

CHAPTER 31

TOXIC CATASTROPHE PREVENTION ACT PROGRAM

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq. and 26:2C-1 et seq.

Source and Effective Date

R.2003 d.335, effective July 14, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 31, Toxic Catastrophe Prevention Act Program, expires on February 9, 2009. See: 40 N.J.R. 5109(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2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new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from former N.J.A.C. 7:31-2.12; Subchapter 9, Work Plan/EHSARA, was adopted; and former Appendices I and II were repealed by R.1998 d.355, effective July 20, 1998.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: Source and Effective Date. See, also, section annotations.

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).

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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), Applicability; and 40 CFR 68.12(b), 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 inventory that meets or exceeds the threshold quantity as determined under N.J.A.C. 7:31-6.3.”

ii. At the definition of “process,” add “at a facility” after “Process means any activity” and before “involving a regulated substance.”

iii. At the definition of “threshold quantity,” delete, “quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.” and replace with, “minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a covered process that determines whether or not an owner or operator must register under the program.”

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).”

3. 40 CFR 68.10, Applicability:

i. At 40 CFR 68.10(a), delete the phrase, “more than a threshold quantity” and replace with the phrase, “at least the threshold quantity”, and delete the phrase, “as determined under 40 CFR 68.115” and replace with “as determined under N.J.A.C. 7:31-6” and at 40 CFR 68.10(a)(3) delete the phrase, “above a threshold quantity” and replace with “at a threshold quantity.”

ii. At 40 CFR 68.10(a)1, delete June 21, 1999 and add the following, “September 30, 2004, for covered purposes with EHSs listed in N.J.A.C. 7:31-6.3 in Table I, Part D. For covered processes with EHSs listed in

N.J.A.C. 7:31-6.3 Table I Part A, B, or C , the obligation to comply with this chapter shall continue and the obligation to revise an owner or operator's risk management program shall be in accordance with 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. 7:31-3.4 (for Program 2 covered processes) or N.J.A.C. 7:31-4.11 (for Program 3 covered processes)."

iv. At 40 CFR 68.10(c), delete the words "either paragraph (b) or paragraph (d) of this section," and replace with "Program 3 eligibility 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 following:

i. The management system shall include a documentation plan which shall: (1) provide a means of

identifying all documentation required by this chapter; 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 for recording the daily quantity of each extraordinarily hazardous substance (EHS) contained in storage vessels and shipping containers.

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).

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 (LC_{50}); or one times the lowest lethal concentration (LC_{10}) of test data for any mammalian species in test periods up to eight hours; or the Immediately Dangerous to Life and Health (IDLH) concentration. LC_{50} , LC_{10} , 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".

"Agent of the Department" means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.

"ANSI" means the American National Standards Institute.

"Budget-expenditure variance" means the difference, either positive or negative, between the gross expenditures and the spending plan (budget) of the same fiscal year of the TCPA program. Where budget exceeds expenditures, this difference is positive.

"Change" means any modification in existing EHS equipment or procedures which are directly involved with an EHS, including additions or deletions. Change does not include routine maintenance, which means the repair or replacement in kind of existing EHS equipment to provide continuity of operation, or replacement with identical equipment.

"Claimant" means any person who submits a confidentiality claim under this chapter.

“Commissioner” means the Commissioner of the Department of Environmental Protection or the person delegated to act on his behalf.

“Confidential copy” means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.

“Confidential information” means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the owner or operator or compromise the security of the covered process or its operations; consisting of non-privileged trade secret information, proprietary information and non-privileged security information.

“Confidentiality claim” or “claim” means a written request made by an owner or operator of a covered process pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.

“Consequence analysis” means the determination of the potential consequence of an EHS release on the surrounding population, using dispersion, thermal or overpressure analysis and, at a minimum, identifying potential populations exposed to the toxic, thermal or overpressure endpoint for each EHS.

“Department” means the New Jersey Department of Environmental Protection.

“Dispersion analysis” means the calculation, by means of EPA Offsite Consequence Analysis look-up tables or a model acceptable to the Department, of the ambient concentrations of an EHS after its release, taking into account the physical and chemical states and properties of the EHS, the release scenario and the geographical, topographical, geological and meteorological characteristics of the environment, which will influence the migration, movement, dispersion, or degradation of the EHS in the environment.

“EHS accident” means an unplanned, unforeseen or unintended incident, situation, condition, or set of circumstances which directly or indirectly results in an EHS release.

“EHS equipment” means that equipment within a covered process whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation, EHS release detection equipment, and EHS shipping container handling equipment.

“EHS operator” means an employee who is directly involved with an EHS and qualified and trained in the operations of EHS equipment or procedures.

“EHS procedure” means a step of an operation involving an EHS, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

“EHS release” means a discharge or emission of an EHS into the environment, excluding discharges or emissions occurring pursuant to and in compliance with the conditions of any State permit or a regulation promulgated pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

“EHS service” means the handling, use, manufacture, storage or generation of an EHS.

“Electrical classification” means the electrical area or bubble classification according to the National Electrical Code (NEC) which provides the NEC group number of the flammable or combustible substance(s) handled, stored or used. The NEC may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322.

“Electrical one-line diagram” means a diagram including legend of the electrical power distribution system that could contribute to an EHS release showing such items as power consumers, the chain of supply back through starters, distribution centers, substations to the main feeder, emergency power supply, and connections to various components. For complex systems, the one-line diagram may be a group of drawings.

“Emergency condition” means any situation at a covered process during which an EHS release is in progress or will occur because no preventive measures would be effective.

“Employee” means any person allowed or permitted to work by an owner or operator of a covered process, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the owner or operator of a covered process.

“External forces and events” means forces of nature or sabotage or such events as neighboring fires or explosions, neighboring EHS releases, electric power failures, and intrusions of external transportation vehicles such as aircraft, ships, trucks or automobiles.

“Extraordinarily hazardous accident risk” means a potential for an EHS release which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability.

“Extraordinarily hazardous substance accident risk assessment” or “EHSARA” means a review and safety evaluation of those operations at a covered process which involve the generation, storage, or handling of an extraordinarily hazardous substance.

“Extraordinarily hazardous substance” or “EHS” means any substance or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-6.3.

“Extraordinarily Hazardous Substance List” means the list of substances and chemical compounds set forth in Table I of N.J.A.C. 7:31-6.3.

“Extraordinarily Hazardous Substance Risk Reduction Work Plan” or “work plan” means the document developed by the Department for each covered process at which is generated, stored, or handled an extraordinarily hazardous substance, setting forth the scope and detail of the EHSARA to which the covered process will be submitted.

“Facility” means a building, equipment, and contiguous area which embodies a process. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person. Facility shall include pilot plant scale operations.

“Failure mode and effects analysis” or “FMEA” means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and the effect of the failure on the system with respect to an EHS release. The failure and effects are determined in a study of updated piping and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned. The results of the FMEA are reported for a unit or system of a covered process on an FMEA table. The results entered on an FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

“Fault tree analysis” or “FTA” means the analysis of the logic diagram constructed from a study of the updated piping

and instrument diagrams that describe the covered process taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release. The combinations are determined by solving the fault tree logic diagram for the minimal cut sets, that is, the smallest combination of equipment or procedural failures, which if all occur, will result in the “top event”, that is the EHS release. The table is also entered with a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. The analysis of the logic diagram includes the identification of “minimal cut sets.” When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability or frequency of occurrence of the EHS release.

“Fire water system piping diagram” means one or more diagrams relevant to the covered process and its potential releases showing that portion of the site plan that includes fire water pumps and piped distribution system showing the location of branches for fire monitors, fire hydrants, sprinklers and deluge systems and, where available, the sizes and designation numbers of header and subheader piping and piping specifications.

“Functional group” means a group of chemical compounds that have similar structural and/or molecular features which impart similar physical characteristics to the compounds in that group.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazard analysis” means a systematic identification of the potential conditions that may result in an EHS accident.

“Hazard and operability study” or “HAZOP” means a systematic study of updated piping and instrument diagrams that describes 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 performed by a multidisciplinary team to identify hazard or operability problems that would result in an EHS accident. Deviations from the design value of key parameters (flow, temperature, composition, time, quantity, etc.) of each segment of the covered process and its procedures are studied using guide words (such as, more of, less of, none of, part of, more than and other) to control the examination and evaluation. Results of the HAZOP study shall be reported by tabulation for a unit by key equipment, such as vessels or pipelines, and process parameter. The results are entered on the table as follows: guide word, causes of the deviation, consequences of the deviation in terms of a potential EHS release, the criticality based on the quantity or rate of potential release and the suggested action in terms of equipment or procedure to mitigate the deviation.

“Hazard unit” means the measure of inventory of an EHS expressed as multiples of its threshold quantity, used in calculating TCPA fees.

“Heat of reaction” or “ ΔH_R ” means the change in the amount of heat energy of the substances contained in a process vessel that occurs during a chemical reaction expressed as calories per gram; or specifically, the energy content of the reaction products minus the energy content of the reactants. The heat of reaction includes heat energies such as the heat of decomposition, heat of explosion or heat of combustion depending on the chemical reaction(s) taking place.

“Industrial complex” means the overall property of at least two contiguous TCPA regulated stationary sources which meet the following criteria:

1. Owners and operators of each source provide access to the hazard review, process hazard analyses with risk assessment and accident or potential catastrophic event investigation reports to the qualified person or the assigned designee of each of the other stationary sources, and the qualified person or the assigned designee of each source signs a certification statement annually that the records have been reviewed;
2. Employees of each of the individual sources have access to these reports and all information required to be developed under this chapter;
3. The owners or operators of each source have implemented security measures to restrict uncontrolled public access to the entire property; and
4. There is a previous history of ownership of the complex, now occupied by the individual regulated stationary sources, by one company.

“Inherently safer technology” means the principles or techniques that can be incorporated in a covered process to minimize or eliminate the potential for an EHS release.

“Inventory” means the EHS quantity contained in a process or the quantity of EHS generated within one hour by the process, whichever is greater.

“Management system” means the composite of organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing, evaluating and maintaining the required Risk Management Program.

“Material deficiency” means an inadequacy or omission of an owner’s or operator’s risk management program that reduces the effectiveness of the risk management program.

“Operating alternative” means an alternative procedure, schedule or process chemistry or a combination thereof.

“Overpressure analysis” means the computation of the distance that a criterion level of overpressure extends from the center of a explosion due to a release/ignition scenario of a flammable substance.

“Person” means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.

“Petition to withhold privileged trade secret or security information” or “petition” means a written request made by an owner or operator of a covered process pursuant to this chapter to withhold from disclosure to the Department certain information which is privileged trade secret or security information.

“Petitioner” means any person who submits a petition to withhold privileged trade secret or security information under this chapter.

“Piping and instrument diagram” or “P & ID” means one or more detailed diagrams including legends and citations of referenced documents, showing: every item of EHS equipment and its identification number (including installed spare equipment); every pipe including size, flow direction, identification number and indication of ANSI piping specification and break between piping specifications; symbols and identification of every instrument including instrument function to show trips and interlocks represented in accordance with Instrument Society of America standards or a standard adequate for the conduct of a safety review or hazard analysis with an appropriate symbol legend shown; every valve; the failsafe position of control valves or non-hand operated valves in the case of instrument air or power failure; steam traps; representation of insulation or heat tracing of piping, EHS equipment and instruments; sizes of all important

equipment nozzles with location shown schematically to reflect function and elevation, such as, drains, vents, flushing connections and steam connections; references to inter-facing with other diagrams describing process, service, treatment, disposal, or utility systems; data on type, size, and set pressures of every relief valve and relieving device; instruments to monitor early detection of abnormal conditions or an EHS release; where critical, the relative elevations between equipment and of key piping; notes or symbols on such items as slope of critical piping to avoid pockets, or, where critical, symmetrical piping; notes on each item of EHS equipment, such as, material of construction, design temperature, design pressure, design thermal duty of heat exchangers, design capacity and dynamic head of rotating equipment, etc.

“Potential catastrophic event” means an incident that could have reasonably resulted in a catastrophic release of an EHS.

“Privileged trade secret or security information” means trade secret or security information which the Department has determined the owner or operator of a covered process is entitled to withhold from and not disclose to the Department; consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or state law or regulation, and which has never been released to any person other than the owner’s or operator’s employees involved in its use.

“Process chemistry” means the chemical reactions which are relevant to possible scenarios of EHS release, including information on raw materials, intermediates, products, and waste products.

“Process flow diagram” means one or more diagrams of a covered process including legends and citations of referenced documents showing the use, generation, storage or handling of an EHS, items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. A process flow diagram includes, or references, a block flow diagram that depicts the receipt, handling and storage steps at the stationary source of shipping containers of the EHS.

“Public copy” means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.

“Qualified person or position” means the member of management who has the overall responsibility for the develop-

ment, implementation and integration of the risk management program elements for the stationary source and who shall possess sufficient corporate authority and technical background to adjudicate issues relating to the execution of the risk management program based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

“Rate of energy release” means the amount of heat energy released in a specified unit of time during a chemical reaction involving an EHS.

“Reactive hazard substance” or “RHS” means an EHS that is a substance, or combination of substances, which is capable of producing toxic or flammable EHSs or undergoing unintentional chemical transformations producing energy and causing an extraordinarily hazardous accident risk. RHSs are identified at N.J.A.C. 7:31-6.3(a), Table I, Part D, Group I (List of Individual Reactive Hazard Substances).

“Reactive hazard substance (RHS) mixture” means an EHS that is a combination of substances intentionally mixed in a process vessel and is capable of undergoing an exothermic chemical reaction which produces toxic or flammable EHSs or energy. An RHS mixture has a heat of reaction which, by convention, is expressed as a negative value for an exothermic reaction, that has an absolute value greater than or equal to 100 calories per gram of RHS mixture. RHS mixtures include a reactant, product, or byproduct that is a chemical substance or a mixture of substances having one or more of the chemical functional groups specified in N.J.A.C. 7:31-6.3(a), Table I, Part D, Group II.

“Registered EHS” means an EHS which is handled, used, manufactured or stored, or is capable of being generated within one hour, at a covered process in a quantity equal to or greater than the threshold quantity for that EHS in Table I of N.J.A.C. 7:31-6.3.

“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.

“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.

“State-of-the-art” means current technology that, when applied to an owner or operator’s EHS equipment and procedures, will result in a significant reduction of risk. The technology represents an advancement in reduction of risk and shall have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain or otherwise available at reasonable cost commensurate with the reduction of risk achieved.

“Stationary source emergency response team” means those personnel identified in the emergency response plan that respond to an emergency at the stationary source which involves an EHS. Functions for which the stationary source emergency response team shall be responsible include activities such as alarm identification and response, response to an EHS release, use of emergency protective equipment, rescue procedures, evacuation procedures, medical assistance, action plans for dealing with specific scenarios, and specifically assigned emergency response duties. Owners or opera-

tors of a covered process may arrange with outside providers for any portion of these functions as needed.

“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".

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 these 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

Division of Waste Compliance and Enforcement
and Release Prevention

PO Box 424

Trenton, NJ 08625-0424

Telephone: (609) 633-7289

(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).

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 stationary source 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).

(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 stationary source for which there is no previously approved risk management program shall begin operating that covered process until the Department and the owner or operator have executed a consent agreement containing an approved risk management program.

(d) No owner or operator of a stationary source with an approved risk management program shall operate a new process or utilize an existing covered process for a new EHS service before submitting to the Department the documentation required by N.J.A.C. 7:31-3.4(c) or (d) (Program 2) or N.J.A.C. 7:31-4.11(c) or (d) (Program 3), and the fee required by N.J.A.C. 7:31-1.11. The owner or operator shall not operate the new covered process before executing a consent agreement to update the approved risk management program for the new covered process.

(e) No owner or operator of a covered process shall fail to provide the Department with any information required to be submitted to the Department pursuant to the TCPA or this chapter.

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

7:31-1.10 Prevention of catastrophic accidents

(a) The Department may take such actions as it deems necessary in order to protect human health from an EHS release. Such actions may include, but shall not be limited to, issuing such orders as may be necessary to protect the health of persons who may be subject to such a release.

(b) The Department may include in the orders, at its discretion, the following:

1. A requirement that the owner or operator immediately submit a risk management program to the Department for review;
2. A requirement that the owner or operator perform a safety review, hazard analysis or risk assessment;
3. A requirement that the owner or operator immediately take risk reduction actions or implement a risk reduction plan;
4. A requirement that the owner or operator cease operating until the identified risk or risks have been abated; or

5. Any other requirement the Department determines is necessary to carry out the purposes of the TCPA or this chapter.

(c) When the Department issues an order or takes other appropriate action pursuant to this section, such order or action shall not be deemed to affect the availability of, or preclude the use of, any other enforcement provision.

Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).
Recodified from N.J.A.C. 7:31-2.13 and 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), deleted references to registrants throughout.

7:31-1.11 (Reserved)

Correction: Deleted "State's" from (f).
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(b).
Added (n).
Amended by R.1991 d.463, effective September 3, 1991.
See: 23 N.J.R. 818(a), 23 N.J.R. 2780(a).
In (a), added references to N.J.A.C. 7:31-2.5, "(i) through (m) below" for computation of fees and "(f) through (h) below" for billing and remittance. Deleted texts of (b) and (c); Reserved. In (d), deleted reference to (b) and (c); deleted "with the registration forms"; added "in accordance with the bill received from the Department". In (e), deleted "with the amended registration forms"; added "in accordance with the bill received from the Department". In (g), deleted references to calendar year 1988 and (f). In (h), added "Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee." In (j), the words "or" and "or both" replaced "and" as a clarification of what the fee applies to and the fee was revised to "\$6,500". In (k), fee revised to "\$6,500". In (l), revised inventory derived fee. In (m), added "except for (n) below". Added (n). Recodified existing (n) and (o) as (o) and (p).
Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1995.
See: 26 N.J.R. 5116(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1996.
See: 27 N.J.R. 5055(a).
Public Notice: Annual TCPA Fee Schedule Report, FY 1997.
See: 28 N.J.R. 5499(b).
Public Notice: Annual TCPA Fee Schedule Report, FY 1998.
See: 29 N.J.R. 5334(c).
Recodified from N.J.A.C. 7:31-2.16 and amended by R.1998 d.355, effective July 20, 1998 (to expire June 21, 1999).
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
In (a), (i), (l) and (o), changed N.J.A.C. references; in (h), substituted "in accordance with the remittance information contained on the bill" for an address at the end; in (q) and (r), changed N.J.A.C. references, and substituted "on the bill" for "in N.J.A.C. 7:31-2.16(h)" at the end of each; and added (s) through (u).
Public Notice: Annual TCPA Fee Schedule Report, FY 1999.
See: 30 N.J.R. 4478(b).
Repealed by R.2003 d.335, effective August 4, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).
Section was "Fees (effective until June 21, 1999)".

7:31-1.11A Fees

(a) After June 21, 1999, each owner or operator of a stationary source subject to this chapter shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (b), (c) and (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) The Department shall assess annual fees that include a base fee, a covered process derived fee, and an inventory derived fee. The base fee unit rate, covered process derived fee unit rate, and inventory derived fee unit rate shall be calculated using the data from the TCPA database as of October 1 of the current year.

(c) The Department shall annually determine during the month of October the base fee and the covered process fee and the inventory derived fee unit rates, taking the following steps:

1. Establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which owners or operators shall be charged fees based on the following data:

i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;

ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

iv. The estimated TCPA program operating expenses; and

v. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the TCPA program;

2. Subtract a positive difference or add a negative difference of the "budget-expenditure variance" of the spending plan for the TCPA program of the prior fiscal year, determined by the Department as of October 1 of the current fiscal year, from the amount of money required to fund the TCPA program determined in (c)1 above to determine the net money required;

3. Project the total amount to be contributed by the inventory derived fee to the aggregate fee of each owner or operator. This projection shall be based on the following data and steps:

i. Determine the sum of hazard units at all covered processes registered as of October 1 of the fiscal year during which the determination is made; and

ii. Determine the contribution of the aggregate inventory fees to be collected as 40 percent of the net money required as determined at (c)2 above; and

iii. Determine the value of the unit inventory derived fee in dollars per hazard unit by dividing (c)3ii above by (c)3i above;

4. Determine the total amount to be contributed by the covered process derived fee to the aggregate fee of each owner or operator of a covered process. The determination shall be based on the following data and steps:

i. Determine the number of covered processes as of October 1 of the fiscal year during which the determination is made;

ii. Determine the contribution of the aggregate covered process fees to be collected as 40 percent of the net money required as determined at (c)2 above; and

iii. Determine the value of the unit covered process derived fee in dollars per covered process by dividing (c)4ii above by (c)4i above;

5. Determine the total amount to be contributed by the base fee to the aggregate fee of each owner or operator. The determination shall be based on the following data and steps:

i. Determine the total number of stationary sources as of October 1 of the fiscal year during which the determination is made;

ii. Determine the contribution of the aggregate base fee to be collected as 20 percent of the net money required as determined at (c)2 above; and

iii. Determine the value of the base fee in dollars per owner or operator by dividing (c)5ii above by (c)5i above; and

6. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted base fee, covered process derived, and inventory derived unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(d) An owner or operator of a new covered process with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (b), (c) and (i) through (m) below in accordance with the bill received from the Department.

(e) An owner or operator having previously registered EHSs who is registering a new covered process or increasing the EHS inventory shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i) below, in accordance with the bill received from the Department.

(f) The annual fees are assessed on the basis of the fiscal year and shall not be prorated or refunded.

(g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each owner or operator a bill for each stationary source stating the fee for that calendar year.

1. This bill shall include the base fee and fees calculated using inventory and covered process data from the owner or operator's Risk Management Plan on file with the Department as of the previous October 1.

(h) The owner or operator shall pay his or her fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any owner or operator who has not paid the annual fee by the due date shall be assessed a 25 percent late fee. The check or money order shall be submitted in accordance with the remittance information contained on the bill.

(i) For the purpose of calculating fees, "inventory" as used in this section means the maximum quantity for each EHS reported by the owner or operator of a covered process on the Risk Management Plan submitted to the Department in accordance with N.J.A.C. 7:31-7.

(j)-(l) (Reserved)

(m) The annual fee for the owner or operator of a stationary source shall be the sum of the base fee and the sum of the covered process derived fee for each covered process and the sum of each EHS inventory derived fee except as provided at (o) and (p) below.

(n) (Reserved)

(o) The annual fee for an owner or operator who has temporarily discontinued use, handling, storage or generation of all EHSs at the stationary source and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-4.10 (for the Program 3 covered processes) shall be 25 percent of the base fee.

(p) The annual fee for an owner or operator who has obtained a temporary discontinuance in accordance with N.J.A.C. 7:31-4.10 for one or more EHSs, but has retained other EHSs at the stationary source that are registered in the most current Risk Management Plan in amounts that meet or exceed threshold quantities shall be the full base fee and the covered process and inventory fees for the registered EHSs.

(q) Each owner or operator submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-

10.5(d) shall submit a fee of \$350.00 for the review of his or her petition at the time of submitting the petition substantiation form. The fee shall be submitted in accordance with the remittance information contained on the bill.

(r) Each owner or operator submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-10.6 shall submit a fee of \$350.00 for the review of his or her petition at the time of submitting the petition substantiation form. The fee shall be submitted in accordance with the remittance information contained on the bill.

(s) Any fee under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

New Rule, R.1998 d.355, effective June 21, 1999.

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

Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2000.

See: 31 N.J.R. 4342(a).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2001.

See: 32 N.J.R. 4478(c).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2002.

See: 34 N.J.R. 311(b).

Public Notice: Toxic Catastrophe Prevention Act fee schedule report for fiscal year 2003.

See: 34 N.J.R. 4475(a).

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 "October" for "December" in the introductory paragraph; in (g)1 and (i), substituted "Risk Management Plan" for "registration form"; rewrote (p); in (q) and (r), rewrote the second sentence.

Public Notice: Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 2004.

See: 36 N.J.R. 222(c).

Public Notice: Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 2005.

See: 37 N.J.R. 537(b).

Public Notice: Availability of annual TCPA fee schedule report for Fiscal Year (FY) 2006.

See: 37 N.J.R. 5067(a).

Public Notice: Availability of annual TCPA fee schedule report for Fiscal Year (FY) 2007.

See: 39 N.J.R. 260(b).

Public Notice: Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 2008.

See: 40 N.J.R. 758(b).

Public Notice: Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 2009.

See: 41 N.J.R. 1107(a).

7:31-1.12 Release of information by insurance carriers

(a) After a review of documents and a stationary source inspection, the Department may determine that an owner or operator shall authorize its environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the owner or operator's EHS management practices.

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;
2. Reports of safety and environmental inspections or audits;
3. Reports of inspections of fire protection equipment;
4. Reports of any additional studies conducted which evaluated the adequacy of the owner or operator's management of EHSs; and
5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the owner or operator shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the owner or operator.

(e) The Department is authorized to disclose information obtained from an insurance carrier or its representative pursuant to this section only to its own employees or agents to assist in enforcing the provisions of the TCPA, or for use in a civil or criminal proceeding, if so ordered by a court.

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). See: 20 N.J.R. 1743(a).

Amended by R.1993 d.358, effective July 19, 1993.
See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Recodified from N.J.A.C. 7:31-2.15 and 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; and in (a), substituted a reference to stationary source inspection for a reference to site inspection.

SUBCHAPTER 2. HAZARD ASSESSMENT

7:31-2.1 Incorporation by reference

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

(b) The following provision of 40 CFR 68 Subpart B is not incorporated by reference: 40 CFR 68.25(a)(1).

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

1. 40 CFR 68.20, in the first sentence, delete the word "part" and replace with "chapter."

2. 40 CFR 68.22(a)(1), after "in Appendix A of this part." add, "Toxic endpoints for Table I, Part A toxic substances not listed in Appendix A shall be determined in accordance with the criteria used by EPA in developing 40 CFR Part 68 Appendix A."

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. Twenty-eight 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; 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).

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), hazardous 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 New covered processes—construction and new EHS service

(a) Owners or operators who plan to construct a new Program 2 covered process at a stationary source for which there is no previously approved risk management program shall:

1. 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 the covered process;

2. Proceed with construction of the new covered process only upon receiving written approval from the Department;

3. Submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service any updates of the documentation as required by (a)1; and

4. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(b) Owners or operators who plan to utilize existing equipment for a new Program 2 covered process at a stationary source for which there is no previously approved risk management program shall:

1. 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 placing the equipment into EHS service; and

2. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(c) Owners or operators who plan to construct a new Program 2 covered process or utilize existing equipment for a new Program 2 covered process at a stationary source that has a previously approved risk management program shall:

1. 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 the equipment into EHS service; and

2. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(d) Prior to placing equipment into EHS service the owner or operator of a covered process shall enter into a consent agreement, or consent agreement addendum, for that equipment with the Department, subsequent to a stationary source inspection by the Department, and complete any items of the consent agreement, or consent agreement addendum, for that equipment in accordance with the schedule in the consent agreement or consent agreement addendum.

(e) The owner or operator shall 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. The owner or operator shall submit the inherently safer technology review report with the submittal required at (a)1, (b)1, or (c)1 above, as applicable.

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).

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 "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 sentence, replace "the following elements" with "the elements listed at 1-4 below." 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 the language that the operators can understand.”

9. 40 CFR 68.71, Training, in the heading, add “EHS operator” before “training.”

10. 40 CFR 73, Mechanical integrity, in the heading, add “/preventive maintenance” after “Mechanical integrity.”

11. 40 CFR 68.73(a)(6), at the end, add the following:

- i. All EHS equipment;
- ii. Standby emergency equipment such as power generators, fire pumps, and lighting; and
- iii. Electrical grounding systems.

12. 40 CFR 68.75(b)(2), at the end, add the words “and preventive maintenance procedures.”

13. 40 CFR 68.79(a), Compliance audits, delete “every three years” and replace with “every year.” Add, at the end of the sentence, “Also, the owner or operator shall verify that the process technology and equipment, as built and operated, are in accordance with the process safety information prepared pursuant to 40 CFR 68.65(c) and (d) as incorporated with changes at N.J.A.C. 7:31-4.1(c)1 through 4.”

14. 40 CFR 68.79(c), add, “The compliance audit report shall also include the scope, audit techniques, methods used and the names of the audit participants.”

15. 40 CFR 68.81, Incident investigation, in the heading and in (b), (c), (d)(1), (d)(3), (d)(4), (e), (f) and (g), delete the word “incident” and replace it with the words “EHS accident or potential catastrophic event.”

16. 40 CFR 68.81(a), delete the phrase “ incident which resulted in, or could reasonably have resulted in, a catastrophic release of a regulated substance” and replace it with “EHS accident or potential catastrophic event.”

17. 40 CFR 68.81(d)(1), after the word “date” add “, time, and location.”

18. 40 CFR 68.81(d)(3), after the word “incident,” which is being replaced by the words “EHS accident and potential catastrophic event,” (see (c)15 above) add, “in chronological order providing all the relevant facts. Include the identity, amount and duration of the EHS release if these facts can be reasonably determined based on the information obtained through the investigation. Also, identify the consequences, if any, of the EHS accident or potential catastrophic event including the number of evacuees, injured, and fatalities, and the impact on the community.”

19. 40 CFR 68.81(d)(4), after the word “incident,” which is being replaced by the words “EHS accident or potential catastrophic event,” (see (c)15 above) add, “that

includes an identification of basic and contributory causes, either direct or indirect.”

20. 40 CFR 68.81(d)(5), after the word “investigation,” add “to prevent a recurrence.”

21. 40 CFR 68.81(d)(5), at the end, add the following:

- i. The names and position titles of the investigators.

22. 40 CFR 68.83, Employee participation, at (b) and (c), after the phrase “process hazard analyses” add “with risk assessments.”

23. 40 CFR 68.79(d), Compliance Audits, at the end, add the sentence, “The owner or operator shall prepare and include in the report a written schedule for the implementation of corrective actions or state that such actions have been completed.”

24. 40 CFR 68.65(b)(4), after “Reactivity data,” add “applicable to the process in which an EHS is being used, handled, stored or generated that includes the following:

- i. 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;

- ii. 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 data at that temperature; and

- iii. Data regarding any incidental formation of byproducts that are reactive and unstable.

25. 40 CFR 68.65(b)(6), after “Thermal and chemical stability data,” add “applicable to the process in which an EHS is being used, handled, stored, or generated: 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;”

26. 40 CFR 68.65(b)(7), after “Hazardous effects of inadvertent mixing of different materials that could foreseeably occur,” add “which includes the explosive/flammable effects and 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.”

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 8 and 13 and added 23 through 26.

7:31-4.2 Process hazard analysis with risk assessment for specific pieces of EHS equipment or operating alternatives

(a) The provisions of this section apply in addition to those in 40 CFR 68.67 with changes specified at N.J.A.C. 7:31-4.1(c)5 through 7.

(b) The owner or operator of a covered process shall perform a process hazard analysis with risk assessment which shall include the following:

1. Identification of EHS equipment subject to the assessment, the points of possible EHS release, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuing EHS release, either steady or non-steady state, and the corresponding cause of the EHS release. Estimates of the quantity or rate and duration of a release shall be based on actual release mechanisms and shall reflect the operating procedures, safeguards, and mitigation equipment and procedures, planned for new or modified covered processes, or in place for existing covered processes.

2. Consideration of toxicity, flammability and reactivity for EHSs which appear in N.J.A.C. 7:31-6.3(a), Table I, Parts A and/or B as a toxic substance, Part C as a flammable substance, and/or Part D as an RHS or RHS mixture. The owner or operator shall consider both the explosive/flammability hazard and the capability to generate a toxic EHS, as applicable to the RHS or RHS mixture and process in which it is handled; and

3. Identification of all scenarios of toxic, flammable, and reactive hazards that have a potential offsite impact for the endpoint criteria at (b)3iii and iv below using a consequence analysis consisting of dispersion analysis, thermal analysis or overpressure analysis. The following parameters shall be used for the consequence analysis:

i. 1.5 meters per second wind speed and F atmospheric stability class;

ii. All parameters listed for alternative scenarios at 40 CFR 68.22(c) through (g);

iii. As applicable to the scenario being analyzed, the endpoint criteria of 10 times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2; 1,750 thermal dose units (equivalent to 17 kW/m² for 40 seconds); five psi overpressure; or the lower flammability limit. As an alternative to using the 10 times toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2, the value of five times the Acute Toxicity Concentration (ATC) may be used for toxic release scenarios; and

iv. As applicable to the scenario being analyzed, the endpoint criteria of five times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c) 2; 1,200 thermal dose units (equivalent to 15 kW/m² for 40 seconds); or 2.3 psi overpressure. As an alternative to using the five times

toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2, the value of the ATC may be used for toxic release scenarios.

(c) The owner or operator shall identify all release scenarios that have an offsite impact of the endpoint criteria specified at (b)3iii and iv above.

1. For each release scenario that has an offsite impact of the endpoint criteria specified at (b)3iii above, the owner or operator shall perform an evaluation of state-of-the-art, including alternative processes, procedures or equipment which would reduce the likelihood or consequences of an EHS release;

2. For each release scenario that has an offsite impact of the endpoint criteria specified at (b)3iv above, the owner or operator shall:

i. Perform an evaluation of state-of-the-art, including alternative processes, procedures or equipment which would reduce the likelihood or consequences of an EHS release; or

ii. Determine the likelihood of release occurrence. If the likelihood of release occurrence is greater than or equal to 10⁻⁴ per year, the owner or operator shall perform an evaluation of state-of-the-art, including alternative processes, procedures or equipment which would reduce the likelihood or consequences of an EHS release. If the frequency of release occurrence is less than 10⁻⁴ per year, no further assessment is required.

3. The owner or operator shall develop a risk reduction plan for the release scenarios requiring state-of-the-art evaluation determined pursuant to (c)1 and 2 above.

(d) The following documentation from the process hazard analysis with risk assessment shall be maintained:

1. Table(s) of the process hazard analysis results giving the release point and corresponding release scenario of the potential basic (initiating) and intermediate event sequences, the corresponding estimated quantity or rate and duration of releases, and the recommended resolution action based upon 40 CFR 68.67(e);

2. Table(s) summarizing each potential offsite release scenario identified that includes:

i. A scenario identification number and brief description;

ii. The rate and duration, or quantity, of potential release;

iii. The distance to the endpoint determined in (b)3iii and (b)3iv above and the respective distance to the nearest property line; and

iv. The release likelihood determined pursuant to (c)2ii above, if applicable.

3. Information from the dispersion modeling that includes:

- i. The identification of the dispersion model used; and
- ii. Printouts of the dispersion model inputs and outputs, if a dispersion model other than the lookup tables provided in the EPA's RMP Offsite Consequence Analysis Guidance current as of the time of modeling was used;

4. An explanation why any risk reduction measures identified in (c) and (d)1 above have not been included in the risk reduction plan; and

5. A statement of completion for each risk reduction measure in the risk reduction plan or an explanation of any changes made for each measure in the risk reduction plan.

(e) The owner or operator of a covered process shall prepare a report of the process hazard analysis with risk assessment. The report shall include the following:

1. An identification of the covered process that is the subject of the process hazard analysis with risk assessment; the name, position and affiliation of persons who performed the process hazard analysis with risk assessment; the date of completion; and the methodology used;

2. A description of each scenario identified in (b)3iii and iv above; and

3. The risk reduction plan developed pursuant to (c)3 and (d)1 above.

(f) The owner or operator of a stationary source that is part of an industrial complex as defined at N.J.A.C. 7:31-1.5 shall use either the property boundary of the industrial complex or the property boundary for the individual stationary source for the purpose of identifying release scenarios with offsite impact.

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

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

In (b), inserted "safeguards," preceding "and mitigation equipment" in 1, and rewrote 2 and 3; rewrote (c); in (d), inserted "based upon 40 CFR 68.67(e)" in 1, substituted "likelihood" for "frequency" and "(c)2ii" for "(c)2" in 2iv, inserted "and (d)1" in 4 and added 5; in (e), rewrote 3; added (f) and (g).

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

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

Deleted (g).

7:31-4.3 Standard operating procedures

(a) The provisions of this section apply in addition to those in 40 CFR 68.69, Operating procedures, with changes specified at N.J.A.C. 7:31-4.1(c) 8.

(b) The standard operating procedures shall include the following:

1. A process description defining the operation and showing flows, temperatures and pressures, or a reference to a document with this information;

2. Sampling procedures addressing apparatus and specific steps involved in the taking of samples;

3. Logsheets and checklists where appropriate to the operation;

4. A statement as to the number of EHS operators required to meet safety needs for each operation with requirements for shift coverage;

5. A requirement that an EHS operator be in attendance at the stationary source, be able to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage, or generation except:

i. During chlorination of water using chlorine vapor out of a supply vessel, if the Department determines that chlorine monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident and the online supply vessel total capacity is less than 2,100 pounds;

ii. During EHS storage requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action for an appropriate response, and a risk assessment demonstrates that an EHS operator is not necessary onsite during the specified activity;

iii. During storage not requiring refrigeration, circulation, agitation or inert gas blanketing, if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station, or a risk assessment performed pursuant to N.J.A.C. 7:31-4.2 demonstrates that an EHS operator is not necessary onsite during the specified activity; or

iv. Notwithstanding any other applicable State and/or Federal requirements, during mechanical refrigeration using anhydrous ammonia within a closed loop system, if the Department determines that anhydrous ammonia detection monitoring equipment is capable of automatically isolating, shutting down, and emptying EHS equipment and is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident; and

6. A table of contents or a system to index each covered process's standard operating procedures covering the items of 40 CFR 68.69(a) and (b)1 through 5 above.

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

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

In (b), rewrote 5iii and added 5iv.

7:31-4.4 EHS operator training

(a) The provisions of this section apply in addition to those in 40 CFR 68.71 with changes specified at N.J.A.C. 7:31-4.1(c)9.

(b) The owner or operator of a covered process shall provide a written job description which includes the duties and responsibilities for each EHS operator position.

(c) The training program shall specify the qualifications required for the personnel responsible for training EHS operators.

7:31-4.5 Mechanical integrity/preventive maintenance program

(a) The provisions of this section apply in addition to those of 40 CFR 68.73 with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11.

(b) The owner or operator shall implement a system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to determine the frequency of inspections and tests and to evaluate equipment reliability.

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

In (b), substituted "to determine" for "for the primary purpose of determining" following "analysis" and inserted "and to evaluate equipment reliability" following "tests".

7:31-4.6 Management of change

(a) The provisions of this section apply in addition to those in 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12.

(b) If any change in the covered process or procedures results in an increase in rate, duration or quantity, or release frequency, the associated release scenarios and changes in rate, duration and quantity shall be identified. The associated release scenarios shall be analyzed in accordance with the parameters and methods required at N.J.A.C. 7:31-4.2 to determine whether a criterion endpoint defined at N.J.A.C. 7:31-4.2(b)3iv extends beyond the stationary source boundary.

(c) If a release scenario due to the change results in a criterion endpoint extending beyond the stationary source boundary, the documentation and report required by N.J.A.C. 7:31-4.2(d) and (e) shall be prepared or updated for that change prior to implementing the change.

(d) Temporary changes involving EHS procedures, equipment, or safety instrumentation shall not be considered a change requiring compliance with 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12 and 4.6(a), (b) and (c). The management of change procedures shall contain the following requirements for implementing temporary changes:

1. Preparation of a description of the temporary change that includes:

- i. The temporary change to be made;
- ii. Identification of the EHS equipment, piping and instrument diagram(s), and standard operating procedure(s) affected by the temporary change; and
- iii. The reason for the temporary change;

2. Authorization of the temporary change by the appropriate person specified in the management system developed pursuant to 40 CFR 68.15(c);

3. Notification of all affected personnel of the temporary change;

4. A requirement to implement appropriate safety precautions while the temporary change is in EHS service;

5. The time limit for the temporary change. If this time limit is exceeded, the owner or operator shall comply with all requirements of 40 CFR 68.75 with changes specified at N.J.A.C. 7:31-4.1(c)12 and 4.6(a), (b) and (c); and

6. A requirement to ensure that the equipment and procedures are returned to their original or designed conditions at the end of the temporary change.

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

In (b), substituted "and" for "or" preceding "quantity".

7:31-4.7 Safety reviews: design and pre-startup

(a) The provisions of this section apply in addition to those in 40 CFR 68.77.

(b) For each new covered process, the owner or operator shall conduct a safety review of design for new EHS equipment prior to construction and shall document that the design of the covered process follows design and operating standards as reflected in the process safety information compiled in accordance with 40 CFR 68.65 with changes specified at N.J.A.C. 7:31-4.1(c)1 through 4.

(c) A written report shall be prepared for each safety review performed pursuant to (b) above. The safety review of design report shall include the following:

1. The date of the report and an identification of the covered process, the process safety information, and standard operating procedures reviewed;

2. An identification of the codes and standards upon which the covered process design and operations were based;

3. The names of the persons who performed the safety review; and

4. The deviations from the design and operating codes and standards that were found with an appropriate description of the resolution of each deviation finding.

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; and
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 deter-

mined 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 5. EMERGENCY RESPONSE

7:31-5.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart E, 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 E are incorporated by reference with the specified changes:

1. 40 CFR 68.90(b), after “The owner or operator of a stationary source” add, “of a Program 2 covered process”, and after “§ 68.95” add “(a)(1)(ii) and (iii), (2), (3), and (4), (b) and (c).”

2. 40 CFR 68.90(b)(3), at the end, add “The owner or operator shall obtain documentation from the local fire department or other outside emergency responder agencies, as applicable, that they will be responsible for responding to accidental releases at the owner or operator’s stationary source.”

3. 40 CFR 68.95(b), delete the words “complies with other Federal contingency plan regulations or”; and

4. 40 CFR 68.95(b), after the words “is consistent with” add the words “and as stringent as.”

7:31-5.2 Emergency response program

(a) The provisions of this section apply in addition to those of 40 CFR 68.95 with changes specified at N.J.A.C. 7:31-5.1(c)3 and 4.

(b) Each owner or operator shall develop and implement a written emergency response (ER) program which shall include:

1. Initial and annual refresher emergency response training for all employees in relevant procedures to implement the emergency response plan;

2. Performance of at least one EHS ER exercise per calendar year in accordance with the following requirements:

i. Owners or operators of stationary sources for Program 2 covered processes whose employees will not respond to an EHS accident in accordance with 40 CFR 68.90(b) with changes specified at N.J.A.C. 7:31-5.1(c)2 shall invite at least one outside responder agency designated in the ER plan to participate in the ER exercise. Employees of the stationary source shall perform their assigned responsibilities for all ER exercises; and

ii. All other owners or operators shall perform at least one full scale ER exercise in which the ER team and ER containment, mitigation, and monitoring equipment are deployed at a strength appropriate to demonstrate the adequacy and implementation of the plan; and

3. A written assessment of the ER plan and of the adequacy or need for ER equipment after each ER plan implementation or each ER exercise;

4. A description of the emergency notification system at the stationary source which shall include the following requirements for reporting EHS accidents:

i. Immediate notification to the Department's emergency communications center at 1-877 WARN DEP (1-877-927-6337) by the emergency coordinator or designee of an EHS accident or imminent EHS accident at the stationary source. The notification shall include the following information:

- (1) The company name and address of the EHS accident;
- (2) The name, position, and telephone number of caller;
- (3) The time of, or anticipated time, of the EHS accident and the projected duration;
- (4) The chemical name of the EHS released;
- (5) The actual EHS quantity or, if not known, the estimated EHS quantity and whether it will have an offsite impact; and
- (6) Weather conditions, including wind direction and speed and expected offsite effects, if any;

ii. The emergency coordinator or designee for the stationary source shall be prepared to provide the Department's emergency communications center updates, if requested, which shall include the following information:

- (1) The name and address of stationary source of the EHS accident;
- (2) The name, position and telephone number of caller;
- (3) The location of the point of EHS release, a description of the source, cause and type of EHS accident, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;
- (4) The measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures; and
- (5) An update on weather conditions; and

iii. The following EHS accidental releases shall be exempt from the notification provisions of (b)4 above provided the EHS accident is recorded in accordance with the procedures established for EHS accident investigation at 40 CFR 68.60 with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8 for Program 2 covered processes or 40 CFR 68.81 with changes specified at N.J.A.C. 7:31-4.1(c)15 through 21 for Program 3 covered processes. This exemption does not affect any other State or Federal reporting requirements.

- (1) An EHS release that has no potential offsite impact or that has no potential impact beyond the property boundary of the industrial complex;
- (2) An EHS release that results in no actual or potential injuries or fatalities at the stationary source; and
- (3) An EHS release that does not activate the emergency response plan.

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

In (b), rewrote the introductory paragraph, substituted "Initial" for "A schedule for initial" in 1, substituted "Performance of" for "A schedule to perform" in 2, amended the phone number in 4i, substituted "following EHS accidental releases" for "EHS accidental releases in(b)4iii(1) through iii below" in 4iii and rewrote 4iii(1).

(d) For each new covered process or modified covered process, the owner or operator shall conduct and document a pre-startup safety review prior to placing the covered process into EHS service.

(e) A written report shall be prepared for each pre-startup safety review performed pursuant to (d) above. The pre-startup safety review report shall include the following:

1. The date of the report and an identification of the covered process; and
2. Documentation that all the requirements of 40 CFR 68.77(b) have been completed prior to the startup of the new or modified covered process.

7:31-4.8 Emergency response

Owners and operators of Program 3 covered processes are subject to the emergency response provisions of N.J.A.C. 7:31-5.

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

Amended the N.J.A.C. reference.

7:31-4.9 Annual reports

(a) Each owner or operator shall submit an annual report to the Department reflecting the risk management activities for the 12 month period ending on the anniversary date within 90 days of the 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 annual 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)2, 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 annual report;
2. A description of significant changes to the management system. If there were no changes in the management system since the last annual report, the owner or operator shall state this in the annual report;
3. 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. For those risk assessment reports prepared pursuant to N.J.A.C. 7:31-4.6(c), a list of the reports may be substituted instead of the reports. If no process hazard analysis with risk assessment reports were

completed since the last annual report, the owner or operator shall state this in the annual report;

4. A summary of EHS accidents that occurred during the previous years. If no EHS accidents occurred since the last annual 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 year ending on the anniversary date prepared pursuant to 40 CFR 68.79(c) and (d) incorporated with changes specified at N.J.A.C. 7:31-4.1(c)14 and 23; and

6. Each inherently safer technology review report completed pursuant to N.J.A.C. 7:31-4.12(b) and (f) during the previous year.

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).

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.

7:31-4.10 Obligations upon temporary discontinuance of EHS use, storage and handling

(a) The owner or operator of a covered process who temporarily discontinues use, storage, handling and generation of an EHS in the covered process, or temporarily stores it at less than the threshold quantity, shall continue activities required of the owner or operator by this chapter until the date a consent agreement, or consent agreement addendum, that is signed by the owner or operator, is signed by the Department which requires, at a minimum:

1. Performance of a pre-startup safety review of the discontinued EHS equipment and procedures in accordance with the requirements of 40 CFR 68.77(a), (b)(1) and (2) and N.J.A.C. 7:31-4.7(e), within 60 calendar days prior to bringing the EHS back to the covered process;
2. Performance of inspections, tests and checks for proper operation of the discontinued EHS equipment, conforming to requirements of 40 CFR 68.73 with changes specified at N.J.A.C. 7:31-4.1(c)10 and 11 and 4.5, within 60 calendar days prior to bringing the EHS back to the covered process; and
3. Performance of EHS operator training activities, conforming to 40 CFR 68.71 with changes specified at N.J.A.C. 7:31-4.1(c)9 and 4.4, within 60 calendar days prior to bringing the EHS back to the covered process; and

4. Payment of the annual fee.

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.

7:31-4.11 New covered processes—construction and new EHS service

(a) Owners or operators who plan to construct a new Program 3 covered process at a stationary source for which there is no previously approved RMP shall:

1. Submit to the Department a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and 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)1 and 2 at least 90 days prior to construction of the covered process;

2. Proceed with construction of the new covered process only upon receiving written approval from the Department;

3. Submit to the Department at least 90 days prior to the date the equipment is scheduled to be placed into EHS service any updates of the documentation as required by N.J.A.C. 7:31-4.11(a)1;

4. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and

5. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(b) Owners or operators who plan to utilize existing equipment for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program shall:

1. Submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and 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)1 and 2 at least 90 days prior to placing the equipment into EHS service;

2. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and

3. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(c) Owners or operators who plan to construct a new Program 3 covered process or utilize existing equipment for a new Program 3 covered process at a stationary source that has a previously approved risk management program shall:

1. Submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and 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)1 and 2 at least 90 days prior to the scheduled placing of the equipment into EHS service;

2. Conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e); and

3. Submit to the Department the fees required by N.J.A.C. 7:31-1.11.

(d) Prior to placing equipment into EHS service the owner or operator of a covered process shall enter into a consent agreement, or consent agreement addendum, for that equipment with the Department, subsequent to a stationary source inspection by the Department, and complete any deficiencies in the consent agreement, or consent agreement addendum, for that equipment in accordance with the schedule in the consent agreement or consent agreement addendum.

(e) The owner or operator shall complete an inherently safer technology review and report pursuant to N.J.A.C. 7:31-4.12(c) through (f) for each new covered process. The owner or operator shall submit the inherently safer technology review report with the submittal required at (a)1, (b)1, or (c)1 above, as applicable.

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).

7:31-4.12 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 process hazard analysis with risk assessment revalidations and updates pursuant to 40 CFR 68.67(f) incorporated with changes at N.J.A.C. 7:31-4.1(c)7 and 4.6(c) 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 is required pursuant to N.J.A.C. 7:31-4.6(c), 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

**SUBCHAPTER 6. EXTRAORDINARILY
HAZARDOUS SUBSTANCES****7:31-6.1 Incorporation by reference**

(a) This subchapter incorporates by reference 40 CFR 68 Subpart F, Regulated Substances for Accidental Release Prevention, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) The following provisions are not incorporated by reference: 40 CFR 68.120, Petition process; and 40 CFR 68.125, Exemptions.

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

1. 40 CFR 68.100, delete "subpart" and replace with "subchapter", after "as amended," add "and the Toxic Catastrophe Prevention Act, as amended, and". Delete the phrase "and establishes the requirements for petitioning to add or delete substances from the list".

2. 40 CFR 68.115(a), delete "regulated substance" and replace with "EHS" at both occurrences. After "listed in" delete "§ 68.130" and replace with "N.J.A.C. 7:31-6.3(a), Table 1," and add "meets or" before "exceeds".

3. 40 CFR 68.115(b), (b)(1), and (b)(2) at all occurrences delete "more than" before "a threshold quantity," and delete "regulated toxic substance" and replace with "toxic EHS" and delete "regulated flammable substance" and replace with "flammable EHS".

4. 40 CFR 68.115(b)(5)(ii), after "operations;" replace "and" with "however, only the substances and threshold quantities listed at 40 CFR 68.130 shall be used for determining whether a process containing an EHS is covered under this chapter; and".

5. 40 CFR 68.130, all substances and their specified threshold quantities are incorporated by reference into two lists as follows:

i. 40 CFR 68.130 Table 1 (and 2), List of Regulated Toxic Substances, including all future amendments and supplements, are incorporated as N.J.A.C. 7:31-6.3(a), Table I, Part B;

ii. 40 CFR 68.130 Table 3 (and 4), List of Regulated Flammable Substances, including all future amendments and supplements, with the exception of 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), and 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)) are incorporated as N.J.A.C. 7:31-6.3(a), Table I, Part C.

7:31-6.2 Threshold quantity determination

(a) If an EHS is listed as a toxic substance in N.J.A.C. 7:31-6.3(a) Table I, Part A and Part B, the lower threshold quantity shall apply as the threshold quantity throughout this chapter.

(b) If an EHS is listed in N.J.A.C. 7:31-6.3(a) as a toxic substance in Table I, Part A or B and as a flammable substance in Part C, the lower threshold quantity shall apply as the threshold quantity throughout this chapter.

(c) If a toxic EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Part A is present in a mixture at a concentration which is lower than the acute toxicity concentration (ATC), the amount of the EHS in the mixture shall not be considered in determining if the threshold quantity is present at a covered process.

(d) For mixtures of EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Parts A or D, Group I, for which no concentration is specified, the threshold quantity shall be calculated using the weight percent of EHS contained in the mixture. When the weight of the total mixture times the weight percent is equal to or greater than the threshold quantity for that EHS, the owner or operator must comply with this chapter.

1. For EHSs in Table I, Part A listed with a concentration in weight percent, the total weight of the solution shall be used to determine whether a threshold quantity is present in a process.

2. For EHSs in Table I, Part A listed with a concentration in volume percent, the weight of only the pure EHS shall be used to determine whether a threshold quantity is present in a process.

(e) For a toxic EHS listed in N.J.A.C. 7:31-6.3(a) Table I, Part B, threshold quantity shall be determined in accordance with 40 CFR 68.115(b) with changes specified at N.J.A.C. 7:31-6.1(c)3 and 4.

(f) For mixtures containing toxic EHSs listed in N.J.A.C. 7:31-6.3(a) Table I, Part B, the weight of the pure EHS shall be considered in determining whether a threshold quantity is present at a covered process.

(g) For intentional mixtures involving one or more functional groups listed on Table I, Part D, Group II, the threshold quantity shall be based on the heat of reaction (ΔH_r) of the intended mixture as determined in accordance with N.J.A.C. 7:31-6.3(b)2iv and shall be derived from Table II at N.J.A.C. 7:31-6.3(c).

(h) For the purpose of determining whether a threshold quantity of an RHS mixture is present in a process, the maximum capacity of the process vessel containing the RHS mixture shall be used. Administrative controls that limit the maximum quantity in the process vessel shall not be taken into account.

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

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

In (d), inserted "or D, Group I, for which no concentration is specified," following "Table I, Parts A" in the introductory paragraph and added 1 and 2; added (g) and (h).

7:31-6.3 Extraordinarily hazardous substance list

(a) The substances listed in Table I, Parts A, B, C, and D Group I and Group II (with its correlated thresholds listed in Table II at (c) below) constitute the Department's extraordinarily hazardous substance list.

Table I
Part A—EHS List

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
Group I		
*Hydrogen chloride (HCl)	7647-01-0	2,000
*Hydrochloric acid 36 percent by weight or more HCl	7647-01-0	5,600
Allyl chloride	107-05-1	2,000
*Hydrogen cyanide (hydrocyanic acid)	74-90-8	500
*Hydrogen fluoride (HF)	7664-39-3	500
***Hydrofluoric acid 70 percent by weight or more HF	7664-39-3700	
*Chlorine	7782-50-5	1,000
***Phosphorus trichloride	7719-12-2	500
*Hydrogen sulfide	7783-06-4	1,000
*Phosgene	75-44-5	100
*Bromine	7726-95-6	1,000
*Methyl isocyanate	624-83-9	100
*Toluene-2,4-diisocyanate	584-84-9	10,000
*Toluene-2,4-diisocyanate (mixture with Toluene-2,6-diisocyanate, unspecified isomer)	26471-62-5	10,000
Group II		
*Acetaldehyde	75-07-0	4,900
*Acrolein	107-02-8	200
*Acrylonitrile	107-13-1	2,300
*Allylamine	107-11-9	1,200
*Ammonia (NH ₃)	7664-41-7	5,200
*Ammonia (aqueous) 28 percent by weight or more NH ₃	1336-21-6	19,000
*Arsine	7784-41-1	60
***bis (Chloromethyl) ether	542-88-1	80
Boron tribromide	10294-33-4	10,000
*Boron trichloride	10294-34-5	1,700
*Boron trifluoride	7637-07-2	200
Bromine chloride	13863-41-7	800
Bromine pentafluoride	7789-30-2	1,300
Carbon monoxide (10 percent by volume or more)	630-08-0	12,000
Carbonyl fluoride	353-50-4	1,700

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
*Chlorine dioxide	10049-04-4	500
Chlorine pentafluoride	13637-63-3	500
Chlorine trifluoride	7790-91-2	600
*Chloromethyl methyl ether	107-30-2	300
Chloropicrin	76-06-2	900
Chloroprene	126-99-8	12,000
*Crotonaldehyde (cis-, trans-isomers)	123-73-9 4170-30-3	450
*Cyanogen	460-19-5	1,300
*Cyanogen chloride	506-77-4	200
Diazomethane	334-88-3	300
*Diborane	19287-45-7	60
Dichloroacetylene	7572-29-4	125
*Dichlorosilane	4109-96-0	2,000
Diethylamine	109-89-7	9,600
*Dimethylamine	124-40-3	6,600
*1,1 Dimethylhydrazine	57-14-7	800
***Epoxypropane (Propylene oxide)	75-56-9	7,700
*Ethylamine	75-04-7	7,500
*Ethylene oxide (Oxirane)	75-21-8	2,700
*Ethylenimine (Aziridine)	151-56-4	800
*Ethyl mercaptan	75-08-1	13,000
*Fluorine	7782-41-4	450
***Formaldehyde (gas)	50-00-0	175
*Furan	10-00-9	200
Hexafluoroacetone	684-16-2	3,300
Hydrogen bromide (HBr)	10035-10-6	2,900
Hydrobromic acid 62 percent by weight or more HBr	10035-10-6	4,800
***Hydrogen selenide	7783-07-5	125
*Isopropylamine	75-31-0	3,300
Ketene	463-51-4	50
Methacrylaldehyde	78-85-3	1,300
*Methyl acrylonitrile	126-98-7	175
*Methylamine	74-89-5	2,300
Methyl bromide	74-83-9	1,800
*Methyl chloride	74-87-3	12,000
*Methyl chloroformate	79-22-1	350
Methyl dichlorosilane	75-54-7	27,000
Methyl fluoroacetate	453-18-9	90
Methyl fluorosulfate	421-20-5	50
*Methylhydrazine	60-34-4	125
Methyl iodide	74-88-4	2,900
*Methyl mercaptan	74-93-1	2,400
Methyl vinyl ketone	78-94-4	10
*Nickel carbonyl	13463-39-3	125
*Nitric acid (HNO ₃) 94 percent by weight or more HNO ₃	7697-37-2	450
Nitrogen Oxides Nitrogen dioxide (NO ₂) 10 percent by volume or more	10102-44-0	200
*Nitric oxide 10 percent by volume or more	10102-43-9	125
Nitrogen tetroxide 10 percent by volume or more	10544-72-6	200
Nitrogen trifluoride	7783-54-2	10,000
Nitrogen trioxide 10 percent by volume	10544-73-7	175
***Oleum 65 percent by weight or more free sulfur trioxide (SO ₃)	8014-95-7	800
Osmium tetroxide	20816-12-0	4,500
Oxygen difluoride	7783-41-7	10

Name of Extraordinarily Hazardous Substance (EHS)	CAS #	Threshold Quantity in Pounds
Ozone	10028-15-6	15
Pentaborane	19624-22-7	15
*Perchloromethyl mercaptan	7616-94-6	2,900
Perchloryl fluoride	7803-51-2	30
*Phosphine	7803-51-2	30
Phosphorus trifluoride	7783-53-3	4,000
*Phosphoryl chloride	10025-87-3	800
Propylamine	107-10-8	11,000
Selenium hexafluoride	7783-79-1	700
Stibine	7803-52-3	250
*Sulfur dioxide (SO ₂) 10 percent by volume or more SO ₂	7446-09-5	4,600
Sulfur monochloride	10025-67-9	2,800
Sulfur pentafluoride	5714-22-7	175
*Sulfur tetrafluoride	7783-60-0	150
*Sulfur trioxide	7446-11-9	500
Sulfuryl fluoride	2699-79-8	22,000
Tellurium hexafluoride	7783-80-4	175
Tetrafluorohydrazine	10036-47-2	3,800
*Tetramethyl lead	75-74-1	800
*Tetranitromethane	509-14-8	900
Thionyl chloride	7719-09-7	250
*Titanium tetrachloride	7750-45-0	600
*Trichlorosilane	10025-78-2	2,700
*Trifluorochloroethylene	79-38-9	7,300
Trimethoxysilane	2487-90-3	1,100
*Trimethylamine	75-50-3	11,000
*Trimethylchlorosilane	75-77-4	1,400
Vinyl trichlorosilane	75-94-5	7,700

*EHS also listed in Part B or Part C as of June 18, 1998. Some may appear with different Federal thresholds or concentrations.

Part B

40 CFR 68.130 Table 1 (and 2) incorporated by reference

Part C

40 CFR 68.130 Table 3 (and 4) incorporated by reference with the exception of 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), and 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)).

Part D

Group I

List of Individual Reactive Hazard Substances

Substance	CAS #	Threshold Quantity (pounds)	Basis for Listing
1. Acetyl Peroxide	110-22-5	2,500	e
2. Butyl Hydroperoxide tertiary	75-91-2	2,500	e
3. Butyl hypochlorite tertiary	none	2,500	b
4. Calcium dithionite or Calcium hydrosulfite	15512-36-4	5,000	b
5. Chlorodinitrobenzenes	97-00-7	2,500	d, e
6. Cumene Hydroperoxide	80-15-9	2,500	e
7. Dibenzoyl peroxide	94-36-0	2,500	f
8. Diethyl Peroxide	628-37-5	2,500	e
9. Diisopropyl Peroxydicarbonate	105-64-6	2,500	e
10. Dinitro phenol, dry or wet, less than 15 percent water as 2,4	51-28-5	2,500	a
11. Dinitro resorcinol (wetted with not less than 15 percent water)	35860-81-6	2,500	a
12. Dipicryl sulfide	2217-06-3	2,500	a
13. Di-tert-butyl Peroxide	110-05-4	2,500	e
14. Divinyl Acetylene	821-08-9	2,500	e
15. Ethyl Nitrate	625-58-1	2,500	e
16. Ethyl Nitrite (solutions)	109-95-5	2,500	d, e
17. Isosorbide dintrate	88-33-2	2,500	a
18. Magnesium diamide	7803-54-4	2,500	b
19. m-Dinitrobenzene	99-65-0	2,500	d
20. Nitroglycerine (alcohol solution)	55-63-0	2,500	e
21. Nitromethane	75-52-5	2,500	d, e
22. o-Dinitrobenzene	528-29-0	2,500	e
23. p-Dinitrobenzene	100-25-4	2,500	d
24. Peracetic acid (greater than 56 percent peracetic acid)	79-21-0	2,500	d, e
25. Picric acid (wet, with not less than 10 percent water)	88-89-1	2,500	d
26. Potassium dithionite or Potassium hydrosulfite	14293-73-3	5,000	b
27. Propargyl bromide (3 Bromopropyne)	106-96-7	2,500	d, e
28. Silver picrate wetted with not less than 30 percent water	146-84-9	2,500	a
29. Sodium dithionite or Sodium hydrosulfite	7775-14-6	5,000	b
30. Trinitro benzene as 1,3,5 (wetted not less than 30 percent water)	99-35-4	2,500	a

Basis for listing:
 a = DOT 4.1
 b = DOT 4.2
 c = DOT 4.3
 d = NFPA 49
 e = NFPA 325
 f = NFPA 432

Part D
Group II
Reactive Hazard Substance Mixtures Functional Groups
(For Threshold Quantity Determination
See N.J.A.C. 7:31-6.3(b) and (c))

Functional Group(s)	Reactive Substance Class		
1. $\text{-C}\equiv\text{C-}$	Acetylenic compounds	25. -O-O-M	Metal peroxides, peroxyacid salts
2. $\text{-C}\equiv\text{C-M}$	Metal acetylides	EOO^-	
3. $\text{-C}\equiv\text{C-X}$	Haloacetylene derivatives	MOO^-	
$\text{N}=\text{N}$ $\diagdown \quad \diagup$ C	Diazirines	26. -O-O-E	Peroxoacids, peroxyesters
4. CN_2	Diazo compounds	27. $\text{H}_3\text{N}\rightarrow\text{Cr-OO-}$	Amminechromium peroxocomplexes
5. -C-N=O	Nitroso compounds	28. -N_3	Azides (acyl, halogen, nonmetal, organic)
-N-N=O		29. $\text{C-N}_2^+\text{O}^-$	Arenediazonium oxides
6. -C-NO_2	Nitroalkanes, C-nitro and	30. $\text{-C-N}_2^+\text{S}^-$	Diazonium sulfides and derivatives, "Xanthates"
Ar-NO_2 , $\text{Ar(NO}_2)_n$	Nitroaryl and Polynitroaryl compounds	31. $\text{N}^+\text{-HZ}^-$	Hydrazinium salts
$\text{C(NO}_2)_n$	Polynitroalkyl compounds	N^+EO_n^-	Oxosalts of nitrogenous bases
$\text{O}_2\text{NC-CNO}_2$		32. $\text{-N}^+\text{-OH Z}^-$	Hydroxylaminium salts
$\text{HC[OCH}_2\text{C(NO}_2)_3]_3$	Trinitroethyl orthoesters	33. $\text{-C-N}_2^+\text{Z}^-$	Diazonium carboxylates or salts
$\text{C[OCH}_2\text{(NO}_2)_3]_4$		34. $[\text{N}\rightarrow\text{Metal}]^+\text{Z}^-$	Ammine metal oxosalts
7. -C-O-N=O	Acyl or alkyl nitrites	35. Ar-Metal-X	Halo-arylmets
8. -C-O-NO_2	Acyl or alkyl nitrates	X-Ar-Metal	Haloarenemetal p-complexes
9. >C-C- $\diagdown \quad \diagup$ O	1,2-Epoxides	36. -N-X	Halogen azides
10. $\text{MC}\equiv\text{N}\rightarrow\text{O}$	Metal fulminates or	XN_3	N-halogen compounds
C=N-O-M	aci-nitro salts, oximates	O X O $\parallel \quad \parallel$ -C-N-C-	N-haloimides
11. NO_2 -C-F NO_2	Fluorodinitromethyl compounds	37. -N-F_2	Difluoroamino compounds
12. -N-M	N-metal derivatives	-C(NF)NF_2	<i>N,N,N</i> -trifluoroalkylamidines
13. $\text{-N=Hg}^+\text{=N-}$	Poly(dimercuryimmonium salts)	38. N-O-	N-O compounds
14. -N-NO_2	N-nitro compounds	39. -O-X	Hypohalites
15. $\text{=N}^+\text{-N-NO}_2$	N-Azolium nitroimidates	XO_n	Halogen oxides
16. -C-N=N-C-	Azo compounds	-Cl-O_3	Perchloryl compounds
17. Ar-N=N-O-R	Arenediazoates	ClO_2^-	Chlorite salts
18. ArN=N-S-Ar	Arenediazo aryl sulfides	R-O-Cl-O_3	Alkyl perchlorates
19. Ar-N=N-O-N=N-Ar	Bis(arenediazo) oxides	$\text{RN}^+\text{H}_3\text{ClO}_4^-$	Aminium perchlorates
20. Ar-N=N-S-N=N-Ar	Bis(arenediazo) sulfides	40. $\left(\begin{array}{c} \quad \\ \text{C-C} \\ \quad \\ n \end{array} \right)_n$	Polymerization, alkene polymers and monomers thereof
21. >C-N=N-N-C- R ($\text{R}=\text{H, CN, OH, NO}$)	Trizenes	41. $\left(\begin{array}{c} \text{O} \\ \parallel \\ \text{C-C} \\ \quad \\ \text{N}^- \end{array} \right)_n$	Polymerization, polyamide polymers and monomers thereof
22. -N=N-N=N- N-N=N-N=C-	High-nitrogen compounds Tetrazoles	42. $\left(\begin{array}{c} \text{O} \\ \parallel \\ \text{C-C} \\ \quad \\ \text{O}^- \end{array} \right)_n$	Polymerization, polyester polymers and monomers thereof
23. -C-O-O-H O \parallel R-C-O-OH	Alkylhydroperoxides Peroxyacids	43. $\text{S}_2\text{O}_4^{2-}$	Dithionites
24. -C-O-O-C- O \parallel -C-O-OR	Peroxides (cyclic, diacyl, dialkyl), peroxyesters		

Abbreviations: Ar = aromatic (benzene); M = metal; R organic chain; X = halogen; E = nonmetal; Z = anion; n = integer variable; all other abbreviations are for the element symbols from the periodic table of elements.

Note: Not all chemical bond symbols are shown.

(b) The following conditions apply for determining whether RHSs or RHS mixtures listed in Part D of Table I are subject to the requirements of this chapter.

1. Individual RHSs listed in 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) of the RHS shall be exempt from this chapter as long as the appropriate inhibitor concentration is maintained. The owner or operator shall document that the inhibitor concentration is maintained.

2. An RHS mixture is a combination of substances that is intentionally mixed in a process vessel and is capable of undergoing an exothermic chemical reaction which produces toxic or flammable EHSs or energy. An RHS mixture has a heat of reaction which, by convention, is expressed as a negative value for an exothermic reaction, that has an absolute value greater than or equal to 100 calories per gram of RHS mixture. RHS mixtures include a reactant, product, or byproduct that is a chemical substance or a mixture of substances having one or more of the chemical functional groups specified in Table I, Part D, Group II.

i. The heat of reaction shall be determined in accordance with (b)2iv below.

ii. The heat of solution or dilution shall not be considered when determining whether a mixture of substances is an RHS mixture subject to this chapter.

iii. RHS mixtures that are only processed in a scrubber that is operated as an air pollution control device in compliance with the conditions of a State permit pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. shall not be subject to this chapter.

iv. The owner or operator shall determine and document the heat of reaction by using one of the following methods:

(1) Testing the intended combination in an acceptable calorimetry test over the lowest temperature range of the following: up to 400 degrees Celsius, 100 degrees Celsius higher than the maximum projected or observed processing temperature, or the maximum achievable temperature in the process vessel; or

(2) A generally accepted practice such as a literature review or engineering calculations applicable to the RHS mixture over the lowest temperature range of the following: up to 400 degrees Celsius, 100 degrees Celsius higher than the maximum projected or observed processing temperature, or the maximum achievable temperature in the process vessel;

(c) Table II—Reactive Hazard Substance Mixture Threshold Quantities

Heat of Reaction (Exothermic) ($-\Delta H_R$) (calories/g of RHS Mixture)	Threshold Quantity (Pounds)
$100 \leq -\Delta H_R < 200$	13,100
$200 \leq -\Delta H_R < 300$	8,700
$300 \leq -\Delta H_R < 400$	6,500
$400 \leq -\Delta H_R < 500$	5,200
$500 \leq -\Delta H_R < 600$	4,400
$600 \leq -\Delta H_R < 700$	3,700
$700 \leq -\Delta H_R < 800$	3,300
$800 \leq -\Delta H_R < 900$	2,900
$900 \leq -\Delta H_R < 1,000$	2,600
$-\Delta H_R \geq 1,000$	2,400

(d) If an EHS is listed in Table I, Part D, Group I as an individual RHS and is also part of an RHS mixture in a covered process as determined in accordance with (b)2 above, the lower threshold quantity shall apply throughout this chapter.

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).

Rewrote the section.

SUBCHAPTER 7. RISK MANAGEMENT PLAN AND TCPA PROGRAM SUBMISSION

7:31-7.1 Incorporation by reference

(a) This subchapter incorporates by reference the provisions of 40 CFR 68 Subpart G, Risk Management Plan, including all future amendments and supplements, except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR 68 Subpart G are not incorporated by reference: 40 CFR 68.165(a)(1) and 40 CFR 68.185(a).

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

1. 40 CFR 68.150(a) Submission, add the following phrase to the end of the last sentence "for covered processes regulated under to 40 CFR 68."

2. 40 CFR 68.150(a) Submission, after "June 21, 1999" add the following sentence, "Submittal of the RMP to the Department shall be in accordance with N.J.A.C. 7:31-7.2 below."

3. 40 CFR 68.190(a) Updates, in the first sentence after "owner or operator", add "of a covered process regulated under 40 CFR 68".

4. 40 CFR 68.190(a) Updates, after "June 21, 1999" add the following sentence, "For all covered processes submittal 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."

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.

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

(a) All owners or operators of a covered process 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;

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

v. For RHS mixtures containing one or more EHSs listed in Parts A, B or C of Table I, identification of each covered process containing an RHS mixture and the number of process vessels in which the RHS mixture is present at or above its threshold quantity; 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 of RHS mixture 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 Table I, in a process above the threshold quantity, an owner or operator shall register only the EHS listed on Part A, B or C as a toxic or flammable substance, as applicable. Registration of these RHS mixtures shall be made in accordance with N.J.A.C. 7:31-7.2(a)2v.

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

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".

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 in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 and 8.2 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 stationary source shall be reviewed by the Department to determine whether the stationary source has an established risk management program. Owners or operators that have at least one process hazard analysis (for Program 3 covered processes) or at least one hazard assessment and one hazard review (for Program 2 covered processes) shall be determined to have an established risk management program and shall be notified and audited in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)1 through 12 and 8.2.

(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 stationary source 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.

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 Program 2 or Program 3 TCPA Risk Management Program for the covered process.

(b) A new owner or operator shall adopt an existing approved Program 2 or Program 3 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.

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 and/or C until the risk management program is revised to reflect the new requirements of this chapter, which shall be no later than January 1, 2004.

(b) All owners or operators of covered processes having newly 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.

(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. 7:31-3.4 for Program 2 covered processes or 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. 7:31-3.4 for Program 2 covered

processes or N.J.A.C. 7:31-4.11 for Program 3 covered processes.

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.

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 200 Recordkeeping replace "Subpart D of this part" with N.J.A.C. 7:31-3 and 4."

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) add the phrase "risk management programs and" before each occurrence of "RMPs."

4. 40 CFR 68.220(a) add "and N.J.A.C. 7:31-3 (Program 2) and N.J.A.C. 7:31-4 (Program 3). The Department shall audit stationary sources to determine compliance with N.J.A.C. 7:31." to the end of the sentence.

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 stationary source a written preliminary determination of material deficiencies and necessary revisions to the owner or operator's RMP and risk management program for the stationary source to ensure that the RMP meets the criteria of Subchapter 7 of this chapter and that the risk management program meets the criteria of N.J.A.C. 7:31-3 (for Program 2 covered processes) and N.J.A.C. 7:31-4 (for Program 3 covered processes).

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."

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.

7:31-8.2 Audits

(a) The Department shall have the right to enter and inspect and/or audit any stationary source, 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 stationary source, to sketch or photograph any portion of the stationary source, 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 assist, the Department in the performance of all aspects of any inspection and 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.

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

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.

(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).

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.

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 stationary source data and the detailed scope of work necessary to perform an EHSARA. The EHSARA shall result in a recommended risk reduction plan that will include any deficiencies that when corrected will result in an approved risk management program.

(c) An owner or operator assisting the Department in the development of the required work plan shall compile and submit to the Department the list of risk management program documents within 30 days after receipt of notice of the determination that the owner or operator does not have an established risk management program. The list of documents shall be grouped by operating or utility unit area in EHS service at the stationary source giving their document

number, name, the EHS involved, most recent revision number and date, file location at the stationary source, and code of sheet size according to ANSI Y14.1-1996 (A, B, C, D, or E) or Deutshes Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0).

(d) Upon review of the documents submitted, the Department shall schedule a meeting with the owner or operator for the purpose of:

1. Identifying any other documents the owner or operator must submit to the Department;
2. Discussing and adapting the work plan to be developed to the owner or operator's EHS equipment and procedures;
3. Explaining the consultant selection process as described in N.J.A.C. 7:31-9.3;
4. Determining any limits on the scope or details of the work plan;
5. Identifying the members of the owner or operator's staff who shall assist in the work of the EHSARA under the direction of the independent consultant or the Department;
6. Setting an end-date of the EHSARA that shall be included in the owner or operator's request for proposal to independent consultants; and
7. Reviewing the instructions to bidders to be included in the owner or operator's request for proposal document to which the work plan will be attached.

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 "Extraordinarily" for "Environmental".

7:31-9.2 Generic scope of work

(a) The scope of work for the work plan for each owner or operator required to have an EHSARA performed by a consultant or the Department for a Program 3 covered process shall include the following:

1. A general description of how the owner or operator uses EHSs at the stationary source;
2. A requirement for the verification of the quantities and methods of handling all EHSs at the stationary source against the registration submitted by the owner or operator;
3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:
 - i. A review of process description and process chemistry to define all the possible chemical reactions at the stationary source that may cause or contribute to an EHS accident;

ii. A review or creation of the design codes and standards and operating consensus standards employed; and

iii. A review of the EHS process flow diagrams; piping and instrument diagrams including those of process, utility or service units at the stationary source that

are interactive with the EHS piping and instrument diagrams; electrical one-line diagrams; and site plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3iii above;

(2) Legibility;

- (3) Uniformity of symbols;
- (4) Drawing title; and
- (5) Revision number and date;

4. A requirement for a safety review of existing equipment which shall meet the requirements of N.J.A.C. 7:31-4.7(b). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, electrical classification drawings, site plan, sewer system piping diagrams, and fire water system piping diagrams incorporating drawing title, revision number, date, signature, etc., as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. Completion or creation of the standard operating procedures necessary to comply with the requirements of 40 CFR 68.69 with changes specified at N.J.A.C. 7:31-4.1(c)8 and 4.3;

iii. A site plan review to determine at a minimum the following:

(1) Conformance of location of the EHS equipment with the criteria for design and operation relative to parameters of flammability, reactivity and toxicity;

(2) Accessibility for operations, maintenance and emergency response including corridors, roadways and walkways; and

(3) The measures and precautions designed for the purpose of protecting the covered process from external forces and events and for the purpose of controlling EHS releases within the stationary source;

iv. An electrical classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70;

v. A review of fire water and sewer system drawings to determine if these systems as built conform with current design practices;

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation with criteria for design and operation including, but not limited to:

- (1) Pressure and temperature ratings;
- (2) Materials of construction;
- (3) Corrosion allowance;
- (4) Safety relief devices and interlocks;
- (5) Leak tightness and pressure testing; and

(6) Potential points of EHS releases due to failure of EHS equipment, such as, seal systems, packings, sight glasses, expansion joints and rotameters;

vii. A review and detailed analysis of any EHS accidents that occurred in the past six years for the purpose of identifying problem areas;

viii. A determination of the nature and age of EHS equipment and an examination of their physical integrity by visual inspection for evidence of deterioration or distortion by processes such as corrosion, erosion, vibration and fluid leaks; and

ix. An examination of the EHS equipment for evidence of inadequate equipment and piping supports;

5. A requirement for a process hazard analysis with risk assessment meeting the requirements of N.J.A.C. 7:31-4.2 on EHS equipment or operating alternatives using the method of analysis specified in the work plan by the Department;

6. A requirement for a review of the owner or operator's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-4.5;

7. A requirement for review of the owner or operator's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-4.4;

8. A requirement for review of the owner or operator's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.81 with changes specified at N.J.A.C. 7:31-4.1(c)15 through 21;

9. A requirement for review of the owner or operator's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-5;

10. A requirement for review of the owner or operator's audit program; and

11. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

(b) The scope of work for the work plan for each owner or operator required to have an EHSARA performed by a

consultant or the Department for a Program 2 covered process shall include the following:

1. A general description of how the owner or operator of a covered process uses EHSs at the stationary source;

2. A requirement for the verification of the quantities and methods of handling all EHSs at the stationary source against the registration submitted by the owner or operator of a covered process;

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. A review of process description and process chemistry to define all the possible chemical reactions at the stationary source that may cause or contribute to an EHS accident;

ii. A review or creation of the codes and standards used to design, build and operate the process;

iii. A review of the simplified EHS process flow diagrams and piping and instrument diagrams including those of process, utility or service units at the stationary source that are interactive with the EHS piping and instrument diagrams;

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3iii above;

(2) Legibility;

(3) Uniformity of symbols;

(4) Drawing title; and

(5) Revision number and date;

iv. A review of safety information related to the EHSs, processes, and equipment as specified at 40 CFR 68.48 with changes specified at N.J.A.C. 7:31-3.1(c)1 and 2; and

v. A review of standard operating procedures as required by 40 CFR 68.52 with changes specified at N.J.A.C. 7:31-3.1(c)3;

4. A requirement for a hazard review in accordance with 40 CFR 68.50.

5. A requirement for a review of the owner or operator's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with 40 CFR 68.56;

6. A requirement for review of the owner or operator's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with 40 CFR 68.54 with changes specified at N.J.A.C. 7:31-3.1(c)4;

7. A requirement for review of the owner or operator's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.60 with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8;

8. A requirement for review of the owner or operator's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-5;

9. A requirement for review of the owner or operator's audit program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.58 with changes specified at N.J.A.C. 7:31-3.1(c)5 and 6; and

10. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

7:31-9.3 Selection of consultants

(a) The Department shall authorize an independent consultant nominated by the owner or operator to perform the Extraordinarily Hazardous Substance Accident Risk Assessment. The independent consultant shall be chosen by the Department and hired and paid for by the owner or operator in accordance with the provisions of this subchapter.

(b) Within 60 days after receipt of the finished work plan, an owner or operator shall submit the names and proposals of three consultants who meet the requirements at N.J.A.C. 7:31-9.4(b) and are willing and able to perform the EH-SARA in accordance with the schedule set in the work plan.

(c) The owner or operator shall not submit the name and proposal of any consultant who:

1. Is owned or controlled by the owner or operator or by a firm which owns or controls both the owner or operator and the consultant or owns or controls the owner or operator;

2. Was the designer of any covered process at the stationary source;

3. Is debarred or suspended pursuant to N.J.A.C. 7:1D-2 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work in the State;

4. Fails to state in its written proposal that it will not subcontract any of the work involved in the EHSARA unless provided in writing by the Department; or

5. Fails to state in its written proposal that it will not change the staff named to do any of the work involved in the EHSARA unless approved in writing by the Department.

Administrative change.
See: 32 N.J.R. 1796(a).

7:31-9.4 Proposal requirements

(a) Each proposal shall explain in a clear and concise manner how the consultant is going to address each task in the owner or operator's work plan.

(b) Each proposal shall demonstrate the consultant's ability to perform the EHSARA set forth in this subchapter and shall include:

1. The consultant's qualifications in:

- i. Process engineering;
- ii. Safety engineering;
- iii. Preparation of operating procedures;
- iv. Preparation or review of maintenance procedures;
- v. Preparation or review of safety procedures;
- vi. Preparation or review of operator training programs;
- vii. Performance or review of accident investigations;
- viii. Performance of hazard reviews and process hazard analyses;
- ix. Performance of risk assessments;
- x. Preparation or review of emergency response plans;
- xi. Performance of audits of risk management programs;
- xii. Knowledge of risk reduction methods; and
- xiii. With respect to each of the above qualifications, the following:

(1) The name of consultant's client; if the client's name cannot be divulged, then a description of the client;

(2) The name of client's contact person, if available;

(3) The date and duration of work;

(4) The names of consultant's employees who performed the work;

(5) The schedule of the work; and

(6) A brief description of the work.

2. The qualifications and experience of additional staff who may be assigned on an as needed basis; and

3. The level of effort to be dedicated and schedule for performing each workplan task item including:

- i. The names of staff assigned;
- ii. The expected starting and completion dates;
- iii. The estimated personhours; and
- iv. The scope and extent of usage of collateral items such as computer use, outside consultants, etc.

(c) The resumes of the consultant or the consultant's staff who are to be committed to the work plan agreed to by the owner or operator of a covered process and the Department shall be included in the proposal submitted to the Department and shall demonstrate that the consultant or the consultant's staff implementing the workplan has the following qualifications, at a minimum:

1. At least one previous project in each of the 12 areas of experience listed in (b)1 above;

2. Key staff members each having at least five years of professional experience and one key staff member who is a licensed professional engineer;

3. A task force leader with at least 36 months of accumulated experience as a project manager of multidisciplinary technical teams;

4. A technical leader of the hazard analysis and risk assessment portions of the work who has at least 12 months aggregate experience at such work; and

5. Any assisting staff shall have at least three years of professional work experience and at least six months accumulated experience on the type of work involved in the portion of the EHSARA to which they will contribute.

(d) The Department, within 15 days after receipt of the names and proposals from the owner or operator, shall:

1. Select one of the consultants to perform the EHSARA; or

2. Within 60 days after determining that none of the consultants' proposals submitted by the owner or operator meet the requirements in N.J.A.C. 7:31-9.4, direct the owner or operator to submit the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the EHSARA.

(e) The owner or operator of a covered process shall execute a contract with the consultant chosen by the Department within 45 days after receipt of the name of the consultant from the Department.

(f) The consultant or Department shall perform the EHSARA and develop a recommended risk reduction plan

which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to N.J.A.C. 7:31-9.1(d). Members of the owner or operator's staff may participate in the work preparatory to the EHSARA.

7:31-9.5 EHSARA report

(a) Upon completion of the EHSARA, the consultant or the Department shall prepare an EHSARA report which shall include recommendations to reduce risks.

(b) The original EHSARA report shall be submitted to the Department and a copy of the EHSARA report shall be submitted to the owner or operator at the same time.

(c) The EHSARA report shall contain, but not be limited to, the following for Program 3 covered processes:

1. The findings of the verification required by N.J.A.C. 7:31-9.2(a)2;
2. The findings of the review required by N.J.A.C. 7:31-9.2(a)3;
3. The findings of the safety review required by N.J.A.C. 7:31-9.2(a)4;
4. The reports of the process hazard analysis with risk assessment required by N.J.A.C. 7:31-9.2(a)5;
5. The findings of the reviews required by N.J.A.C. 7:31-9.2(a)6 through 10; and
6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (c)1 through 5 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(d) The EHSARA report shall contain, but not be limited to, the following for Program 2 covered processes:

1. The findings of the verification required by N.J.A.C. 7:31-9.2(b)2;
2. The findings of the review required by N.J.A.C. 7:31-9.2(b)3;
3. The reports of the process hazard analysis with risk assessment required by N.J.A.C. 7:31-9.2(b)4;
4. The findings of the reviews required by N.J.A.C. 7:31-9.2(b)5 through 9; and
5. The recommended risk reduction plan including the listing of all of the deficiencies identified in (c)1 through 4 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(e) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the owner or operator. The administrative order shall direct the owner or operator to implement the risk reduction plan which shall include:

1. A list of risks that must be reduced;
2. The actions the owner or operator is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 for Program 2 covered processes or N.J.A.C. 7:31-4 for Program 3 covered processes and the schedule within which the owner or operator shall complete the actions; and
3. A statement that the owner or operator has an established risk management program.

(f) Any owner or operator aggrieved by the administrative order issued pursuant to (k) above may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:31-11.3.

(g) Upon implementation of the risk reduction plan as required by the administrative order, the established risk management program will be audited in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 and 8.2.

(h) The Department may by regulation or on a case-by-case basis limit the scope or detail of the work plan where it determines that the action does not remove or compromise the protection required for the public interest.

SUBCHAPTER 10. CONFIDENTIALITY AND TRADE SECRETS

7:31-10.1 Scope and applicability

(a) This subchapter constitutes the rules for the assertion, substantiation, review, and appeal of confidentiality claims and petitions to withhold privileged trade secret or security information, and establishes the principles, guidelines and procedures governing the internal management and disclosure of confidential information provided to the Department pursuant to this chapter.

(b) All owners or operators asserting a confidentiality claim or a petition to withhold privileged trade secret or security information shall follow the procedures set forth in this subchapter.

(c) The Department, its employees and its agents shall strictly adhere to the procedures established by this subchapter for maintaining the confidentiality and security of confidential information and for the disclosure of confidential information.

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), substituted a reference to owners and operators for a reference to registrants.

7:31-10.2 General provisions

(a) All information collected by or originated by the Department in connection with the Act, this chapter or the TCPA program shall be made available to the public in accordance with N.J.S.A. 47:1A-1 et seq. except as otherwise provided in this subchapter.

(b) The Department shall protect from disclosure to the public any confidential information obtained pursuant to the Act or this chapter.

(c) Confidential information, supplied to the Department, will be disclosed only to the employees or agents of the Department and only on a need-to-know basis for the purposes of carrying out or enforcing the provisions of the Act or this chapter, or for use in civil or criminal proceedings, if so ordered by a court.

(d) An owner or operator may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. An owner or operator may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the initial document submittals with the Department pursuant to N.J.A.C. 7:31-7.2, or within 30 days after receipt of a Department request for the stationary source data for owners or operators with no risk management program as provided by N.J.A.C. 7:31-9.1(c), or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-10.4 and 10.6, respectively. If the space provided for responses on Department forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All forms can be obtained from:

Chief, Bureau of Chemical Release Information
and Prevention
New Jersey Department of Environmental Protection
PO Box 424
Trenton, New Jersey 08625-0424

(e) The owner or operator shall initially submit or disclose only the confidential copy of documents containing confidential information to the Department. The public copy which shall have deleted all confidential information and be available for public disclosure shall be submitted to the Department only upon the Department's receipt of a request for the public disclosure of the information or if the Department otherwise decides to determine whether the information is entitled to confidential treatment. The confidential copy shall be for the Department's records and shall include all necessary information.

(f) Any confidential information supplied to the Department shall be sent by certified mail, return receipt requested, by personal delivery, or by other means that provides verification of delivery, the date of delivery, and the name of the person who receives the document at the Department.

(g) A properly completed and submitted petition to withhold privileged trade secret or security information or any subsequent interim decisions by the Department concerning such petition shall not exempt the owner operator from compliance with the requirements of the Act or this chapter, except that the owner or operator will not be required to provide the Department with the trade secret or security information claimed as privileged, unless the petition is finally denied.

(h) No employees or agents of the Department are authorized to sign a confidentiality agreement or other non-disclosure agreement, and any such agreement so executed will be of no force or effect as to the Department.

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 (d); and in (e) and (g), substituted references to owners and operators for references to registrants.

7:31-10.3 Exclusions from confidential information and privileged trade secret or security information

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1. The name of the owner or operator, his or her address, and the name and location of his or her EHS facilities;
2. The chemical or common name, Chemical Abstract Services number, United States Department of Transportation identification number, extraordinarily hazardous substance name or other identifying name for the substances listed in Table I in N.J.A.C. 7:31-6.3, or any regulation promulgated under the Act;
3. Information required to be publicly disclosed pursuant to any other Federal or state act or regulation;

4. Information supplied to the Department by an owner or operator contained within the RMP;

5. Information required to be publicly disclosed pursuant to a court order or ruling;

6. Information which is patented;

7. Information which is published or available through any public source;

8. Information which is known to persons outside the owner or operator's business, who are not bound by a confidentiality agreement or other duty to keep the information confidential;

9. Information which is determined not to be confidential information pursuant to this chapter;

10. (Reserved)

11. Information required to be included in the registrant's emergency response plan pursuant to N.J.A.C. 7:31-5.1 through 5.2; and

12. Information submitted or disclosed to the Department by an owner or operator which is not marked or which does not display in bold type or stamp the word "Confidential" on the top of each page.

(b) At a minimum the following information required to be submitted or disclosed to the Department pursuant to the Act or this chapter shall not be considered privileged trade secret or security information regardless of any petition either pending or approved:

1. Process hazard analysis with risk assessment records;
2. Safety review records;
3. EHS accident records;
4. Process flow and piping and instrumentation diagrams;
5. Standard operating procedures;
6. Preventive maintenance procedures;
7. Inspection reports;
8. Safety and emergency procedures;
9. Training records and procedures; and
10. Design criteria and standards and operating consensus standards.

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), substituted references to owners and operators for references to registrants throughout, changed N.J.A.C. references in 2 and 11, rewrote 4, and reserved 10; and in (b), rewrote 1, deleted a former 3, recodified former 4 through 11 as 3 through 10, and rewrote 10.

7:31-10.4 Confidentiality claims

(a) Any owner or operator required to submit or disclose to the Department any information pursuant to the Act or this chapter which is the owner or operator's opinion constitutes confidential information, may assert a confidentiality claim by following the procedures set forth in this section.

(b) Any owner or operator asserting a confidentiality claim shall do so in writing on a form provided by the Department at the time the owner or operator provides or discloses confidential information to the Department.

(c) Any owner or operator submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit a confidential copy of the document to the Department along with a properly executed confidentiality claim form. The confidential copy shall contain all the information required by the Act or this chapter including any information which the claimant requests to be treated as confidential. A second copy, the public copy, which shall be identical to the confidential copy except that it shall contain no information which the claimant requests to be treated as confidential, shall be submitted to the Department only if the Department receives a request for public disclosure of the information or if the Department decides to determine whether the information is entitled to confidential treatment. The public copy can be a photocopy of the confidential copy, with the allegedly confidential information blacked out. When a public copy is required, the Department shall notify the claimant by certified mail, return receipt requested, that it must submit the public copy and the required fee, along with the confidentiality claim substantiation form as required by N.J.A.C. 7:31-10.5(d), to the Department within 30 days. If the public copy, required fee or the confidentiality claim substantiation form is not received by the Department within the 30 day time limit, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant that its claim will be considered abandoned and the confidential copy shall be treated as public information, unless the public copy, required fee or substantiation form is received by the Department within 10 days of receipt of the Department's notice.

(d) The top of each page of the confidential copy containing any information which the claimant desires to be treated as confidential shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(e) All parts of the text of the confidential copy which the claimant requests to be treated as confidential shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the information claimed as confidential and the underscoring or highlighting is reproducible on photocopying machines. Information not so marked will be treated as public and may be disclosed without notice to the claimant.

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Chemical Release Information
and Prevention
New Jersey Department of Environmental Protec-
tion
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.

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 information and that the claimant intends to continue to take such measures;

5. The information is not, and has not been, available or otherwise disclosed to persons other than employees, except under a confidentiality or non-disclosure agreement, without the claimant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to a person not involved in the proceeding);

6. Any prior confidentiality determinations concerning the information made by the Department, another agency or a court approved or upheld the registrant's confidentiality claim;

7. The information is not the subject of a patent, or if patented, the patent does not connect the claimant with the confidential information and does not protect the claimant from competitive harm;

8. The confidential information is not readily discoverable through reverse engineering;

9. No statute or regulation requires public disclosure of the information; and

10. For security information, the claimant has shown that disclosure of the information would likely have an adverse effect on the security of the facility or its operations.

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).

Changed N.J.A.C. references throughout; in (c), substituted a reference to the same covered process for a reference to the same facility, and substituted a reference to owners and operators for a reference to registrants; and in (f), substituted a reference to owners and operators for a reference to registrants.

7:31-10.6 Petitions to withhold privileged trade secret or security information

(a) An owner or operator required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the owner or operator believes must be kept privileged so as not to competitively disadvantage the covered process, or compromise the security of the covered process or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the procedures set forth in this section and by paying the fee set forth in N.J.A.C.

7:31-1.11(r). Any owner or operator submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any owner or operator petitioning the Department for the right to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of initial document submittal, or within 30 days after receipt of a Department request for the site data for owners or operators with no risk management program as provided by N.J.A.C. 7:31-9.1(c), or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information and pay the fee set forth in N.J.A.C. 7:31-1.11(r) for review of its petition and substantiation in accordance with the following:

1. A petitioner whose initial RMP submittal is accepted for further review in accordance with N.J.A.C. 7:31-7.3(c) shall submit its substantiation and fee within 30 days of receipt of a written request by the Department.

2. A petitioner whose risk management is determined to be unacceptable shall submit its substantiation and fee at the time it submits the site data as required by N.J.A.C. 7:31-9.1(c), that is, within 30 days after receipt of notice that its risk management program is unacceptable.

3. (Reserved)

4. A petitioner who creates new privileged trade secret or security information shall submit its substantiation and fee within 30 days after receipt of a written request by the Department.

(c) The substantiation shall include, but need not be limited to, the following:

1. Identification of the specific use of the trade secret and an explanation why it is of interest to competitors and should be treated as a privileged trade secret. Such identification shall include, but not be limited to, the following:

i. A description of the specific use of the trade secret, identifying the product, process, or activity in which it is used;

ii. If the petitioner's company or facility has been linked to the trade secret in publications or other information available to the public, an explanation why this knowledge does not eliminate the justification for trade secrecy;

iii. If the trade secret is unknown outside of the petitioner's company, an explanation how competitors could deduce this information from any disclosure required under the Act or this chapter; and

iv. An explanation why the trade secret information sought to be withheld would be valuable to competitors;

2. A description of the specific measures taken to safeguard the confidentiality of the trade secret or security information;

3. Identification of any and all persons, including employees of the covered process, to whom the trade secret or security information has been disclosed, including a copy of any signed confidentiality agreement requiring the person to refrain from disclosing the information sought to be withheld, or a description of any other methods used to ensure the confidentiality of the trade secret or security information. Officers or employees of the United States government to whom the information was disclosed for use in national defense purposes are not to be identified;

4. An indication of the number of and location of all documents which contain the allegedly privileged trade secret or security information;

5. A list of all local, state and Federal government entities to which the trade secret or security information has been disclosed. For each entity, whether a confidentiality claim for the information was asserted and whether the government entity granted or denied that claim shall be indicated;

6. A description of the harm to the petitioner's competitive position that would likely result from disclosure of the trade secret, including an estimate of the potential loss in sales or profitability;

7. A description of the extent to which the trade secret information is discoverable through the process of reverse engineering, including a description of the factors which influence the cost of discovering the trade secret by reverse engineering and a rough estimate of the cost of such discovery;

8. Identification of any patent to which the trade secret or petitioner's use of the trade secret is subject and an explanation why the patent:

i. Does not connect the petitioner with the trade secret; and

ii. Does not protect the petitioner from competitive harm;

9. A description of how disclosure of the trade secret or security information would likely affect the security of the facility or national defense; and

10. Any other relevant information to assist the Department in determining the validity of the petition to withhold privileged trade secret or security information.

(d) The certification on the bottom of the petition and substantiation form shall contain the signatures and two part certification specified in 40 CFR 68.185(b).

(e) The owner or operator petitioning to withhold privileged trade secret or security information may claim as confidential any confidential information contained in the substantiation form by following the procedures set forth 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 petitioner.

(f) The petitioner 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).

(g) The Department may request supplemental information from the petitioner in support of its petition and substantiation to withhold trade secret or security information. The Department may specify the kind of information to be submitted, and the petitioner may submit any additional detailed information which further supports the information previously supplied to the Department in the petitioner's initial substantiation within 30 days of receipt of the Department's request. The petitioner may claim as confidential any confidential information included in the supplemental information, and shall clearly designate those portions of the supplemental information claimed as confidential in the manner described in N.J.A.C. 7:31-10.4(d) and (e). Information not properly marked will be treated as public information and may be disclosed without notice to the petitioner. A petitioner submitting supplemental information shall include a certification which shall contain the signatures and two part certification specified in 40 CFR 68.185(b). If supplemental information is submitted by the petitioner and the petitioner claims portions of it as confidential information, then the petitioner shall initially submit to the Department only the confidential copy of the supplemental information as prescribed in N.J.A.C. 7:31-10.4(c).

(h) The confidential copy of any petition to withhold privileged trade secret or security information, and the substantiation form or supplemental information which contains confidential information shall be enclosed in envelopes in accordance with the procedures set forth in N.J.A.C. 7:31-10.4(f) and be forwarded to the address Provided therein.

(i) To ensure proper delivery, the methods specified in N.J.A.C. 7:31-10.4(g) shall be followed.

(j) A petitioner shall update information submitted to the Department regarding a pending or approved petition within 30 days of the petitioner's knowledge or receipt of new information which could affect the petition to withhold privileged trade secret or security information.

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 and changed N.J.A.C. references throughout; in (a), substituted references to covered processes for references to facilities throughout; in (b), substituted "initial document submittal" for "filing of the summary risk management program statement" in the first sentence, substituted "initial RMP submittal" for "summary risk management program statement" in 1, and reserved 3; in (c), substituted a reference to covered processes for a reference to facilities; and in (d) and (g), substituted CFR references for N.J.A.C. references.

7:31-10.7 Determinations of petitions to withhold privileged trade secret or security information

(a) Upon receipt of a petition to withhold privileged trade secret or security information, the Department shall first make a determination that the information petitioned to be withheld as privileged trade secret or security information has not been the subject of a prior determination by the Department of a petition to withhold the same information concerning the same covered process, or if it has, that the prior determination upheld the owner or operator's petition to withhold the information.

1. If such a prior determination held that the petition to withhold the trade secret or security information was invalid, the Department shall notify the petitioner that the information petitioned to be withheld from the Department is the subject of a prior determination concerning the withholding of the same information in which it was held that such petition was invalid, and the Department shall require the petitioner to submit or disclose the information to the Department.

(b) Failure of petitioner to furnish timely substantiation or to pay the required fee waives its petition to withhold privileged trade secret or security information and the Department will require the petitioner to submit or disclose the information to the Department. Failure to furnish substantiation or to pay the required fee does not affect the owner or operator's right to assert a confidentiality claim concerning the same information.

(c) If the Department determines that the petition to withhold privileged trade secret or security information is not the subject of a prior determination, the Department shall determine whether the petitioner has presented sufficient support for its petition to withhold privileged trade secret or security information in its substantiation. A petition to withhold such information as privileged will be considered sufficient if, assuming all the information contained in the substantiation is true, this supporting information meets the criteria set forth in (d) below.

(d) A substantiation submitted under N.J.A.C. 7:31-5.6 will be determined to be sufficient to support a petition to withhold privileged trade secret or security information if the substantiation asserts specific facts to support the following conclusions:

1. The petitioner has established that the information sought to be withheld as privileged trade secret or security information is entitled to protection as confidential information in accordance with the criteria in N.J.A.C. 7:31-10.5(j)1 through 10;

2. The petitioner has not disclosed the information sought to be withheld to any other person other than to the petitioner's employees involved in its use, or, if the information relates to national security, to officers or employees of the United States government; and

3. The petitioner is not required by any state or Federal law or regulation to disclose the information to any governmental entity or agency, regardless of any right of the petitioner to make a claim or confidentiality upon disclosing the information to such governmental entity or agency.

(e) If the petition does not meet the criteria for sufficiency set forth in (d) above, the Department shall notify the petitioner in writing of this fact by certified mail (return receipt requested). The notification shall include the reasons for the Department's initial decision that the petition is insufficient, and shall inform the petitioner of its right to submit in writing supplemental information to the Department within 30 days of receipt of the notice in accordance with N.J.A.C. 7:31-10.6(g) to support the facts asserted in its substantiation. The notification may specifically request supplemental information in particular areas relating to the petition and shall inform the petitioner of its right to claim as confidential, any confidential information contained in any supplemental information it submits, and will include a reference to N.J.A.C. 7:31-10.4(d) and (e) as the source for the proper procedures for making such confidentiality claim.

(f) Upon receipt of supplemental information or after the 30 day period to submit supplemental information has expired, the Department shall determine whether the petition meets the standard of sufficiency set forth in (d) above.

1. If after receipt of supplemental information, the Department determines that the petition is sufficient, the Department will make a final determination concerning the petition to withhold trade secret or security information in accordance with (g) below.

2. If after the expiration of the 30 day period specified in (e) above, no supplemental information has been received by the Department, and the Department makes a final determination that the petition is still insufficient, the Department will notify the petitioner by certified mail (return receipt requested) that its petition is considered abandoned. The notice shall state the basis for the determination and will require the owner or operator to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's determination. A determination that a petition to withhold privileged trade secret or security information is insufficient does not affect a registrant's right to assert a

confidentiality claim concerning the same information, unless the determination of insufficiency concluded that the information sought to be withheld is not confidential information.

(g) Once a petition has been determined to be sufficient under (d) or (f)1 above, the Department will determine whether the petition to withhold trade secret or security information will be granted or denied.

1. The petitioner will be notified by regular mail that its petition has been granted if the Department determines that the information submitted in support of the petition is true and that the information sought to be withheld is a trade secret or security information which meets the following criteria:

i. The information is trade secret or security information entitled to be treated as confidential information in accordance with the criteria established in N.J.A.C. 7:31-10.5(j)1 through 10;

ii. The information has never been released to any person other than to the petitioner's employees who are involved in its use, or, if the information relates to national security, to officers or employees of the United States government;

iii. The information is not otherwise required to be disclosed by any Federal or state law or regulation to any governmental entity or agency, regardless of any right by the petitioner to make a claim of confidentiality upon disclosing the information to any such governmental entity or agency; and

iv. The information is not included on the list provided at N.J.A.C. 7:31-10.3(b).

2. If the Department determines that the information submitted in support of the petition is not true or that the information sought to be withheld is not a trade secret or security information which is entitled to be treated as privileged in accordance with the criteria set forth in (g)1 above, the petitioner shall be notified by certified mail (return receipt requested) that its petition has been denied. The notification shall state the basis for the determination, and shall advise the petitioner of its right to request an adjudicatory hearing in accordance with the procedures specified at N.J.A.C. 7:31-11.3(b). Unless a request for an adjudicatory hearing is received within the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's denial of its petition. A denial of a petition to withhold privileged trade secret or security information does not affect an owner or operator's right to assert a confidentiality claim concerning the same information, unless the denial concluded that the information sought to be withheld is not confidential information.

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 and changed N.J.A.C. references throughout; and in (a), substituted a reference to the same covered process for a reference to the same facility.

7:31-10.8 Maintaining the confidentiality and security of confidential information

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to only those Department employees and agents whose activities necessitate such access and as provided at N.J.A.C. 7:31-10.9.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the registrant who supplied it to the Department.

(d) Only those Department employees who are designated as records custodians in accordance with (l) below, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:31-10.4(f).

(e) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:31-10.5 shall be stored by the Department or its agents only in locked cabinets.

(f) Any record made or maintained by Department employees or agents which contains confidential information shall be treated as confidential in accordance with the provisions of this section.

(g) Confidential information shall not be publicly disclosed by the Department and shall not be communicated over telecommunications networks, including but not limited to telephones, computers connected by modems, or electronic mail systems.

(h) Any document, which contains confidential information and is transmitted by the Department to the registrant or to any authorized person, shall be sent by certified mail or by other means that requires a verification of receipt, the date of receipt, and the name of the person who receives the document.

(i) The Department's contact regarding confidential information shall be the owner or operator's qualified person.

(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 September 30, 2004 for covered processes with EHSs listed in Table I, Part D or by June 18, 2003 for covered processes with EHSs listed in N.J.A.C. 7:31-6.3 Table 1 Part A, B, or C.	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. 7:31-3.4 (for Program 2 covered processes) or N.J.A.C. 7:31-4.11 (for Program 3 covered processes).	40 CFR 68.10(a), N.J.A.C. 7:31-1.1(c)3iii	1,000	2,000	5,000	NM	
5. Failure to determine that a covered process is subject to Program 2 requirements when the process does not meet the eligibility requirements of Program 3.	40 CFR 68.10(c), N.J.A.C. 7:31-1.1(c)3iv	1,000	2,000	5,000	M	30
6. Failure to determine that a covered process in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532 is subject to Program 3 requirements.	40 CFR 68.10(d)(1), N.J.A.C. 7:31-1.1(c)3v	2,000	4,000	10,000	NM	
7. Failure to determine that a covered process subject to the OSHA process safety management standard, 29 CFR 1910.119, is subject to Program 3 requirements.	40 CFR 68.10(d)(2), N.J.A.C. 7:31-1.1(c)3v	2,000	4,000	10,000	NM	
8. Failure to comply with the requirements of a new Program level that applies to the process and update the RMP as provided in 40 CFR 68.190 as incorporated at N.J.A.C. 7:31-7.1(c) at the time the covered process no longer meets the eligibility criteria of its Program level.	40 CFR 68.10(e), N.J.A.C. 7:31-1.1(a)	2,000	4,000	10,000	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>
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)4iii(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)4iii(1) and (3)	6,000	12,000	30,000	NM	
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)4iii(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)4iii(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)4iii(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	

<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>
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 Program 2 and Program 3 covered processes.	40 CFR 68.15(a), N.J.A.C. 7:31-1.1(a)	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	
22. Failure to document the names or positions of the people who have been assigned responsibility for implementing individual requirements of 40 CFR 68 incorporated at N.J.A.C 7:31 and define the lines of authority through an organization chart or similar document.	40 CFR 68.15(c), N.J.A.C. 7:31-1.1(a)	1,000	2,000	5,000	M	30
23. Failure to include in the management system a documentation plan which: (1) provides a means of identifying all documentation required by this chapter; and (2) describes how the owner or operator of a covered process will store, maintain and update all documentation required by this chapter.	40 CFR 68.15, N.J.A.C. 7:31-1.1(c)5i	2,000	4,000	10,000	M	30
24. Failure to provide in the management system a means for recording the daily quantity of each extraordinarily hazardous substance (EHS) contained in storage vessels and shipping containers.	40 CFR 68.15, N.J.A.C. 7:31-1.1(c)5ii	2,000	4,000	10,000	NM	
25. Failure to handle, use, manufacture generate or store an EHS in a manner which complies with the TCPA, N.J.A.C. 7:31 and/or the approved risk management program.	N.J.A.C. 7:31-1.9(a)	2,000	4,000	10,000	NM	
26. Failure to pay an annual fee to the Department computed in accordance with N.J.A.C. 7:31-1.11A(b), (c) and (i) through (m), and billed and remitted in accordance with N.J.A.C. 7:31-1.11(f) through (h).	N.J.A.C. 7:31-1.11A(a)	one-third of fee	one-third of fee + 1,000	one-third of fee + 2,000	M	30
27. Failure to authorize the insurance carrier to release information within 30 days from the written request of the Department. or Failure to require the insurance company to forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the owner or operator.	N.J.A.C. 7:31-1.12(d)	2,000	4,000	10,000	NM	
28. Failure to prepare a worst-case release scenario analysis as provided in 40 CFR 68.25 incorporated at N.J.A.C. 7:31-2.1(a) and to complete the five-year accident history as provided in 40 CFR 68.42 incorporated at N.J.A.C. 7:31-2.1(a).	40 CFR 68.20, N.J.A.C. 7:31-2.1(c)1	2,000	4,000	10,000	NM	
29. Failure to use the toxic endpoints provided in Appendix A of 40 CFR 68 for analyses of offsite consequences for toxic substances. or Failure to use the toxic endpoints determined by the Department in accordance with the criteria used by USEPA in developing 40 CFR 68 Appendix A for Table 1 Part A toxic substances not listed in Appendix A.	40 CFR 68.22(a)(1), N.J.A.C. 7:31-2.1(c)2	500	1,000	2,500	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>
30. Failure to use the endpoint of 1 psi for explosion for analyses of offsite consequences for flammable substances.	40 CFR 68.22(a)(2)(i), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
31. Failure to use the endpoint of a radiant heat of 5 kw/m for 40 seconds for radiant heat/exposure time for analyses of offsite consequences for flammable substances.	40 CFR 68.22(a)(2)(ii), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
32. Failure to use the endpoint of a lower flammability limit as provided in NFPA documents or other generally recognized sources for lower flammability limit for analyses of offsite consequences for flammable substances.	40 CFR 68.22(a)(2)(iii), N.J.A.C. 7:31-2.1(a)	500	1,000	5,000	NM	
33. Failure to use a wind speed of 1.5 meters per second and F atmospheric stability class for the worst-case release analysis. Failure to demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years when using these minimums.	40 CFR 68.22(b), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
34. Failure to use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station for worst-case release analysis of a regulated toxic substance.	40 CFR 68.22(c), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
35. Failure to analyze the worst-case release of a regulated toxic substance assuming a ground level (0 feet) release. or Failure to use the correct release height as determined by the release scenario for an alternative scenario analysis of a regulated toxic substance.	40 CFR 68.22(d), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
36. Failure to use either urban or rural topography, as appropriate.	40 CFR 68.22(e), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
37. Failure to ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.	40 CFR 68.22(f), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
38. Failure to consider liquids other than gases, liquefied only by refrigeration, to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher, for worst case. or Failure to consider substances to be released at a process or ambient temperature that is appropriate for the scenario for alternative scenarios.	40 CFR 68.22(g), N.J.A.C. 7:31-2.1(a)	500	1,000	2,500	NM	
39. Failure to analyze and report in the RMP for Program 2 and/or 3 processes one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in Appendix A of 40 CFR 68 resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in 40 CFR 68.22 incorporated at N.J.A.C. 7:31-2.1(c).	40 CFR 68.25(a)(2)(i), N.J.A.C. 7:31-2.1(a)	4,000	8,000	20,000	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 28 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	

<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>
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)li	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)lii(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)lii(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)lii(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)lii(4)	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(c)	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	
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	
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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	operations which includes at least one employee who has experience and knowledge specific to the process being evaluated. or Failure to perform the process hazard analysis using a team with at least one member who is knowledgeable in the specific process hazard analysis methodology being used.						
250.	Failure to establish a system to promptly address the process hazard analysis team's findings and recommendations. or Failure to assure that the process hazard analysis team's recommendations are resolved in a timely manner or that the resolution is documented. or Failure to document what actions are to be taken to resolve the process hazard analysis recommendations. or Failure to complete actions required by the process hazard analysis recommendations as soon as possible. or Failure to develop a written schedule of when actions recommended in the process hazard analysis are to be completed. or Failure to communicate the actions recommended in the process hazard analysis to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.	40 CFR 68.67(e), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
251.	Failure to update and revalidate the process hazard analysis (with risk assessment) at least every five years after the completion of the initial process hazard analysis (with risk assessment) using a team meeting the requirements in 40 CFR 68.67(d) as incorporated at N.J.A.C. 7:31-4.1(c)7 to assure that the process hazard analysis with risk assessment is consistent with the current process.	40 CFR 68.67(f), N.J.A.C. 7:31-4.1(c)7	4,000	8,000	20,000	NM	
252.	Failure to retain process hazards analyses and updates or revalidations for each covered process, as well as the documented resolution of recommendations described in 40 CFR 68.67(e) as incorporated at N.J.A.C. 7:31-4.1(a) for the life of the process.	40 CFR 68.67(g), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
253.	Failure to perform a process hazard analysis with risk assessment.	N.J.A.C. 7:31-4.2(b)	5,000	10,000	25,000	NM	
254.	Failure to perform a process hazard analysis with risk assessment which includes the following: (1) identification of EHS equipment subject to the assessment, (2) the points of possible EHS release, (3) the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuing EHS release, either steady or non-steady state, or (4) the corresponding cause of the EHS release. or Failure to base estimates of the quantity or rate and duration of a release on actual release mechanisms that reflect the operating procedures, safeguards, and mitigation equipment and procedures planned for new or modified covered processes or in place for existing covered processes.	N.J.A.C. 7:31-4.2(b)1	5,000	10,000	25,000	NM	
255.	Failure to include in the process hazard analysis with risk assessment consideration of toxicity, flammability	N.J.A.C. 7:31-4.2(b)2	5,000	10,000	25,000	NM	

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and reactivity for EHSs which appear in N.J.A.C. 7:31-6.3(a), Table I, Parts A and/or B as a toxic substance, Part C as a flammable substance and Part D as a Reactive Hazard Substance. or Failure to consider in the process hazard analysis with risk assessment both the explosive/flammability hazard and the capability to generate a toxic EHS, as applicable to the RHS or RHS Mixture and process in which it is handled, for RHSs or RHS Mixtures identified and listed at N.J.A.C. 7:31-6.3(a) Table I, Part D, Groups I and II.						
256. Failure to identify all scenarios of toxic, flammable, and reactive hazards that have a potential offsite impact for the endpoint criteria defined at N.J.A.C. 7:31-4.2(b)3iii and iv using a consequence analysis consisting of dispersion analysis, thermal analysis or overpressure analysis.	N.J.A.C. 7:31-4.2(b)3	2,000	4,000	10,000	NM	
257. Failure to use the parameters of 1.5 meters per second wind speed and F atmospheric stability class for the consequence analysis of a process in the process hazard analysis with risk assessment.	N.J.A.C. 7:31-4.2(b)3i	2,000	4,000	10,000	NM	
258. Failure to use all parameters listed for alternative scenarios at 40 CFR 68.22(c) through (g) for the consequence analysis of a process in the process hazard analysis with risk assessment.	N.J.A.C. 7:31-4.2(b)3ii	2,000	4,000	10,000	NM	
259. Failure to use the appropriate parameters for the consequence analysis in the process hazard analysis with risk assessment for the scenario being analyzed: the endpoint criteria of 10 times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2 or the value of five times the Acute Toxicity Concentration (ATC); 1750 thermal dose units (equivalent to 17 kW/m ² for 40 seconds); five psi overpressure; or the lower flammability limit.	N.J.A.C. 7:31-4.2(b)3iii	2,000	4,000	10,000	NM	
260. Failure to use the appropriate parameters for the consequence analysis of the process hazard analysis with risk assessment for the scenario being analyzed: the endpoint criteria of five (5) times the toxicity endpoint as designated at N.J.A.C. 7:31-2.1(c)2 or the value of the ATC; 1200 thermal dose units (equivalent to 15 kW/m ² for 40 seconds); or 2.3 psi overpressure.	N.J.A.C. 7:31-4.2(b)3iv	2,000	4,000	10,000	NM	
261. Failure to perform an evaluation of state-of-the-art, including alternative processes, procedures or equipment, which would reduce the likelihood or consequences of an EHS release, for each release scenario that has an offsite impact of the endpoint criteria specified at N.J.A.C. 7:31-4.2(b)3iii.	N.J.A.C. 7:31-4.2(c)1	2,000	4,000	10,000	NM	
262. Failure to perform an evaluation of state-of-the-art, including alternative processes, procedures or equipment which would reduce the likelihood or consequences of an EHS release for each release scenario that has an offsite impact of the endpoint criteria specified at N.J.A.C. 7:31-4.2(b)3iv or Failure to determine whether the likelihood of release occurrence is greater than or equal to 10 ⁻⁴ per year.	N.J.A.C. 7:31-4.2(c)2	2,000	4,000	10,000	NM	
263. Failure to develop a risk reduction plan for release scenarios requiring a state-of-the-art evaluation.	N.J.A.C. 7:31-4.2(c)3	2,000	4,000	10,000	NM	
264. Failure to maintain documentation from the process hazard analysis with risk assessment including a table(s) setting forth the process hazard analysis results giving the release point and corresponding release	N.J.A.C. 7:31-4.2(d)1	2,000	4,000	10,000	NM	

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	scenario of the potential basic (initiating) and intermediate event sequences, the corresponding estimated quantity or rate and duration of releases, and the recommended resolution action based upon 40 CFR 68.67(e).						
265.	Failure to maintain documentation from the process hazard analysis with risk assessment including table(s) summarizing each potential offsite release scenario identified including the scenario identification number and brief description.	N.J.A.C. 7:31-4.2(d)2i	2,000	4,000	10,000	NM	
266.	Failure to maintain documentation from the process hazard analysis with risk assessment including table(s) summarizing each potential offsite release scenario identified including the rate and duration, or quantity, of potential release.	N.J.A.C. 7:31-4.2(d)2ii	2,000	4,000	10,000	NM	
267.	Failure to maintain documentation from the process hazard analysis with risk assessment including table(s) summarizing each potential offsite release scenario identified including the distance to the endpoint determined in N.J.A.C. 7:31-4.2(b)3iii and (b)3iv and the respective distance to the nearest property line.	N.J.A.C. 7:31-4.2(d)2iii	2,000	4,000	10,000	NM	
268.	Failure to maintain documentation from the process hazard analysis with risk assessment including table(s) summarizing each potential offsite release scenario identified including the release likelihood determined pursuant to N.J.A.C. 7:31-4.2(c).	N.J.A.C. 7:31-4.2(d)2iv	2,000	4,000	10,000	NM	
269.	Failure to maintain documentation from the process hazard analysis with risk assessment containing dispersion modeling information that identifies the dispersion model used.	N.J.A.C. 7:31-4.2(d)3i	2,000	4,000	10,000	NM	
270.	Failure to maintain documentation from the process hazard analysis with risk assessment containing dispersion modeling information that includes printouts of the dispersion model inputs and outputs for a dispersion model other than the lookup tables provided in the EPA's RMP Offsite Consequence Analysis Guidance current as of the time the modeling was performed.	N.J.A.C. 7:31-4.2(d)3ii	2,000	4,000	10,000	NM	
271.	Failure to maintain documentation from the process hazard analysis with risk assessment including an explanation as to why any risk reduction measures identified in N.J.A.C. 7:31-4.2(c) and (d)1 have not been included in the risk reduction plan.	N.J.A.C. 7:31-4.2(d)4	2,000	4,000	10,000	NM	
272.	Failure to maintain documentation from the process hazard analysis with risk assessment including the resolution of the risk reduction measures in the risk reduction plan.	N.J.A.C. 7:31-4.2(d)5	2,000	4,000	10,000	NM	
273.	Failure to prepare a report of the process hazard analysis with risk assessment that includes an identification of the covered process that is the subject of the process hazard analysis with risk assessment; the name, position and affiliation of persons who performed the process hazard analysis with risk assessment; the date of completion; or the methodology used.	N.J.A.C. 7:31-4.2(e)1	2,000	4,000	10,000	NM	
274.	Failure to prepare a report of the process hazard analysis with risk assessment that includes a description of each scenario identified in N.J.A.C. 7:31-4.2(b)3iii and iv.	N.J.A.C. 7:31-4.2(e)2	2,000	4,000	10,000	NM	

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275. Failure to prepare a report of the process hazard analysis with risk assessment that includes the risk reduction plan developed pursuant to N.J.A.C. 7:31-4.2(c)3 and (d)1.	N.J.A.C. 7:31-4.2(e)3	2,000	4,000	10,000	NM	
276. Failure to use either the property boundary of the industrial complex or the property boundary for the individual stationary source for the purpose of identifying release scenarios with offsite impact at a stationary source that is part of an industrial complex as defined at N.J.A.C. 7:31-1.5.	N.J.A.C. 7:31-4.2(f)	500	1,000	2,500	NM	
277. Failure to develop and implement written operating procedures consistent with the process safety information that provide clear instructions for safely conducting activities involved in the covered process. or Failure to write the operating procedures in a manner and language that the EHS operators of a process are capable of understanding.	40 CFR 68.69(a), N.J.A.C. 7:31-4.1(c)8	4,000	8,000	20,000	NM	
278. Failure to address in the written operating procedures steps for each operating phase including initial startup.	40 CFR 68.69(a)(1)i N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
279. Failure to address in the written operating procedures steps for each operating phase including normal operations.	40 CFR 68.69(a)(1)(ii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
280. Failure to address in the operating written procedures steps for each operating phase including temporary operations.	40 CFR 68.69(a)(1)(iii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
281. Failure to address in the written operating procedures steps for emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.	40 CFR 68.69(a)(1)(iv), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
282. Failure to address in the written operating procedures steps for each operating phase including emergency operations.	40 CFR 68.69(a)(1)(v); N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
283. Failure to address in the written operating procedures steps for each operating phase including normal shutdown.	40 CFR 68.69(a)(1)(vi), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
284. Failure to address in the written operating procedures steps for each operating phase including startup following a turnaround, or after an emergency shutdown.	40 CFR 68.69(a)(1)(vii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
285. Failure to address in the written operating procedures operating limits including consequences of deviation.	40 CFR 68.69(a)(2)(i), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
286. Failure to address in the written operating procedures operating limits including steps required to correct or avoid deviation.	40 CFR 68.69(a)(2)(ii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
287. Failure to address in the written operating procedures safety and health considerations including properties of, and hazards presented by, the chemicals used in the process.	40 CFR 68.69(a)(3)(i), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
288. Failure to address in the written operating procedures safety and health considerations containing precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment.	40 CFR 68.69(a)(3)(ii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
289. Failure to address in the written operating procedures safety and health considerations including control measures to be taken if physical contact or airborne exposure occurs.	40 CFR 68.69(a)(3)(iii), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	

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290. Failure to address in the operating written procedures safety and health considerations including quality control for raw materials and control of hazardous chemical inventory levels.	40 CFR 68.69(a)(3)(iv), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
291. Failure to address in the written operating procedures safety and health considerations including any special or unique hazards.	40 CFR 68.69(a)(3)(v), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
292. Failure to address in the written operating procedures safety systems and their functions.	40 CFR 68.69(a)(4), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
293. Failure to make operating procedures readily accessible to employees who work in or maintain the process.	40 CFR 68.69(b), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
294. Failure to review the operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to the stationary source.	40 CFR 68.69(c), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
295. Failure to certify annually that the operating procedures are current and accurate.	40 CFR 68.69(c), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
296. Failure to develop and implement safe work practices that apply to employees and contractor employees that provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; or control over entrance into the stationary source by maintenance, contractor, laboratory, or other support personnel.	40 CFR 68.69(d), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
297. Failure to include in the standard operating procedures a process description defining the operation and showing flows, temperatures and pressures, or a reference to a document with this information.	N.J.A.C. 7:31-4.3(b)1	500	1,000	2,500	NM	
298. Failure to include in the standard operating procedures sampling procedures addressing apparatus and specific steps involved in the taking of samples.	N.J.A.C. 7:31-4.3(b)2	500	1,000	2,500	NM	
299. Failure to include in the standard operating procedures logsheets and checklists where appropriate to the operation.	N.J.A.C. 7:31-4.3(b)3	500	1,000	2,500	NM	
300. Failure to include in the standard operating procedures a statement as to the number of EHS operators required to meet safety needs for each operation that has shift coverage requirements.	N.J.A.C. 7:31-4.3(b)4	500	1,000	2,500	NM	
301. Failure to include in the standard operating procedures a requirement that an EHS operator be in attendance at the stationary source to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage or generation unless the conditions of N.J.A.C. 7:31-4.3(b)5i, are met. or Failure to provide EHS monitoring equipment with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident.	N.J.A.C. 7:31-4.3(b)5i	500	1,000	2,500	NM	
302. Failure to include in the standard operating procedures a requirement that an EHS operator be in attendance at the stationary source to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage or generation unless the conditions of N.J.A.C. 7:31-4.3(b)5ii are met. or	N.J.A.C. 7:31-4.3(b)5ii	500	1,000	2,500	NM	

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Failure to provide EHS monitoring equipment with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident.						
303. Failure to include in the standard operating procedures a requirement that an EHS operator be in attendance at the stationary source to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage or generation unless the conditions of N.J.A.C. 7:31-4.3(b)5iii are met. or Failure to provide EHS monitoring equipment with alarms reporting to a continuously attended station, and failure to demonstrate that an EHS operator is not necessary during the specified activity by performing a risk assessment pursuant to N.J.A.C. 7:31-4.2.	N.J.A.C. 7:31-4.3(b)5iii	500	1,000	2,500	NM	
304. Failure to include in the standard operating procedures a requirement that an EHS operator be in attendance at the stationary source to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling, use, manufacturing, storage or generation unless the conditions of N.J.A.C. 7:31-4.3(b)5iv are met. or Failure to implement anhydrous ammonia detection monitoring equipment capable of automatically isolating, shutting down, and emptying EHS equipment and provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an EHS accident.	N.J.A.C. 7:31-4.3(b)5iv	500	1,000	2,500	NM	
305. Failure to include in the standard operating procedures a table of contents or a system to index the standard operating procedures covering the items of 40 CFR 68.69(a) and N.J.A.C. 7:31-4.3(b)1 through 5 for each covered process.	N.J.A.C. 7:31-4.3(b)6	500	1,000	2,500	M	30
306. Failure to train each employee presently involved in operating a process in an overview of the process and in the operating procedures as specified in 40 CFR 68.69 as incorporated at N.J.A.C. 7:31-4.1(c)8. or Failure to include in the training for employees presently involved in operating a process emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. or Failure to train each employee before being involved in operating a newly assigned process in an overview of the process and in the operating procedures as specified in 40 CFR 68.69 as incorporated at N.J.A.C. 7:31-4.1(c)8. or Failure to include in the training of a newly assigned employee emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.	40 CFR 68.71(a)(1), N.J.A.C. 7:31-4.1(c)	2,000	4,000	10,000	NM	
307. Failure to certify in writing that an employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures in lieu of initial training for those employees already involved in operating a process on June 21, 1999.	40 CFR 68.71(a)(2), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	

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308. Failure to provide refresher training at least every three years and more often as necessary to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. or Failure to determine, in consultation with the employees involved in operating the process, the appropriate frequency of refresher training.	40 CFR 68.71(b), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
309. Failure to ascertain that each employee involved in operating a process has received and understood the required training.	40 CFR 68.71(c), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
310. Failure to prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.	40 CFR 68.71(c), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
311. Failure to provide a written job description which includes the duties and responsibilities for each EHS operator position.	N.J.A.C. 7:31-4.4(b)	500	1,000	2,500	NM	
312. Failure to specify the qualifications required for the personnel responsible for training EHS operators.	N.J.A.C. 7:31-4.4(c)	500	1,000	2,500	NM	
313. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to pressure vessels and storage tanks.	40 CFR 68.73(a)(1), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
314. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to piping systems (including piping components such as valves).	40 CFR 68.73(a)(2), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
315. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to relief and vent systems and devices.	40 CFR 68.73(a)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
316. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to emergency shutdown systems.	40 CFR 68.73(a)(4), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
317. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to controls (including monitoring devices and sensors, alarms, and interlocks).	40 CFR 68.73(a)(5), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
318. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(a) to pumps.	40 CFR 68.73(a)(6), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
319. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(c)11 to all EHS equipment.	40 CFR 68.73(a)(6), N.J.A.C. 7:31-4.1(c)11i	1,000	2,000	5,000	NM	
320. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(c)11 to standby emergency equipment such as power generators, fire pumps, and lighting.	40 CFR 68.73(a)(6), N.J.A.C. 7:31-4.1(c)11ii	1,000	2,000	5,000	NM	
321. Failure to apply paragraphs 40 CFR 68.73(b) through (f) as incorporated at N.J.A.C. 7:31-4.1(c)11 to electrical grounding systems.	40 CFR 68.73(a)(6), N.J.A.C. 7:31-4.1(c)11iii	1,000	2,000	5,000	NM	
322. Failure to establish and implement written procedures to maintain the on-going integrity of process equipment.	40 CFR 68.73(b), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
323. Failure to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.	40 CFR 68.73(c), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
324. Failure to perform inspections and tests on process equipment.	40 CFR 68.73(d)(1), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	

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325. Failure to follow recognized and generally accepted good engineering practices for inspection and testing procedures.	40 CFR 68.73(d)(2), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
326. Failure to make the frequency of inspections and tests of process equipment consistent with applicable manufacturers' recommendations and good engineering practices, and to increase frequency when determined to be necessary by prior operating experience.	40 CFR 68.73(d)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
327. Failure to document each inspection and test that has been performed on process equipment. or Failure to identify in the maintenance documentation the date of an inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, or the results of the inspection or test.	40 CFR 68.73(d)(4), N.J.A.C. 7:31-4.1(a)	500	1,000	2,500	NM	
328. Failure to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 CFR 68.65 as incorporated at N.J.A.C. 7:31-4.1(a)) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.	40 CFR 68.73(e), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
329. Failure, in the construction of new plants and equipment, to assure that equipment as it is fabricated is suitable for the process application for which it will be used.	40 CFR 68.73(f)(1), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
330. Failure to perform appropriate checks and inspections to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.	40 CFR 68.73(f)(2), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
331. Failure to assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.	40 CFR 68.73(f)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
332. Failure to implement a system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to determine the frequency of inspections and tests and to evaluate equipment reliability.	N.J.A.C. 7:31-4.5(b)	2,000	4,000	10,000	NM	
333. Failure to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, procedure, or other changes to stationary sources that affect a covered process.	40 CFR 68.75(a), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	
334. Failure to assure in the management of change procedures that the technical basis for the proposed change is addressed prior to implementing the change.	40 CFR 68.75(b)(1), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
335. Failure to assure in the management of change procedures that the impact of the proposed change on safety and health and preventive maintenance procedures is addressed prior to implementing the change.	40 CFR 68.75(b)(2), N.J.A.C. 7:31-4.1(c)12	1,000	2,000	5,000	NM	
336. Failure to assure in the management of change procedures that modifications to operating procedures are addressed prior to implementing the change.	40 CFR 68.75(b)(3), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	
337. Failure to assure in the management of change procedures that the necessary time period for the change is addressed prior to implementing the change.	40 CFR 68.75(b)(4), N.J.A.C. 7:31-4.1(a)	1,000	2,000	5,000	NM	

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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 of the contract owner or operator to assure that each contract employee is trained in the work practices necessary to safely perform his/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 of 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/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 of 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 of 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 of 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	
403. Failure of the contract owner or operator to advise the owner or operator of any unique hazards presented by	40 CFR 68.87(c)(5), N.J.A.C. 7:31-4.1(a)	2,000	4,000	10,000	NM	

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the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.						
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 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 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 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 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

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413. Failure to include in the annual report the compliance audit report and documentation for the year ending on the anniversary date prepared pursuant to 40 CFR 68.79(c) and (d) with changes specified at N.J.A.C. 7:31-4.1(c)14 and 23.	N.J.A.C. 7:31-4.9(b)5	500	1,000	2,500	M	30
414. Failure to include in the annual report each inherently safer technology review update report completed pursuant to N.J.A.C. 7:31-4.12(b) and (f).	N.J.A.C. 7:31-4.9(b)6	500	1,000	2,500	M	30
415. Failure to perform a pre-startup safety review of temporarily discontinued EHS equipment and procedures in accordance with the requirements of 40 CFR 68.77(a), (b)(1) and (2) and N.J.A.C. 7:31-4.7(e), within 60 calendar days prior to bringing the EHS back to the covered process.	N.J.A.C. 7:31-4.10(a)1	2,000	4,000	10,000	NM	
416. Failure to perform inspections, tests and checks conforming to requirements of 40 CFR 68.73 with changes specified at N.J.A.C. 7:31-4.1(c)10-11 and N.J.A.C. 7:31-4.5, for proper operation of temporarily discontinued EHS equipment, within 60 calendar days prior to bringing the EHS back to the covered process.	N.J.A.C. 7:31-4.10(a)2	2,000	4,000	10,000	NM	
417. Failure to perform EHS operator training activities conforming to 40 CFR 68.71 with changes specified at N.J.A.C. 7:31-4.1(c)9 and N.J.A.C. 7:31-4.4, for activities involving temporarily discontinued EHS equipment, within 60 calendar days prior to bringing the EHS back to the covered process.	N.J.A.C. 7:31-4.10(a)3	2,000	4,000	10,000	NM	
418. Failure to pay the annual fee for a temporary discontinuance in accordance with N.J.A.C. 7:31-1.11A(o) and (p).	N.J.A.C. 7:31-4.10(a)4	2,000	4,000	10,000	M	30
419. Failure to submit to the Department a report of safety review of design, in accordance with N.J.A.C. 7:31-4.7(b) and (c), and 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)1 and 2, at least 90 days prior to construction of a new Program 3 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(a)1	2,000	4,000	10,000	M	30
420. Failure to receive written approval from the Department before proceeding with construction of a new Program 3 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(a)2	6,000	12,000	30,000	NM	
421. Failure to submit to the Department, at least 90 days prior to the date the equipment was scheduled to be placed into EHS service, any updates of the documentation as required by N.J.A.C. 7:31-4.11(a)1 for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(a)3	2,000	4,000	10,000	M	30
422. Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(a)4	4,000	8,000	20,000	NM	
423. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a new Program 3 covered process at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(a)5	one-third of fee	one-third of fee + 1,000	one-third of fee + 2000	M	30
424. Failure to submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and 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-	N.J.A.C. 7:31-4.11(b)1	2,000	4,000	10,000	M	30

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7.1(c)1 and 2 at least 90 days prior to placing the equipment into EHS service for a new Program 3 covered process that utilizes existing equipment at a stationary source for which there is no previously approved risk management program.						
425. Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) on a new Program 3 covered process that utilizes existing equipment at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(b)2	2,000	4,000	10,000	NM	
426. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a new Program 3 covered process that utilizes existing equipment at a stationary source for which there is no previously approved risk management program.	N.J.A.C. 7:31-4.11(b)3	one-third of fee	one-third of fee + 1,000	one-third of fee + 2,000	M	30
427. Failure to submit a report of safety review of design in accordance with N.J.A.C. 7:31-4.7(b) and (c) and 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)1 and 2 at least 90 days prior to the scheduled placing of equipment into EHS service for a Program 3 covered process that is newly constructed or that utilizes existing equipment at a stationary source that has a previously approved risk management program.	N.J.A.C. 7:31-4.11(c)1	2,000	4,000	10,000	M	30
428. Failure to conduct a pre-startup safety review in accordance with N.J.A.C. 7:31-4.7(d) and (e) for a new Program 3 covered process that is newly constructed or utilizes existing equipment at a stationary source that has a previously approved risk management program.	N.J.A.C. 7:31-4.11(c)2	2,000	4,000	10,000	NM	
429. Failure to submit to the Department the fees required by N.J.A.C. 7:31-1.11A for a newly constructed Program 3 covered process or one that utilizes existing equipment at a stationary source that has a previously approved risk management program.	N.J.A.C. 7:31-4.11(c)3	one-third of fee	one-third of fee + 1,000	one-third of fee + 2,000	M	30
430. 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 corrective action of deficiencies in 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. 7:31-4.11(d)	6,000	12,000	30,000	NM	
431. Failure to complete an inherently safer technology review and report pursuant to N.J.A.C. 7:31-4.12(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. 7:31-4.11(a)1, (b)1, or (c)1, as applicable.	N.J.A.C. 7:31-4.11(e)	2,000	4,000	10,000	NM	
432. 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. 7:31-4.12(a)	2,000	4,000	10,000	NM	
433. Failure to update the inherently safer technology review on the same schedule as the process hazard analysis with risk assessment revalidations and updates for each covered process at the stationary source, including each new covered process brought on line	N.J.A.C. 7:31-4.12(b)	2,000	4,000	10,000	NM	

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	since the date of the previous inherently safer technology review. and/or Failure to address the inherently safer technologies that have been developed since the last inherently safer technology review.						
434.	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. 7:31-4.12(c)	1,000	2,000	5,000	NM	
435.	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. 7:31-4.12(d)1	1,000	2,000	5,000	NM	
436.	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. 7:31-4.12(d)2	1,000	2,000	5,000	NM	
437.	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. 7:31-4.12(d)3	1,000	2,000	5,000	NM	
438.	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. 7:31-4.12(d)4	1,000	2,000	5,000	NM	
439.	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. 7:31-4.12(e)	1,000	2,000	5,000	NM	
440.	Failure to prepare and submit to the Department a report to document each inherently safer technology review.	N.J.A.C. 7:31-4.12(f)	1,000	2,000	5,000	NM	
441.	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. 7:31-4.12(f)1	500	1,000	2,500	NM	
442.	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. 7:31-4.12(d).	N.J.A.C. 7:31-4.12(f)2	500	1,000	2,500	NM	

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443. 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. 7:31-4.12(f)3	500	1,000	2,500	NM	
444. Failure to include in an inherently safer technology review report a list of additional inherently safer technologies identified.	N.J.A.C. 7:31-4.12(f)4	500	1,000	2,500	NM	
445. 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. 7:31-4.12(f)5	500	1,000	2,500	NM	
446. Failure to include in an inherently safer technology review report a list of the inherently safer technologies determined to be infeasible. Failure to include a written explanation to justify the infeasibility determination for each inherently safer technology determined to be not feasible; 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. 7:31-4.12(f)6	500	1,000	2,500	NM	
447. 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 economic, environmental, legal and technological factors.	N.J.A.C. 7:31-4.12(f)7	500	1,000	2,500	NM	
448. Failure of an owner/operator of a Program 2 covered process, whose employees will not respond to accidental releases of regulated substances, to meet the emergency response exemption applicability and failure requirements of 40 CFR 68.90(b) incorporated at N.J.A.C. 7:31-5.1(c)1 and 2 and to develop and implement an emergency response program in accordance with 40 CFR 68.95.	40 CFR 68.90(a) N.J.A.C. 7:31-5.1(a)	1,000	2,000	5,000	NM	
449. Failure to develop and implement an emergency response program that includes an emergency response plan which is maintained at the stationary source.	40 CFR 68.95(a) N.J.A.C. 7:31-5.1(a)	4,000	8,000	20,000	NM	
450. Failure to include in the emergency response plan procedures for informing the public and local emergency response agencies about accidental releases.	40 CFR 68.95(a)(1)(i) N.J.A.C. 7:31-5.1(a)	500	1,000	2,500	NM	
451. Failure to include in the emergency response plan documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures.	40 CFR 68.95(a)(1)(ii), N.J.A.C. 7:31-5.1(a)	500	1,000	2,500	NM	
452. Failure to include in the emergency response plan procedures and measures for emergency response after an accidental release of a regulated substance.	40 CFR 68.95(a)(1)(iii), N.J.A.C. 7:31-5.1(a)	500	1,000	2,500	NM	
453. Failure to include in the emergency response program procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.	40 CFR 68.95(a)(2), N.J.A.C. 7:31-5.1(a)	1,000	2,000	5,000	NM	
454. Failure to include in the emergency response program emergency response program training for all employees in relevant procedures.	40 CFR 68.95(a)(3), N.J.A.C. 7:31-5.1(a)	1,000	2,000	5,000	NM	

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455. Failure to include in the emergency response program procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and to ensure that employees are informed of changes.	40 CFR 68.95(a)(4), N.J.A.C. 7:31-5.1(a)	1,000	2,000	5,000	NM	
456. Failure to include elements of 40 CFR 68.95(a) and 40 CFR 68.95(c) as incorporated at N.J.A.C. 7:31-5.1(a) in the emergency response plan that are consistent with and as stringent as the National Response Team's Integrated Contingency Plan Guidance ("One Plan").	40 CFR 68.95(b), N.J.A.C. 7:31-5.1(a)3 and 4	1,000	2,000	5,000	NM	
457. Failure to coordinate the emergency response plan developed under 40 CFR 68.95(a)(1) as incorporated at N.J.A.C. 7:31-5.1(a) with the community emergency response plan developed under 42 U.S.C. §11003. or Failure to promptly provide to the local emergency planning committee or emergency response officials, upon their request, information necessary for developing and implementing the community emergency response plan.	40 CFR 68.95(c), N.J.A.C. 7:31-5.1(a)	1,000	2,000	5,000	NM	
458. Failure to develop and implement a written emergency response (ER) program which includes initial and annual refresher emergency response training for all employees in relevant procedures to implement the emergency response plan.	N.J.A.C. 7:31-5.2(b)1	2,000	4,000	10,000	NM	
459. Failure to develop and implement a written emergency response (ER) program which includes performance of at least one EHS ER exercise per calendar year.	N.J.A.C. 7:31-5.2(b)2	2,000	4,000	10,000	NM	
460. Failure to invite at least one outside responder agency who is designated in the ER plan to participate in the ER exercise at a stationary source with a Program 2 covered process whose employees will not respond to an EHS accident in accordance with 40 CFR 68.90(b) with changes specified at N.J.A.C. 7:31-5.1(c)2. or Failure to require employees of the stationary source to perform their assigned responsibilities for all ER exercises.	N.J.A.C. 7:31-5.2(b)2i	2,000	4,000	10,000	NM	
461. Failure to perform at least one full scale ER exercise in which the ER team and ER containment, mitigation, and monitoring equipment are deployed at a strength appropriate to demonstrate the adequacy and implementation of the plan for a stationary source at which the employees will respond to an EHS accident.	N.J.A.C. 7:31-5.2(b)2ii	2,000	4,000	10,000	NM	
462. Failure to make a written assessment of the ER plan and of the adequacy or need for ER equipment after each ER plan implementation or each ER exercise.	N.J.A.C. 7:31-5.2(b)3	1,000	2,000	5,000	NM	
463. Failure to provide in the emergency response (ER) program a description of the emergency notification system which requires immediate notification of an EHS accident or imminent EHS accident at the stationary source, including company name and address of the EHS accident, to the Department's emergency communications center at 877-WARNDEP by the emergency coordinator or designee.	N.J.A.C. 7:31-5.2(b)4i(1)	2,000	4,000	10,000	NM	
464. Failure to provide in the emergency response (ER) program a description of the emergency notification system which requires immediate notification of an EHS accident or imminent EHS accident at the stationary source, including the name, position and telephone number of the caller, to the Department's emergency communications center at 877-WARNDEP by the emergency coordinator or designee.	N.J.A.C. 7:31-5.2(b)4i(2)	1,000	2,000	5,000	NM	

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465. Failure to provide in the emergency response (ER) program a description of the emergency notification system which requires immediate notification of an EHS accident or imminent EHS accident at the stationary source, including time of, or anticipated time of the EHS accident and the projected duration to the Department's emergency communications center at 877-WARNDEP by the emergency coordinator or designee.	N.J.A.C. 7:31-5.2(b)4i(3)	1,000	2,000	5,000	NM	
466. Failure to provide in the emergency response (ER) program's emergency notification system a requirement for immediate notification of an EHS accident or imminent EHS accident, including the chemical name of the EHS released, to the Department's emergency communications center at 877-WARNDEP by the emergency coordinator or designee.	N.J.A.C. 7:31-5.2(b)4i(4)	1,000	2,000	5,000	NM	
467. Failure to provide in the emergency notification system a requirement for immediate notification to the Department's emergency communications center at 877-WARNDEP of an EHS accident or imminent EHS accident by the emergency coordinator or designee stating the actual EHS quantity (or estimated quantity if not known), and whether it will have an offsite impact.	N.J.A.C. 7:31-5.2(b)4i(5)	1,000	2,000	5,000	NM	
468. Failure to require in the emergency response (ER) program's emergency notification system the weather conditions, including wind direction and speed and expected offsite effects in the immediate notification to the Department's emergency communications center at 877-WARNDEP by the emergency coordinator or designee for an EHS accident or imminent EHS accident.	N.J.A.C. 7:31-5.2(b)4i(6)	1,000	2,000	5,000	NM	
469. Failure to provide in the emergency response (ER) program an EHS accident reporting requirement that the emergency coordinator or designee for the stationary source be prepared to provide the Department's emergency communications center with updates, if requested, which include the name and address of the stationary source.	N.J.A.C. 7:31-5.2(b)4ii(1)	1,000	2,000	5,000	NM	
470. Failure to provide in the emergency response (ER) program an EHS accident reporting requirement that the emergency coordinator or designee for the stationary source be prepared to provide the Department's emergency communications center updates, if requested, which include the name, position and telephone number of the caller.	N.J.A.C. 7:31-5.2(b)4ii(2)	1,000	2,000	5,000	NM	
471. Failure to require in the emergency response (ER) program an EHS accident reporting requirement that the emergency coordinator or designee be prepared to provide the Department's emergency communications center with updates, if requested, which include the location of the point of EHS release, a description of the source, cause and type of EHS accident, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature.	N.J.A.C. 7:31-5.2(b)4ii(3)	1,000	2,000	5,000	NM	
472. Failure to provide in the emergency response (ER) program an EHS accident reporting requirement that the emergency coordinator or designee for the stationary source be prepared to provide the Department's emergency communications center updates, if requested, which include the measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures.	N.J.A.C. 7:31-5.2(b)4ii(4)	1,000	2,000	5,000	NM	

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473. Failure to provide in the emergency response (ER) program an EHS accident reporting requirement that the emergency coordinator or designee for the stationary source be prepared to provide the Department's emergency communications center updates, if requested, which include an update on weather conditions.	N.J.A.C. 7:31-5.2(b)4iii(5)	1,000	2,000	5,000	NM	
474. Failure to report to the Department's emergency communications center an EHS accident that had potential offsite impact or that extended beyond an industrial complex property boundary.	N.J.A.C. 7:31-5.2(b)4iii(1)	4,000	8,000	20,000	NM	
475. Failure to report to the Department's emergency communications center an EHS accident that resulted in actual or potential injuries or fatalities at the stationary source.	N.J.A.C. 7:31-5.2(b)4iii(2)	4,000	8,000	20,000	NM	
476. Failure to report to the Department's emergency communications center an EHS accident that activates the emergency response plan.	N.J.A.C. 7:31-5.2(b)4iii(3)	4,000	8,000	20,000	NM	
477. Failure to submit a single RMP that includes the information required by 40 CFR 68.155 through 40 CFR 68.185 as incorporated at N.J.A.C. 7:31-7.1 for all covered processes. 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.	40 CFR 68.150(a), N.J.A.C. 7:31-7.1(c)1 and 2	5,000	10,000	25,000	NM	
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 above a threshold quantity in a process.	40 CFR 68.150(b)(3), N.J.A.C. 7:31-7.1(a)	5,000	10,000	25,000	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

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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
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 above the threshold quantity in the process, 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

		First Offense	Second Offense	Subsequent Offenses	Type of Violation	Grace Period (days)
	<u>Categories of Offense</u>					
	<u>Cite</u>					
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).	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); (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.	500	1,000	2,500	M	30
506.	Failure to submit in the RMP for Program 2 and 3 processes 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.	2,000	4,000	10,000	NM	
507.	Failure to submit the chemical name in the off-site consequence analysis (OCA).	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.	1,000	2,000	5,000	M	30
509.	Failure to submit the physical state (toxics only) in the OCA.	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).	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.	1,000	2,000	5,000	M	30
512.	Failure to submit the quantity released in pounds in the OCA.	1,000	2,000	5,000	M	30
513.	Failure to submit release rate in the OCA.	1,000	2,000	5,000	M	30
514.	Failure to submit the release duration in the OCA.	1,000	2,000	5,000	M	30
515.	Failure to submit the wind speed and atmospheric stability class (toxics only) in the OCA.	1,000	2,000	5,000	M	30
516.	Failure to submit the topography (toxics only) in the OCA.	1,000	2,000	5,000	M	30
517.	Failure to submit the distance to endpoint in the OCA.	1,000	2,000	5,000	NM	

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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
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

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573. Failure to submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.	40 CFR 68.185(b), N.J.A.C. 7:31-7.1(a)	2,000	4,000	10,000	NM	
574. Failure to review and update the RMP as specified in 40 CFR 68.190(b) incorporated at N.J.A.C. 7:31-7.1(c) and submit it in a method and format to a central point specified by EPA as of the date of submission.	40 CFR 68.190(a), N.J.A.C. 7:31-7.1(c)3-4	1,000	2,000	5,000	NM	
575. Failure to submit RMP updates to the Department in accordance with 40 CFR 190(b) incorporated N.J.A.C. 7:31-7.1(c) and N.J.A.C. 7:31-7.2 for all covered processes.	40 CFR 68.190(b), N.J.A.C. 7:31-7.1(c)5, N.J.A.C. 7:31-7.2	1,000	2,000	5,000	NM	
576. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 at least once every five years from the date of its initial submission or most recent update required by 40 CFR 68.190(b)(2) through (b)(7), whichever is later. For purposes of determining the date of initial submissions, RMPs submitted before June 21, 1999 are considered to have been submitted on that date.	40 CFR 68.190(b)(1), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
577. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 prior to three years after a newly regulated substance is first listed by EPA.	40 CFR 68.190(b)(2), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
578. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 prior to the date on which a new regulated substance is first present above a threshold quantity in an already covered process.	40 CFR 68.190(b)(3), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
579. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 prior to the date on which a regulated substance was first present above a threshold quantity in a new process.	40 CFR 68.190(b)(4), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
580. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 within six months of a change that requires a revised PHA or hazard review.	40 CFR 68.190(b)(5), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
581. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 within six months of a change that requires a revised offsite consequence analysis as provided in 40 CFR 68.3 incorporated at N.J.A.C. 7:31-2.1(c).	40 CFR 68.190(b)(6), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
582. Failure to revise and update the RMP submitted under 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2 within six months of a change that alters the Program level that applied to any covered process.	40 CFR 68.190(b)(7), N.J.A.C. 7:31-7.1(c)5	1,000	2,000	5,000	NM	
583. Failure to submit a de-registration to EPA and the Department within six months of being no longer subject to 40 CFR 68 as incorporated at N.J.A.C. 7:31 indicating that the stationary source is no longer covered.	40 CFR 68.190(c), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	M	30

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584. Failure to correct the RMP for any accidental release meeting the five-year accident history reporting criteria of 40 CFR 68.42 and occurring after April 9, 2004 by submitting the data required under 40 CFR 68.168, 68.170(j), and 68.175(l) with respect to that accident within six months of the release or by the time the RMP is updated under 40 CFR 68.190, whichever is earlier.	40 CFR 68.195(a), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
585. Failure to correct the RMP beginning June 21, 2004, within one month of any change in the emergency contact information required under 40 CFR 68.160(b)(6), the owner or operator shall submit a correction of that information.	40 CFR 68.195(b), N.J.A.C. 7:31-7.1(a)	1,000	2,000	5,000	NM	
586. Failure to submit to the Department in a specified format all documents required by 40 CFR 68.150 incorporated with changes specified at N.J.A.C. 7:31-7.1(c)1 and 2.	N.J.A.C. 7:31-7.2(a)1	1,000	2,000	5,000	M	30
587. Failure to submit to the Department in a specified format, supplemental TCPA program information including identification of the position titles, expertise and affiliation of the persons involved with the development of each element of the risk management program.	N.J.A.C. 7:31-7.2(a)2i	1,000	2,000	5,000	M	30
588. Failure to submit to the Department in a specified format supplemental TCPA program information including a description and profile of the area in which the covered process is situated and its proximity to population and water supplies.	N.J.A.C. 7:31-7.2(a)2ii	1,000	2,000	5,000	M	30
589. Failure to submit to the Department in a specified format supplemental TCPA program information identifying 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.	N.J.A.C. 7:31-7.2(a)2iii	1,000	2,000	5,000	M	30
590. Failure to submit to the Department in a specified format supplemental TCPA program information identifying the extraordinarily hazardous substances inventory at the covered process as end products, intermediate products, by-products or waste products.	N.J.A.C. 7:31-7.2(a)2iv	1,000	2,000	5,000	M	30
591. Failure to submit to the Department in a specified format supplemental TCPA program information identifying each covered process containing an RHS Mixture and the number of process vessels in which the RHS Mixture is present at or above its threshold quantity for RHS Mixtures containing one or more EHSs listed in Parts A, B, or C of N.J.A.C. 7:31-6.3(a) Table I.	N.J.A.C. 7:31-7.2(a)2v	1,000	2,000	5,000	M	30
592. Failure to identify and register each regulated individual RHS and RHS Mixture and provide in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a) the total amount of the individual RHS in the covered process for each individual RHS listed at N.J.A.C. 7:31-6.3(a), Table I, Part D, Group I.	N.J.A.C. 7:31-7.2(a)3i	1,000	2,000	5,000	NM	
593. Failure to identify and register a RHS Mixture in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a) the maximum capacity of the process vessel containing the RHS Mixture, for each regulated RHS Mixture identified pursuant to N.J.A.C. 7:31-6.3. or	N.J.A.C. 7:31-7.2(a)3ii	1,000	2,000	5,000	NM	

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Failure to register the total combined capacity of multiple vessels with a capacity at or above the threshold quantity of an RHS Mixture.						
594. Failure to identify and register each regulated individual RHS and RHS mixture and provide in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a) the heat of reaction range for RHS mixtures in calories/gram of RHS mixture as listed at Table II of N.J.A.C. 7:31-6.3(c). or Failure to identify and register the RHS mixture having the highest heat of reaction range as shown on Table II in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a) when more than one RHS mixture is present in the process vessel at different times.	N.J.A.C. 7:31-7.2(a)3iii	1,000	2,000	5,000	NM	
595. Failure to identify and register only the EHS listed on Part A, B, or C as a toxic or flammable substance, as applicable, in the RMP registration section pursuant to 40 CFR 68.160(b)(7) incorporated at N.J.A.C. 7:31-7.1(a), for RHS Mixtures containing one or more EHS(s) listed in Parts A, B, or C of Table I in a process above their threshold.	N.J.A.C. 7:31-7.2(a)3iv	1,000	2,000	5,000	NM	
596. Failure to submit an update to the Department within 60 days of an increase in maximum inventory of a covered process in addition to the updates required by N.J.A.C. 7:31-7.1(c)3 through 5.	N.J.A.C. 7:31-7.2(b)	2,000	4,000	10,000	NM	
597. Failure to adopt the existing, or obtain a new, approved Program 2 or Program 3 TPCA risk management program for the covered process before operating EHS equipment following the transfer of the covered process to a new owner or operator or change in ownership or the name of an owner or operator.	N.J.A.C. 7:31-7.4(a)	2,000	4,000	10,000	NM	
598. Failure to adopt an existing approved Program 2 or Program 3 TPCA risk management program by submitting an updated registration in accordance with Subchapter 7 and signing an addendum to the consent agreement that was previously signed by the Department and the former owner or operator.	N.J.A.C. 7:31-7.4(b)	2,000	4,000	10,000	NM	
599. Failure to comply with the approved risk management program for EHSs listed in N.J.A.C. 7:31-6.3, Table I, Parts A, B and/or C until the risk management program is revised to reflect the new requirements of N.J.A.C. 7:31. or Failure to revise the risk management program to reflect the new requirements of this chapter by January 1, 2004.	N.J.A.C. 7:31-7.5(a)	2,000	4,000	10,000	NM	
600. Failure to be in compliance with this chapter by September 30, 2004.	N.J.A.C. 7:31-7.5(b)	2,000	4,000	10,000	NM	
601. Failure to maintain records supporting the implementation of 40 CFR 68 as incorporated at N.J.A.C. 7:31 for five years unless otherwise provided in N.J.A.C. 7:31-3 and 4.	40 CFR 68.200, N.J.A.C. 7:31-8.1(c)1	2,000	4,000	10,000	NM	
602. Failure to provide the Department access to the stationary source, supporting documentation, or any area where an accidental release could occur in accordance with N.J.A.C. 7:31-8.2.	40 CFR 68.220(d), N.J.A.C. 7:31-8.1(c)2 and 5	2,000	4,000	10,000	NM	
603. Failure to include in the written response to a preliminary determination a statement that the revisions contained in the preliminary determination will be implemented in accordance with the timetable included	40 CFR 68.220(f)(1), N.J.A.C. 7:31-8.1(c)7	2,000	4,000	10,000	NM	

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in the preliminary determination or a statement that the revisions in whole or in part are rejected. or Failure to explain the basis for rejecting in whole or in part a revision contained in a preliminary determination.						
604. Failure to submit the written response under 40 CFR 68.220(f)(1) as incorporated at N.J.A.C. 7:31-8.1(c)7 to the Department within 60 days of the issue of the preliminary determination.	40 CFR 68.220(f)(2), N.J.A.C. 7:31-8.1(c)8	4,000	8,000	20,000	NM	
605. Failure to enter into a consent agreement (or consent agreement addendum for previously approved risk management programs) with the Department within 120 days of receipt of a preliminary determination. or Failure to comply with the requirements of the approved risk management program as set forth in the consent agreement or consent agreement addendum.	40 CFR 68.220(g), N.J.A.C. 7:31-8.1(c)9	2,000	4,000	10,000	NM	
606. Failure to revise and submit the RMP prepared under 40 CFR 68.150 as incorporated at N.J.A.C. 7:31-7.1(c) as required by a consent agreement, consent agreement addendum or administrative order under 40 CFR 68.220(g) as incorporated at N.J.A.C. 7:31-8.1(c)9 within 30 days after completion of the actions detailed in the implementation schedule set forth in the consent agreement, consent agreement addendum or administrative order.	40 CFR 68.220(h), N.J.A.C. 7:31-8.1(c)10	2,000	4,000	10,000	NM	
607. Failure to provide the Department the right to enter and inspect and/or audit any stationary source, building or equipment, or any portion thereof, at any time, in order to determine compliance with the TCPA, N.J.A.C. 7:31, any order, consent order or agreement. or Failure to provide the Department the right to test or sample any materials at the stationary source, to sketch or photograph any portion of the stationary source, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner or operator. or Failure to assist the Department by hindering or delaying during the performance of any aspects of an inspection and audit.	N.J.A.C. 7:31-8.2(a)	2,000	4,000	10,000	NM	
608. Failure to submit to the Department a risk management program document for review.	N.J.A.C. 7:31-8.2(c)	1,000	2,000	5,000	NM	
609. Failure to assist the Department in developing a work plan to perform an Extraordinarily Hazardous Substance Accident Risk Assessment (EHSARA) and develop a risk reduction plan.	N.J.A.C. 7:31-9.1(a)	2,000	4,000	10,000	NM	
610. Failure to compile and submit to the Department the list of risk management program documents within 30 days after receipt of notice of the determination that the owner or operator does not have an established risk management program. or Failure to group the list of documents by operating or utility unit area in EHS service at the stationary source giving their document number, name, the EHS involved, most recent revision number and date, file location at the stationary source, and code of sheet size according to ANSI Y14.1-1996 (A, B, C, D, or E) or Deutsches Institute Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0).	N.J.A.C. 7:31-9.1(c)	2,000	4,000	10,000	NM	

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611. Failure to attend a meeting with the Department for the purpose of discussing any workplan items listed at N.J.A.C. 7:31-9.1(d)1 through 7.	N.J.A.C. 7:31-9.1(d)1 through 7	2,000	4,000	10,000	NM	
612. Failure to submit within 60 days of receipt of the finished workplan the names and proposals of three consultants who meet the requirements at N.J.A.C. 7:31-9.4(b) and are willing and able to perform the EHSARA in accordance with the schedule set in the work plan.	N.J.A.C. 7:31-9.3(b)	2,000	4,000	10,000	NM	
613. Failure to obtain approval in writing from the Department to subcontract work involved in the EHSARA.	N.J.A.C. 7:31-9.3(c)4	750	1,500	3,750	NM	
614. Failure to submit the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the EHSARA within 60 days after the Department's determination that none of the original proposals meet the requirements in N.J.A.C. 7:31-9.4.	N.J.A.C. 7:31-9.4(d)2	2,000	4,000	10,000	NM	
615. Failure to execute a contract with the consultant chosen by the Department within 45 days after receipt of the name of the consultant from the Department.	N.J.A.C. 7:31-9.4(e)	2,000	4,000	10,000	NM	
616. Failure to require the consultant to perform the EHSARA and develop a recommended risk reduction plan which includes the identification of those activities necessary to create a risk management program in conformity with the work plan developed and explained at the meeting held pursuant to N.J.A.C. 7:31-9.1(d).	N.J.A.C. 7:31-9.4(f)	2,000	4,000	10,000	NM	
617. Failure to require the consultant to prepare an EHSARA report upon completion of the EHSARA which includes recommendations to reduce risks.	N.J.A.C. 7:31-9.5(a)	2,000	4,000	10,000	NM	
618. Failure to submit the original EHSARA report to the Department in accordance with the schedule set forth in the work plan.	N.J.A.C. 7:31-9.5(b)	2,000	4,000	10,000	M	30
619. Failure to include in the EHSARA report the findings of the verification required by N.J.A.C. 7:31-9.2(a)2.	N.J.A.C. 7:31-9.5(c)1	1,000	2,000	5,000	NM	
620. Failure to include in the EHSARA report the findings of the review required by N.J.A.C. 7:31-9.2(a)3.	N.J.A.C. 7:31-9.5(c)2	1,000	2,000	5,000	NM	
621. Failure to include in the EHSARA report the findings of the safety review required by N.J.A.C. 7:31-9.2(a)4.	N.J.A.C. 7:31-9.5(c)3	1,000	2,000	5,000	NM	
622. Failure to include in the EHSARA report the reports of the process hazard analysis with risk assessment required by N.J.A.C. 7:31-9.2(a)5.	N.J.A.C. 7:31-9.5(c)4	1,000	2,000	5,000	NM	
623. Failure to include in the EHSARA report the findings of the reviews required by N.J.A.C. 7:31-9.2(a)6 through 10.	N.J.A.C. 7:31-9.5(c)5	1,000	2,000	5,000	NM	
624. Failure to include in the EHSARA report the recommended risk reduction plan including the listing of all of the deficiencies identified in N.J.A.C. 7:31-9.5(c)1 through 5, the remedial actions and alternatives to correct the deficiencies or a proposed schedule for implementation.	N.J.A.C. 7:31-9.5(c)6	1,000	2,000	5,000	NM	
625. Failure to include in the EHSARA report the findings of the verification required by N.J.A.C. 7:31-9.2(b)2.	N.J.A.C. 7:31-9.5(d)1	1,000	2,000	5,000	NM	
626. Failure to include in the EHSARA report the findings of the review required by N.J.A.C. 7:31-9.2(b)3.	N.J.A.C. 7:31-9.5(d)2	1,000	2,000	5,000	NM	
627. Failure to include in the EHSARA report the report of the hazard review required by N.J.A.C. 7:31-9.2(b)4.	N.J.A.C. 7:31-9.5(d)3	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>
628. Failure to include in the EHSARA report the findings of the reviews required by N.J.A.C. 7:31-9.2(b)5 through 9.	N.J.A.C. 7:31-9.5(d)4	1,000	2,000	5,000	NM	
629. Failure to include in the EHSARA report the recommended risk reduction plan including the listing of all of the deficiencies identified in N.J.A.C. 7:31-9.5(d)1 through 4, the remedial actions and alternatives to correct the deficiencies or a proposed schedule for implementation.	N.J.A.C. 7:31-9.5(d)5	1,000	2,000	5,000	NM	
630. Failure to implement the risk reduction plan which includes a list of risks that must be reduced.	N.J.A.C. 7:31-9.5(e)1	4,000	8,000	20,000	NM	
631. Failure to implement the risk reduction plan which includes the scheduled actions that were required to be taken to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 for Program 2 covered processes or N.J.A.C. 7:31-4 for Program 3 covered processes.	N.J.A.C. 7:31-9.5(e)2	4,000	8,000	20,000	NM	

(d) The Department may assess a civil administrative penalty for a violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order adopted or issued pursuant thereto, for which no penalty amount is specified under (c) above, according to the following:

1. The Department shall assess a penalty in an amount not to exceed the following:

- i. \$10,000 for the first offense;
- ii. \$20,000 for the second offense;
- iii. \$50,000 for the third and each subsequent offense.

2. The Department shall determine whether the violation is a minor violation and subject to a grace period or whether the violation is non-minor and not subject to a grace period and shall assess a penalty as follows:

i. If, pursuant to (e) below, the violation is comparable to a violation listed in (c) above, and the comparable violation in (c) above is minor, then the violation under this section is also minor, provided the criteria at N.J.A.C. 7:31-11.5(c)1 through 4 are also met. The minor violation shall be subject to the grace period set forth in (c) above for the comparable violation, and the penalty shall be assessed in the amount of the penalty for the comparable violation, in accordance with the procedures set forth at N.J.A.C. 7:31-11.5;

ii. If the violation is not comparable to a violation listed in (c) above and the violation meets all of the criteria at (d)2ii(1) through (3) below as well as the criteria at N.J.A.C. 7:31-11.5(c)1 through 4, then the violation under this section is minor. The minor violation shall be subject to a grace period of 30 days, and may be subject to a penalty to be assessed under (d)1 above, in accordance with the procedures set forth at N.J.A.C. 7:31-11.5.

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).

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).