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

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Toxic Catastrophe Prevention Act Program, expires on February 9, 2016. See: 43 N.J.R. 1203(a).

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2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new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. As a part of R.2009 d.85, Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was repealed, effective March 16, 2009 (operative March 16, 2010). See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

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."

"Reliability study" means the determination of the probability of a piece of EHS equipment performing its required function in the desired manner under all relevant conditions and on the occasion or during the time intervals when it is required to so perform. It includes the analysis of the failure of EHS equipment to perform its normal required function.

"Risk assessment section" means all Department personnel engaged in the following activities concerning the review of risk management programs developed by owners and operators to ensure their compliance with TCPA: detailed review of the risk management programs; creation and implementation of work plans; review of submittals to construct and operate new EHS covered processes; and periodic inspections and audits of risk management programs.

"Risk management program" means the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks, including, but not limited to, requirements for safety review of design for new and existing equipment, requirements for standard operating procedures, requirements for preventive maintenance programs, requirements for operator training and accident investigation procedures, requirements for risk assessment for specific pieces of equipment or operating alternatives, requirements for emergency response planning, and internal or external audit procedures to ensure programs are being executed as planned. Risk management program includes all activities performed and documents prepared pursuant to 40 CFR 68.12(c) and (d) as incorporated by reference at N.J.A.C. 7:31-1.1(c).

"Risk reduction plan" means the plan developed as a result of a hazard analysis, risk assessment or EHSARA which identifies the risk reduction measures, recommends corrective actions, and provides for scheduling and implementation of remedial actions.

"Security information" means information the release of which could either compromise the physical security of the covered process or its operations, or adversely affect national security. Examples include, but are not limited to, offsite consequence analysis data and quantities and locations of EHSs at facilities.

"Sewer system piping diagram" means one or more diagrams relevant to the covered process and its potential releases showing those portions of the site plan that include the chemical sewers, sanitary sewers and storm water sewers drainage systems in the covered process or the adjoining areas.

"Site plan" means a diagram of the stationary source showing exact locations to scale of all units or areas, warehouses, buildings, roads, access ways, walkways, parking areas, fences, gates and property lines plus the covered process.

"Standard operating procedures" or "SOP" means the documents setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the covered process.

"Substantiation" means the written submittal on a Department provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.

"Tabletop exercise" means an activity in which the participants are gathered informally to describe actions to be taken to respond to a pre-planned simulated EHS release scenario based upon the emergency response plan as if it were an actual release, to include documents relevant to the EHS release scenario such as site plans, equipment arrangement plans and local street maps referenced by the participants during the exercise.

"TCPA" means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

"TCPA program operating expense" means the cost for normal TCPA program operating items such as postage, telephone, travel supplies and data management systems.

"Thermal analysis" means the computation of the distance from the center of a fireball that a criterion thermal radiation dose extends subsequent to specific release/ignition scenarios of a flammable substance.

"Total spending plan of the TCPA program" means the total annual estimated cost of operating the TCPA program approved by the Department for the fiscal year beginning July 1.

"Trade secret" means information concerning a formula, process, device or compilation which an owner or operator of a covered process uses to gain a business advantage over competitors who do not know or use it.

"What if Checklist" means a method of hazard analysis based on a systematic study of updated piping and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The study is composed of a comprehensive list of questions prepared in advance from study of the documents by team members either in conference or independently usually corresponding to their individual background. Results of the study shall be reported for a unit on a table. The results are entered on the table as follows: the "what if" question and its corresponding consequence/hazard, the criticality based on the quantity or rate of the potential release and the recommended action in terms of equipment or procedure to mitigate the consequence/hazard.

Administrative Correction.
See: 20 N.J.R. 1743(c).
Amended by R.1988 d.378, effective August 1, 1988.
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(a).
Added definitions.
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).
Added "Functional group", "Heat of reaction" or "ΔH_R", "Industrial complex", "Inherently safer technology", "Rate of energy release", "Reactive Hazard Substance" or "RHS", "Reactive Hazard Substance (RHS) mixture" and "State-of-the-art"; rewrote "Material deficiency"; in "Risk management program", added the last sentence.
Amended by R.2006 d.143, effective April 17, 2006.
See: 37 N.J.R. 1595(a), 38 N.J.R. 1678(a).
Added definition "Grace period".
Amended by R.2008 d.121, effective May 5, 2008.
See: 39 N.J.R. 1351(a), 40 N.J.R. 2254(a).
Rewrote definition "Inherently safer technology".
Amended by R.2009 d.85, effective March 16, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).
Rewrote definitions "EHS release", "Facility", "Inventory" and "Registered EHS"; added definitions "Emergency response team", "Feasible" and "Maximum achievable temperature"; deleted definitions "Industrial complex", "State-of-the-art" and "Stationary source emergency response team"; in definition "Qualified person or position", substituted "facility" for "stationary source"; in definition "Reactive hazard substance (RHS) mixture", deleted the former second sentence and inserted the last two sentences; and in definition "Security information", inserted the last sentence.

7:31-1.6 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

7:31-1.7 Practice where these rules do not govern

The Department may rescind, amend or expand theses rules from time to time, and such rules shall be filed with the Office of Administrative Law as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In any matter concerning chemical accident prevention that arises not governed by these rules, the Department shall exercise its discretion within the authority of N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., 26:2C-1 et seq. and all other legislatively conferred powers.

New Rule, R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

7:31-1.8 Document availability

(a) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference are available for review. Publications incorporated by reference within the Code of Federal Regulations are also available for review. These may be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection
Bureau of Release Prevention
PO Box 424
Trenton, NJ 08625-0424
Telephone: (609) 633-0610

(b) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference may be purchased from the following sources:

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SCOP
Washington, DC 20402-9328

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, NY 10278-0081

U.S. Government Printing Office Bookstore
Robert Morris Building
100 North 17th Street
Philadelphia, PA 19103

(c) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference herein are also available for review at the following public libraries:

New Jersey State Library
PO Box 520, 185 West State Street
Trenton, NJ 08625-0520

Newark Public Library
5 Washington Street
Newark, NJ 07101

New Rule, R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
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), updated the address.

7:31-1.9 Prohibitions

(a) No owner or operator of a covered process shall handle, use, manufacture, generate or store an EHS, except in a manner which complies with the TCPA, this chapter, and the approved risk management program.

(b) No owner or operator of a facility for which there is no previously approved risk management program shall construct a new covered process or utilize an existing process for a new EHS service unless the owner or operator has complied with N.J.A.C. 7:31-3.4 (Program 2) or N.J.A.C. 7:31-4.11 (Program 3).

1. As of March 16, 2010, no owner or operator of a facility for which there is no previously approved risk management program shall construct a new covered process or utilize an existing process for a new EHS service unless the owner or operator has complied with N.J.A.C. 7:31-4.11.

(c) No owner or operator of a newly constructed covered process or an existing process being utilized for a new EHS service covered process at a facility for which there is no previously approved risk management program shall begin operating that covered process until the Department and the

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

SUBCHAPTER 8. OTHER FEDERAL REQUIREMENTS

7:31-8.1 Incorporation by reference

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

(b) The following provisions of 40 CFR Part 68 Subpart H are not incorporated by reference: 40 CFR 68.210 Availability of information to the public, and 40 CFR 68.215 Permit content and air permitting authority or designated agency requirements.

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

1. 40 CFR 68.200 Recordkeeping replace "part" with "Chapter" and replace "Subpart D of this part" with "N.J.A.C. 7:31-4 and as follows: mechanical integrity/preventive maintenance records for the lifetime of EHS equipment, design safety review reports for the lifetime of a covered process, and hot work permits until they are reviewed in the next Department audit or inspection."

2. 40 CFR 69.220 Audits, replace "implementing agency" with "the Department" and replace "Subpart G of this part" with "N.J.A.C. 7:31-7" in all occurrences of this section.

3. 40 CFR 68.220(a) delete the Federal requirement and replace with "The Department shall periodically audit or inspect risk management programs and RMPs to review their adequacy and require revisions when necessary to ensure compliance with N.J.A.C. 7:31 and the Act."

4. (Reserved.)

5. 40 CFR 68.220(d) at the end of the sentence, add the phrase "in accordance with N.J.A.C. 7:31-8.2."

6. 40 CFR 68.220(e) replace the first sentence with "Based on the audit, the Department shall issue the owner or operator of a facility a written preliminary determination of material deficiencies and necessary revisions to the owner or operator's RMP and risk management program for the facility to ensure that the RMP and the risk management program meet the criteria of N.J.A.C. 7:31.

7. 40 CFR 68.220(f) change the introductory clause from "Written response to a preliminary determination" to "In response to a preliminary determination:".

8. 40 CFR 68.220(f)(2) replace this provision with "The written response under paragraph (f)(1) of this section shall be received by the Department within 60 days of the issue of the preliminary determination."

9. 40 CFR 68.220(g) replace this provision with "If the Department and owner or operator reach agreement on the RMP and risk management program, the owner or operator shall enter into a consent agreement (or consent agreement addendum for previously approved risk management programs) with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement or consent agreement addendum. The consent agreement or consent agreement addendum shall be signed by the owner or operator or his/her representative and by the Chief of the Bureau of Chemical Release Information and Prevention or his/her supervisor. If the owner or operator has not signed a consent agreement or consent agreement addendum within 120 days of receipt of the preliminary determination, the Department shall prepare and send an administrative order. The administrative order may adopt or modify the revisions contained in the preliminary determination under 40 CFR 68.220(e) with changes specified at N.J.A.C. 7:31-8.1(c)6 or may modify the substitute revisions provided in the response under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c)7-8. An administrative order that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. An administrative order that fails to adopt a substitute revision provided under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c) 7-8 shall include an explanation of the basis for finding such substitute revision unreasonable. In the administrative order, the Department shall advise the owner or operator of his/her right to an adjudicatory hearing pursuant to N.J.A.C. 7:31-11.3(b)."

10. 40 CFR 68.220(h) delete "final determination" and replace with "consent agreement or consent agreement addendum or administrative order" at all occurrences.

11. 40 CFR 68.220(i) replace "final determinations" with "consent agreements or consent agreement addenda or administrative orders" and "§ 68.210 of this part" with "N.J.S.A. 47:1A-1 et seq."

12. 40 CFR 68.220(j) replace "EPA or the state" with "the Department" and "part under the Act" with "chapter."

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), amended the N.J.A.C. reference in 1 and rewrote 4.
Amended by R.2009 d.85, effective March 16, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).
Rewrote (c)1, (c)3 and (c)6; and reserved (c)4.

7:31-8.2 Audits and inspections

(a) The Department shall have the right to enter and inspect and/or audit any facility, building or equipment, or any portion thereof, at any time, in order to determine compliance with the TCPA, this chapter, or any order or consent order or agreement. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the facility, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance, and to interview any employees or representatives of the owner or operator. Such right shall be absolute except for those parts or portions of any materials, equipment, documents and records which contain either privileged trade secret or security information or confidential information for which the owner or operator has submitted a petition in accordance with N.J.A.C. 7:31-10.6, or claim in accordance with N.J.A.C. 7:31-10.4, and which petition or claim has not been denied by the Department. Those parts or portions of any materials, equipment, documents and records containing privileged trade secret or security information shall be treated as provided in (b)1 below, and those parts or portions containing confidential information shall be treated as provided in (b)2 below. Such right of inspection and audit shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators, employees, and representatives shall not hinder or delay, and shall upon request assist, the Department in the performance of all aspects of any inspection or audit.

(b) At the beginning of an inspection and/or audit by the Department, an owner or operator may identify those materials, equipment, documents and records at the stationary source which contain either privileged trade secret or security information or confidential information for which an appropriate petition or claim has been asserted and which has not been denied by the Department.

1. Those parts or portions of any materials, equipment, documents and records at the stationary source which contain privileged trade secret or security information need not be disclosed to or submitted to the Department. Any such materials, areas, documents or records disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged trade secret or security information thereafter. The fact that such trade secret or security information has been disclosed, or submitted, to the Department shall not prohibit the owner or operator from asserting a confidentiality claim concerning such information.

2. Those parts or portions of any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or submitted to the Department during an inspection, including all negatives and prints of photographs, and shall be labelled "confidential". In order to assert a confidentiality claim, a properly completed claim form must be submitted to the Department at the same time any such confidential information is submitted or disclosed to the Department. These materials, equipment, documents and records shall not be disclosed by the Department to other persons except in accordance with the provisions of this chapter.

(c) The Department may require submittal of any risk management program document for review.

1. The owner or operator shall include the following certification with any risk management program document required to be submitted:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

2. The certification shall be signed by the qualified person or position specified in the owner or operator's RMP, or person of higher authority for the owner or operator.

(d) Within a reasonable time after an audit, the owner or operator shall be furnished with a preliminary determination of material deficiencies and necessary revisions to the risk management program and RMP in accordance with 40 CFR 68.220(e) with changes specified at N.J.A.C. 7:31-8.1(c).

(e) The owner or operator shall make all documentation required pursuant to this chapter readily accessible for review by the Department during an audit or inspection.

New Rule, R.1988 d.378, effective August 1, 1988.
See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).
The rule that was printed 6-20-88 had not been adopted and was printed in error. This section should have been (Reserved).
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.2009 d.85, effective March 16, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).
Section was "Audits". In (a), substituted "facility" for "stationary source" three times, inserted "upon request" and substituted "or" for "and" preceding the last occurrence of "audit"; and added (c)1, (c)2 and (e).

SUBCHAPTER 9. WORK PLAN/EHSARA

7:31-9.1 Work plan preparation

(a) An owner or operator who does not have an established risk management program as determined by the Department pursuant to N.J.A.C. 7:31-7.3 shall assist the Department in developing a work plan to perform an Extraordinarily Hazardous Substance Accident Risk Assessment (EHSARA) and develop a risk reduction plan.

(b) The work plan shall consist of the facility data and the detailed scope of work necessary to perform an EHSARA. The EHSARA shall result in a recommended risk reduction plan

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New Jersey Department of Environmental Protection
PO Box 424
Trenton, New Jersey 08625-0424

The outer envelope shall bear no marking indicating the confidential nature of its contents.

(g) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, by personal delivery or by other means which will provide verification of delivery, the date of delivery and the name of the person who receives the document at the Department. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided in (f) above.

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification specified in 40 CFR 68.185. Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification as specified in 40 CFR 68.185.

(i) For information which in the owner or operator's opinion constitutes confidential information and which is merely disclosed to the Department during an inspection at the covered process, only one copy, the confidential copy, need be revealed to the Department at that time. A properly executed confidentiality claim form for the information disclosed shall be submitted to the Department at the time of such disclosure. The second copy, the public copy, will be submitted to the Department only if it becomes necessary for the Department to make a confidentiality determination concerning the information claimed as confidential which is disclosed during an inspection. Any information disclosed to the Department during an inspection which is not properly marked and identified as confidential information will not be considered confidential or be treated as such by the Department.

(j) If upon receipt of the public copy, the Department becomes aware of an apparent error or omission on the part of a claimant in failing to delete information from the public copy which it identified as being confidential by underscoring or highlighting on the confidential copy, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant of the apparent error or omission. The letter shall advise the claimant that the claim as to all information not deleted on the public copy will be considered abandoned and the public copy will be treated as public information, unless the Department receives a corrected public copy within 10 days of receipt of the Department's notice.

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).
Substituted references to owners and operators for references to registrants throughout; in (c), changed N.J.A.C. reference; in (f), changed address; in (h), substituted CFR references for N.J.A.C. references throughout; and in (i), substituted a reference to the covered process for a reference to the EHS facility in the first sentence.
Amended by R.2009 d.85, effective March 16, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).
In (f), updated the first line of the address.

7:31-10.5 Determination of confidentiality claims

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Decides to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Whenever the Department is required to or decides to make a determination whether information is entitled to confidential treatment, the Department shall first make a determination that the information claimed as confidential has not been the subject of a prior confidentiality determination by the Department concerning the same covered process, or if it has, that the prior determination upheld the owner or operator's claim. If such a prior determination held that the confidentiality claim was invalid, the Department shall notify the claimant by registered mail, return receipt requested, that the information claimed as confidential is the subject of a prior determination concerning the confidentiality of the same information in which it was held that such claim was invalid and the Department will treat the information as public information.

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. 7:31-1.11(q) for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1. The reasons why the information needs to be treated as confidential;

2. The extent to which disclosure of the information would result in damage to the claimant, including a description of the damage, and an explanation of the relationship between disclosure and the damage;

3. The period of time for which confidential treatment is desired by the claimant (for example, until a certain date, until the occurrence of a specified event, or permanently);

4. The measures taken by the claimant to guard against undesired disclosure of the information to others, and claimant's intention to continue such measures and any new measures the claimant intends to implement in the future to protect the information;

5. The extent to which the information has been published or otherwise disclosed to others, including employees, and the precautions taken in connection therewith;

6. Prior confidentiality determinations concerning the information made by the Department, another agency or a court, and a copy of such determination;

7. Whether the information is patented and, if so, identification of the patent and an explanation why the patent:

i. Does not connect the claimant with the confidential information; and

ii. Does not protect the claimant from competitive harm.

8. The ease or difficulty with which the information could be discovered through reverse engineering and an estimate of the cost;

9. Whether any Federal or state statute or regulation requires the public disclosure of the information, and a copy thereof; and

10. For security information, a description of the adverse impact disclosure would have on either the facility's security or its operations.

(e) Failure of a claimant to furnish the public copy, the confidentiality claim substantiation form or to pay the required fee within 10 days of receipt of the Department's second notice provided in accordance with N.J.A.C. 7:31-10.4(c), waives the claimant's confidentiality claim and the information will be treated as public information.

(f) The owner or operator may assert a confidentiality claim for any confidential information contained in its substantiation form submitted to the Department pursuant to (d) above. To claim this material as confidential, the claimant shall clearly designate those portions of the substantiation form claimed as confidential in accordance with the procedures provided in N.J.A.C. 7:31-10.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the claimant.

1. The claimant shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-10.4(c). The certification on the substantiation form shall be executed as provided in N.J.A.C. 7:31-10.4(h).

(g) The substantiation form shall be enclosed in envelopes as specified in N.J.A.C. 7:31-10.4(f) and be forwarded to the address provided therein. To ensure proper delivery, the methods specified in N.J.A.C. 7:31-10.4(g) shall be followed.

(h) The Department may extend the time limit for submitting substantiation pursuant to (d) above to not more than 60 days upon receipt of a request in writing for good cause shown.

(i) After receiving the substantiation, the Department shall make a final confidentiality determination in accordance with the criteria set forth in (j) below.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, and shall advise the claimant of its right to request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. 7:31-11.3(b). The notice shall also advise the claimant that the Department shall make the information available to the public on the 30th day following receipt by the claimant of the written notice, unless the Department has received a timely written request for an adjudicatory hearing to contest such decision.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The claimant shall be notified of the Department's determination by regular mail. The notice shall state the basis for the determination and that it constitutes final agency action.

(j) If the claimant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted shall be treated as confidential:

1. The claimant has established a reasonable basis for treating the information as confidential;

2. Except for security information, the claimant has shown that disclosure of the information would be likely to cause damage to its competitive position;

3. The claimant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

4. The claimant has shown that reasonable measures have been taken to protect the confidentiality of the infor-

	Categories of Offense	Cite	First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
	risk assessments and to all other information required to be developed under this rule.						
391.	Failure to issue a hot work permit for hot work operations conducted on or near a covered process.	40 CFR 68.85(a), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
392.	Failure to document in the hot work permit that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations, to indicate the date(s) authorized for hot work, and to identify the object on which hot work is to be performed. or Failure to keep the hot work permit on file until completion of the hot work operations.	40 CFR 68.85(b), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
393.	Failure to apply the requirements of 40 CFR 68.87 as incorporated at N.J.A.C. 7:31-4.1(a) for contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process.	40 CFR 68.87(a), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
394.	Failure to obtain and evaluate information regarding the contract owner or operator's safety performance and programs when selecting a contractor.	40 CFR 68.87(b)(1), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
395.	Failure to inform a contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.	40 CFR 68.87(b)(2), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
396.	Failure to explain to the contract owner or operator the applicable provisions of 40 CFR 68 subpart E as incorporated at N.J.A.C. 7:31-5.1(a).	40 CFR 68.87(b)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
397.	Failure to develop and implement safe work practices consistent with 40 CFR 68.69(d), as incorporated at N.J.A.C. 7:31-4.1(a) to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.	40 CFR 68.87(b)(4), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
398.	Failure to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 CFR 68.87(c) as incorporated at N.J.A.C. 7:31-4.1(a).	40 CFR 68.87(b)(5), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
399.	Failure to require the contract owner or operator to assure that each contract employee is trained in the work practices necessary to safely perform his or her job.	40 CFR 68.87(c)(1), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
400.	Failure to require the contract owner or operator to assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his or her job and the process, and the applicable provisions of the emergency action plan.	40 CFR 68.87(c)(2), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
401.	Failure to require the contract owner or operator to document that each contract employee has received and understood the training required by 40 CFR 68.87 as incorporated at N.J.A.C. 7:31-4.1(a). or Failure to require the contract owner or operator to prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that each employee understood the training.	40 CFR 68.87(c)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
402.	Failure to require the contract owner or operator to assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by 40 CFR 68.69(d) as incorporated as N.J.A.C. 7:31-4.1(a).	40 CFR 68.87(c)(4), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	

	Categories of Offense	Cite	First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
403.	Failure to require the contract owner or operator to advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.	40 CFR 68.87(c)(5), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
404.	Failure to comply with the emergency response provisions of N.J.A.C. 7:31-5.	N.J.A.C. 7:31-4.8(a)	4,000	8,000	20,000	NM	
405.	Failure to submit to the Department within 90 days of the anniversary date an annual report reflecting the risk management activities for the 12-month period ending on the anniversary date.	N.J.A.C. 7:31-4.9(a)	2,000	4,000	10,000	M	30
406.	Failure to include in the annual 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 annual report if there were no changes in this information since the last Risk Management Plan submittal.	N.J.A.C. 7:31-4.9(b)1	500	1,000	2,500	M	30
407.	Failure to include in the annual 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 annual report if there were no changes in this information since the last annual report.	N.J.A.C. 7:31-4.9(b)2	500	1,000	2,500	M	30
408.	Failure to include in the annual report a process hazard analysis with risk assessment report prepared pursuant to N.J.A.C. 7:31-4.2(e) for each process hazard analysis with risk assessment completed during the previous year, when applicable. or Failure to include in the annual report a list of the risk assessment reports prepared pursuant to N.J.A.C. 7:31-4.6(c) or the actual risk assessment reports. or Failure to state in the annual report that there were no process hazard analysis with risk assessment reports completed if no such reports were completed since the last annual report.	N.J.A.C. 7:31-4.9(b)3	500	1,000	2,500	M	30
409.	Failure to include in the annual report a summary of any EHS accidents and potential catastrophic events that occurred during the previous year including the EHS involved and amount released if these facts could have been reasonably determined based on the information obtained through the investigation.	N.J.A.C. 7:31-4.9(b)4i	500	1,000	2,500	M	30
410.	Failure to include in the annual report a summary of any EHS accidents and potential catastrophic events that occurred during the previous year including the date and time of the EHS accident and identification of EHS equipment involved.	N.J.A.C. 7:31-4.9(b)4ii	500	1,000	2,500	M	30
411.	Failure to include in the annual report a summary of any EHS accidents and potential catastrophic events that occurred during the previous year including the basic and contributory causes.	N.J.A.C. 7:31-4.9(b)4iii	500	1,000	2,500	M	30
412.	Failure to include in the annual report a summary of any EHS accidents and potential catastrophic events that occurred during the previous year including a statement that there were no EHS accidents if no EHS accidents occurred since the last annual report.	N.J.A.C. 7:31-4.9(b)4iv	500	1,000	2,500	M	30

	Categories of Offense	Cite	First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
	or Failure to submit the RMP for covered processes regulated under 40 CFR 68 as incorporated at N.J.A.C. 7:31-7.1 in a method and format to a central point as specified by USEPA as of the date of submission. or Failure to submit the RMP for all covered processes to the Department in accordance with N.J.A.C. 7:31-7.2.						
478.	Failure to submit the first RMP on or before June 21, 1999.	40 CFR 68.150(b)(1), N.J.A.C. 7:31-7.1(a)	5,000	10,000	25,000	NM	
479.	Failure to submit the first RMP on or before three years after the date on which a regulated substance is first listed under 40 CFR 68.130.	40 CFR 68.150(b)(2), N.J.A.C. 7:31-7.1(a)	5,000	10,000	25,000	NM	
480.	Failure to submit the first RMP on or before the date on which a regulated substance is first present at or above a threshold quantity at the facility.	40 CFR 68.150(b)(3), N.J.A.C. 7:31-7.1(a)	If found by the Department: 10,000 per year out of compliance plus amount of past fees due as calculated per N.J.A.C. 7:31-1.11A. If self-reported: 10,000	If found by the Department: 25,000 per year out of compliance plus amount of past fees due as calculated per N.J.A.C. 7:31-1.11A. If self-reported: 25,000	If found by the Department: 50,000 per year out of compliance plus amount of past fees due as calculated per N.J.A.C. 7:31-1.11A. If self-reported: 50,000	NM	
481.	The owner or operator of any stationary source for which an RMP was submitted before June 21, 2004, shall revise the RMP to include the information required by 40 CFR 68.160(b)(6) and (14) by June 21, 2004 in the manner specified by EPA prior to that date. Any such submission shall also include the information required by 40 CFR 68.160(b)(20) (indicating that the submission is a correction to include the information required by 40 CFR 68.160(b)(6) and (14) or an update under 40 CFR 68.190).	40 CFR 68.150(c), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
482.	Failure to update and correct RMPs submitted under 40 CFR 68 in accordance with 40 CFR 68.190 as incorporated at N.J.A.C. 7:31-7.1(c)3,4, and 5 and 68.195 incorporated at N.J.A.C. 7:31-7.1(a).	40 CFR 68.150(d), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
483.	Failure to provide an executive summary in the RMP.	40 CFR 68.155 N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30
484.	Failure to provide in the RMP executive summary a brief description of the accidental release prevention and emergency response policies at the stationary source.	40 CFR 68.155(a), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
485.	Failure to provide in the RMP executive summary a brief description of the stationary source and regulated substances handled.	40 CFR 68.155(b), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
486.	Failure to provide in the RMP executive summary a brief description of the general accidental release prevention program and chemical specific prevention steps.	40 CFR 68.155(c), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
487.	Failure to provide in the RMP executive summary a brief description of the five-year accident history.	40 CFR 68.155(d), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
488.	Failure to provide in the RMP executive summary a brief description of the emergency response program.	40 CFR 68.155(e), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30

	Categories of Offense	Cite	First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
489.	Failure to provide in the RMP executive summary a brief description of the planned changes to improve safety.	40 CFR 68.155(f), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
490.	Failure to complete a single registration form that is included in the RMP that covers all regulated substances handled in covered processes.	40 CFR 68.160(a), N.J.A.C. 7:31-7.1(a)	2,000	4,000	10,000	NM	
491.	Failure to include in the registration any of the following: stationary source name, street, city, county, state, zip code, latitude and longitude, method for obtaining latitude and longitude, or description of location that latitude and longitude represent.	40 CFR 68.160(b)(1), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
492.	Failure to include in the registration the stationary source's Dun and Bradstreet number.	40 CFR 68.160(b)(2), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
493.	Failure to include in the registration the name and Dun and Bradstreet number of the corporate parent company.	40 CFR 68.160(b)(3), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
494.	Failure to include in the registration the name, telephone number, and mailing address of the owner or operator.	40 CFR 68.160(b)(4), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
495.	Failure to include in the registration the name and title of the person or position with overall responsibility for RMP elements and implementation, and (optional) the e-mail address for that person or position.	40 CFR 68.160(b)(5), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
496.	Failure to include in the registration the emergency contact person's name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists).	40 CFR 68.160(b)(6), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
497.	Failure to include in the registration for each covered process the name and CAS number of each regulated substance held at or above the threshold quantity at the facility, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process.	40 CFR 68.160(b)(7), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	NM	
498.	Failure to include in the registration the stationary source USEPA identifier.	40 CFR 68.160(b)(8), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
499.	Failure to include in the registration the number of full-time employees at the stationary source.	40 CFR 68.160(b)(9), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
500.	Failure to include in the registration whether the stationary source is subject to 29 CFR 1910.119.	40 CFR 68.160(b)(10), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
501.	Failure to include in the registration whether the stationary source is subject to 40 CFR part 355.	40 CFR 68.160(b)(11), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
502.	Failure to include in the registration the CAA Title V operating permit number for a stationary source that has a CAA Title V operating permit.	40 CFR 68.160(b)(12), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
503.	Failure to include in the registration the date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.	40 CFR 68.160(b)(13), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
504.	Failure to include in the registration as of June 21, 2004, the name, the mailing address, and the telephone number of the contractor who prepared the RMP (if any).	40 CFR 68.160(b)(14), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	M	30
505.	Failure to include in the registration as of June 21, 2004, the type of and reason for any changes being made to a previously submitted RMP categorized as follows: (i) Updates and re-submissions required under 40 CFR 68.190(b);	40 CFR 68.160(b)(20), N.J.A.C. 7:31-7.1(a)	500	1,000	2,500	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; and reserved penalties 10 through 14, 108 through 208, and 522 through 540, operative March 16, 2010.

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).