CHAPTER 1G

WORKER AND COMMUNITY RIGHT TO KNOW REGULATIONS

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 13:1D-125 et seq., 26:2C-1 et seq., 34:5A-1 et seq., and 52:27D-222 through 228.

Source and Effective Date

R.2005 d.27, effective December 13, 2004.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1G, Worker and Community Right to Know Regulations, expires on December 13, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 1G formerly contained the interim rules of the Pinelands Commission, subchapter 1 of which was filed and became effective on August 20, 1979 as R.1979 d.333. See: 11 N.J.R. 320(b), 11 N.J.R. 502(b). Subchapter 2 of the interim rules was filed and became effective on August 20, 1979 as R.1979 d.332. See: 11 N.J.R. 504(a). A comprehensive Management Plan for the Preservation Area was filed on August 15, 1980 to become effective on September 23, 1980 as R.1980 d.370. See: 12 N.J.R. 309(a), 12 N.J.R. 575(c). Regulations which superseded the interim rules contained in N.J.A.C. 7:1G and the Plan for the Preservation Area were filed and became effective on January 14, 1981 as R.1981 d.13. See: 12 N.J.R. 309(a), 12 N.J.R. 513(b), 13 N.J.R. 91(e). These superseding rules are codified as N.J.A.C. 7:50.

This chapter subsequently contained the drought crises emergency rules which were filed on an emergency basis and became effective on March 10, 1981 as R.1981 d.93 see: 13 N.J.R. 195(c). Subsequent amendments to the drought rules concerning car washing became effective on March 16, 1981 and were filed on March 18, 1981 as R.1981 d.105 see: 13 N.J.R. 204(c). Subsequent amendments concerning the watering of non-commercial crops, home vegetable gardens, the washing of refuse/garbage vehicles and street sweeping were filed and became effective on May 1, 1981 as R.1981 d.147 see: 13 N.J.R. 334(c). Amendments concerning the use of fresh water for horticultural purposes became effective on May 6, 1981 and were filed on May 7, 1981 as R.1981 d.159 see: 13 N.J.R. 335(a). Subsequent amendments to various sections of the drought rules were filed and became effective on May 20, 1981 as R.1981 d.203 see: 13 N.J.R. 397(d). Amendments concerning nonessential use of fresh water were filed and became effective on June 8, 1981 as R.1981 d.222 see: 13 N.J.R. 399(a). Amendments concerning the use of fresh water for watering lawns, plants, shrubs and gardens were filed and became effective on June 19, 1981 as R.1981 d.266 see: 13 N.J.R. 400(a). Amendments concerning excess use charges for landlords/tenants were filed and became effective on June 3, 1981 as R.1981 d.217 see: 13 N.J.R. 400(b). The drought crisis rules were repealed by Executive Order No. 5, sec. 6, on April 27, 1982.

On October 3, 1983 Water Supply Bond Loan Regulations for the Interconnection of Water Supply Systems were adopted at N.J.A.C. 7:1G pursuant to the Water Supply Bond Act, P.L. 1981, c.261, section 4, and became effective as R.1983 d.425. See: 14 N.J.R. 1012(a), 15 N.J.R. 1650(b). On June 18, 1984, R.1984 d.232 repealed the text of these rules except N.J.A.C. 7:1G-2.3, "Eligibility and criteria", and N.J.A.C. 7:1G-2.12, "Priority determination", which were recodified under Chapter 1A as N.J.A.C. 7:1A-4.1 and 4.2, respectively. Pursuant to amendments to the Water Supply Bond Act of 1981 (P.L. 1983, c.499), all Water Supply Bond Loan Programs were consolidated in Chapter 1A. See: 16 N.J.R. 631(a), 16 N.J.R. 1479(b).

Chapter 1G, Worker and Community Right to Know Regulations, Subchapters 1 through 5, was adopted as R.1984 d.278, effective July 2, 1984. See: 16 N.J.R. 646(a), 16 N.J.R. 1732(a). Subchapter 6, Trade Secrets, was adopted as R.1984 d.437, effective October 1, 1984. See: 16 N.J.R. 1854(a), 16 N.J.R. 1924(a), 16 N.J.R. 2530(b). Subchapter 7, Assessment of Civil Administrative Penalties, was adopted as R.1988 d.90, effective February 16, 1988. See: 19 N.J.R. 703(a), 20 N.J.R. 388(a). Pursuant to Executive Order No. 66(1978), Chapter 1G was readopted as R.1989 d.544, effective September 29, 1989. See: 21 N.J.R. 1944(a), 21 N.J.R. 3478(a).

Pursuant to Executive Order No. 66(1978), Chapter 1G was readopted as R.1994 d.349. See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).

Petition for Rulemaking. See: 30 N.J.R. 1638(a), 1863(a).

The Executive Order No. 66(1978) expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 1999 to June 16, 2000. See: 31 N.J.R. 1803(a).

The expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 2000 to June 16, 2001. See: 32 N.J.R. 2591(a).

The expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 2001 to June 16, 2002. See: 33 N.J.R. 2341(a).

Chapter 1G, Worker and Community Right to Know Regulations, was readopted as R.2005 d.27, effective December 13, 2004. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from December 13, 2009 to December 13, 2010. See: 42 N.J.R. 69(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from December 13, 2010 to December 13, 2011. See: 43 N.J.R. 186(a).

Law Review and Journal Commentaries

Products Liability With No Sales or Products? Lee Henig-Elona, 154 N.J.L.J. 668 (1998).

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APPENDIX A. SELECTED SUBSTANCES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1G-1.1 Scope

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department implementing the Worker and Community Right to Know Act, P.L. 1983 c.315, N.J.S.A. 34:5A-1 et seq.

7:1G-1.2 Definitions

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

"Act" means the Worker and Community Right to Know Act, P.L. 1983 c.315, N.J.S.A. 34:5A-1 et seq.

"Administrative order" means any and all orders issued or entered into by the Department including, but not limited, to administrative consent orders.

"Chemical Abstracts Service Registry Number" or "C.A.S. number" means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

"Common name" means any designation or identification such as a code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Community Right to Know Survey" means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part I, and the Superfund Amendments and Reauthorization Act, Section 312.

"Compound" means a substance composed of two or more elements chemically united in a fixed proportion.

"Container" means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, pipelines, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks. "Container" shall not include process containers.

"Department" means the New Jersey Department of Environmental Protection, however, for the purpose of N.J.A.C. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and the New Jersey Department of Health and Senior Services, unless otherwise indicated.

"Designated county lead agency" means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by the Act in the county.

"Employee" means a person who works at a facility owned or operated by an employer as defined in this section on a paid or unpaid basis and who may or may not be directly paid by the employer who owns or operates the facility. It is not intended that this term encompass independent contractors.

"Employer" means any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having the following United States North American Industry Classification System (NAICS) codes, dated and published in 2002 by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024), subject to the specified exceptions and limitations:

Administrative correction.
See: 36 N.J.R. 2762(b).
Adopted concurrent new rule, R.2004 d.328, effective July 29, 2004.
See: 36 N.J.R. 212(a), 36 N.J.R. 4121(a).

SUBCHAPTER 2. ENVIRONMENTAL HAZARDOUS SUBSTANCE LIST

7:1G–2.1 Designation of environmental hazardous substances

(a) The list of EHSs shall be comprised of the substances listed below:

1. Toxic Chemicals on the list at 40 CFR 372.65 established by the United States Environmental Protection Agency for reporting pursuant to SARA Title III section 313, incorporated herein by reference, as from time to time supplemented or amended;

2. Extremely Hazardous Substances on the list at 40 CFR 355 Appendix A designated under SARA Title III section 302, established by the United States Environmental Protection Agency for reporting, incorporated herein by reference, as from time to time supplemented or amended;

3. Chemicals designated as selected substances at Appendix A of this chapter, incorporated herein by reference, for Industrial Survey Project reporting.

4. Unusually Hazardous Substances defined at N.J.A.C. 7:1G–1.2 and listed below by the Department pursuant to N.J.S.A. 52:27D–223:

Chemical	CAS Number
Saran	8013-77-2
PVC (Chloroethylene, polymer)	9002-86-2
Lopac	9003-54-7

5. Any hazardous substance added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K–3.5; and

6. Regulated Substances on the list at 40 CFR 68.130 established by the United States Environmental Protection Agency for accidental release prevention under Section 112(r) of the Federal Clean Air Act Amendments, incorporated herein by reference, as from time to time supplemented or amended.

(b) Chemical inventory reporting on the Community Right to Know Survey shall include all EHSs listed at (a)1 through 6 above.

(c) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of substances described at (a)1 and 5 above.

Amended by R.1984 d.416, effective September 17, 1984.
See: 16 N.J.R. 1861(a), 16 N.J.R. 2432(a).
Added amitrol, 1,1–dimethyl hydrazine, hexachlorocyclopentadiene, vinylidene chloride.
Amended by R.1988 d.89, effective February 16, 1988.
See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).
Added bromine, chlorine, hydrogen chloride, hydrogen fluoride, hydrogen sulfide, methyl isocyanate and phosphorus trichloride.
Petition for Rulemaking: Three pigments excluded from list: C.I. Pigment Blue 15, Phthalocyanine Blue CAS No. 147–14–8, C.I. Pigment Green 7, Phthalocyanine Green CAS No. 1328–53–6 and C.I. Pigment Green 36, Phthalocyanine Green CAS No. 14302–13–7.
See: 24 N.J.R. 2636(a), 24 N.J.R. 3440(c).
Amended by R.1993 d.408, effective August 16, 1993.
See: 25 N.J.R. 2166(a), 25 N.J.R. 3754(a).
Amended by R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
Amended by R.1994 d.349, effective July 18, 1994.
See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).
Amended by R.1994 d.576, effective November 21, 1994.
See: 26 N.J.R. 2833(a), 26 N.J.R. 4606(a).
Public Notice: Petition for rulemaking.
See: 27 N.J.R. 4010(b).
Public Notice: Copper phthalocyanine compounds.
See: 27 N.J.R. 5054(a).
Amended by R.1997 d.191, effective May 19, 1997.
See: 29 N.J.R. 725(a), 29 N.J.R. 2274(a).

Case Notes

Asbestos tort defendants were jointly and severally liable. Stevenson v. Keene Corp., 254 N.J.Super. 310, 603 A.2d 521 (A.D.1992), appeal granted 130 N.J. 2, 611 A.2d 643, affirmed 131 N.J. 393, 620 A.2d 1047.

7:1G–2.2 (Reserved)

Amended by R.1988 d.89, effective February 16, 1988.
See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).
Added 34 Halogens and 35 Inorganic Acids.
Repealed by R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
Section was "chemical group and group numbers".

SUBCHAPTER 3. COMMUNITY RIGHT TO KNOW SURVEY

7:1G–3.1 Completion of Community Right to Know Portion of the Environmental Survey

(a) An employer shall complete and submit to the Department a Community Right to Know Survey for each facility covered by the rules indicating if EHSs were present during the reporting period and whether the EHSs met or exceeded the threshold quantities for reporting listed in (b) below.

(b) A threshold of 500 pounds or the Federal SARA 302 threshold planning quantity, whichever is lower, shall apply to all EHSs present in aggregate at the facility at any one time.

These thresholds for reporting do not apply to container labeling pursuant to N.J.A.C. 8:59.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the Department, which shall include, but is not limited to, the following:

1. The chemical name, Chemical Abstracts Service registry number, if available, and the EHS number and USDOT number, if available, of each EHS which is present at the facility in a pure state or mixture;

2. For reporting, EHSs shall be grouped according to container type and location within the facility;

3. For EHSs present in the pure state, the quantity of each, in pounds, in terms of daily maximum and average daily amount, and the hazard code for the EHS;

4. EHSs in mixtures shall be reported as follows:

i. Each EHS comprising more than one percent of a mixture (or .1 percent if the EHS is carcinogenic as defined at 29 CFR 1910.1200(d)4 of the Occupational Safety and Health Standard) shall be reported with its quantity determined by multiplying the weight percent of the EHS by the mass, in pounds, of the entire mixture.

ii. EHSs in mixtures in the following generic categories may be reported using the generic name and the quantity of the entire mixture: gasoline, new and used petroleum oil, and hazardous waste;

5. The major methods of storage, including container type, temperature, pressure conditions, and locations shall be reported including the number of days the EHS was present onsite during the calendar year at the facility; and

6. If no EHS is present in a mixture, and the mixture is subject only to reporting pursuant to the Federal requirements of Section 312 of SARA (40 CFR 370), a product name may be used to report the substance.

7. Quality control samples of substances that are elsewhere reported on the Community Right to Know Survey may be listed as a single entry: "samples of reported substances."

(d) An employer or owner or operator of any facility subject to Federal hazardous chemical reporting under Section 312 of SARA (40 CFR 370) shall submit a completed Community Right to Know Survey to the Department to satisfy these requirements.

Repeal and New Rule, R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
Section was "Completion of Environmental Survey".
Amended by R.1994 d.349, effective July 18, 1994.
See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).
Amended by R.1994 d.576, effective November 21, 1994.
See: 26 N.J.R. 2833(a), 26 N.J.R. 4606(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).
Rewrote (b).

Case Notes

Employer's failure to timely return environmental survey required by right to know law warrants penalty. NJDEP v. Barclay Texaco, Inc., 96 N.J.A.R.2d (EPE) 47.

Employer's failure to timely complete and return survey form with respect to use of propane warranted imposition of fine. Department of Environmental Protection v. Amlack, 95 N.J.A.R.2d (EDE) 86.

Operator of nonprescription drug business was liable for penalty; Worker and Community Right to Know Survey requirements. Division of Environmental Quality v. VJS, Incorporated. 92 N.J.A.R.2d (EPE) 137.

Failure to timely file Worker and Community Right to Know Survey. Division of Environmental Quality v. Bob's Auto Sales, Inc. 92 N.J.A.R.2d (EPE) 113.

7:1G–3.2 Reporting exemptions

(a) EHSs meeting any of the following criteria are exempt from chemical inventory reporting on the Community Right to Know Survey:

1. EHSs present at a facility in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C. 7:1G–3.1(b);

2. EHSs located within a research and development laboratory as defined in N.J.A.C. 7:1G–1.2 and used for R & D activities are exempt from reporting on the Community Right to Know Survey provided the employer has obtained a research and development laboratory exemption from the Department, which may be obtained in accordance with the following procedure:

i. The employer shall submit to the Department for evaluation and approval a completed research and development laboratory exemption application, on forms approved by the Department, containing the following information:

(1) The facility name, location and New Jersey Employer Identification Number;

(2) An 8½ × 11 inch map of the facility indicating the designated research and development area(s) of the facility. The map should indicate if R & D activities are limited to specific locations within the facility or if the entire facility is dedicated to R & D activities;

(3) The percentage of total work hours devoted to R & D activities in the designated area;

(4) Written verification from the local fire department that an acceptable communications program has been established with them to assist in responding to emergencies at the research and development laboratory;

(5) A description of the technical qualifications of each supervisor of the R & D laboratory area(s) or a certification by the supervisor of the research and development laboratory operations at the facility that each research and development laboratory is under the direct supervision of a technically qualified person; and

(b) If it is a hardship for an employer to submit an RPPR electronically, the employer may request approval from the Department to submit the RPPR in paper form. The Department shall approve such a request provided that:

1. The request is submitted no later than March 1 of the submittal year;

2. The employer explains:

i. The grounds for the hardship that electronic submittal would impose; and

ii. The effort(s) the employer will make to ensure the facility's ability to make electronic submittals in the future; and

3. The employer makes every effort to become able to submit the form electronically in future years.

(c) The Department shall approve, on a case-by-case basis, an extension of a reporting deadline if a facility is unable to electronically file its RPPR due to a malfunction in the Department's electronic reporting system. The Department shall not approve any extension due to a malfunction in a facility's electronic information technology system, unless the facility verifies the malfunction in writing and promptly files the report by other means.

New Rule, R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G–5.4 (Reserved)

Repealed by R.1988 d.89, effective February 16, 1988.
See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).
Repealed section dealing with waiver of N.J.A.C. 7:1G–5.1, 5.2 and 5.3.

SUBCHAPTER 6. TRADE SECRETS

7:1G–6.1 Authority

(a) This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, L. 1983, c.315, N.J.S.A. 34:5A–1 et seq., in particular, N.J.S.A. 34:5A–15 and 30, and N.J.S.A. 13:1D–9.

(b) This subchapter is a jointly adopted rule of the Department of Environmental Protection and the Department of Health and Senior Services (see N.J.A.C. 8:59–3).

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G–6.2 Purpose

(a) Trade secret claims will be filed or maintained by employers who are subject to the Act to maintain the confidentiality of information requested on the Right to Know Survey or the environmental survey and for the names of substances on container labels. It is the purpose of this subchapter to prescribe:

1. The procedures and guidelines for filing trade secret claims and maintaining trade secret information;

2. The information required by the department for determination of a trade secret claim;

3. The methods for maintaining the confidentiality and security of trade secret information;

4. The criteria for determination of a trade secret claim;

5. The procedure for requesting trade secret information;

6. The procedures for appeal of a determination of a trade secret claim; and

7. The procedures and guidelines for the disclosure of trade secret information.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.3 Definitions

"Department" means, for the purposes of this subchapter, both the New Jersey Department of Health and Senior Services and the New Jersey Department of Environmental Protection, unless otherwise indicated.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G–6.4 General provisions

(a) Except as provided in N.J.A.C. 7:1G–6.15, the Department shall not disclose any trade secret claim and supporting information, that is pending or has been approved. This non-disclosure requirement shall apply to trade secret claims for substances which were subsequently deleted from the environmental hazardous substances list.

(b) An employer shall report the information for which a trade secret claim is being made to the appropriate Department in accordance with N.J.A.C. 8:59–3.6 (7:1G–6.6), or maintain this information in accordance with the provisions of N.J.A.C. 8:59–3.6.

(c) On the Right to Know Survey and the environmental survey which the employer sends to county and local government agencies and which the employer retains on file at the facility for inspection by an enforcement officer or employees, the employer shall conceal or omit information claimed to be a trade secret, and shall note on the surveys where information has been claimed to be a trade secret.

(d) Any Right to Know Survey or environmental survey shall only be made available to the public with trade secret

information concealed as required in subsection (c) above indicating pending or approved trade secret claim status.

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program
New Jersey Department of Health and Senior Services
PO Box 368
Trenton, NJ 08625–0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, Office of Pollution Prevention and Right to Know
New Jersey Department of Environmental Protection
PO Box 405
Trenton, NJ 08625–0405

(f) The top of each page of any document containing the information for which a trade secret claim is being made and submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type or stamp. If the documents submitted in support of the trade secret claim are to be kept confidential, they shall be similarly stamped.

(g) The outside of the envelope containing the information claimed to be a trade secret and any other envelopes containing information in support of such claim submitted pursuant to (e) above, shall display the word "CONFIDENTIAL" in bold type on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(h) The department shall determine the validity of a trade secret claim when a request is made by any person for the disclosure of the information for which the trade secret claim was made and at any time that the department deems appropriate. Employers shall be notified before the department makes its determination and shall be provided 30 days to submit any information pursuant to N.J.A.C. 7:1G–6.6 except when the employer has filed a trade secret claim prohibited by N.J.A.C. 7:1G–6.5. The department shall make its determination on a trade secret claim in accordance with the criteria in 7:1G–6.9. The department may approve a trade secret claim based on information provided pursuant to 7:1G–6.6.

(i) The department may revoke an approved trade secret claim upon the receipt of new information from any person regarding the information previously submitted by an employer pursuant to N.J.A.C. 7:1G–6.8. In the event of such revocation, N.J.A.C. 7:1G–11 and 13 shall apply in the same manner as where the department rejects a trade secret claim.

(j) Nothing in these regulations shall be construed as prohibiting the incorporation of trade secret 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 outside the department, not otherwise having knowledge of such information, to deduce from it the trade secret information, or the identity of the employer who supplied it to the department.

(k) Any failure by an employer to submit additional information relevant to the trade secret claim requested by the department or to allow inspection of its facility by the department for purposes of determining the validity of a trade secret claim shall constitute valid cause for denial of the trade secret claim.

(*l*) Compliance with this subchapter does not constitute satisfaction of Federal trade secret claim requirements for substances exceeding the Federal reporting thresholds of Title III of the Superfund Amendments and Reauthorization Act.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.1993 d.408, effective August 16, 1993.
See: 25 N.J.R. 2166(a), 25 N.J.R. 3754(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Case Notes

Occupational Safety and Health Act preempts the state Right to Know Law concerning employees in the manufacturing sector; the mandated disclosure of trade secrets under the Right to Know Law are not takings of property rights which trigger a right to compensation (citing former N.J.A.C. 7:1G–5 and 7:1G–12); Court of Appeals limited preemption to only pertain to protection of employees' health and safety in the manufacturing sector. New Jersey State Chamber of Commerce v. Hughey, 600 F.Supp. 606 (D.N.J.1985), affirmed in part, reversed in part 774 F.2d 587 (3rd Cir.1985).

7:1G–6.5 Prohibited claims

(a) A trade secret claim may not be made to the Department of Environmental Protection for the following information:

1. The name and Chemical Abstracts Service number or United States Department of Transportation identification number of any substance listed on the Special Health Hazard Substance List (N.J.A.C. 8:59–10), which meets the criteria established pursuant to N.J.A.C. 8:59–10;

2. Any information required to be publicly disclosed pursuant to any other act;

(f) Except as provided in N.J.A.C. 8:59–3.15 (7:1G–6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over pre-hearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of Environmental Protection or the Department of Health and Senior Services pursuant to N.J.A.C. 1:21.

(g) All documents containing information regarding a trade secret claim shall be stored in a locked file or safe in a locked office in the department. The file or safe and office containing such documents shall be locked when not being used by authorized persons.

(h) Persons authorized to use trade secret documents pursuant to (f) above shall do so in the office in which the trade secret documents are stored, unless authorized to remove the documents by the Commissioner or his designated representative. All trade secret documents which are removed shall be returned to the office in which the documents are stored each day by the end of the regular workday. The department shall maintain a log of persons who use documents containing trade secret information. The log shall include the person's name, title, and name of the document used, and the time of commencing and finishing use of the document. No trade secret document shall be delivered between offices by persons who are not authorized to handle said documents. Such documents shall not be duplicated unless necessary for purposes of N.J.A.C. 7:1G–6.15 or if the department determines that it is absolutely necessary to carry out its responsibilities under the Act. If so duplicated, the document shall be marked as a copy, but treated as if it was an original document. The copy shall be destroyed immediately after completion of the use for which it was intended.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).
In (f), amended the N.J.A.C. reference.

7:1G–6.8 Decision-making agency on a trade secret claim

(a) The Department of Health is authorized to approve or deny a trade secret claim concerning:

1. Information reported on the Right to Know Survey.

2. Labeling a container with the chemical name and Chemical Abstracts Service number of the substance in the container.

(b) The Department of Environmental Protection is authorized to approve or deny a trade secret claim concerning information reported on an environmental survey.

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health and Senior Services and the Department of Environmental Protection.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).
Amended by R.2005 d.27, effective January 18, 2005.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

7:1G–6.9 Criteria for determination of the validity of a trade secret claim

(a) Any formula, plan, pattern, process, production data, information, or compilation of information shall be considered a trade secret if the employer establishes that its secrecy is certified by an appropriate official of the federal government as necessary for national defense purposes, or if the employer establishes that:

1. It is not patented;

2. It is known only to the employer and certain other individuals;

3. It is used in the research and development or production of an article or of a mixture; and

4. It gives the employer possessing it a competitive advantage over businesses who do not possess it.

(b) The chemical name and Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors, or is included in a formula or process that meets the criteria of (a) above.

(c) In determining whether a trade secret claim meets the requirements of (a) or (b) above, the Department shall consider information provided by the employer or any other person, including the information in (c)1 through 6 below:

1. The extent to which the information for which the trade secret claim is made known outside the employer's business;

2. The extent to which the information is known by employees and others involved in the employer's business;

3. The extent of measures taken by the employer to guard the secrecy of the information;

4. The value of the information to the employer or the employer's competitor;

5. The amount of effort or money expended by the employer in developing the information;

6. The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.10 Request for trade secret information

(a) Any person may submit, at any time, a written request for the disclosure of information for which a trade secret claim is pending or has been approved, to the appropriate Department at the address provided in N.J.A.C. 8:59–3.4 (7:1G–6.4). The request shall state the requestor's name, address, and affiliation, and may include information concerning the validity of a pending or approved trade secret claim. The names of the employees making requests for trade secret information on a Right to Know Survey or a label shall be kept confidential.

(b) A request for disclosure of an approved trade secret may be submitted only if accompanied by new significant information not previously submitted concerning the invalidity of the trade secret claim.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.11 Notification of determination of the validity of a trade secret claim

(a) Upon making a determination on the validity of a trade secret claim, the department shall notify the employer and the requestor of the determination by certified mail, return receipt requested. The notice shall state that the employer has 45 days from receipt of the department's determination to file a written request with the department for an administrative hearing on the determination.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.12 (Reserved)

7:1G–6.13 Appeal of determination

(a) If the Department denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the Department's determination to file with the Department a written request for an administrative hearing on the determination. Such request shall be filed with the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625–0402.

(b) (Reserved)

(c) If a request for an administrative hearing is made pursuant to (a) above, the department shall refer the matter to the Office of Administrative Law for a hearing thereon.

(d) Within 45 days of receipt of the administrative law judge's initial decision containing a recommendation on a matter referred to in (c) above, the Department shall affirm, reject, or modify the recommendation. The Department shall inform the employer of its decision on the administrative law judge's recommendation by certified mail return receipt requested. The Department's action shall be considered final agency action for purposes of the "Administrative Procedure Act", N.J.S.A. 52:14B–1 et seq., and shall be subject only to judicial review as provided in the Rules of Court.

(e) In the event that the department determines, pursuant to (d) above, that the trade secret claim is not valid, the employer shall have 45 days from receipt of the department's determination to notify the department, in writing, that it has filed to appeal the department's decision in the courts. If the employer does not so notify the department, the department shall disclose the information for which the trade secret claim was made in the manner set forth in N.J.A.C. 7:1G–6.14.

(f) Special rules applicable to trade secret claim appeals are set forth at N.J.A.C. 1:21.

Administrative Correction and change to (a).
See: 23 N.J.R. 3325(b).
Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.14 Disclosure of information determined not to be a trade secret

(a) After a trade secret claim has been denied and all appeals and the right to bring an appeal have been exhausted, the Department shall take the following action:

1. Modify the employer's Right to Know Survey or environmental survey, as the case may be, on file with the Department to substitute the omitted information for the trade secret docket or registry number and add the information wherever else appropriate; and

2. Direct the employer to modify the Right to Know Survey or environmental survey on file at his facility to include the information for which the trade secret claim was denied and add the information wherever else appropriate; to send modified copies of the revised Right to Know Survey or environmental survey to the appropriate Department and all county and local agencies that are required by law, rule or regulation to receive the survey containing this information; and to replace the trade secret registry number with the chemical name and Chemical Abstracts Service number on its fact sheets and container labels, if applicable.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.15 Restricted access to trade secret information retained by the Department

(a) Except as provided in (b) through (g) below and N.J.A.C. 7:1G–6.7 or when so ordered by a court, no person shall willingly and knowingly disclose and no person shall willingly and knowingly receive trade secret information protected by this subchapter without the employer's written consent.

(b) An officer or employee of the State may be granted access to trade secret information protected by this subchapter, only in accordance with this section, upon a demonstration to the satisfaction of the department that such request is in connection with the official duties of the officer or employee under any law for the protection of public health.

1. An officer or employee of the State designated by the head of an agency may make a written request to the department for information on a pending or approved trade secret claim. Such request shall state:

i. Name, title, program, division and department of the officer or employee;

ii. The officer or employee's need for the information and its connection with official duties;

iii. The reason why the information cannot be obtained from other sources; and

iv. The public health law for which the information is needed.

2. If the department proposes to release trade secret information to an officer or employee of the State, the department shall notify, in writing and by certified mail, return receipt requested, the employer who submitted the trade secret claim of the intent to release such information.

(c) A contractor of the State and its employees may be granted access to trade secret information protected by this subchapter if the Department determines that such disclosure is necessary for the completion of any work contracted for in connection with the implementation of the Act, and that the requirements of (c)1 through 3 below have been satisfied. Such approval shall restrict access to the trade secret information to persons approved by the Department. Employers shall be notified of this determination by the Department prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:

1. The contractor has submitted a plan to the Department which describes measures for adequately protecting trade secret information from unauthorized disclosure, and such plan has been approved by the Department;

2. The contractor has provided written documentation demonstrating, to the satisfaction of the Department, that the contractor maintains Professional Liability Insurance or suitable indemnity insurance and Comprehensive General Liability Insurance in forms and in amounts to be set by the Department; and

3. In addition to the requirement of (e) below, the contractor has signed an agreement developed by the Department, protecting trade secret information from unauthorized disclosure. The agreement shall include a provision whereby the contractor assumes liability for any damages to an employer resulting from the intentional or negligent release of trade secret information by the contractor and its employees.

(d) The department shall provide any information for which a trade secret claim is pending or has been approved to a physician or osteopath when such information is needed for medical diagnosis or treatment. The physician or osteopath who will receive confidential information shall be required to sign an agreement developed by the department protecting the confidentiality of the information disclosed. This agreement shall include a provision prohibiting the physician or osteopath from revealing the trade secret information to any person. Where feasible the employer shall be notified prior to disclosure of the information.

(e) Any person granted access to trade secret information pursuant to N.J.A.C. 7:1G–6.15 shall sign an agreement developed by the department protecting the confidentiality of the information prior to receipt of the information.

(f) Any person who receives trade secret information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

1. Keeping the information confidential from unauthorized persons;

2. Keeping any records containing trade secret information in a locked file cabinet or safe, when not in use;

3. Using the information only for the use approved by the department;

4. Not reproducing the trade secret information; and

5. Returning all material on which the trade secret information has been recorded to the department within 30 days or when finished using the information, whichever is sooner.

(g) For emergency public health or medical purposes, the department may waive the requirements of (b)1 (written request by State officer or employee), (b)2 (notice to employer prior to release of trade secret information), and (e) (signing a confidentiality agreement prior to receipt of trade secret information) above, and shall follow the procedures set forth in (g)1 and 2 below, if the department determines that waiver of said requirements is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment or is necessary for an emergency medical diagnosis or treatment by a physician or osteopath.

1. If trade secret information is conveyed verbally, in person or by telephone, the contents of a confidentiality agreement developed pursuant to (e) above, shall be read to the persons receiving such information.

2. Any person receiving oral or written trade secret information pursuant to this subsection shall sign a confidentiality agreement developed pursuant to (e) above, within 72 hours of receipt of such information.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

7:1G–6.16 Penalties for unauthorized disclosure of trade secret information

(a) Any officer or employee of the State, contractor of the State, physician or osteopath, or employee of a county health department, county clerk, or designated county lead agency, local fire department, or local police department, or any other person who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(b) Disclosure of trade secret information by any contractor or agent of the department or its employees in violation of the Act shall constitute grounds for debarment, suspension, and disqualification from contracting with the department.

Amended by R.1993 d.386, effective August 2, 1993.
See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

SUBCHAPTER 7. ISSUANCE OF ADMINISTRATIVE ORDERS AND NOTICES OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

7:1G–7.1 Authority and scope

(a) This subchapter is promulgated to provide for the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments and to establish a schedule and procedures for the assessment of Civil Administrative Penalties as provided in the Worker and Community Right to Know Act, N.J.S.A. 34:5A–1 et seq., at N.J.S.A. 34:5A–31(a) and (b) and (d).

(b) Pursuant to N.J.S.A. 34:5A–31(a), the Commissioner or his or her designee is authorized to issue an Administrative Order and Notice of Civil Administrative Penalty Assessment whenever any employer is in violation of the Act or any rule or regulation promulgated pursuant to the Act. The Commissioner is authorized to issue a Civil Administrative Penalty of not more than $2,500 for each violation, and additional penalties of not more than $1,000 for each day during which a violation continues after the compliance date of an Administrative Order from the Commissioner to cease such violation pursuant to N.J.S.A. 34:5A–31(d).

(c) This subchapter shall govern the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments for violations of the Worker and Community Right to Know Act, N.J.S.A. 34:5A–1 et seq., or of any rule or regulation issued pursuant to this Act by the Department of Environmental Protection.

Amended by R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G–7.2 (Reserved)

Repealed by R.1994 d.3, effective January 3, 1994.
See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).
Section was "Definitions."

7:1G–7.3 Procedures for the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments

(a) The Commissioner may issue an Administrative Order upon finding that an employer is in violation of N.J.S.A. 34:5A–1 et seq., or any rule or regulation adopted pursuant thereto. Such an order shall:

1. Specify the provision or provisions of the Act, the rule or regulation adopted pursuant thereto of which the employer is in violation;

2. Cite the action which caused the violation;

3. Require compliance with the provision of the Act or the rules or regulations adopted pursuant thereto of which the employer is in violation; and

4. Give notice to the employer of the right to an adjudicatory hearing on the matters contained in the order and specify the procedures for requesting an adjudicatory hearing.

(b) A Notice of Civil Administrative Penalty Assessment may be issued separately or as part of an Administrative Order issued pursuant to N.J.S.A. 34:5A–31(b) requiring the alleged violator to take necessary action to comply with the Worker and Community Right to Know Act or a rule or regulation issued pursuant to the Act. Such Notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;

2. A concise statement of the facts alleged to constitute a violation;

3. A statement of the amount of the administrative penalty to be imposed; and

4. A statement of the employer's right to an adjudicatory hearing and notice of the procedure for requesting an adjudicatory hearing.

(c) The alleged violator shall have 20 calendar days from receipt of the Administrative Order and/or Notice of Civil Administrative Penalty Assessment within which to deliver a written request for an adjudicatory hearing to:

Office of Legal Affairs
Attention: Adjudicatory Hearings
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625–0402