owners or operators planning to put into EHS service a new covered process for an EHS listed in N.J.A.C. 7:31-6.3, Table I, Parts A, B and/or C shall comply with N.J.A.C. 7:31-4.11 for Program 3 covered processes.

(d) Owners or operators planning to put into EHS service a new covered process for an EHS listed in N.J.A.C. 7:31-6.3, Table I, Part D on or after September 30, 2004, shall comply with N.J.A.C. 7:31-4.11 for Program 3 covered processes.

(e) Owners or operators of facilities having propane (CAS No. 74-98-6), propylene (CAS No. 115-07-1), butanes (normal butane (CAS No. 106-97-8) or isobutane (CAS No. 75-28-5), or butylenes (1-butene (CAS No. 106-98-9), 2-butene (CAS No. 107-01-7), butene (CAS No. 25167-67-3), 2-butene-cis (CAS No. 590-18-1), 2-butene-trans (CAS No. 624-64-6), and 2-methylpropene (CAS No. 115-11-7)) listed at N.J.A.C. 7:31-6.3(a), at Table I, Part C, at or above threshold quantities shall be in compliance with this chapter no later than March 16, 2010.

(f) Owners or operators of facilities having individual RHSs listed in N.J.A.C. 7:31-6.3, Table I, Part D, Group I, that are received, stored and handled in combination with one or more other chemical substances specifically formulated to inhibit the reactive hazard (such as water reactivity, pyrophoric, or self-reacting) where the RHS is at or above the threshold quantity shall be in compliance with this chapter no later than March 16, 2010.

(g) As of March 16, 2009, owners or operators having an approved risk management program for EHSs listed in N.J.A.C. 7:31-6.3, Table I, Parts A, B, C, or D shall comply with the process hazard analysis with risk assessment requirements of 40 CFR 68.67 with changes specified at N.J.A.C. 7:31-4.1(c) and 4.2.

(h) All owners or operators that, as of March 16, 2009, are subject to this chapter based on the threshold quantity at the facility as provided at 40 CFR 68.10 with changes specified at N.J.A.C. 7:31-1.1(c)3 shall be in compliance with this chapter no later than March 16, 2010.

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

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

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

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

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

Administrative change in (c).

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

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

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

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

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

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

7:31-11.4 Civil administrative penalty determination

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

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

(c) The Department shall determine the amount of the civil administrative penalty for the offenses described in Table III below on the basis of the category of offense, the frequency of the violation, the type of violation as minor (M) or non-minor (NM), and the applicable grace period if the violation is minor, as follows:

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

Categories of Offense	Cite	First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
1. Failure to comply with the requirements of 40 CFR 68 as incorporated at N.J.A.C. 7:31 by the schedule set forth in N.J.A.C. 7:31-7.5.	40 CFR 68.10(a)(1), N.J.A.C. 7:31-1.1(c)3i and ii	2,000	4,000	10,000	NM	
2. Failure to comply with the requirements of 40 CFR 68 as incorporated at N.J.A.C. 7:31 within three years after the date on which a regulated substance is first listed at 40 CFR 68.130.	40 CFR 68.10(a)(2), N.J.A.C. 7:31-1.1(c)3i	2,000	4,000	10,000	NM	
3. Failure to comply with the requirements of 40 CFR 68 as incorporated at N.J.A.C. 7:31 no later than the date on which a regulated substance is first present at a threshold quantity in a process.	40 CFR 68.10(a)(3), N.J.A.C. 7:31-1.1(c)3i	2,000	4,000	10,000	NM	
4. Failure to comply with the requirements of 40 CFR 68 as incorporated at N.J.A.C. 7:31 for new covered processes in accordance with the requirements at N.J.A.C. 7:31-4.11.	40 CFR 68.10(a), N.J.A.C. 7:31-1.1(c)3iii	1,000	2,000	5,000	NM	
5.-8. (Reserved.)						
9. Failure to submit a single RMP, as provided in 40 CFR 68.150 to 40 CFR 68.185(b) with changes specified at N.J.A.C. 7:31-7.1(c). or Failure to include in the RMP a registration that reflects all covered processes.	40 CFR 68.12(a), N.J.A.C. 7:31-1.1(c)4i	5,000	10,000	25,000	NM	
10. Failure to develop and implement a management system for a Program 2 covered process as provided in 40 CFR 68.15 with changes specified at N.J.A.C. 7:31-1.1(c)5 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(c)(1), N.J.A.C. 7:31-1.1(c)4ii(1) and (2)	4,000	8,000	20,000	NM	
11. Failure to conduct a hazard assessment as provided in 40 CFR 68.20 through 68.42, incorporated with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2 and N.J.A.C. 7:31-2.2 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(c)(2), N.J.A.C. 7:31-1.1(c)4ii(1) and (3)	6,000	12,000	30,000	NM	

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
12. Failure to implement the Program 2 prevention steps provided in 40 CFR 68.48 through 40 CFR 68.60 incorporated with changes specified at N.J.A.C. 7:31-3.1(c)1 through 10 and N.J.A.C. 7:31-3.2 through 3.5 or implement the Program 3 prevention steps provided in 40 CFR 68.65 through 68.87, incorporated with changes specified at N.J.A.C. 7:31-4.1(c)1 through 23 and N.J.A.C. 7:31-4.2 through 4.11, in addition to meeting the requirements of 40 CFR 68.12(a) incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(c)(3), N.J.A.C. 7:31-1.1(c)4ii(1) and (4)	1,000	2,000	5,000	NM	
13. Failure to develop and implement an emergency response program as provided in 40 CFR 68.90 to 68.95 incorporated with changes specified at N.J.A.C. 7:31-5.1(c)1 through 4 and N.J.A.C. 7:31-5.2 in addition to meeting the requirements of 40 CFR 68.12(a) incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(c)(4), N.J.A.C. 7:31-1.1(c)4ii(1) and (5)	4,000	8,000	20,000	NM	
14. Failure to submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in 40 CFR 68.170 as incorporated at N.J.A.C. 7:31-7.1(a) in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(c)(5), N.J.A.C. 7:31-1.1(c)4ii(1) and (5)	500	1,000	2,500	NM	
15. Failure to develop and implement a management system for a Program 3 covered process as provided in 40 CFR 68.15 with changes specified at N.J.A.C. 7:31-1.1(c)5 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(d)(1), N.J.A.C. 7:31-1.1(c)4iii(1) and (2)	4,000	8,000	20,000	NM	
16. Failure to conduct a hazard assessment as provided in 40 CFR 68.20 through 68.42 with changes specified at N.J.A.C. 7:31-2.1(c)1 and 2 and N.J.A.C. 7:31-2.2 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(d)(2), N.J.A.C. 7:31-1.1(c)4iii(1) and (3)	6,000	12,000	30,000	NM	
17. Failure to implement the prevention requirements of 40 CFR 68.65 through 68.87 with changes specified at N.J.A.C. 7:31-4.1(c)1 through 24 and N.J.A.C. 7:31-4.2 through 4.11 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(d)(3), N.J.A.C. 7:31-1.1(c)4iii(1) and (4)	1,000	2,000	5,000	NM	
18. Failure to develop and implement an emergency response program as provided in 40 CFR 68.90 to 68.95 incorporated with changes specified at N.J.A.C. 7:31-5.1(c)1 through 4 and N.J.A.C. 7:31-5.2 in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(d)(4), N.J.A.C. 7:31-1.1(c)4iii(1) and (5)	4,000	8,000	20,000	NM	
19. Failure to submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 CFR 68.175 as incorporated at N.J.A.C. 7:31-7.1(a) in addition to meeting the requirements of 40 CFR 68.12(a) as incorporated at N.J.A.C. 7:31-1.1(c)4.	40 CFR 68.12(d)(5), N.J.A.C. 7:31-1.1(c)4iii(1)	500	1,000	2,500	NM	
20. Failure to develop a management system to oversee the implementation of the risk management program elements for covered processes.	40 CFR 68.15(a), N.J.A.C. 7:31-1.1(c)5iv	4,000	8,000	20,000	NM	
21. Failure to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.	40 CFR 68.15(b), N.J.A.C. 7:31-1.1(a)	1,000	2,000	5,000	NM	

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
96. Failure to document a hazard assessment for a covered process in which an RHS or RHS Mixture is used, handled, or stored in accordance with 40 CFR 68 Subpart B as incorporated with changes at N.J.A.C. 7:31-2.1(c)1 and 2 and N.J.A.C. 7:31-2.2.	N.J.A.C. 7:31-2.2(a)	1,000	2,000	5,000	NM	
97. Failure to consider the explosive flammability hazard of an RHS in the hazard assessment.	N.J.A.C. 7:31-2.2(a)1	500	1,000	2,500	NM	
98. Failure to report in the RMP the one worst-case scenario that is estimated to create the greatest distance in any direction to the endpoint for stationary sources that have multiple RHSs or RHS Mixtures in covered process(es). or Failure to report in the RMP additional worst-case release scenarios for stationary sources that have multiple RHSs or RHS Mixtures in covered process(es) if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case scenario with the greatest endpoint distance.	N.J.A.C. 7:31-2.2(a)2	4,000	8,000	20,000	NM	
99. Failure to identify, analyze, and report in the hazard assessment at least one alternative release scenario to represent all RHSs or RHS Mixtures held in covered processes.	N.J.A.C. 7:31-2.2(a)3	4,000	8,000	20,000	NM	
100. Failure to report in the RMP the RHS hazard assessment results in the RMP Offsite Consequence Analysis sections for flammable substances.	N.J.A.C. 7:31-2.2(a)4	2,000	4,000	10,000	NM	
101. Failure to use the endpoints for flammables listed at 40 CFR 68.22(a)(2) as the endpoint parameter for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)1	500	1,000	2,500	NM	
102. Failure to use the maximum capacity of the largest process vessel containing an RHS or RHS mixture, not taking into account administrative controls that limit the maximum quantity, as the worst case release quantity for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)2	4,000	8,000	20,000	NM	
103. Failure to use a TNT-equivalent explosion method or any commercially or publicly available explosion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices, for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)3	4,000	8,000	20,000	NM	
104. Failure to use the heat of reaction of the RHS or RHS Mixture when using a TNT-equivalent explosion method for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)3i	4,000	8,000	20,000	NM	
105. Failure to use 100 percent of the potential heat release (heat of reaction) assumed to contribute to the explosion for an RHS Mixture in a process vessel when using a TNT-equivalent explosion method for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)3ii	4,000	8,000	20,000	NM	
106. Failure to use 100 percent of the potential heat release (heat of reaction) assumed to contribute to the explosion for an RHS Mixture in a process vessel when using a TNT-equivalent explosion method for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)3iii	4,000	8,000	20,000	NM	
107. Failure to use all other parameters and calculation methods specified at 40 CFR 68 Subpart B as incorporated with changes at N.J.A.C. 7:31-2.1(c)1 and 2 as the parameters for the RHS hazard assessment.	N.J.A.C. 7:31-2.2(b)4	2,000	4,000	10,000	NM	

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108. Failure to include Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g) in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a)(1), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
109. Failure to include the maximum intended inventory of equipment in which the regulated substances are stored or processed in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a)(2), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
110. Failure to include safe upper and lower temperatures, pressures, flows, and compositions in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a)(3), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
111. Failure to include equipment specifications in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a)(4), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
112. Failure to include codes and standards used to design, build, and operate the process in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a)(5), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
113. Failure to include process flow diagrams and piping and instrumentation diagrams in the up-to-date safety information required to be compiled and maintained for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)1i	2,000	4,000	10,000	NM	
114. Failure to include flash point up to 200 degrees Fahrenheit (and method used), flammable limits (lower explosive limit and upper explosive limit), extinguishing media, special fire fighting procedures, and unusual fire and explosion hazards in the reactivity data applicable to the process in which an EHS is used, handled, stored or generated required to be compiled and maintained in the up-to-date-safety information for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)1ii(1)	2,000	4,000	10,000	NM	
115. Failure to include thermal and chemical stability information: stability (unstable or stable), conditions to avoid (for instability), incompatibility (materials to avoid), hazardous decomposition (products or byproducts), hazardous polymerization (may occur or will not occur), and conditions to avoid (for polymerization) in the reactivity data applicable to the process in which an EHS is used, handled, stored or generated required to be compiled and maintained in the up-to-date-safety information for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)1ii(2)	2,000	4,000	10,000	NM	
116. Failure to include thermodynamic and reaction kinetic data including: heat of reaction, temperature at which instability (uncontrolled reaction, decomposition, and/or polymerization) initiates, and energy release rate data in the reactivity data applicable to the process in which an EHS is used, handled, stored or generated required to be compiled and maintained in the up-to-date-safety information for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)1ii(3)	2,000	4,000	10,000	NM	
117. Failure to include incidental formation of byproducts that are reactive and unstable in the reactivity data applicable to the process in which an EHS is used, handled, stored or generated required to be compiled and maintained in the up-to-date-safety information for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)1ii(4)	2,000	4,000	10,000	NM	

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118. Failure to include information showing the identity of toxic or flammable EHSs capable of being generated for individual RHSs listed at N.J.A.C. 7:31-6.3(a) Table I, Part D, Group I due to inadvertent mixing with incompatible substances, decomposition, and self-reaction in the reactivity data applicable to the process in which an EHS is used, handled, stored or generated required to be compiled and maintained in the up-to-date-safety information for the regulated substances, processes, and equipment.	40 CFR 68.48(a), N.J.A.C. 7:31-3.1(c)lii(5)	2,000	4,000	10,000	NM	
119. Failure to ensure that a process is designed in compliance with recognized and generally accepted good engineering practices. or Failure to comply with Federal or state regulations that address industry-specific safe design or industry-specific design codes and standards.	40 CFR 68.48(b), N.J.A.C. 7:31-3.1(a)	5,000	10,000	25,000	NM	
120. Failure to update the safety information for a change to a covered process that made the safety information inaccurate.	40 CFR 68.48(c), N.J.A.C. 7:31-3.1(c)2	500	1,000	2,500	NM	
121. Failure to conduct a hazard review that identifies the hazards associated with a regulated substance, process, or procedures.	40 CFR 68.50(a)(1), N.J.A.C. 7:31-3.1(a)	4,000	8,000	20,000	NM	
122. Failure to conduct a hazard review that identifies the opportunities for equipment malfunctions or human errors that could cause an accidental release.	40 CFR 68.50(a)(2), N.J.A.C. 7:31-3.1(a)	4,000	8,000	20,000	NM	
123. Failure to conduct a hazard review that identifies the safeguards used or needed to control a hazard or prevent equipment malfunction or human error.	40 CFR 68.50(a)(3), N.J.A.C. 7:31-3.1(a)	4,000	8,000	20,000	NM	
124. Failure to conduct a hazard review that identifies any steps used or needed to detect or monitor releases.	40 CFR 68.50(a)(4), N.J.A.C. 7:31-3.1(a)	4,000	8,000	20,000	NM	
125. Failure to determine in a hazard review, by inspecting all equipment, whether the process is designed, fabricated, or operated in accordance with the applicable industry standards or Federal or state design rules, for processes designed to meet those standards or rules.	40 CFR 68.50(b), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
126. Failure to document the results of a hazard review in a hazard review report prepared in accordance with N.J.A.C. 7:31-3.6 or ensure that problems identified are resolved in a timely manner.	40 CFR 68.50(c), N.J.A.C. 7:31-3.1(c)9	2,000	4,000	10,000	NM	
127. Failure to update a hazard review at least once every five years.	40 CFR 68.50(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
128. Failure to conduct a hazard review for a major change in a process.	40 CFR 68.50(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
129. Failure to resolve all issues identified in the hazard review before startup of a changed process.	40 CFR 68.50(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
130. Failure to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. or Failure to write operating procedures in a manner and language that the EHS operators of a process are capable of understanding.	40 CFR 68.52(a); N.J.A.C. 7:31-3.1(c)3	4,000	8,000	20,000	NM	
131. Failure to address initial startup in the operating procedures.	40 CFR 68.52(b)(1), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
132. Failure to address normal operations in the operating procedures.	40 CFR 68.52(b)(2), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	

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133. Failure to address temporary operations in the operating procedures.	40 CFR 68.52(b)(3), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
134. Failure to address emergency shutdown and operations in the operating procedures.	40 CFR 68.52(b)(4), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
135. Failure to address normal shutdown in the operating procedures.	40 CFR 68.52(b)(5), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
136. Failure to address startup following a normal or emergency shutdown or a major change that requires a hazard review in the operating procedures.	40 CFR 68.52(b)(6), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
137. Failure to address the consequences of deviations and steps required to correct or avoid deviations in the operating procedures.	40 CFR 68.52(b)(7), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
138. Failure to address equipment inspections in the operating procedures.	40 CFR 68.52(b)(8), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
139. Failure to ensure that the operating procedures were updated, if necessary, when a major change occurred and prior to startup of the changed process.	40 CFR 68.52(c), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
140. Failure to ensure that each employee operating a process or each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in 40 CFR 68.52 incorporated at N.J.A.C.7:31-3.1(a) that pertain to their duties. or Failure to certify in writing that the employee already operating a process on June 21, 1999 has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.	40 CFR 68.54(a), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
141. Failure to provide refresher training at least every three years, and more often as necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. or Failure to determine the appropriate frequency of refresher training in consultation with the employees operating the process.	40 CFR 68.54(b), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
142. Failure to ensure that operators are trained in updated or new procedures prior to startup of a process after a major change.	40 CFR 68.54(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
143. Failure to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment.	40 CFR 68.56(a), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
144. Failure to train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of a process. or Failure to train each such employee in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks to ensure that the employee can perform the job tasks in a safe manner.	40 CFR 68.56(b), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
145. Failure to require a maintenance contractor to ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under 40 CFR 68.56(a) incorporated at N.J.A.C. 7:31-3.1(a).	40 CFR 68.56(c), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	

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146. Failure to perform or cause to be performed inspections and tests on process equipment. or Failure to follow recognized and generally accepted good engineering practices when performing inspection and testing procedures. or Failure to make the frequency of inspections and tests of process equipment consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, or prior operating experience.	40 CFR 68.56(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
147. Failure to conduct a compliance audit and certify at least every three years that compliance with the provisions of 40 CFR 40 Subpart C as incorporated at N.J.A.C. 7:31-3 has been evaluated in order to verify that the procedures and practices developed under the rule are adequate and are being followed. or Failure to verify that the process technology and equipment, as built and operated, are in accordance with the safety information prepared pursuant to 40 CFR 68.48(a) and (b) as incorporated with changes at N.J.A.C. 7:31-3.1(c)1.	40 CFR 68.58(a), N.J.A.C. 7:31-3.1(c)5	5,000	10,000	25,000	NM	
148. Failure to conduct a compliance audit with at least one person knowledgeable in the process.	40 CFR 68.58(b), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
149. Failure to develop a report of the audit findings that includes the scope, audit techniques, methods used or the names of the audit participants.	40 CFR 68.58(c), N.J.A.C. 7:31-3.1(c)6	1,000	2,000	5,000	NM	
150. Failure to promptly determine and document an appropriate response to each of the findings of a compliance audit or document that deficiencies found during the audit have been corrected. or Failure to prepare and include in the compliance audit report a written schedule for the implementation of corrective actions or state that such actions have been completed.	40 CFR 68.58(d), N.J.A.C. 7:31-3.1(c)10	1,000	2,000	5,000	NM	
151. Failure to retain the two most recent compliance audit reports.	40 CFR 68.58(e), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
152. Failure to investigate each EHS accident or potential catastrophic event.	40 CFR 68.60(a), N.J.A.C. 7:31-3.1(c)7	5,000	10,000	25,000	NM	
153. Failure to initiate an EHS accident or potential catastrophic event investigation as promptly as possible, but not later than 48 hours following the incident.	40 CFR 68.60(b), N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000	NM	
154. Failure to prepare a summary at the conclusion of an investigation which includes the date of an EHS accident or potential catastrophic event.	40 CFR 68.60(c)(1), N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000	NM	
155. Failure to prepare a summary at the conclusion of an investigation of an EHS accident or potential catastrophic event which includes the date the investigation began.	40 CFR 68.60(c)(2), N.J.A.C. 7:31-3.1(c)7	1,000	2,000	5,000	NM	
156. Failure to prepare a summary at the conclusion of an investigation which includes a description of the EHS accident or potential catastrophic event.	40 CFR 68.60(c)(3), N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000	NM	
157. Failure to prepare a summary at the conclusion of an investigation of an EHS accident or potential catastrophic event which includes the factors that contributed to the EHS accident or potential catastrophic event.	40 CFR 68.60(c)(4), N.J.A.C. 7:31-3.1(c)8	1,000	2,000	5,000	NM	

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158. Failure to prepare a summary at the conclusion of an EHS accident or potential catastrophic event investigation which includes any recommendations resulting from the investigation.	40 CFR 68.60(c)(5), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
159. Failure to promptly address and resolve the EHS accident or potential catastrophic event investigation findings and recommendations. or Failure to document the resolutions and corrective actions of an EHS accident or potential catastrophic event investigation.	40 CFR 68.60(d), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
160. Failure to review the findings of an EHS accident or potential catastrophic event investigation with all affected personnel whose job tasks are affected by the findings.	40 CFR 68.60(e), N.J.A.C. 7:31-3.1(a)	1,000	2,000	5,000	NM	
161. Failure to retain EHS accident or potential catastrophic event investigation summaries for five years.	40 CFR 68.60(f), N.J.A.C. 7:31-3.1(a)	2,000	4,000	10,000	NM	
162. Failure to comply with the emergency response requirements of N.J.A.C. 7:31-5.	N.J.A.C. 7:31-3.2(a)	2,000	4,000	10,000	NM	
163. Failure to submit within 90 days of the third anniversary date, and each subsequent third anniversary date, a triennial report to the Department reflecting the risk management program activities for the 36 month period ending on the anniversary date.	N.J.A.C. 7:31-3.3(a)	2,000	4,000	10,000	M	30
164. Failure to include in the triennial report an update of the supplemental TCPA program information as specified in N.J.A.C. 7:31-7.2(a)2 if this supplemental information was not previously reported in a revised Risk Management Plan submittal. or Failure to state that there were no changes to the supplemental TCPA program information in the triennial report if there were no changes in this information since the last Risk Management Plan submittal.	N.J.A.C. 7:31-3.3(b)1	500	1,000	2,500	M	30
165. Failure to include in the triennial report a description of significant changes to the management system. or Failure to state that there were no changes to the management system in the triennial report if there were no changes in this information since the last triennial report.	N.J.A.C. 7:31-3.3(b)2	500	1,000	2,500	M	30
166. Failure to include in the triennial report the hazard review report required at N.J.A.C. 7:31-3.5 for each hazard review completed during the previous three years. or Failure to state that there were no hazard review reports completed in the triennial report if there were no hazard review reports completed since the last triennial report.	N.J.A.C. 7:31-3.3(b)3	500	1,000	2,500	M	30
167. Failure to include in the triennial report a summary of any EHS accidents that occurred during the previous three years including the EHS involved and amount released if these facts could have been reasonably determined based on the information obtained through an investigation.	N.J.A.C. 7:31-3.3(b)4i	500	1,000	2,500	M	30
168. Failure to include in the triennial report a summary of any EHS accidents that occurred during the previous three years that including the date and time of the EHS accident and identification of EHS equipment involved.	N.J.A.C. 7:31-3.3(b)4ii	500	1,000	2,500	M	30

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169. Failure to include in the triennial report a summary of any EHS accidents that occurred during the previous three years that including the basic and contributory causes.	N.J.A.C. 7:31-3.3(b)4iii	500	1,000	2,500	M	30
170. Failure to include in the triennial report a summary of any EHS accidents that occurred during the previous three years that including a statement that there were no EHS accidents if no EHS accidents occurred since the last triennial report.	N.J.A.C. 7:31-3.3(b)4iv	500	1,000	2,500	M	30
171. Failure to include in the triennial report the compliance audit report and documentation for the previous three years ending on the anniversary date prepared pursuant to 40 CFR 68.58(c) and (d) as incorporated with changes at N.J.A.C. 7:31-3.1(c)6 and 10.	N.J.A.C. 7:31-3.3(b)5	500	1,000	2,500	M	30
172. Failure to include in the triennial report each inherently safer technology review update report completed pursuant to N.J.A.C. 7:31-3.6(b) and (f) during the previous three years.	N.J.A.C. 7:31-3.3(b)6	500	1,000	2,500	M	30
173. Failure to submit the documentation required at N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to construction of a new Program 2 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(a)(1)	2,000	4,000	10,000	M	30
174. Failure to receive written approval from the Department before proceeding with construction of a new Program 2 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(a)(2)	6,000	12,000	30,000	NM	
175. Failure to submit to the Department, at least 90 days prior to the date the equipment was scheduled to be placed into EHS service, updates of the documentation as required by N.J.A.C. 7:31-3.4(a) 1 on a new Program 2 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(a)(3)	2,000	4,000	10,000	M	30
176. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(a)(4)	one-third of fee	one-third of fee + 1000	one-third of fee + 2000	M	30
177. Failure to submit the documentation required by N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to placing existing equipment for a new Program 2 covered process into EHS service at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(b)(1)	2,000	4,000	10,000	M	30
178. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-3.4(b)(2)	one-third of fee	one-third of fee + 1000	one-third of fee + 2000	M	30
179. Failure to update documentation in accordance with N.J.A.C. 7:31-7.2 and 40 CFR 68.150 with changes specified at N.J.A.C. 7:31-7.1(c) at least 90 days prior to the scheduled placing of existing equipment for a new Program 2 covered process into EHS service at a stationary source that has a previously approved risk management program.	N.J.A.C. 7:31-3.4(c)(1)	2,000	4,000	10,000	M	30
180. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a new Program 2 covered process at a stationary source that has a previously approved risk management program.	N.J.A.C. 7:31-3.4(c)(2)	one-third of fee	one-third of fee + 1000	one-third of fee + 2000	M	30

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
181. Failure to enter into a consent agreement or consent agreement addendum with the Department prior to placing equipment into EHS service for a new covered process and subsequent to a stationary source inspection by the Department. or Failure to complete items of the consent agreement, or consent agreement addendum, for equipment in a new covered process in accordance with the schedule in the consent agreement or consent agreement addendum.	N.J.A.C. 7:31-3.4(d)	5,000	10,000	25,000	NM	
182. Failure to complete an inherently safer technology review and report pursuant to N.J.A.C. 7:31-3.6(c) through (f) for each new covered process; and/or Failure to submit the inherently safer technology review report with the submittal required at N.J.A.C. 7:31-3.4(a)1, (b)1, or (c)1, as applicable.	N.J.A.C. 7:31-3.4(e)	2,000	4,000	10,000	NM	182.
183. Failure to prepare a hazard review report which includes identification of the covered process.	N.J.A.C. 7:31-3.5(a)1	500	1,000	2,500	NM	
184. Failure to prepare a hazard review report which includes the date the hazard review was performed.	N.J.A.C. 7:31-3.5(a)2	500	1,000	2,500	NM	
185. Failure to prepare a hazard review report which includes the date of the completed hazard review report.	N.J.A.C. 7:31-3.5(a)3	500	1,000	2,500	NM	
186. Failure to prepare a hazard review report which includes the names, positions, and affiliation of the hazard review participants.	N.J.A.C. 7:31-3.5(a)4	500	1,000	2,500	NM	
187. Failure to prepare a hazard review report which includes documentation of the hazards associated with the process and regulated substances.	N.J.A.C. 7:31-3.5(a)5	500	1,000	2,500	NM	
188. Failure to prepare a hazard review report which includes documentation of the opportunities for equipment malfunctions or human errors that could cause an accidental release.	N.J.A.C. 7:31-3.5(a)6	500	1,000	2,500	NM	
189. Failure to prepare a hazard review report which includes documentation of the safeguards used or needed to control the hazards or prevent equipment malfunction or human error.	N.J.A.C. 7:31-3.5(a)7	500	1,000	2,500	NM	
190. Failure to prepare a hazard review report which includes documentation of any steps used or needed to detect or monitor releases.	N.J.A.C. 7:31-3.5(a)8	500	1,000	2,500	NM	
191. Failure to prepare a hazard review report which includes documentation on the implementation of recommended corrective actions including a schedule for such implementations and the resolution and status for completing the corrective actions.	N.J.A.C. 7:31-3.5(a)9	500	1,000	2,500	NM	
192. Failure to retain all hazard review reports and documentation for the life of the covered process.	N.J.A.C. 7:31-3.5(b)	2,000	4,000	10,000	NM	
193. Failure to complete an initial inherently safer technology review and submit to the Department an inherently safer technology review report for each covered process at the stationary source by September 2, 2008.	N.J.A.C. 7:31-3.6(a)	2,000	4,000	10,000	NM	
194. Failure to update the inherently safer technology review on the same schedule as the hazard review updates for each covered process at the stationary source, including each new covered process brought on line since the date of the previous inherently safer technology review. and/or	N.J.A.C. 7:31-3.6(b)	2,000	4,000	10,000	NM	

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	Failure to address the inherently safer technologies that have been developed since the last inherently safer technology review.						
195.	Failure to conduct each inherently safer technology review with a team of qualified experts whose members have expertise in environmental requirements, chemistry, design and engineering, process controls and instrumentation, maintenance, production and operations, and chemical process safety.	N.J.A.C. 7:31-3.6(e)	1,000	2,000	5,000	NM	
196.	Failure to include an analysis of the following principle and technique in each inherently safer technology review to identify available inherently safer technology alternatives, or combinations of alternatives, that minimize or eliminate the potential for an EHS release: reducing the amount of EHS material that potentially may be released.	N.J.A.C. 7:31-3.6(d)1	1,000	2,000	5,000	NM	
197.	Failure to include an analysis of the following principle and technique in each inherently safer technology review to identify available inherently safer technology alternatives, or combinations of alternatives, that minimize or eliminate the potential for an EHS release: substituting less hazardous materials.	N.J.A.C. 7:31-3.6(d)2	1,000	2,000	5,000	NM	
198.	Failure to include an analysis of the following principle and technique in each inherently safer technology review to identify available inherently safer technology alternatives, or combinations of alternatives, that minimize or eliminate the potential for an EHS release: using EHSs in the least hazardous process conditions or form.	N.J.A.C. 7:31-3.6(d)3	1,000	2,000	5,000	NM	
199.	Failure to include an analysis of the following principle and technique in each inherently safer technology review to identify available inherently safer technology alternatives, or combinations of alternatives, that minimize or eliminate the potential for an EHS release: designing equipment and processes to minimize the potential for equipment failure and human error.	N.J.A.C. 7:31-3.6(d)4	1,000	2,000	5,000	NM	
200.	Failure to determine whether the inherently safer technologies are feasible, which means capable of being accomplished in a successful manner, taking into account environmental, public health and safety, legal, technological, and economic factors.	N.J.A.C. 7:31-3.6(e)	1,000	2,000	5,000	NM	
201.	Failure to prepare and submit to the Department a report to document each inherently safer technology review.	N.J.A.C. 7:31-3.6(f)	1,000	2,000	5,000	NM	
202.	Failure to include in an inherently safer technology review report an identification of the covered process that is the subject of the review; a list of the review team members with name, position, affiliation, responsibilities, qualifications and experience for each; the date of report completion; and the inherently safer technology analysis method used to complete the review.	N.J.A.C. 7:31-3.6(f)1	500	1,000	2,500	NM	
203.	Failure to include in an inherently safer technology review report the questions asked and answered to address the inherently safer technology principles and techniques pursuant to N.J.A.C. 7:31-3.6(d).	N.J.A.C. 7:31-3.6(f)2	500	1,000	2,500	NM	
204.	Failure to include in an inherently safer technology review report a list of inherently safer technologies determined to be already present in the covered process.	N.J.A.C. 7:31-3.6(f)3	500	1,000	2,500	NM	

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205. Failure to include in an inherently safer technology review report a list of additional inherently safer technologies identified.	N.J.A.C. 7:31-3.6(f)4	500	1,000	2,500	NM	
206. Failure to include in an inherently safer technology review report a list of the additional inherently safer technologies selected to be implemented with a schedule for their completion.	N.J.A.C. 7:31-3.6(f)5	500	1,000	2,500	NM	
207. Failure to include in an inherently safer technology review report a list of the inherently safer technologies determined to be infeasible.	N.J.A.C. 7:31-3.6(f)6	500	1,000	2,500	NM	
208. Failure to include a written explanation justifying the infeasibility determination for each inherently safer technology determined to be infeasible; and/or Failure to substantiate the infeasibility determination using a qualitative and quantitative evaluation of environmental, public health and safety, legal, technological, and economic factors.	N.J.A.C. 7:31-3.6(f)7	500	1,000	2,500	NM	
209. Failure to complete a compilation of written process safety information before conducting any required process hazard analysis in accordance with the schedule set forth in 40 CFR 68.67 as incorporated at N.J.A.C. 7:31-4.1(c)6.	40 CFR 68.65(a), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
210. Failure to include toxicity information in the process safety information pertaining to the hazards of the regulated substances in a process.	40 CFR 68.65(b)(1), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
211. Failure to include permissible exposure limits in the process safety information pertaining to the hazards of the regulated substances in a process.	40 CFR 68.65(b)(2), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
212. Failure to include physical data in the process safety information pertaining to the hazards of the regulated substances in a process.	40 CFR 68.65(b)(3), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
213. Failure to provide in the process safety information reactivity data including the flash point up to 200 degrees Fahrenheit (and method used), flammable limits (lower explosive limit and upper explosive limit), extinguishing media, special fire fighting procedures, or unusual fire and explosion hazards.	40 CFR 68.65(b)(4), N.J.A.C. 7:31-4.1(c)24i	500	1,000	2,500	NM	
214. Failure to provide in the process safety information reactivity data including the following thermodynamic and reaction kinetic data: heat of reaction, temperature at which instability (uncontrolled reaction, decomposition, and/or polymerization) initiates, and energy release rate data.	40 CFR 68.65(b)(4), N.J.A.C. 7:31-4.1(c)24ii	500	1,000	2,500	NM	
215. Failure to provide in the process safety information reactivity data including the incidental formation of byproducts that are reactive and unstable.	40 CFR 68.65(b)(4), N.J.A.C. 7:31-4.1(c)24iii	500	1,000	2,500	NM	
215A. Failure to provide in the process safety information reactivity data including for covered RHS mixtures, detailed reactivity data including the rate of pressure rise (dP/dt), the rate of temperature rise (dT/dt), and the onset temperature at which the rate of temperature change due to uncontrolled reaction, decomposition, change in molecular structure, or polymerization exceeds 0.01 degrees Celsius per minute, all of which are corrected to a thermal inertia (ϕ) of 1.0.	40 CFR 68.65(b)(4), N.J.A.C. 7:31-4.1(c)24iv	500	1,000	2,500	NM	
216. Failure to include corrosivity data in the process safety information pertaining to the hazards of the regulated substances in the process.	40 CFR 68.65(b)(5), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	

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217. Failure to provide in the process safety information thermal and chemical stability data including stability (unstable or stable), conditions to avoid (for instability), incompatibility (materials to avoid), hazardous decomposition (products or byproducts), hazardous polymerization (may occur or will not occur), and conditions to avoid (for polymerization).	40 CFR 68.65(b)(6), N.J.A.C. 7:31-4.1(c)25	500	1,000	2,500	NM	
218. Failure to provide in the process safety information hazardous effects of inadvertent mixing of different materials that could foreseeably occur including the explosive/flammable effects and information showing	40 CFR 68.65(b)(7), N.J.A.C. 7:31-4.1(c)26	500	1,000	2,500	NM	

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(ii) Corrections under Sec. 68.195 or for purposes of correcting minor clerical errors, updating administrative information, providing missing data elements or reflecting facility ownership changes, and which do not require an update and re-submission as specified in 40 CFR 68.190(b); (iii) De-registrations required under 40 CFR 68.190(c); and (iv) Withdrawals of an RMP for any facility that was erroneously considered subject to 40 CFR Part 68.						
506. Failure to submit in the RMP information on one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. or Failure to submit information for additional worst-case scenarios for toxics or flammables required by 40 CFR 68.25(a)(2)(iii) incorporated at N.J.A.C. 7:31-2.1(a). or Failure to submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.	40 CFR 68.165(a)(2), N.J.A.C. 7:31-7.1(a)	2,000	4,000	10,000	NM	
507. Failure to submit the chemical name in the off-site consequence analysis (OCA).	40 CFR 68.165(b)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
508. Failure to submit the percentage weight of the chemical in a liquid mixture (toxics only) in the OCA.	40 CFR 68.165(b)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
509. Failure to submit the physical state (toxics only) in the OCA.	40 CFR 68.165(b)(3), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
510. Failure to submit the basis for the results of the off-site consequence analysis data in the RMP (including model name if used).	40 CFR 68.165(b)(4), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
511. Failure to submit the scenario (explosion, fire, toxic gas release, or liquid spill and vaporization) in the OCA.	40 CFR 68.165(b)(5), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
512. Failure to submit the quantity released in pounds in the OCA.	40 CFR 68.165(b)(6), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
513. Failure to submit release rate in the OCA.	40 CFR 68.165(b)(7), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
514. Failure to submit the release duration in the OCA.	40 CFR 68.165(b)(8), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
515. Failure to submit the wind speed and atmospheric stability class (toxics only) in the OCA.	40 CFR 68.165(b)(9), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
516. Failure to submit the topography (toxics only) in the OCA.	40 CFR 68.165(b)(10), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
517. Failure to submit the distance to endpoint in the OCA.	40 CFR 68.165(b)(11), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
518. Failure to submit the public and environmental receptors within the distance to endpoint in the OCA.	40 CFR 68.165(b)(12), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
519. Failure to submit the passive mitigation considered in the OCA.	40 CFR 68.165(b)(13), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
520. Failure to submit the active mitigation considered (alternative releases only) in the OCA.	40 CFR 68.165(b)(14), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30

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521. Failure to submit in the RMP the five year accident history information required at 40 CFR 68.42(b) incorporated at N.J.A.C. 7:31-2.1(a) on each accident covered by 40 CFR 68.42(a) incorporated at N.J.A.C. 7:31-2.1(a).	40 CFR 68.168, N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
522. Failure to indicate in the RMP to which Program 2 processes the prevention program information in 40 CFR 68.170(b) through (k) incorporated at N.J.A.C. 7:31-7.1(a) applies, for prevention program information provided only once which applies to more than one covered process.	40 CFR 68.170(a), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
523. Failure to provide in the RMP the five- or six-digit NAICS code that most closely corresponds to each Program 2 process.	40 CFR 68.170(b), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
524. Failure to provide in the RMP the name(s) of the chemical(s) covered for each Program 2 process.	40 CFR 68.170(c), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
525. Failure to provide in the RMP for each Program 2 process the date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry specific design codes and standards used to demonstrate compliance with the safety information requirement.	40 CFR 68.170(d), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
526. Failure to provide in the RMP the date of completion of the most recent hazard review or update for each Program 2 process.	40 CFR 68.170(e), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
527. Failure to provide in the RMP the expected date of completion of any changes resulting from the hazard review for each Program 2 process.	40 CFR 68.170(e)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
528. Failure to provide in the RMP the major hazards identified for each Program 2 process.	40 CFR 68.170(e)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
529. Failure to provide in the RMP the process controls in use for each Program 2 process.	40 CFR 68.170(e)(3), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
530. Failure to provide in the RMP the mitigation systems in use for each Program 2 process.	40 CFR 68.170(e)(4), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
531. Failure to provide in the RMP the monitoring and detection systems in use for each Program 2 process.	40 CFR 68.170(e)(5), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
532. Failure to provide in the RMP the changes since the last hazard review for each Program 2 process.	40 CFR 68.170(e)(6), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
533. Failure to provide in the RMP the date of the most recent review or revision of operating procedures for each Program 2 process.	40 CFR 68.170(f), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
534. Failure to provide in the RMP the date of the most recent review or revision of training programs for each Program 2 process.	40 CFR 68.170(g), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
535. Failure to provide in the RMP the type of training provided-(classroom, classroom plus on the job, on the job) for each Program 2 process.	40 CFR 68.170(g)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
536. Failure to provide in the RMP the type of competency testing used for each Program 2 process.	40 CFR 68.170(g)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30

		First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
<u>Categories of Offense</u>	<u>Cite</u>					
537. Failure to provide in the RMP the date of the most recent review or revision of maintenance procedures, the date of the most recent equipment inspection or test, or the equipment inspected or tested for each Program 2 process.	40 CFR 68.170(h), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
538. Failure to provide in the RMP the date of the most recent compliance audit or the expected date of completion of any changes resulting from the compliance audit for each Program 2 process.	40 CFR 68.170(i), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
539. Failure to provide in the RMP the date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation for each Program 2 process.	40 CFR 68.170(j), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
540. Failure to provide in the RMP the date of the most recent change that triggered a review or revision of the safety information, the hazard review, operating or maintenance procedures, or training for each Program 2 process.	40 CFR 68.170(k), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
541. Failure to indicate to which Program 3 processes the prevention program information required by 40 CFR 68.175(b) through (p) incorporated at N.J.A.C. 7:31-7.1(a) applies, for prevention program information provided only once which applies to more than one covered process.	40 CFR 68.175(a), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
542. Failure to provide in the RMP the five- or six-digit NAICS code that most closely corresponds to each Program 3 process.	40 CFR 68.175(b), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
543. Failure to provide in the RMP the name(s) of the substance(s) covered for each Program 3 process.	40 CFR 68.175(c), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
544. Failure to provide in the RMP the date on which the safety information was last reviewed or revised for each Program 3 process.	40 CFR 68.175(d), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
545. Failure to provide in the RMP the date of completion of the most recent process hazard analysis or update and the technique used for each Program 3 process.	40 CFR 68.175(e), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
546. Failure to provide in the RMP the expected date of completion of any changes resulting from the PHA for each Program 3 process.	40 CFR 68.175(e)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
547. Failure to provide in the RMP the major hazards identified for each Program 3 process.	40 CFR 68.175(e)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
548. Failure to provide in the RMP the process controls in use for each Program 3 process.	40 CFR 68.175(e)(3), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
549. Failure to provide in the RMP the mitigation systems in use for each Program 3 process.	40 CFR 68.175(e)(4), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
550. Failure to provide in the RMP the monitoring and detection systems in use for each Program 3 process.	40 CFR 68.175(e)(5), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
551. Failure to provide in the RMP the changes since the last PHA for each Program 3 process.	40 CFR 68.175(e)(6), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
552. Failure to provide in the RMP the date of the most recent review or revision of the operating procedures for each Program 3 process.	40 CFR 68.175(f), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
553. Failure to provide in the RMP the date of the most recent review or revision of training programs for each Program 3 process.	40 CFR 68.175(g), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
554. Failure to provide in the RMP for each Program 3 process the type of training given (classroom, classroom plus on the job, on the job).	40 CFR 68.175(g)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
555. Failure to provide in the RMP the type of competency testing used for each Program 3 process.	40 CFR 68.175(g)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30

<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
556. Failure to provide in the RMP the date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested for each Program 3 process.	40 CFR 68.175(h), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
557. Failure to provide in the RMP the date of the most recent change that triggered management of change procedures or the date of the most recent review or revision of management of change procedures for each Program 3 process.	40 CFR 68.175(i), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
558. Failure to provide in the RMP the date of the most recent pre-startup review for each Program 3 process.	40 CFR 68.175(j), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
559. Failure to provide in the RMP the date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit for each Program 3 process.	40 CFR 68.175(k), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
560. Failure to provide in the RMP the date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation for each Program 3 process.	40 CFR 68.175(l), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
561. Failure to provide in the RMP the date of the most recent review or revision of employee participation plans for each Program 3 process.	40 CFR 68.175(m), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
562. Failure to provide in the RMP the date of the most recent review or revision of hot work permit procedures for each Program 3 process.	40 CFR 68.175(n), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
563. Failure to provide in the RMP the date of the most recent review or revision of contractor safety procedures for each Program 3 process.	40 CFR 68.175(o), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
564. Failure to provide in the RMP the date of the most recent evaluation of contractor safety performance for each Program 3 process.	40 CFR 68.175(p), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
565. Failure to provide in the RMP whether there is a written emergency response plan.	40 CFR 68.180(a)(1), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
566. Failure to provide in the RMP whether the emergency response plan includes specific actions to be taken in response to an accidental release of a regulated substance.	40 CFR 68.180(a)(2), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
567. Failure to provide in the RMP whether the emergency response plan includes procedures for informing the public and local agencies responsible for responding to accidental releases.	40 CFR 68.180(a)(3), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
568. Failure to provide in the RMP whether the emergency response plan includes information on emergency health care.	40 CFR 68.180(a)(4), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
569. Failure to provide in the RMP the date of the most recent review or update of the emergency response plan.	40 CFR 68.180(a)(5), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
570. Failure to provide in the RMP the date of the most recent emergency response training for employees.	40 CFR 68.180(a)(6), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
571. Failure to provide in the RMP the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.	40 CFR 68.180(b), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
572. Failure to list in the RMP other Federal or state emergency plan requirements to which the stationary source is subject.	40 CFR 68.180(c), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30

dance with the procedures set forth at N.J.A.C. 7:31-11.5.

(1) The violation poses minimal risk to the public health, safety and natural resources;

(2) The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

(3) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department;

iii. If, pursuant to (e) below, the violation is comparable to a violation listed in (c) above, and the comparable violation in (c) above is non-minor, then the violation under this section is also non-minor and the penalty shall be assessed in the amount of the penalty for the comparable non-minor violation.

iv. If the violation is not comparable to a violation listed in (c) above and the violation does not meet the requirements of (d)2ii above, the violation is non-minor and the penalty shall be assessed pursuant to (d)1 above, and (g) below as appropriate.

(e) Comparability of a violation under (d) above with a violation listed in (c) above is based upon the nature of the violation (for example, a violation 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.

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

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

1. The nature of the violation;
2. The nature and extent of the extraordinarily hazardous accident risk;
3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident

risks in addition to those minimally required by applicable statute or rule;

4. The compliance history of the violator;
5. The number of times and the frequency with which the violation occurred;
6. The severity of the violation;
7. Any other mitigating, extenuating or aggravating circumstances; and/or
8. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed.

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

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

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

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

Rewrote the section.

Amended by R.2003 d.335, effective August 4, 2003.

See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

In (c), substituted "III" for "II" in the introductory paragraph and rewrote the Table.

Amended by R.2006 d.143, effective April 17, 2006.

See: 37 N.J.R. 1595(a), 38 N.J.R. 1678(a).

In introductory paragraph (c), added "the type of violation as minor (M) or non-minor (NM), and the applicable grace period if the violation is minor;" in (c) Table III, added type of violation and grace period columns; rewrote (d), (e) and in (g) added "for a non-minor violation" after "assessed".

Administrative correction.

See: 38 N.J.R. 2800(a).

Amended by R.2008 d.121, effective May 5, 2008.

See: 39 N.J.R. 1351(a), 40 N.J.R. 2254(a).

Rewrote Table III in (c).

Amended by R.2009 d.85, effective March 16, 2009.

See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

In (c), rewrote portions of Table III.

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.

7:31-11.5 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:31-11.4(c) Table III by an "M" in the Type of Violation column and for each violation determined under N.J.A.C. 7:31-11.4(d) as minor, for which conditions at (c) below are satisfied, is a minor violation and is subject to a

grace period, the length of which (in days) is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty table at N.J.A.C. 7:31-11.4(c) Table III by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department shall provide a grace period for any violation identified as minor under this section, provided that 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;
3. The person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same stationary source within the preceding 12-month period; and
4. The person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:
 - i. Identifies the condition or activity that constitutes the 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 that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation, and the violation will not be considered an offense for purposes of determining whether the violation constitutes a second or subsequent offense.

3. The person responsible for the minor violation shall submit to the Department or local government agency, before the end of the specified grace period, written information, certified in accordance with 40 C.F.R. 68.185, incorporated by reference at N.J.A.C. 7:31-7.1, and signed by a qualified person or position as defined in N.J.A.C. 7:31-1.5, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance and shall be certified in accordance with 40 C.F.R. 68.185, incorporated by reference at N.J.A.C. 7:31-7.1. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

New Rule, R.2006 d.143, effective April 17, 2006.
See: 37 N.J.R. 1595(a), 38 N.J.R. 1678(a).