

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

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

#### Case Notes

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

#### 7:1E-5.4 Notification of aircraft discharges

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

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

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

Amended by R.2000 d.352, effective August 21, 2000.  
See: 31 N.J.R. 3561(a), 32 N.J.R. 3091(a).

In (a), amended Department phone number.

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

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

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

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

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

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

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

In (a), amended Department phone number.

#### 7:1E-5.6 Justification of delay

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

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

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

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

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

### 7:1E-5.7 Discharge response

- (a) Any person responsible for a discharge shall:

1. Take immediate action to stop the discharge;
2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by either:
  - i. Following the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; or
  - ii. Remediating the discharge pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and
3. Coordinate such actions with the Department.

(b) No person shall apply chemicals to a discharge without the prior approval of the Department or the federal on-scene coordinator under the National Oil and Hazardous Substances Pollution Contingency Plan pursuant to 40 CFR 300, unless such application is necessary to prevent or mitigate a situation that poses a serious and imminent threat to human life. In any such situation of imminent threat to human life, the owner or operator shall make reasonable efforts to secure the approval of the Department or the federal on-scene coordinator before applying chemicals. Approval to apply chemicals may be obtained verbally, including by telephone. Application of chemicals pursuant to a DCR plan approved by the Department shall be deemed to have prior approval. Unauthorized use of chemicals shall be regarded as a discharge in violation of N.J.A.C. 7:1E-1.11.

(c) Upon learning that a discharge of a hazardous substance has occurred, the Department may:

1. Act to contain, mitigate, clean up and remove the discharge; or
2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:

- i. Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and
- ii. The Technical Rules for Site Remediation, N.J.A.C. 7:26E.

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

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

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

Rewrote (a) and (c).

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

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

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

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

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

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

Readoption of special amendment, R.2011 d.251, effective September 8, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Provisions of R.2009 d.361 readopted without change.

### Case Notes

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

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

### 7:1E-5.8 Confirmation report and recordkeeping

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