
Committee Meeting

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of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"To take testimony from representatives of businesses and industries concerning State regulations adopted or proposed which are inconsistent with legislative intent or duplicative with other State regulations"

LOCATION: Nutley Town Hall
Nutley, New Jersey

DATE: September 30, 1993
10:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator John O. Bennett, Chairman
Senator John P. Scott, Vice-Chairman
Senator Louis F. Kosco



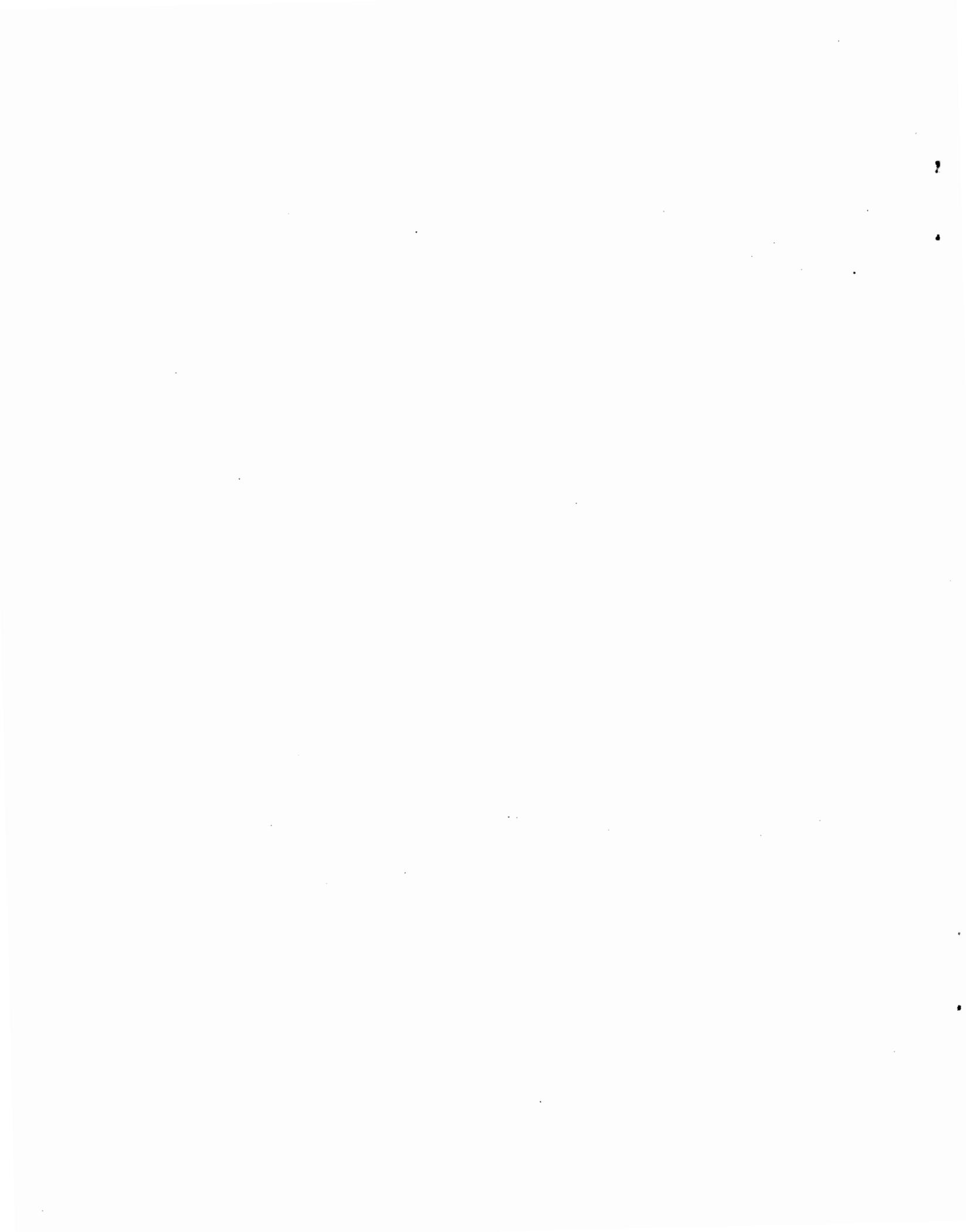
ALSO PRESENT:

Albert Porroni
Marci Levin Hochman
Office of Legislative Services
Aides, Senate Legislative Oversight Committee

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C O M M I T T E E N O T I C E

**TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT
COMMITTEE**

FROM: SENATOR JOHN O. BENNETT, CHAIRMAN

SUBJECT: COMMITTEE MEETING - September 30, 1993

The public may address comments and questions to Albert Porroni, Legislative Counsel, Marci Levin Hochman, Assistant Legislative Counsel, or make bill status and scheduling inquiries to Judith A. Saulli, secretary, at (609) 292-4625.

The Senate Legislative Oversight Committee will meet on **Thursday, September 30, 1993 at 10:30 A.M. in the Nutley Town Hall, Nutley, New Jersey.**

The purpose of the meeting will be to take testimony from representatives of businesses and industries concerning State regulations adopted or proposed which are inconsistent with legislative intent or conflicting or duplicative with other State regulations.

Directions: Route 1 North to NJ Turnpike to the Garden State Parkway - Exit 150 off Parkway. At the end of the off ramp, turn right onto Hoover Avenue. Continue on Hoover Ave. to the end; turn left onto Bloomfield Ave. At the third traffic light turn right onto Chestnut St. Go through one traffic light. Town Hall will be on the right side. (1 Kennedy Drive)

Issued 09/24/93

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SENATOR JOHN O. BENNETT (Chairman): Good morning. Welcome to this hearing of the Senate Legislative Oversight Committee. I'm Senator Bennett. I'm from Monmouth County, and I'm the Chairman of the Committee. Senator Scott, we're here in his district, and he's the Vice-Chairman of the Committee. I expect Senator Kosco from Bergen County will be here shortly. But even though we're already operating under legislative time of being 15 minutes late, I really didn't want to delay it any longer because I know that we do have some valuable testimony to take today as we continue with this Oversight Committee, which is a brand-new Committee having only been named about two months.

Many of you know, this Committee is a result of the voters having amended the State Constitution last year, which allows the Legislature to veto certain rules and regulations that are promulgated by the executive branch. This Committee, in large part, was established by the Senate to exercise that veto power.

In addition to considering all bills that propose to veto rules pursuant to the constitutional amendment, this Committee will strive to shed light on ways in which the bureaucracy can be made to be more responsive and efficient.

Since being named the Chairman of this Committee, I've received numerous complaints from small and large business representatives concerning instances where the bureaucracy allegedly adopted or proposed rules that exceed the legislative intent of authorizing the statute. Upon looking into specific concerns, several instances have become apparent where legislative intent has not been followed. As one example, a small business representative brought to my attention a problem with the hazardous waste fee schedule at the Department of Environmental Protection and Energy. Upon review, it became clear to me that the fee schedule established by the Department is inconsistent with the intent of the Legislature, as expressed in the language of the authorizing statute.

After relaying this concern to the new Commissioner of the Department, I recently received a response that, "Yes, the rule is inconsistent with legislative intent, and the rule would be amended accordingly."

There are a number of other suggestions that those who are regulated may have to help improve the regulatory process. However, since the legislative veto and this Committee are relatively new, many of us are unaware that they can turn to us for assistance in the event that their suggestions for reform are rebuffed by bureaucrats.

That is why this Committee is here in Essex today. We want to reach out to large and small businesses alike, to solicit their suggestions on improving the regulatory process.

Senator Scott, as the Vice-Chairman of this Committee, has been actively seeking input from the business leaders in this area of the State. In fact, he is responsible for encouraging many of those who are here today to testify. I've been informed that we have a representative of Hoffmann-La Roche with us today. Hoffmann-La Roche is one of the largest employers in the State, with approximately 8100 employees statewide. We also have a representative from the Commerce and Industry Association, and other businesses. I look forward to hearing all of their testimony.

I ask that those testifying today keep their comments on existing or formally proposed rules and regulations. Your testimony should fall into one of three categories: the rule is inconsistent with legislative intent as expressed in the language of the statute; the rule is duplicated by another level of government; or the rule is in direct conflict with another State rule. Additionally, I would ask that you suggest constructive alternatives to existing regulations whenever possible.

We do not have the authority as this Committee to simply say, "We don't like that regulation. It's bad for business." That's an authority we don't have. When we have

those types of regulations, it is then incumbent for us to go back to the Legislature to change the law which is the foundation upon which that regulation was done. We can only do those which are inconsistent with the legislation that gave them the authority to promulgate the regulation. So I'd like you to keep that in mind as we go forward.

I will not be staying for the entire session myself today. Hopefully Senator Kosco will be here before I have to leave, and then Senator Scott will continue this hearing until its conclusion. Hopefully we'll be able to hear from everyone who needs to be heard from. All of these hearings are recorded so that any of the members who are not here have the opportunity to listen to that. That's important when we're dealing with intention, so that we have a record. And I think you'll see more of that in the Legislature.

This Committee will end up having the impact of having the Legislature be more careful, when they have legislation passed, in defining what intention is, and, I believe, an executive branch -- not withstanding what party it is, because that's immaterial -- but an executive branch that will be more sensitive to focusing their enactment of regulations directly in relationship to what the intention is.

With that I'd like to-- Do you have an opening remark?

SENATOR SCOTT: Yes, if you don't mind.

SENATOR BENNETT: I'd like to call on Senator Scott to give the welcoming and opening remarks.

SENATOR SCOTT: Well, thank you, Senator Bennett. Welcome to Nutley Township in the 36th legislative district. I would like to thank you, particularly, for bringing this Committee in this particular area with its heavy concentration of major companies like Hoffmann-La Roche, and Givaudan-Roure, SIKA Chemicals, and many others to discuss regulatory reform.

It's important for us, I think, to leave the confines of Trenton when dealing with regulatory matters. Having this

meeting here in Nutley will allow us to discuss the oppressive rules and regulations without the din of all the bureaucrats who write these rules and promulgate them buzzing in our ears.

Since being elected to the Senate two years ago, I've been actively seeking the advice of the constituents and business leaders. Again, and again they've told me about the State's rules and regulations, and about the bureaucracy behind them. There's more than one tale of the bungling of the State bureaucracy where they euthanize a business by putting a regulatory bullet in their back.

Many have complained of a bureaucracy that interferes with their lives in the most intrusive ways. We've all heard the story about that bureaucracy that tried to ban lightly cooked eggs -- the runny egg story. We've all heard about private property effectively being confiscated by the State through oppressive rules and regulations that render private property useless.

I'd like to tell you a little horror story of my own. The Legislature passed a law some time ago called the "Right to Know." The law was in part intended to better educate employees about the hazardous substances in their workplace. The law was also intended to inform fire fighters about the dangerous chemicals that may be stored in a burning building. A noble intent.

Originally, the Legislature required businesses to prepare inventories of approximately 300 harmful products and chemicals. However, the intent of this law has been twisted by a bureaucracy with good intentions but misplaced priorities. The Department of Environmental Protection and Energy now requires nearly 3000 substances to be inventoried under Right to Know. I have two of them, Mr. Chairman, right here. One is what everybody has in their desk in the office, Wite-Out. This is a harmful substance, I guess, and we're not supposed to have

it, or we're supposed to inventory it. Any office building is in violation of many, many laws. And, of course, we also have a book of matches. This also is on that.

These two items right here, as you well imagine, are in everybody's pocket. They're on everybody's desk, in everybody's desk drawer. I've been informed that they must be included.

Now, imagine a fire fighter going into a burning building, trying to respond to an emergency, and taking a look at an inventory of over 3000 items, reading them, and making sense out of that particular inventory. Who in the world can read a list that's so complex it has to be prepared by a team of environmental consultants, so mammoth that it has to be sent out to the printers and bound? I know one of our testifiers today has one such item right here. It's amazing that a fire fighter in a smoke-filled room, fire coming around his feet, is going to stop and take out this particular manual and find a particular item. I hope he has good eyes, and I hope it's not dark in that particular building with the lights out because of the fire.

I understand that some of our witnesses will be speaking about this Right to Know, and I especially look forward to the testimony of Will Sumner and Frank Mara on this topic.

As Senator Bennett stated, we also have representatives from Hoffmann-La Roche, a major employer in this district, and, in particular, in Nutley and Belleville. I look forward to hearing from them explaining the problems they face every day -- the real problems -- and the constructive advice we may get as to how the bureaucracies can more efficiently and effectively uphold the intent of the Legislature while advocating businesses to expand and provide more jobs.

Welcome, and thank you very much.

SENATOR BENNETT: Thank you, Senator Scott.

Not because he happens to be representing some people from Monmouth County, but I'm going to use the prerogative of the Chair, and call on Frank first to come up.

Are you coming by yourself to testify, or are the two of you going to testify collectively?

F R A N K M A R A: I'm going to do one section, and then Wells is going to do the other.

SENATOR BENNETT: Fine, okay. Then that's how we'll do it then.

MR. MARA: Good morning, Mr. Chairman and members of the Committee. As a member of the business community, I commend your interest in talking with industry hit hard by cumbersome and difficult regulations that often are misguided interpretations of legislative intent that protect neither the environment, the safety of our workers, nor the public. I am confident, with your diligent efforts and commonsense approach, that some of these issues may at long last be targeted for action.

I'd like to bring to your attention today certain aspects of the Right to Know legislation where intent and implementation have traveled two different roads.

The name of my company is Fragrance Resources. We have 70 employees on eight acres of land, and we manufacture fragrances. All of you should have a copy of my 1992 Right to Know report in front of you. I've supplied it to the Committee.

SENATOR BENNETT: No, we don't, sir.

SENATOR SCOTT: Here they are, right here.

SENATOR BENNETT: Okay. Let's make sure that I get mine.

MR. MARA: There are two of them there. One is a response guide, the other one is a Right to Know report.

I'd like to read a quote from the 1992 Right to Know Instruction Manual. "The information collected is available to the public and emergency responders such as the police and fire

departments. It is also used to supplement other regulatory programs within the State to allow proper planning for a response to an emergency at a facility which may threaten the surrounding community or environment. An emergency could involve the release of a hazardous substance due to a fire, explosion, or chemical spill."

I'd like you all, if you would, to turn to page 4 of my Right to Know report. There is a map of my facility on that page.

SENATOR SCOTT: The Guide or the big one?

MR. MARA: The larger one is the Right to Know report.

We're going to do a little role playing here this morning. You are now presently members of the Key Port Fire Department. By looking at that map, please locate building 5A. Building 5A is now on fire. I'd like you to tell me from the report, what chemicals are in that building and are burning right now?

SENATOR SCOTT: John, it's above page 4. It's--

MR. MARA: It's the larger book.

SENATOR SCOTT: The thick book right here. It's got a map.

SENATOR BENNETT: Oh. Okay. Got it.

MR. MARA: In the interest of time, I won't allow you to look for it, because it will take you approximately two hours. The reason being, the information you're looking for is on pages 1, 16, 43, 58, 69, 74, etc.

The Department, in the interest of data entry, had us file the report in alphabetical order rather than by location and where the products are. I have 10 buildings on site. This report is useless and meaningless in fighting a fire.

Let's say you spend the two hours looking for the products and you find them. The information is no good; it's from a year ago. You have to file in July of the following

year; this is from the previous year. Everything in that warehouse has now been moved, and the report, again, is meaningless.

Turn to page 93, if you would, please. At the bottom of the page you'll see an area where they ask for percent codes to identify certain products. They have a code 51, which identifies zero to 0.9, all the way up to code 60, which is 100 percent. Any fireman is not going to sit there and read this document to identify what is in every drum if that drum is on fire. It's not going to happen.

Also, the next four pages of that report are for a product called orange terpenes, which is not on the hazardous substance list that the State asks us to file. The reason we had to do it is because I have 10,000 pounds or more of this product on site; therefore, for a nonhazardous substance that may have a tenth of a percent of this product in it, I have to file four pages of report.

One of the interesting things about this report is how they break items out by bottles and by samples. We as a company have a quality control lab within our facility. That quality control lab has a sample of every product that comes into my plant. I spoke with the Department of Health and asked them, rather than identify a separate line for every one of these products, that I possibly put a disclaimer in the beginning of the report and say that for every raw material on site, and every finished product that I have, could I say there's a half-ounce sample of this material in the laboratory. They came back and denied that request so, therefore, 37 percent of this report is for half-ounce sample bottles in my laboratory, which works out to be -- for further information -- 219 entries of the 590 in the book, or 6.9 pounds of my total inventory for the entire facility, or 0.0002 percent of my entire inventory on site. Thirty-seven percent is for 6.9 pounds.

If the lab is on fire, there sure is not going to be a fireman looking through this report for hours to identify what's in these sample bottles.

If you turn to page 49 of the report, you see a product called cornmint. Cornmint is used in a variety of items such as foods. It's also used in fragrances and things of that nature. There is a section in the report that calls for actual number of days on site.

Now, for this product, it was on site for 20 days. I have yet to find out what this information is usable for. As a fireman, was it 20 days in June; was it 20 days in August; was it 20 days in September? There's no use for this information. We might as well just tell them it was on site 365 days.

Also, at the bottom of the page you'll see a section at the left-hand corner called, "Inventory Range." They tell us that they want to know everything that we have of less than one pound on site. Yet if you go up the inventory range to item 13, you'll see that they'll say you can identify this range as 1001 pounds up to 10,000 pounds. If we're interested in one pound, why are we ignoring 8999 pounds through the balance of the report.

Locations of items within the facility: I'd like to read to you another excerpt from the instruction manual: "For each hazardous substance that you are reporting, provide a brief, narrative description of where it is found in your facility; such as, 'rear of the first floor,' 'ground floor rear,' 'tank farm,' shelves, right front,' 'storage area for flammables,' etc. If the substance is found commonly throughout the facility or a majority of the facility area, you may report it as a ubiquitous or plantwide. When you provide location descriptions, assume that an emergency responder does not have a detailed layout of your facility."

I have an eight-acre site. I have 10 buildings, five labs, five warehouses, three production locations, and I'm constantly moving my inventories around. We designed in the

book the first, second, third, and fourth pages, which are descriptions of the facility and a map of our facility to help our local fire department at their request, because they said the document is of no use to them as it sits.

Right to Know labeling within the facility: This is a Right to Know label. (indicating label) Can you see it from there? I doubt it very much. But this is what we are forced to put on the drums within our plant. This initially cost us, as a company, \$71,900 to set up the program. The labeling on a yearly basis, of employees just putting these on and punching the information into a computer, is approximately \$26,000. The annual report that I have to file usually takes me about a month-and-a-half to compile, and three secretaries about two weeks to type. The reason it takes that long is the system is not computerized by the State, and we have to rewrite it by hand every year. That costs us another \$26,500, or \$52,500 a year just to comply with this regulation.

As a member of the local Emergency Planning Committee in the Monmouth County Emergency Management Council, I work closely with emergency responders and fire fighters. All of whom I have spoken with do not utilize, and some even throw out the Right to Know report for being too complicated and cumbersome. They feel it is of no use in an emergency situation, or even in planning for one.

Responding to their request, Fragrance Resources designed our own emergency response guide for the facility, which I have supplied to you also. It is distributed to all our fire fighters, police department, LEPC, and County Lead agencies. We have been doing this for the past five years. This is used for planning for actual emergencies, responses in our town, not the Right to Know report. That Response Guide that we designed for our facility is carried in police cars and fire trucks, and that's what they use.

What works in the Right to Know: Plant tours with your local officials are extremely important. We do plant tours twice a year, and plus, if we have any changes within our facility, we bring our local fire department in and notify them in advance. We're presently going through an ECRA on our site. I call them at least once every month to notify them of where they're digging. In cases of an emergency at night, I don't want fire trucks ending up in a hole.

But what we do is, we walk through the plant. We ask them for recommendations. One of their recommendations to us was to label every door in the plant so that one of the firemen doesn't run into a closet looking for somebody if there is a problem. We walk through buildings discussing what the buildings are made of, what the fire fighting systems are in those buildings, what types of chemicals are there, and how they should put those fires out. You don't get that from this report. You get that from eye contact and being with these people.

MSDSs work. They're extremely important. I wish there were systems that would centralize it and make it one MSDS for all companies, but still, MSDSs are extremely important for the employees, for the public, and for the fire fighters.

In closing, as a company working in New Jersey we find ourselves inundated with regulations that start out with honorable intentions, and grow into a monster that strangle business with self-serving bureaucracy and rules that create more problems than they solve.

I think it is obvious to you that as a company, we work closely with our local officials and have nothing but the best interests of our employees and the public in mind.

I recently heard a public official state, "How can anyone be against Right to Know?" My reaction is, "How can anyone take a position without the facts?" We are not against

Right to Know; we are against useless, meaningless exercises that create a sense of false security without addressing critical issues, and obstruct the worthwhile objectives of worker safety and protecting the environment.

Once again, I thank this Committee's commendable steps toward investigating the true facts and focusing on real issues. Thank you.

SENATOR BENNETT: Excuse me, but the MSDS report?

MR. MARA: Material Safety Data Sheets.

SENATOR BENNETT: And they are not required under Right to Know? They are under something else?

MR. MARA: They're required, but what I'm saying is that they are extremely important, and under Right to Know they do work.

SENATOR BENNETT: Okay.

MR. MARA: That is an important aspect of it that works, as well as the plant tours. That is an important aspect.

The rest of it-- The survey doesn't do a thing.

SENATOR BENNETT: Do you find that the survey itself is improper in total, or the way-- I mean, alphabetically it probably makes no sense whatsoever, and I totally agree with you.

MR. MARA: None.

SENATOR BENNETT: But is there a way that the information that's contained can be helpful?

MR. MARA: Not really.

SENATOR BENNETT: Okay, that's what I want to know.

MR. MARA: If you're an emergency responder, you don't-- You need quick, fast information -- placarding on a building saying what's in a building when you get to it. They don't run around with these books and spend two hours looking through it while my building is burning. They can't utilize this book at all for emergency response. They can't even plan for it.

I recommend you take it home and try to read through it. Try and even understand the codes and how they work. There is no straightforward documentation in here; it's everything is designed for a code. This book is designed for data entry; it's not designed for a responder. It's not designed for somebody to read through it and understand what's taking place. It's designed for data entry into a computer.

SENATOR BENNETT: And for instance, if something is on site for 200 days, I wouldn't have the faintest idea on the day of a fire if it's there or not.

MR. MARA: Whether it's there or not. And the fact that we are constantly moving products around-- The amazing thing is, the day you write this report it's obsolete. It was obsolete six months prior, because you're doing the year before, and it's due July of the following year. So I have already moved everything out of those warehouses, changed my production operation. I'm writing a book trying to tell the fire department where everything is, and it's not there any more.

SENATOR BENNETT: Thank you. Questions, Senators?

SENATOR SCOTT: Yes, one.

Frank, you just said something which kind of made sense, but maybe that's why it's no good. You said there were placards on the side of the building which you could probably change as soon as you change the contents. You could put the sign up, and then, of course, we have firemen looking at this placard, or perhaps even a whole sign outside their plant. If it's building 5, here's building 5, and you can list it and you can change that rather easily.

MR. MARA: Absolutely. You have to understand, firemen are not chemists. They can't work from this report and understand what these products are. Placarding, either under OSHA or DOT, is what they're used to, what they're familiar with, and what they should be working with.

SENATOR SCOTT: That sounds like a very sensible solution. I'm surprised it wasn't done, but then again, I shouldn't be. Thank you.

SENATOR BENNETT: I'd like the record to note that Senator Kosco, who I told you would be here, is here now. Do you have any questions, or do you want us to keep right on?

SENATOR KOSCO: I just was interested in one other aspect. You say you organize a lot of plant tours and that's effective. That is not part of any of the regulations where the local departments--

MR. MARA: Yes, it is part of the regulations. That's why I said it is a good part of the Right to Know regulation, the plant tours. But we've expanded upon it with the town, and written our own emergency response guide to work with them.

SENATOR BENNETT: Thank you.

SENATOR SCOTT: Thank you.

MR. MARA: Thank you.

SENATOR BENNETT: Wells, my understanding is you're the second half of the data?

Tom, would you get those papers, please.

I don't know. It's a lot of paperwork we're getting here.

A. WELLES SUMNER: Most of the paperwork you have was issued by the bureaucracy.

SENATOR BENNETT: I know one thing, I need my glasses to be able to read this stuff. My arm is no longer long enough.

MR. SUMNER: Chairman Bennett, Vice-Chairman Scott, and Senator Kosco, good morning. My name is Wells Sumner. I am a lawyer. I spend most of my time practicing environmental law. My office is in Roseland.

Although I'm addressing another aspect of Right to Know different from Mr. Mara, I'd like to indicate that I am here as a private citizen. I am not representing any particular client or organization.

Chairman Bennett, you asked Mr. Mara if this survey could be fixed, and he said he did not think it could be. If one looks at the Right to Know statute -- the full name of which is Worker and Community Right to Know Act -- one will find that although there are problems to some aspects of the Act as to the survey, the survey would work wonderfully if the provisions of the statute were followed instead of the provisions of the regulations. This is a perfect illustration where we have a good law that's made unmanageable, inefficient, and wasteful by the regulations of the bureaucracy.

The first item in the packet that I have given you is an article appearing in the Sunday Star-Ledger on Sunday, December 8, 1991 by Gordon Bishop, entitled, "Right to Know Triviality Drowns Firms in Paper." That chronicles the problems that Mr. Mara described so far as a businessman is concerned. I would like to take you through just the relevant portions of the statute and show you how this wonderfully intended law, reporting on roughly 300 hazardous substances that we really should know where they are and in what quantity, got expanded out to 3000 things, including such things as matches, as Vice-Chairman Scott indicated.

If you put the Bishop article aside and perhaps read it later, we turn to section 34: 5-A4 of the Worker Community Right to Know Act. That section states which substances will be part of the survey. It basically includes two existing lists of substances. One is the list that was prepared some years ago by the Department of Environmental Protection and Energy for what was called the Industrial Survey Project, and it exists in regulation. You can turn right to it and see exactly what's on the list.

The second list that was added by the Pollution Prevention Act in 1991 is the so-called SARA 313 list; that is, a list of substances under the Superfund Amendments and Reauthorization Act. Those substances are those that certain

businesses, having them in certain large quantities, must report to the Federal government as to what happened to them. Where did they go? Were they released to the environment, or what happened? You must account for those. The combination of those two lists results in a little over 300 substances.

In fact, interestingly enough, the Legislature was thoughtful enough to put in the next section -- which, if you would turn the page -- section 34:5A-24. This is a somewhat unusual provision to find in the statute. After having instructed the DEPE as to what they will survey, this section goes on and says, "substances not included on the Workplace Hazardous Substance List" -- which is a list of substances administered by the Department of Health -- "or the environmental hazardous substance list" -- which the definition of which we just looked at -- "shall not be subject to the reporting provisions of this Act."

If I may paraphrase that section, the Legislature said to the DEPE -- after having specified a list of things to report on, it said, "Thou shalt have no other lists but mine."

The next item is the booklet, the most recent Community Right to Know Survey booklet. I didn't print the whole thing. I only have 77 pages of it here. It's a little bit longer than that. Would you be good enough to turn to page 19. On page 19 the list begins, and it goes on, and on, and on. As you can see, after a few pages you've gone past 300, and if you continue to the end, you approach 3000.

Just to confirm Senator Scott's observation, if you turn to page 41, which is the "Ms", and if you come down about two inches, you'll see matches. If you go across the page and come down a little bit, you'll see for those who don't like to strike matches, lighters are covered -- cigarette lighters. And right below that, lime, the stuff you put on your lawn to sweeten it. You can find many, many things in this list that are ridiculous, including furniture polish.

But I'd like to move on. We can put that tome aside for a moment. I'd like to show you how DEPE moved from a list -- a statutory list of 300, to their own list of 3000.

SENATOR SCOTT: Excuse me, Mr. Wells. May I interrupt for a moment?

I saw something here, and I want to know if it's the same one I saw in the movie? Krypton, is that what gets Superman? I see Krypton in here. Is that the same Krypton that Superman has a problem with?

MR. SUMNER: Like the fire fighter, I'm not a chemist.

SENATOR SCOTT: Okay.

MR. SUMNER: I wouldn't want to be a fire fighter and go up against Triplon (phonetic spelling) and not know what it was I was going up against.

The next item I have reproduced, the Right to Know regulations in part, and I've highlighted the relevant parts-- As you see, I've highlighted those things that I think are important to save your time. The substances contained in the optional materials table in the Code of Federal Regulations -- and it gives the citation -- are designated by reference as hazardous materials pursuant to the Worker and Community Right to Know Act.

Gentlemen, first of all, there is no such thing as a hazardous material under the Act. And it says, "designated pursuant." If there is no such thing as a hazardous material, how can this be designated pursuant to the Act? Wholly made up stuff.

Section B cites another list from the Code of Federal Regulations. Then if you would turn the page to the section captioned, "Completion of ESI Survey," "Within 90 days of receipt of an Emergency Services Information Survey, an employer shall complete the survey concerning each of the hazardous materials at his facility and transmit a copy of the completed survey to the Department of Environmental Protection, the local fire department, and the local police department."

That's a list that has absolutely no statutory authority, and that's a survey that has absolutely no statutory authority. In fact, it flies right in the face of Section 24 of the statute that says, "Thou shalt have no other list but mine."

After inventing this out of whole cloth, the Department said, "Now we have two surveys and," -- in those prophetic words -- "for the convenience of the regulated community, we'll merge them into one." And that's how you got 3000 substances as to which people who have any of those have to give 14 separate items of information. That's how it went from 300 to 3000, and I can think of no clearer illustration as to where a regulation exceeds the statutory authority.

In case there is a question, I'd like you to turn back to the page that has 34:5A-4, the list of environmental hazardous substances. You notice that I highlighted the words that provide that the Commissioner can add to this list so long as he identifies things that, based on documented scientific evidence, he determines pose a threat to the public health and safety. In case you were wondering, in the 10 years the statute has been in existence, the Commissioners have only exercised that power as to seven substances.

That's where we stand now. If the Department follows the course it has followed for the last 10 years, they are now gearing up for the next survey -- 1994 addition -- which will be for calendar 1993. And we'll be going through it again. As you can see from the Gordon Bishop article, the Department has been on notice for several years that this is wrong as well as inefficient. A number of us have tried to persuade the Department to review this. We've gotten what are known as bedbug letters, promises, and this and that, and absolutely nothing has happened.

But, gentlemen, it's going to get worse. I'd like you to turn to the next item, which is from the April 19, 1993 New Jersey Register. The Department proposes new rules for this

list. The problem basically here is, we don't know whether they're going to keep the current regulations that exceed statutory authority, or whether the next one will be the proposed regulations that go even farther beyond the statutory authority. I would ask you to turn to page 1637 of that issue of the Federal Register.

You'll see in the lower left-hand side, I've highlighted the words, "as from time to time, supplemented or amended." Basically, gentlemen, the Department is going to scrap the ESI survey list, but they're going to add another list of lists. Remember, nothing can be added to the list by the Department unless they produce documented scientific evidence that it qualifies under the statutory powers.

One I've highlighted is one, the toxic chemicals at 40 CFR etc. That's the 313 list that they are perfectly, validly including. Item number 3 is chemicals designated pursuant to NJAC 7:1f, appendix A. That's the industrial survey. They have every right to list that. That's what should be there, no more than that. The reason I've highlighted the words, "as from time to time, supplemented or amended," is as to the SARA 313 list. They're basically saying, "We'll put this list in, but as the Federal government changes that list, this New Jersey list will be changed." That is a clearly impermissible delegation of authority, and a loss of control that we all learned in 9th grade that a regulatory agency absolutely cannot do.

But the worst one is number 3, their industrial survey. "As from time to time, supplemented and amended--" That allows them, if that were valid, to change the industrial survey list at any time, and automatically add things to this survey that the Legislature never intended. When the Legislature identified the industrial survey in 1983, they meant the one that was in existence then. Were they to mean that the DEPE could change the statute -- the breadth of the

statute -- by amending that list, the industrial survey list, that would be an impermissible delegation of the legislative authority.

I'm not talking about something that might just happen. I would like you to turn back to the beginning of this, and then turn one page to page 1632. I have highlighted text of DEPE that advises that there are steps afoot substantially to expand the Federal list, both by EPA and by Congress. This is an impermissible delegation of power, and so clearly so that I have difficulty believing that an able agency of the State of New Jersey is doing this innocently without knowledge that they are way out of line.

So that's what we have. Either we have the list of 3000 or we have an unknown list, depending on whether or when these new regulations are adopted.

I'd like to emphasize just one other aspect of these proposed regulations: Under the present statutory scheme, which I think is very well thought-out in some ways, there are 30,000 to 40,000 businesses that are subject to this survey. In another article, Gordon Bishop observed that there is no other environmental law in this State that affects as many businesses as the Right to Know statute. This is the one that hits the most people.

But the statutory structure is as follows: If DEPE wishes to narrow the list from the 30,000 down to those who are most likely to have the greatest quantity of the most hazardous things, it can develop criteria to identify them and just require those companies to file the survey. So the method of selecting who has to follow the survey is, whoever DEPE sends a survey to -- transmits a survey to -- and if you don't get a survey, you're off the reporting requirement. It makes eminent sense. But DEPE has never wanted to narrow it to the most important, and not sweat the small stuff. So they transmit it to all 30,000.

Incidentally, just to mail the extra pages of the additional substances that the statute prohibits from being listed -- just to mail those pieces of paper, which total over a million -- costs over \$20,000. It's not a huge amount, but it's still waste.

But let me get back to-- If you would be good enough to turn in the regulations.

SENATOR BENNETT: Excuse me for just one second. I don't mean to interrupt you, but I don't want to lose my point. I followed you perfectly as far as from 300 to the 3000, and understand the problems with that. I'm troubled as to-- I don't understand the, "from time to time, are supplemented or amended." There's no question that there is list "A" and list "B" set forth in the statute, and you don't have any problems with that. Say that's the 300. But why, if those lists are included-- If for whatever reason those lists are changed, then you're saying any new thing that is included on those lists should not be included because they weren't in at the time of adoption of the Act?

MR. SUMNER: Exactly.

SENATOR BENNETT: I'm not sure I agree with that, by the way.

MR. SUMNER: Pardon?

SENATOR BENNETT: I'm not sure I agree with that.

MR. SUMNER: Let me be heard on it, if I may. I believe you're an attorney also.

Neither the Department nor the Legislature can have a running list in this particular kind of legislation, because when the Legislature decides what's going to be on the list -- the State list -- it's quite valid for them to look at the Federal list that exists at that time and say, "Boy, we want every one of those on there. We have made our legislative determination that those things should be reported on." If the next day the Congress or EPA adds matches, the ladies and

gentlemen of the Legislature have never looked at that and said, "We exercise our determination that we want matches on the list." What you have done is you have delegated back to Congress or EPA your power to decide what will be part of State legislation. And I think, Chairman Bennett, that that is fundamental that you cannot have a running, rolling addition to the list there.

SENATOR BENNETT: If the legislation itself said, "The list, as it may be amended," then that would be okay, or not?

MR. SUMNER: No. I don't think so.

SENATOR BENNETT: We can't delegate that authority then.

MR. SUMNER: I don't think so. No, absolutely cannot be done.

SENATOR BENNETT: Because we do it a lot.

MR. SUMNER: I know. I know.

SENATOR BENNETT: I mean, that doesn't make it right, but we do do it a lot.

MR. SUMNER: Correct.

SENATOR BENNETT: And that's why I'm asking the question.

MR. SUMNER: I know. I know. I think if it were carefully, thoroughly researched, there would be no doubt whatsoever that that is an impermissible delegation.

SENATOR BENNETT: Okay.

MR. SUMNER: Outside of the government of the State of New Jersey, it would be a case where the legislators had clearly not looked at the additional thing, and not made their determination. There are also objections on the grounds of the Federal split between state and Federal authority under our Constitution.

I have no doubt in my mind that that would be an impermissible delegation of power. You could delegate power to an agency to add on within New Jersey State government.

SENATOR BENNETT: I follow you. We can't give that right to an entity outside, such as the Federal government.

MR. SUMNER: No, and even when you give it to a regulatory body within the State, it would have to have some other parameters to it.

SENATOR BENNETT: Okay.

MR. SUMNER: If I may ask you to turn to page 1635 of the regulations? Senator Kosco?

SENATOR BENNETT: I'm sorry. I didn't--

SENATOR KOSCO: Just to put things into perspective so that I understand, you're bringing up an interesting thing here about matches. I think that we might be being a little bit theatrical about it, because isn't it that if you have 500 pounds of matches, you have to report it. Isn't there a threshold number that triggers--

MR. SUMNER: No, there is not.

SENATOR KOSCO: Well, I'm reading here on this page, it says any substance on the Federal list-- The threshold planning quantity listed on table D, for example, is 500 pounds. I think if you have 500 pounds of matches--

MR. SUMNER: What are you reading from, please?

SENATOR KOSCO: I'm reading from the report that you gave me.

MR. SUMNER: Yes, you are reading--

SENATOR KOSCO: If someone has 500 pounds of matches stored in a building, don't you think that should be reported?

MR. SUMNER: Senator Kosco, the threshold planning quantity that you're referring to refers, ironically, only to extremely hazardous substances. Ironically, and I-- There are many things you can pick apart in this, but you've hit on something. If you have one book of matches on your premises, you must report it.

There is a Federal list of extremely hazardous substances, things like methyl isothiocyanate, which is the substance which was involved in Bhopal, India. And as to

methyl isothiocyanate, there is a threshold planning quantity -- I don't know if it's 100 pounds or 500 -- I don't have the sheet in front of me -- but that's the irony. If you have a substance that killed thousands in India, there's a threshold below which you don't have to report it. If you have one book of matches, you've got to report it.

You've hit upon another strange, crazy thing in this survey.

SENATOR KOSCO: Who decides that?

MR. SUMNER: Who decides it?

SENATOR KOSCO: That 500 pounds of matches or one book of matches has to be reported, but something else doesn't have to.

MR. SUMNER: The statute says that if you have any quantity of the 313 things, you must report it. I would not question the Legislature and say, "It does not make sense as to the 313." That is their legislative decision. The problem is that it was DEPE that added matches to a list where there is no threshold, and so one pack of matches has to be listed.

What you're referring to as to a threshold planning quantity for extremely hazardous substances, that happens to be in satisfaction through this document -- through this survey -- of a Federal reporting requirement.

It's another purpose to which DEPE has put this survey which, ironically, although I think that the SARA reporting is a good idea, the requirement to report it to the DEPE has never been legislated.

I'd like you to turn to page 1635 of the proposed regulations. I told you that in order to allow DEPE to say, "We're not going to sweat the small stuff," the Legislature very wisely said, "Those who have to submit the survey are those to whom the Department transmits a survey." That's how we select those companies out of the 30,000 who will have to report, an eminently efficient and intelligent way to do it.

DEPE, however, wants to send it to all 30,000. It has the right to do it, but it doesn't like having to send the nearly 80-page survey to 30,000 people. I asked them why. I said, "What's the problem? Why do you want to define the term transmit," which is the word used in the statute. It's not defined, so it takes its common meaning. The word transmit means to send or transfer from one place to another. In other words, it's got to get there.

I said, "What's the problem with that?" They said, "Well, you know, we have some people who don't send the survey back, and we call them up and they say, 'We didn't get it.'" And I said, "But this is an information gathering statute. Why don't you just say, 'Okay, we'll send you another.'" They said, "Well, they might say they didn't get the second one." I said, "So fine, the second one you send certified. What's the problem?" They said, "The problem is that maybe he lied the first time." I said, "So he lied the first time. You send him a second one certified. He's got to fill it out. What's the problem?" They said, "Well, really, he should have been fined for not sending the first one back if he got it. But we don't have any way to prove that he got it."

I said, "So what are you going to do with transmit?" They said, "We're going to redefine it from transmit with the common meaning of send it so it gets there, to meaning, send via First Class Mail, or otherwise distribute." I said, "Hold it, you can't change the common meaning of a common word that the Legislature decided would have its common meaning, and come up with something as deviant from the obvious meaning of transmit as that. Why do you want to do it?" They said, "Because, what we're going to do is, we're going to send copies of the survey to the local libraries, and we're going to tell the 30,000 businesses, 'They're down at the library. Go pick one up.'" I said, "Now, this is so far away from what the statute says; this is off the wall." And this is the latest proposal from the Department.

Gentlemen, I don't propose that this be done, but the irony of it is the obligation of the businessman, after having filled out the survey, to transmit it to the Department. I think it would be just wonderful if the 30,000 businesspeople filled it out, dropped it off at the library, called up DEPE and said, "We transmitted it. Go around to the library and pick it up."

But we're not here just to identify problems. I would like to propose some solutions. It would be wonderful if this Committee had the power, the size, the time, the wherewithal to seek out every single regulation that goes beyond statutory authority and fix it. And, of course, that is an impossible task.

I suggest that there is a way to make the system automatically weed out these regulations before they become proposed, and to weed out the existing ones by some very short, succinct amendments to the Administrative Procedure Act.

If you would turn to the sheet that is so entitled, "Suggested Amendments to the Administrative Procedure Act," you will see that I am proposing something that is done in every other state of which I am aware; that is, before a proposed regulation is proposed, it is reviewed to be sure that it conforms to that statutory authority.

The State of New York has a special board to which proposals go. I don't suggest that approach. I think it's just setting up one more agency and bureaucracy. But there is a simple way to do it. It's something that should be done, but believe it or not, Chairman Bennett, does not occur in this State; that is, proposed amendments do not automatically go to the Attorney General's office for review. There is some input, but it is not at the level that we need.

I know that you were disgusted to see what was done in twisting the definition of transmit. That resulted from a written opinion by a Deputy Attorney General -- of which, as I

guess you know, there are several hundred -- who was asked by the Department, "Can we define the word transmit?" And he said, "Yes, since it's not defined in the statute, you may reasonably define it."

But he didn't go on to say, as a legal opinion would, "But if you do define it, you cannot deviate from its common meaning. If, for clarity, you wish to define it and give it its common meaning so people know, that's fine. But if you deviate from that, you're going beyond your statutory authority." That wasn't done.

So the proposal I have to amendments to section NJSA 52:14b-4 is, to add provisions that before a proposed regulation goes to the Office of Administrative Law for publication in the register, the Department get an opinion from the Attorney General, signed by him, himself -- not by a delegate -- that the regulation is within the statutory authority.

Now, this has been discussed with the Attorney General's office, and two answers were given: One, we already do it; two, we don't have the manpower to do it. Now, it's one or the other. But if they don't have the manpower to review regulations that are proposed, which if adopted could become law, then they are not doing one of their fundamental jobs.

And I cast this in terms of the opinion being signed by the Attorney General, because it's fully consistent with what happens with heads of the agencies where there is a final decision. Each final decision must be signed by the head of the agency. Truly, they do not go into all the facts. They sign where someone says, "I have reviewed this, Commissioner. I feel it is correct. I would ask you to put your signature to it." The Commissioner trusts the staff to get it right.

The beauty of this is, there would not be that many documents per month additional that the Attorney General would have to sign. But it would ensure, by the Attorney General

putting his name, his reputation as an attorney on the line that we did get regulations that, in most cases, were within statutory authority. It would get rid of all kinds of things, such as what the DEPE is proposing as to Right to Know.

It would work this way because we all know that Attorneys General are prominent people in the Bar. We know that after they serve, they often go back to private practice, they go to teach, or they go on to the bench, and they do not want -- if you'll allow me to say it this way -- they do not want three, four, or five years later some bright attorney pointing out that what he said was hogwash, and have that come back and bite him in the bottom.

So, when a staff member comes and says, "Mr. Attorney General, I have reviewed this and I believe this is within the statutory authority," it is implicit the Attorney General says, "I hope you're right, because if you're wrong and you make me look foolish, I will seek you out." That's the practical aspect, and I would suggest and ask that the Committee members consider this for sponsorship as a separate bill. I think it's short. I think it's sweet. I think it's to the point. I think it's effective.

In closing, I would like to make just one general observation about the enforcement activities of DEPE. There are many, many penalty proceedings that are brought that, when one looks at them, they are not warranted by the statute or the regulations, and some are quite foolish.

I will give you a quick example: I have a client; it's a business that employs four people. It is run by a man who is over 80 years of age. It's in the center of Newark. The man keeps the business running at an annual loss because he is wealthy enough to be able to keep infusing capital to keep up that loss. It keeps him young, and it keeps three other people employed who have served him for many, many years, all

of whom are in their 50s and 60s and would not be able to effectively find a job in the center of Newark if he closed down.

He put a scrubber on some equipment that emits some technical air contaminants. Those air contaminants are not regulated by DEPE or EPA. He does not have to eliminate them from the air, but he chose to. He spent \$25,000 to put what is called a scrubber in the path of the air contaminants, and the contaminants are scrubbed out of the airstream.

He bought what is called an off-the-shelf scrubber. It is designed by the manufacturer to do many different things, for many different applications. And so that it has wide utility, it happens to have a fan that draws the air past the scrubber. In my client's operation, that fan isn't needed because there is no other way out for the contaminants. If they get out of the system, they must go past the scrubber. If they don't go past the scrubber, they don't get out. In fact, without the fan running, they pass by the scrubber more slowly and are scrubbed better without the fan.

One day an inspector came last spring, and he said, "You have a scrubber. I want to see it." They went up on the roof and lo and behold, they found the fan wasn't running because the fuse that supplies electricity to the fan -- the circuit that supplies electricity to the fan -- had burned out. He fined my client \$1600 because the fan wasn't running, which did absolutely nothing.

Now, the regulations say that if you do not have a component part running, then you're liable for a fine. This fan does nothing. I submit it's not a component part. I have made that point to the DEPE staff, who say, "Well, we think it is." No explanation. I have made it to the Deputy Attorney General, who says, "My client thinks it is." To which I say, "Hold it, you're the lawyer. You're supposed to give them legal advice as to what a component part is. They're not supposed to give it to you."

This man would be spending thousands of dollars to fight a \$1600 penalty, which penalty he can ill afford, but he can afford the representation less. This is one of a few cases that I've taken without fee, because it is wrong.

This leads up to the fact that DEPE, the Legislature must understand, is different from every other agency. They are people who are wonderful people, who come to the Department with a mission to have a clean environment, and no one can fault that. They're nice people in the DOT, but you don't come with a mission to DOT to pave over all of New Jersey. You do come to DEPE with a mission, but they must know how to channel that mission to make it work within the governmental framework. And believe it or not, there is no formal program to do that.

The executive branch does have a three-hour course, I understand, in sensitivity to sexual harassment in the workplace. That's an important thing. We don't want that occurring in workplaces, certainly not in workplaces in our government. But if we can spend three hours on that subject, can we not spend some time to help these people to channel their wonderful ideas into the governmental framework?

I propose, as you see, suggested legislation providing training to personnel in the Department of Environmental Protection and Energy. Basically, it directs the Attorney General to develop such a program to explain to them how to carry out their mission within our constitutional democratic framework, and gives them the practical knowledge that they need to know to do their job effectively, lawfully, and consistently with a government of the people, by the people, and for the people. Then it directs the Commissioner to send his people to the course.

I recommend that piece of legislation to you, and hope that one of you, or one of your colleagues will think well enough of it to introduce it as legislation. Thank you very much for your time.

SENATOR BENNETT: Thank you for your time. The only problem I have with that last piece that you're recommending is that you're presuming that the Attorney General has a staff competent enough to teach that course, and I don't know who would teach them.

MR. SUMNER: Mr. Bennett, that's a wonderful idea and thought. I think I anticipated it. It says it must be taught by attorneys who are admitted to practice within this State. It does not say it has to be by the staff of the Attorney General's office. And if you give me two hours, I could find at least a dozen environmental lawyers who would be delighted to donate their time to teach that course. I can get a dozen in two hours. There are other attorneys in the room here who practice in the same area, who I'm sure would be delighted to find more. That would easily be staffed.

SENATOR BENNETT: Okay. As long as we don't have to have the Attorney General's office teaching it.

MR. SUMNER: And I think also--

SENATOR SCOTT: And that would be pro bono.

MR. SUMNER: Pardon me?

SENATOR SCOTT: Pro bono?

MR. SUMNER: Absolutely. I think that would be a wonderful way to draw the AG's office, the DEPE, the regulated community, and the attorneys who serve that regulated community together and work together in harmony. It might be a wonderful synergistic thing. Thank you.

Any other questions?

SENATOR BENNETT: Thank you very much.

I am going to excuse myself right now, and if there are further questions, Senator Kosco and Senator Scott will do it. I'm going to turn the rest of the meeting over to Vice-Chairman, Senator Scott.

Thank you all very much for participating today.

Senator Scott, if you'll take over the meeting?

SENATOR SCOTT: Thank you, Senator Bennett. We've spent a lot of time on very interesting testimony, but I think we have to, in the interest of time, cut back somewhat on the time allowed for individuals. I believe we now want to call Bruce Simenoff.

B R U C E S I M E N O F F: Thank you, Senator. My name is Bruce Simenoff, and I'm Chairman of the State Issues Committee of the Commerce and Industry Association of Paramus, New Jersey.

Just as a side comment, if I may make one fast. I'm also an EMT in New Jersey and on two rescue squads, and I agree totally with the two businessmen, Mr. Sumner and Mr. Mara regarding Right to Know. From a rescue squad standpoint, it goes against all of our training, because when you see a haz-mat incident, the first thing that you're taught to do is to get up on the hill with binoculars and look at the placard. And I want to tell you that you cannot see the labels under the Right to Know with binoculars. So that's an aside.

I'd like to talk to you today, however, about eight words in the English language that have found their way into regulations, but not in the statute. These words are: "jointly and severally liable without regard to fault." They are inconsistent with the polluter pays principle, and we believe they were not in the intention of the Legislature in either ECRA or its amendment, now called ISRA. We believe it was dreamed up, in essence, by the DEPE in their regulations, which I will cite to you.

As a matter of fact, when I testified before Senator McNamara, who is Chairman of the Environmental Committee, Senator McNamara, after I got through testifying, asked his aide, "Where are these words that Simenoff is talking about? I can't find them in the bill." The reason he couldn't find them in the bill is because they're not there; they're in the regulations, and that's what we want to address today.

They found their way into the regulations -- and I'll give you three examples. Under ECRA, they're under section 7:26B 9.2 under the recovery of damages and liability for cleanup and removal costs, where they say, "Failure to comply with any provisions of this Act or this chapter shall render the owner and operator of an industrial establishment strictly liable without regard to fault for all cleanup and removal costs, and for all direct and indirect damages resulting from a failure to implement any cleanup plan."

Under 7:26B 7.5, again, it says: "On the Department's discretion" -- the Department being the DEPE -- "a purchaser, transferee, mortgagee, or other party to the transaction may sign an ACO with the Department and the operator or operator/owner. However, the owner and operator, as well as any other non-Department signatories shall be strictly liable, jointly and severally, for all compliance with this chapter."

In addition, in the landlord/tenants aspects of these regulations, which is 7:26B 3.3-- Here's an area where we want to further discuss it, "Where the owner of an industrial establishment is a landlord and the operator of an industrial establishment is a tenant, both parties shall be strictly liable without regard to fault for compliance with this Act."

SENATOR SCOTT: Just a moment. What's happening with the sound? (referring to microphone feedback)

MR. SIMENOFF: Terrific. Thank you. (referring to correction of sound problem)

When ECRA changed to ISRA recently, it is our understanding that the words, "jointly and severally liable without regard to fault," will be now written from the ECRA regulations into the ISRA regulations. And while ISRA does contain, as you know, Senator, a provision for a study commission on the issue which has been delegated to the Deputy Attorney General, Hazardous Site Section, and the New Jersey

Department of Environmental Protection and Energy, we do not expect whistles to blow when that study comes in, although we are participating in the study and have given them our thoughts.

The reason I say that is, the Legislature -- the Senate and the Assembly -- gave the study to the Attorney General and to the DEPE, and then the commission that took the study, which is the same people, in essence-- If you were in a prison, I would say it would be the prisoners complaining to the warden about the problem. It's the same thing here. The people who are doing the study have come up with four of the six items of the study, of which there was only one, and the one was given by the Legislature.

Let me just read off the four items that are in the study as the titles of the study -- their vision of it.

One: "Analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites." To us, that's got nothing to do with it.

"Analyze methods to reduce the transaction costs associated with liability determination." We don't care if something is unfair or unconstitutional about the liability costs; we're talking about principle.

The third item: "Discuss the effects under the Department's remediation program of modifying the standard, and replacing it with another standard." I couldn't care less, speaking for the citizens of New Jersey, or being treated unfairly by these words, as to what the effect is on the Department's remediation program.

Four: "Review and discuss methods to enhance the fairness -- ah ha -- of the liability standard, including the possible use of mixed and private funding." We're now into funding. The problem is not how to fund something that's unfair; it's, don't do something that's unfair. The polluter does something; the polluter pays. But to bring people in who

didn't pollute, who have to pay and have all these other discussions in the commission, leaves me very cold with what's going to happen.

The fact is that these words didn't come in the statute of either ECRA or ISRA. Senator McNamara was right. He couldn't find it in the bill because it wasn't there, and it wasn't in the first bill. It was put in by the Department.

It is not a question of securing funding. It is not a question of reducing transaction costs. It's not a question of modifying standards. It's a question of principle. The principle is: The polluter pays; innocent parties don't pay in New Jersey -- this is part of the United States of America -- that innocent landlords don't pay for tenants; people who have buildings that are a hundred years old don't pay for people who are already dead, and that now own them, and the people who are deceased and have companies that have been in and out four or five times don't even know what's there. But under the standards of joint and several liability without regard to fault, that's what happens on a practical basis.

We believe the Senate and the Assembly who have set up this study commission -- their interests have already been tilted because of what I just told you, so we're not expecting great shakes to come out of this study. We therefore believe that something has to be done about it, and that's what your group can do.

Let's just address one issue. What is jointly and severally liable without regard to fault? Well, I went to a prominent attorney, and basically it's just very short. Let me give you an example of what he says it is: It is a liability of copromisers of the same performance when each of them has a duty to fully perform, and an obligation, and the obligee can sue all of them upon breach of performance.

Well, what does that mean? Well, copromisers is the key. Let's give an example: Six copromisers borrow a million dollars from a bank and promise to pay it back with interest.

Should the bank not be paid back in the time specified, the bank can sue all six jointly, and/or select any of them severally, and demand full payment from them alone. This is not unfair and it's in the law, for the obligation to pay back the full amount was assumed and agreed to by all six, jointly and severally, without regard to fault. So the bank is correct.

The problem is that under New Jersey environmental regulations, people have not assumed liability for dead people; landlords have not assumed liability for tenants; banks have not assumed liability for either of them; leasing companies and mortgage companies haven't either. Certainly, if I own a building today that was built 250 years ago and damaged 12 times by hazardous substances in the last 150 years, by owning that building I haven't assumed anything for anybody else jointly and severally. But the regulations say I have.

So the examples are applied in New Jersey, we believe, unfairly. What are the results of these regulations? We believe, first, that they've clogged the courts with lawsuits. They've done it in Superfund federally, ECRA, and will in ISRA. They've created unfairness in the landlord and tenant community because what happens -- and I am a landlord; it is my business.

I'll tell you what happens. You come to me and you're ECRA subject; you have a solvent company. Another guy comes, and he distributes dolls. I say, "I'll take the doll guy for a buck a foot less than the solvent guy for a buck a foot more." Why? Because I am jointly and severally liable without regard to fault with both of them. The doll guy can't get me in trouble, but the solvent guy can.

So what happens is, as a public policy these words have regulated out of New Jersey, out of real estate, out of this State people who are ECRA subject who want to lease property, because a landlord doesn't want them.

Thirdly, they hold innocent people responsible for transgressions of other people. That's not America.

Fourthly, it is an unfair violation of due process, and I believe an unfair violation of constitutional principles that you should be responsible for your own actions. People owning properties that are older are now liable for past misdeeds, and this is certainly a violation against ex post facto regulations, in which ECRA looked back and not forward.

In summary, the Commerce and Industry Association believes that jointly and severally provisions of the regulations of ECRA -- and we believe that are coming in ISRA -- are a perversion of the spirit of American justice, and in my view, a grave violation of fundamental constitutional rights.

We believe these regulations should be expunged; that there should be another system such as the polluter pays, which is what should be; and innocent people don't pay in New Jersey, which they now do.

We therefore ask the Committee to look into these regulations which I've cited, and hopefully agree with us. And regardless of the study commission, which has been tilted, as I say, by the Attorney General and the DEPE to nonlegislative mandates, these words should be stricken from the regulations.

I greatly appreciate your time and willingness to hear me again. I thank you. If there are any questions, I'd of course be pleased to take them.

SENATOR SCOTT: Thank you.

Do you have any questions, Senator? (no response)

Thank you very much, Bruce. Several and joint liability, of course, is a problem in many avenues, not just the DEPE -- insurance and so on, and so forth. So hopefully we will be able to address several and joint liability in many different aspects in the coming Legislature. Thank you.

MR. SIMENOFF: I hope so, and I thank you for your time.

SENATOR SCOTT: Thank you very much.

MR. SIMENOFF: Thanks.

SENATOR SCOTT: Is Jack Kace, from Hoffmann-La Roche--
J A C K K A C E: Thank you Senator Scott. Senator Kosco, ladies and gentlemen, I'll try to keep my remarks brief. I know we're running behind schedule today.

First, let me say that Nutley, New Jersey is the U.S. Headquarters of Hoffmann-La Roche, and we're very pleased to be able to present this testimony here today.

I manage the Corporate Environmental Group at Roche, and have done so for the past 14 years. I am familiar with the environmental regulations here in New Jersey and in many of the states in which we have our operations.

One of the things that I will be doing today is talking about some of the New Jersey rules and regulations promulgated by DEPE, and how they differ from other states' approaches.

The first issue that I'd like to bring to your attention is the NJPDES fees. We have a system in this State where the permittee pays the New Jersey Department of Environmental Protection and Energy fees for reviewing the permit applications they submit, and we think that that is a proper procedure.

In New Jersey the Clean Water Act authorizes the DEPE to collect fees for this purpose. It states that reasonable, annual administrative fees, which shall be based upon and shall not exceed the estimated cost of processing, monitoring, and administering the NJPDES permits, shall be collected. We think this is fair.

But let me give you some examples of where this goes awry. If you submit an air permit application to the State of New Jersey, they have three different groups and three different fees to pay, depending on the complexity of the permit. It's much like an IRS form that we're all familiar

with. You know, a 1040 form is a lot more complex than a 1040-A, and that's a lot more complex than the 1040-EZ. So the DEPE charges a lower fee for review of the shorter application -- if you would, the 1040-EZ -- a higher fee for the 1040-A, and the highest fee for the 1040. Now, that makes a lot of sense to me. The fees in the air permits are based on the time that is spent by the permit reviewers in reviewing the application.

The Water Group and the NJPDES permit fees are based on a totally different basis. They have come up with a formula, which I have provided you, which is so complex that it covers six pages of the New Jersey Administrative Code. Let me give you an example of how this formula works.

I'll give you an example based on the Department of Motor Vehicles, because I think that's something we can all understand a lot easier than we can understand this particular fee formula.

Now, when any of us go to the Department of Motor Vehicles to register our car, we pay the same fee. If you have a newer car, you pay a little bit more than an older car, but you basically pay the same fee. The DEPE fee is almost as if the DMV would say to you, "Well, where do you live? How do you commute to work? What roads do you drive on? What's the size of your engine? How often has your car failed inspection?" Then it takes all these answers that you give them, plugs it into a formula, and comes up with a number to charge you for your motor vehicle renewal.

Now, this would make some sense to somebody if the numbers had any purpose, served any good, or, you know, were scientifically defensible. But I submit to you that in the case of the NJPDES fees, it meets none of these criteria. New Jersey is the only state that we operate in that has this kind of fee formula. The Federal government doesn't use this kind of formula, and it's patently unfair.

I will give you an example of that. We have a plant in Belvidere, New Jersey -- White Township, Warren County -- that has to pay \$660,000 per year for their wastewater discharge permit fee. That's each and every year. Now, this plant competes with other Roche manufacturing facilities in Grensoch, Germany and Delrise, Scotland, (phonetic spellings) neither of which have anything resembling this.

We also have a lot of competitors outside of Roche that we compete with that don't have to pay these fees. It places us at a real competitive disadvantage, and in my interpretation of the legislation that I cited earlier, is not at all justified.

What happens when you give DEPE this sort of power to tax, and power to run their operations based on fees? They tend to go pretty wide afield of what you have authorized them to do.

I'd like to switch to my second example.

SENATOR KOSCO: Could we just go back to that first example for a minute?

SENATOR SCOTT: What, the \$660,000?

SENATOR KOSCO: Yes. Are we comparing New Jersey plants now with plants in Europe and Germany? Is that what you're doing?

MR. KACE: Well, what I'm saying really is that, from a competitive standpoint, none of the states that we operate in charges a fee anything resembling this fee.

SENATOR KOSCO: But you're talking countries now.

MR. KACE: And other countries don't either. So, when we--

SENATOR KOSCO: What are the difference in the air standards and quality standards in Germany, as opposed to the State of New Jersey's standards?

MR. KACE: This has nothing to do with the kinds of controls required. It's just the annual fee for the permit.

SENATOR KOSCO: Well, you said before that the fee was based on certain things like your driving record and what streets you drove on, so I'm assuming that the fee is based on certain things: how much pollution you caused, what your runoff is, what your sewer charge is.

I mean, I don't understand your-- You have me confused. We're talking about Germany and the State of New Jersey, and we're talking about Motor Vehicle and we're talking about fees. I don't understand where you're going with this.

SENATOR SCOTT: Well, if I may. Let me ask this to clarify in my mind, now that Senator Kosco brought it up. Correct me if I'm wrong-- Are you saying that the \$660,000 for a permit -- because originally we read where what they're supposed to do is take the cost -- the actual cost for the fee for monitoring and so on. So \$660,000-- How many people would be involved in that particular activity at your plant out where -- Phillipsburg? Is it Phillipsburg?

MR. KACE: Belvidere, in White Township.

SENATOR SCOTT: Okay. With the \$660,000, DEPE is saying that's what it costs us to process this permit, and to monitor it for one year. Is that basically what they're saying?

MR. KACE: No. And if they were saying that, we would be happy.

SENATOR SCOTT: But if they proved it?

MR. KACE: What I think the Legislature told DEPE is, they should charge a fee that is proportionate to the amount of time they spend in monitoring your compliance and in issuing the permit.

What the DEPE has done is to create a permit to pollute fee that is not scientifically based, and have--

SENATOR SCOTT: Okay. We understand that. What they're still saying, if, in fact, they're following our intent where we tell DEPE to charge a fee based on what their needs

are to monitor and administer this for the whole year -- then if that's the case, then they're saying in order to do that in your plant out in western New Jersey it's costing them \$660,000.

MR. KACE: That's right.

SENATOR SCOTT: Which means-- How many people, 50, 100 people? How many people do you have employed there?

MR. KACE: We have 800 there.

SENATOR SCOTT: You have 800. So if they have 100-- You know, what is the payroll? How many people are they actually sending out there on a daily basis -- weekly basis? Have they ever documented that for you and said, "Here's our cost for the fee, and to administer it and to monitor all year long." Have they done that?

MR. KACE: No. And they admit they can't do that.

SENATOR SCOTT: Oh.

MR. KACE: Again, the legislative language is, the estimated cost of processing, monitoring, and administering the NJPDES permit. They would have to assign 50 people to us, full-time, for that.

SENATOR SCOTT: And what do you see? How many people do you see out there?

MR. KACE: Oh, we have an inspection once a year, and the permit is not even renewed on an expeditious basis.

SENATOR SCOTT: All right. But then they may have some people down on their legal staff in Trenton. What would a fair value of that be?

MR. KACE: My estimate of a fair value of those three items would be less than \$10,000 per year.

SENATOR KOSCO: How do they arrive at \$600,000?

MR. KACE: Okay. They have a fee formula that they have developed which is based on what you discharge in terms of flow, what kind of body of water you discharge to. It's a rather complicated formula. I've included that in the information I sent to you. It's in the Administrative Code, 7:14A-1.8

SENATOR SCOTT: Senator, if I may. Let me help you on that, because I happened to get into this with the solid waste recovery fees. It was published in the DEPE's monthly journal -- whatever it is -- that we all receive. In that particular issue, fees had jumped from \$500 a year last year to \$78,000 this year, \$500 to \$68,000, and so on. And up on the top-- I think I sent all of the Senators a copy of this report. I photostated it because I thought it was very interesting. The reason for the increase in fees, that they -- meaning the DEPE -- stated, was because of budgetary reasons. They needed more money to operate. That's their reason for the increased fees; that's no one else's. They said it, and if you like, I'll make sure we issue that again. I think we should definitely review that.

SENATOR KOSCO: So in order for them to raise their fees, they had to change their regulations?

SENATOR SCOTT: Well, they just basically raised it.

SENATOR KOSCO: Which brings us back to the purpose of the formation of this Committee, so that we can review their regulations before they go ahead and raise a fee. So that's why I'm asking these questions. I don't understand how they can come up with a \$660,000 permit, unless I-- And I don't really want to compare it with any other country or anything.

SENATOR SCOTT: But it's an arbitrary figure, Senator.

SENATOR KOSCO: I want to know where the heck they come up with that \$660,000.

I know that your company has been moving all over the world, and moving out of this area. Is this one of the reasons why Roche Company has been moving out of this country?

MR. KACE: Well, that is why I mentioned the examples of the fact that we don't pay these kinds of fees in any other state, or any foreign country. Because it really places companies in New Jersey at a competitive disadvantage to have NJDEPE charge fees that are so much higher than any other district or state.

SENATOR KOSCO: Would it be possible for you to get to this Committee a report from them of how they arrived at that \$660,000 figure?

MR. KACE: I'd be pleased to do that. We've already submitted it to the DEPE in terms of appealing this fee.

SENATOR KOSCO: I'd like to see that. What was this like five years ago? What was your fee?

MR. KACE: It was-- Well, three years ago it was \$30,000. Five years ago, I think it was around \$5000 or \$10,000.

SENATOR KOSCO: All right. Three years ago would be fine. If we could somehow find out how they arrived at that \$30,000 figure, and then how they moved it to \$660,000, I think that would be something that we could--

SENATOR SCOTT: Oh, we could sink our teeth into that one, I'm sure.

MR. KACE: Okay, we'll be glad to provide that to you.

SENATOR SCOTT: And one more thing, if I may add to Senator Kosco's request. Would you -- and I hate to do this, request this, because I'm going to put more bureaucracy on you in that I would like to know -- if you possibly could for this Committee, all your fees that you've been paying, and the subsequent increase over the past one, or two, or three years. Use three years ago as a base, I guess 1990. We'll take a look at what it was then; what is it today. Whether it went from \$5.00 to \$25.00, or from \$30,000 to \$660,000, your total fee process. And in that-- Like I said, I hate to give you all this work, but maybe you've got somebody who will be willing to volunteer and help you guys out.

SENATOR KOSCO: Well, if we did it ourselves, we'd have to raise the fee.

SENATOR SCOTT: We would have to raise his fee. We can't afford to do that. We don't want the Legislature to do it. But we know--

MR. KACE: We'll be glad to provide tht information, because it's--

SENATOR SCOTT: We would love to know what fees are you paying? How many people do you have to put on because of these new regulations? That directly impacts on the company itself. It's something that if you don't have to do it in Pennsylvania and New York, or even Luxembourg or Germany or wherever, because you do compete in a global economy today. If you find that you're going to expand and you have a choice to go either to South Carolina or Germany, you're going to take the cheapest one. How can I blame you? You're on the stock market; you owe it to your shareholders to get the most profit for the company, and we understand that.

That's why we're here today, to try to get this information.

MR. KACE: Okay, thank you. What I'd like to do now is give you an example of a new area that DEPE is aiming to get into, which will be a very high revenue generator, and another real disincentive for business in the State. This is the area in permits for lab hoods.

SENATOR SCOTT: What is it?

MR. KACE: Permits for laboratory hoods.

SENATOR SCOTT: For laboratory?

MR. KACE: Right. Laboratory. Just like you'd have a chemistry laboratory in a high school, or a research and development laboratory here in our operation.

Okay. The legislative language in the Clean Air Act -- the New Jersey Clean Air Act -- says that, "No person shall construct, install or alter any equipment or control apparatus until an application including plans and specifications has been filed with the Department." And I'd like to draw your attention to the words, "any equipment or control apparatus...". That's the definition that's in the act. Now, I've provided to you a section of the current regulations,

72:78.1. Item 10 includes any control apparatus that solely serves one or more laboratory hoods, ducts, vents or similar devices. Basically, if you have a laboratory hood now that does not have a control device, you don't need a DEPE permit. If you decide to install a control device, which might be the right thing to do, the disincentive is that you are required to get a DEPE permit.

The proposed change to this regulation was published in the Tuesday, September 7, "New Jersey Register".

SENATOR SCOTT: September 7?

MR. KACE: September 7. And on page 3995, item 10 has been changed to not refer only to control hoods, or control devices, but will now read, "any applicable laboratory hoods or similar devices used for exhausting fumes from laboratory operations." So, basically, the DEPE is saying, "Well, instead of just going after those laboratory hoods that have control devices, we're now going to go after all laboratory hoods for permits."

Now, to give you an order of the magnitude of the size of this issue, our facility here in Nutley has over seven hundred laboratory hoods. There must be close to one hundred thousand statewide. I don't what the exact number is. Why is DEPE doing this? I really don't know. One might speculate that since manufacturing operations are moving out of State, the air permit folks are looking for things to permit. The concept of permitting a laboratory hood is ridiculous. The amount of emissions from laboratory hoods are minimal. And they are very changeable.

Now, on a permit application, you tell the DEPE what you're going to be emitting from your operations. From a manufacturing operation, that's pretty straightforward. You know what you're going to be manufacturing; you know how you're going to be manufacturing it; and you tell them. You don't.

know what you're going to be doing in a laboratory hood. People do research in laboratory hoods; they try different things.

SENATOR SCOTT: That's the idea of a laboratory.

MR. KACE: Right.

SENATOR SCOTT: To test everything, and see what happens.

MR. KACE: That's the purpose of R & D. Right.

So I want to bring this to the Committee's attention, because I feel it's a clear example of the DEPE proposed regulations going well beyond the legislative authority. The legislative authority was for equipment and control devices. I think what you had in mind then was manufacturing equipment. I don't think it applied to beakers and Erlenmeyer flasks in a laboratory hood.

Okay, the third example I'd like to bring up is an issue called the upset defense. Excuse me, I'm skipping myself here. The third one I'd like to talk about is an issue we call "state-of-the-art". This is an issue where the regulations pretty well match the legislation. I've included the section of the Air Pollution Control Act, and the appropriate section of the regulations. It basically says that when the DEPE issues a new permit, they are to ensure that equipment incorporates advances in the art of air pollution control devices developed for the kind and amount of air contaminant emitted by the applicant's equipment.

Okay, so we have no problem with that. The problem we have is that this state-of-the-art determination, as it's termed by DEPE, is not done by regulation. It's done by internal agency policy. What in effect happens is, as an application is reviewed through DEPE, somebody makes a determination as to whether or not they're going to subject that particular application to a state-of-the-art review. If that determination is made, they take the application out of

the normal processing path, and somebody does some research as to what might state-of-the-art be. We don't think that that was the legislative intent.

We think that the legislative intent was to tell DEPE that when the state-of-the-art changes on a given type of control device, you should go ahead and publish regulations on that -- regulations that are subject to public comment and public input, not behind closed doors, according to internal agency guidelines. Guidelines, which, I might add, are not even available to the general public.

So we don't know, prior to submitting an application, where the goalposts are. We don't know what will be acceptable to the agency. It's anybody's guess as to whether any particular application will be subject to state-of-the-art. And if it is subject to a state-of-the-art review, we don't know what that number is going to be. We don't know whether it's going to be 80 percent efficiency, or 99 percent efficiency.

So we often get involved in air permit applications that are submitted to the agency, which are then kicked back to us saying, "Well, it doesn't meet state-of-the-art." We call them up and say, "Well, what is state-of-the-art?" And they don't really want to tell you, because this is an internal guideline rather than a published regulation. And we don't think that's the right way to do business.

SENATOR SCOTT: Mr. Kace, I'm going to ask you to sum up. We're over time already. We still have a couple of people who'd like to testify. We have some very good information from you, but unfortunately, time is always of the essence. There are people here -- we told them we thought we'd be out by noon. It's 12:25, and we're going to most likely be here for a little bit. If you could sum up, I'd certainly appreciate it.

MR. KACE: Okay. Senator, I can sum up very briefly by saying that the last example which I provided to the Committee is another example where the DEPE has not issued

regulations. The regulation that is in place more or less mimics the legislation, but is not quantitative and has been useless because of that.

SENATOR SCOTT: Thank you. Do you have anything else, Senator? (Negative response). Thank you. All right, thank you very much. You're very informative. I'm sure if you would provide us with the information on the permitting dollars, and the amounts and so on -- the comparison -- would love to see it, I'm sure the whole Committee. And that will help us in our deliberations as to how we can approach it. Thank you very, very much.

MR. KACE: Thank you.

SENATOR SCOTT: May I have Bill Chouinard?

W I L L I A M F. C H O U I N A R D: Senator Scott, Senator, I'm Bill Chouinard, and I'm the Group Vice President for Public Affairs for the Metro Newark Chamber of Commerce. We represent about fifteen hundred companies in Newark and the surrounding counties. I'm going to be very brief, Mr. Chairman. I know you're running late.

My primary recommendation to you today is that as effective as this oversight situation is and how welcome it is to us, we believe that whatever provisions are in both administrative law, or whatever, which are there to ascertain the reasonableness, and the practical and economic feasibility of regulations, it isn't working. It is not working. It's very important, Mr. Chairman, that we tend to focus on all of these environmental regulations on a singular basis. And, frankly, when each one of those are viewed in that singular way, not one of them seems too unreasonable, or too much to ask. But our difficulty here, and the plea, and the hue and cry of industries throughout this region is that the cumulative impact of all these regulations is taking them down. Taking them down, and I don't have to cite the job loss figures and everything else that you're all too familiar with.

Now let me give you a couple of reasons why I believe that we need a mechanism at the State level that will determine not only the practical, but the administrative and economic feasibility of many of these regulations. Under recent amendments to the Spill Act, over fifteen hundred companies in the State of New Jersey between last year and this year are being asked to submit to the Department of Environmental Protection a comprehensive set of maps: site maps, topographical and environmentally sensitive area maps that extend within a 15-mile radius of their plant site. In addition to this -- and there must be a lot of accompanying narrative describing all of the facilities. This applies, virtually, to any company that has twenty thousand gallons storage capacity, which doesn't even mean if they have twenty thousand gallons of a hazardous substance. It means if you have barrels on your site, all right, if they were all filled up.

The point is that since the onset of these regulations this cost to an individual company can range anywhere from sixty to eighty thousand dollars, and the variance there really depends upon whether they have to hire a consultant, and how much they ask the consultant to do beyond the mapping. The immediate response to all this was that a lot of the companies asked DEPE, "Can we form collaboratives to, you know, if we're all in the same geographic area, can we jointly hire a consultant?" They did agree to this, and in Newark I know of two instances: We organized a small collaborative, and another group of manufacturers organized a collaborative.

But my point is, there are hundreds more who may not have the facility to be able to form those collaboratives. statewide these mapping requirements that industry -- is going to cost sixty to eighty million dollars for industry to comply. If you use those average costs, and we have gone through the whole pricing of this thing with consultants when

we formed our own collaborative, sixty to eighty million dollars to comply with that informational requirement.

Now, the irony here is that all the consultants that are being hired to do this mapping are getting the maps from DEPE. The Department of Environmental Protection has the maps. The Department of Natural Resources have had maps on this State going back, I don't know how many years. When any of the major utilities in this area have built generation plants, they have been required to do all this environmentally sensitive mapping. Now, I submit to you, Mr. Chairman, this is a hardship on a small manufacturer, who, by virtue of his industry, happens to have a 20,000-gallon storage capacity. He's looking at an \$80,000 bill. And I've got to tell you that many of the companies in Newark, small manufacturers there, have applied for hardship exemptions because it's (word inaudible). I can tell you that there are probably hundreds of companies who maybe have difficulty complying with this whatsoever, and their deadlines and due dates.

That's just one example of what I would call-- And you can't convince me in a million years that the Department, to satisfy their informational requirements, could not have, for a fraction of that sixty to eighty million dollars, developed a generic mapping for the State of this. They have all the information there.

Pollution prevention: Here is another set of regulations whose cost and economic feasibility really should have been determined prior to these regulations being laid down. I know there were hearings on these regulations, and companies went in there and estimated up to a half a million dollars. What they were doing was going through and saying, "This is what it's going to cost us as a company, the time and the manpower and the personnel that we are going to need." And much of that is so scientifically oriented, because you are talking about going back and looking generically at your

industrial process to determine how can you eliminate what? Waste. This is not an easy task. There are companies who are going to have to spend, very clearly, hundreds of thousands of dollars. Not all of our manufacturers in the State are well enough endowed to have environmental engineers, have environmental scientists on their staff. So, that when they are faced with this kind of regulatory response, they have to go out and they have to hire consulting firms.

Now I -- it's not that I'm here to say that I don't think the environmental consulting firms shouldn't be in business. But there clearly-- What I feel is, that there is a kind of a mindlessness in the promulgation of these regulations as to what the capabilities are of small manufacturers, who make up the bulk of the employment in this State. These are the small businesses who have been growing and employing people in New Jersey for so many years. These are the companies that are really feeling the burden. I mean-- And I have a task force, as you know, Senator. You've been and you've listened to them.

I have 40 or 50 companies, all right, involved in this task force, located right in this city. I have plant managers on that; I have environmental engineers, environmental scientists. This is-- We sit there and deal with the gamut of these regulatory demands on a monthly basis. And I sit there, and I'm a layman; I'm not a scientist. I'm a public affairs practitioner, and I cannot begin to comprehend how we are going to maintain any kind of a manufacturing base in New Jersey until some sense is brought into this. We are simply just taking these people and dragging them right out.

And you have to consider, I've only mentioned two things. Our biggest issue, which Senator Scott knows, is that we've got regional health commissions now operative in this area who last year increased their fees a thousand percent. Firms that were paying fees in the amounts of fifteen hundred

dollars, two thousand dollars to this regional health commission, ended up getting fee amounts in the amount of seventeen, eighteen, nineteen thousand dollars. We went down; we protested. I wrote letters to every mayor in Essex County, saying, this is just unbelievable.

Now, the problem is here-- And this is so-- But the point is that these regional health commissions, all right, are doing the same exact function as the State Department of Environmental Protection. All of our industrialists in this area, when they have to go and they have to get permits for all of their pollution control equipment, they are paying fees to DEPE for that. In turn, they now have to also register with these regional health commissions. And there are three of them in Union, Essex and Hudson County, and they all have these exorbitant fees. The point is that we've discovered over a period of the last year and a half that one: 18 other counties don't charge any fees, because most of those air pollution programs are being run by county health departments. In Bergen County, that's the case. In fact, as a matter in the name of good industrial relations up there, they didn't apply any fees.

SENATOR KOSCO: Can I just go back? I'm interested in-- You hit a number before, I think you said it's going to cost \$80 million?

MR. CHOUINARD: Well, if you take fifteen hundred companies who have to respond to that mapping requirement, and the average cost of those maps--

SENATOR KOSCO: And most of the companies that you represent are in the Newark area?

MR. CHOUINARD: Newark and Essex County.

SENATOR KOSCO: So I would probably guess that this is one of the -- I'm going to probably be facetious now -- but I would guess this is part of the Governor's package to revitalize that area, because the Newark people all seem to endorse the Governor for reelection. And I'm wondering if

that's not a conflict that, if they're all concerned about this, and this is his plan-- I mean, it's amazing that they endorsed him. To spend \$80 million-- I'm amazed.

MR. CHOUINARD: Well, you know, sometimes, Senator, you have to-- I mean, I have to admit--

SENATOR KOSCO: I don't expect you to comment, Bill, that was my political comment for the day. I rest my case.

MR. CHOUINARD: --that's a very dramatic example, but it's-- Okay. I understand exactly what you're talking about.

My final point, though, is that we are bewildered now, because the State DEPE is supposed to govern the actions of these regional health commissions. They give them money under the CHOP program. They approve their ordinances; they write interagency agreements. We went and complained to the DEPE about these fees, and it was just the last straw. I mean, this is an agency that-- What we discovered is that DEPE uses -- this is their regional agent. They come out there and have them doing inspections which they are, by law, statutorily charged -- the State is -- to achieve their air quality standards. And because they didn't have enough personnel in this area, they started using the regional health commissions. The regional health commissions in turn, you know, without any public discussion -- they ran a notice in the Saturday edition of The Star-Ledger, seventy-two hours in advance--

SENATOR SCOTT: Bill, if I can ask you to sum up. You know, I'm familiar with what you're saying, because I think we went over it. There are several problems that we know of, and hopefully after November 2 we can get into them and do the work that should be done over the next four years.

MR. CHOUINARD: Well, let me just conclude by saying that we have kind of brow-beaten DEPE to now developing a computer program so that they can share the air source registration with the local people. Because the administrative requirements of having to respond to another source

registration entity, which is the regional health commission, is enormous. Hoffmann-La Roche, Anheuser-Busch, all these major industries in here, in addition to paying a double-dipping kind of fee situation, are also having to spend considerable amounts of money--

And this is why, Senator, we need some kind of mechanism. Whatever administrative are there about determining the practicality of regulations is not working. And in a lot of these situations-- I mean, this mapping thing, the individual submission represents documents this high (gestures). This high. I don't even know where DEPE is going to store them, nor do we doubt that there are enough people down there in Trenton to review that much material to begin with.

SENATOR SCOTT: I think that's one of the problems on all these reports that they receive. They can't read them, nobody has the time, and I don't think they should have another ten thousand employees in order to complete the job. And I agree.

MR. CHOUINARD: Well, if these regulations-- If there was a mechanism, Senator, that could test the reasonableness of these regulations, a lot of these problems would disappear. Thank you.

SENATOR SCOTT: All right. Thank you very much, Bill. I really appreciate it.

Is Ed Hogan here, from Porzio, Bromberg and Newman? Ed, I will help your-- I won't call you up; we've got some good reading material. Thank you, Ed. (laughter). Ed, I would ask you, once again in the interest of time -- and I know you've sat here patiently through all of this--

E D W A R D A. H O G A N, ESQ.: I'll be quite brief, Senator. I think my comments are really quite focused today, not as though they're not focused at other times.

My name is Edward Hogan. I'm Chair of the Environmental Issues Committee of the Commerce and Industry Association of New Jersey.

I'm here today to talk about two statutes: the first, the Spill Act, and the second, the Clean Water Enforcement Act. I'm not going to speak to them very generally, but two very specific problems with the Spill Act, and one particular one with the Clean Water Enforcement Act.

The Spill Act has had, since 1977, a reporting obligation. That obligation is reprinted in your exhibit "A," and at NJSA 58:10-23.11e. That requires the reporting of discharges.

The DEPE for a number of years had a spill reporting obligation that required the reporting of discharges if they were in such quantity or concentration as posed an unreasonable risk to natural resources or human health. However, a year-and-a-half ago it promulgated new regulations which now appear at NJAC 7:1E-5 -- which are reprinted in your exhibit "B" -- which require the reporting of any discharge.

The DEPE was challenged on constitutional grounds by the Chemical Industry Council of New Jersey. In a decision-- The Appellant Division decision is reprinted in your materials, exhibit "C."

The DEPE defended the position that any discharge had to be reported. The DEPE went through its rule-making process, and one of the comments was, "What happens if someone overfills their lawn mower?" And DEPE said, "That's a discharge to the environment. Any discharge has to be reported unless it's to an impervious surface and which it's immediately cleaned up, and it's a leak." The DEPE took the literal position that the overfilling of a lawn mower is a discharge. There is no minimum quantity discharge.

Now the Federal government, since 1980, has had a reporting obligation under the Superfund statute, which has

reportable quantities, certain quantities of a hazardous substance -- which may be as little as one pound or as much as 5000 pounds, which are a threshold which have to be reported.

The DEPE has taken the Legislature's guidance on spill reporting, and promulgated that regulation to the extent that if you doubt that, I will merely call your attention to the last page of exhibit "C," which is a concurring decision of Judge D'Annunzio in the Appellate Division. In the second paragraph he notes that the Department, for example, takes the position that a homeowner who spills a small amount of gasoline on a lawn while filling a power mower must immediately notify the Department.

The panel at the Appellate Division found that this was very clear because the challenge was a constitutional challenge as to whether it was clear, not whether it was wise. Indeed, the legislation that you have, and I presume your Oversight Committee wants to look for these kind of examples, has authorized this type of reporting.

The Department has said they are going to be reasonable. Well, that's fine from an enforcement perspective, but I think it's important to recognize that many businesses-- The compliance level with this has to be extremely low. Obviously, there are many minimal discharges of a hazardous substance that occur on a regular basis.

However, this type of regulation sets up a situation which transcends mere enforcement. When you set up a statute, and it's an environmental statute in particular, you set up a situation where people who are in the process of selling their businesses may make representations that they're in compliance with all law. You have executives who are signing certifications they are in compliance with law. You have the Security and Exchange Commission filing requirements as to compliance with law. And you've set up a provision which is virtually impossible to comply with.

Is it the lawn mower overfill? What about half-a-gallon? What about a gallon? What about five gallons? There is not a bright line. There is not even a decent subjective test. We're talking about any discharge of a hazardous substance.

The Department, again, has defended this position all the way through the Appellate Division, and worst of all, won in that position on legislation that the Legislature, obviously not perhaps the same legislators who are here today, but under legislation that's been around for 15 or 20 years. The same language has been in the Act since '77.

I suggest that this might be an issue that your Committee might want to look at because it creates the circus atmosphere that allows people to mock us. It puts businesses in a situation where they are constantly vulnerable. All they need to do is get in a fight with DEPE in some form or another, and they have this potentially thrown up at them. The J.T. Baker case in Phillipsburg is a classic, where this spill reporting obligation was thrown up to them.

SENATOR SCOTT: Let me ask you something, Ed. I see here "immediately" means within 15 minutes. Isn't there also something -- I'm trying to recall reading it -- whereby when you do that, then you're immediately subject to penalty?

MR. HOGAN: There is not that provision in the Spill Act. There is an immediate obligation to report. The Department does have penalty requirements, but--

SENATOR SCOTT: It's not in this one.

MR. HOGAN: It's not in this one. I will speak, however, to my second problem with the Spill Act in a moment.

But generally there can be penalties, but they're not necessarily automatic. They may come.

SENATOR SCOTT: Because I thought of the Fifth Amendment when, you know, if you have to report it or you're penalized; or if you do report it, you're penalized. You know, self-incrimination. I think it's against the Constitution.

MR. HOGAN: I think that there are some incrimination issues there, surely. It's used in a criminal context. Most of this obviously arises in a civil context--

SENATOR SCOTT: But it does not apply here?

MR. HOGAN: --where those provisions don't apply. The problem is many companies do, literally, report, and are calling the hot-line five, ten, and fifteen times a week, which again, ties up our State resources. It creates a lot of problems in the marketplace. It doesn't make a great deal of sense, and the Appellate Division recognized that.

SENATOR SCOTT: Ed, what would happen to me if I were doing, I happen to have -- I don't know why I would have it -- I overturned somehow-- I have an outdoor tank on my farm for gasoline, and I keep it because the nearest gas station, whatever -- and I have a tractor that I use for my farm, whatever. I inadvertently run my tractor in there. The tank falls to the ground and splits open. I've got -- I don't know -- 3000 gallons of gasoline all over. Now, what would happen there if I report that, if I tell them?

I call them up and-- First of all, I hope I wasn't working on that on Sunday morning at 8:00 in the morning. I don't know who I would report it to. First of all, if I was an individual, I don't have a response system. I don't have somebody preparing these for me. So I'm sitting there saying, "Gee whiz, I better clean all this up. I'll get some stuff and I'll get some dirt."

Now, what happens at that point? I didn't do it in 15 minutes. Perhaps I thought it was more important for my daughter not to go on the swing. So, let me clean all that up myself, and, my God, it took me four hours to do it. Now I say, "Well, I think I'm supposed to report this." And I call the local police because I have no idea. I need some help.

But I didn't do it in 15 minutes. That's quite obvious I didn't do it. Now what's going to happen to me, as a homeowner that had that happen?

MR. HOGAN: You could be penalized.

SENATOR SCOTT: Heavily?

MR. HOGAN: You could be penalized very heavily. It is not an unusual circumstance where the first agency called is the fire department with a spill. There have been situations -- numerous situations -- where people call the fire department. The fire department calls DEPE, but it's not the discharger that's called within 15 minutes.

There is discretion in the Department to assess those penalties.

SENATOR SCOTT: But I've seen their discretion.

MR. HOGAN: It's very problematic. The problem I have here is that even on a regulation which they say they're going to enforce rationally, they litigated, defended, and won the position that any discharges reportable-- It leaves a cloud hanging over facilities, even if they don't enforce it. It leaves them vulnerable to the DEPE. It leaves them vulnerable in a transaction.

SENATOR SCOTT: They always have that big club sitting there.

MR. HOGAN: It's implicit, and it creates a very difficult problem when you make representations that facilities are in compliance with all law. It really can foul up a lot of transactions, which is the other side I see -- aside from ECRA and other issues, just mere transactions of having a facility in compliance with law.

In the interest of time, let me turn to my second issue under the Spill Act. This relates to the way the Department of Environmental Protection notifies local agencies of discharges. A situation arose in Bergen County last year. The Bergen County Board of Chosen Freeholders -- in large part it turned out later to be from pressure from the County Health Department -- passed their own spill reporting ordinance. This is the one you may be thinking of, Senator.

They reported their own ordinance which had automatic penalties, had no exceptions for leaks to an impervious surface, which would literally mean, if you were to spill paint in your house and cleaned it up, it had to be reported to the Bergen County Health Department immediately, and there would be automatic penalties. The only question was the magnitude. Most penalties were based on the size and the volume with no discretion. You could never comply; you always got a penalty.

The Commerce and Industry Association of New Jersey wrote to the Commissioner, submitted comments as I-- And, indeed, the Commissioner's office is obligated to review these ordinances within 60 days. And much to the good credit of the Commissioner they -- as is shown in exhibit "E" -- the Commissioner vetoed that ordinance. We think that was an excellent thing for the Commissioner to do.

However, as a follow-up to that, the Commerce and Industry Association went back to the Health Department and found what the real problem was. The problem that existed was the County Health Department was finding out about discharges within their county -- within Bergen County -- once a month. They would get a list from DEPE.

We wrote on March 8. Richard DuPrey, then Director of Government Relations for the Association, wrote on March 8 -- it's in my exhibit "F" -- to the Department and said, "Why can't you let the county health departments know?" In exhibit "G," Assistant Commissioner Miller wrote back to Mr. DuPrey and said, "Under a statute which exists --13:1K-5," -- it's an unnamed statute, although it has been referred to as the Hazardous Substances Discharge Notices and Reports Act -- "DEPE must notify an agency, and each municipality is to designate that agency, and in default of a notice, will notify the police and fire department." That's exhibit "H."

Their position was that when they get a hot-line call into Trenton, they will tell the local agency, that agency being the police and fire department. The Bergen County Health

Department was not a designated agency for any of the municipalities in Bergen County. So the question was: Why can't you let also the Bergen County Health Department know? Because the failure to do that causes them to try to prompt the local Board of Chosen Freeholders to enact an ordinance which duplicates this regulation. Why not just let everyone know? You're letting the police and fire department know.

And apparently, as reflected in Assistant Commissioner Miller's letter, under this requirement their 24-hour contact is the police and fire department. They're only going to make one call; they're not going to make more calls.

Well, the simple answer to this is to amend the statute to require that they notify the local police, fire departments, and health departments.

Well, our members of our Association are not all that more thrilled in seeing another level of agency involved in responding to an incident. I think we concede in this day and age, you're going to have DEPE, local police, and fire departments, and other agencies there. If you're going to have that, excepting as a contention, the last thing we need is a duplicative set of county ordinances in each of the counties. It's an easy fix. DEPE is basically saying, "If we're told to, we'll let them know. But at this point, we don't want to pick up the phone. We're going to make one phone call, but we're not going to make two to let local agencies know about discharges."

The counties have invested in these haz-mat units. We met with these county health department people. They seem like nice folks. They had uniforms; they had vans; they had mops; and they want to go out on spills. But they can't go out to them if they don't know about them.

The municipalities-- The police and fire departments don't want to give up their leverage of knowing what spills are happening in their jurisdiction, fair enough. It seems to me

that one way to eliminate the pressure that exists for these jurisdictional conflicts is a simple change to the Spill Act that requires that additional reporting.

I've reproduced in item "H," their regulation in which they have enacted, which, in essence, implements that program.

Let me change to the Clean Water Enforcement Act.

SENATOR SCOTT: All right. Could I do one thing?

In the interest of time-- It is now six minutes to one.

MR. HOGAN: Yes.

SENATOR SCOTT: At 1:00, we're one hour over what we had planned to do.

MR. HOGAN: I understand.

SENATOR SCOTT: And we still have someone who would like to testify. I hate to do this to the guys at the end, because the guys in the beginning, there was no problem, but if you could summarize, I'd appreciate it.

MR. HOGAN: To summarize the Clean Water Enforcement Act problem-- And indeed, Senator Bennett was one of the prime sponsors of the statute. It has created a tremendous morass. I've reproduced Gordon Bishop's article on the problems with the Clean Water Enforcement Act. It's caused people to have abandoned parking lots, because the only way to comply with the statute is to sweep the parking lot daily, berm it, and prohibit parking on it.

The problem is, when you adapted the Clean Water Enforcement Act, it made everyone who had permits, which were rational permits, it made violating them a capital offense virtually. As a result, companies had to be very, very cautious.

It's created a tremendous backlog in the system. Permit renewals are now running over 1300 days. These are five-year permits, and it's taking four years to renew them.

I've included in your materials a request that DEPE had on how do they deal with a problem called antibacksliding that exists under Federal law. Two of our clients asked us to prepare a 20-page letter to DEPE six months ago telling them how to get around this problem. We've not had even an inquiry from DEPE on that tome that we've provided, and yet monthly, clients are accruing \$20,000, \$30,000 and \$40,000 penalties because they have old permits they accepted years ago; as a good citizen, did not challenge them, didn't hire lawyers, didn't exercise their rights, and the Clean Water Enforcement Act takes DEPE's discretion away and mandates \$10,000, \$15,000 and \$50,000 penalties on a monthly basis.

The point is, every action has a reaction, and I think that was really the point I wanted to make here today. Under the Spill Act, if you have a gap, there is going to be a pressure that builds somewhere else. The Clean Water Enforcement Act as an efficiency measure is very efficient in making people comply with permits. The problem is, it creates a backlog on the permitting side, and I'm not sure that that balance is there. It isn't funded. You have a four-year backlog, and if you intend to do something, you really have to see the action and reaction.

The point being, I think there is some fixed area with the Clean Water Enforcement Act for adequate funding for people, or direction on renewals of permits, or reaction to assistance from the regulated community.

SENATOR SCOTT: Thank you very much. I appreciate your testimony, and your well-documented piece here. We'll take a look at it, and it will be a big help.

MR. HOGAN: Thank you. If I can be of any other assistance, I'll be pleased to respond. Thank you.

SENATOR SCOTT: Thank you.

I think we have the last, but not least. Angelo Morresi? I would ask Mr. Morresi to try to get into the mode

of really directing it on specifics because we want to get out as promised -- at least, no more than an hour late.

A N G E L O C. M O R R E S I, E S Q.: Ten minutes. I thank you for the opportunity to speak here, Mr. Chairman, Senator Kosco.

I'm going to be very specific and to the point. I've identified basically three issues, and if you need more information at a later date, we can talk about that and get it to you. But I understood the purpose was to just identify two or three quick issues.

But just let me back up a second to follow up on what a previous speaker mentioned: this issue of the DEPE responding to incidents. In one situation, the DEPE would come out any time a policeman calls them. So if there's a fire -- if a factory has a fire -- they'll call the DEPE up. Whether or not there is a hazardous material involved or not, the DEPE will come out. What that prompts is a bill; you get a bill for that.

My client got a bill for \$1200 because he had a fire. There was no release of hazardous substances. There were no hazardous substances involved. It's just the bill comes out. And this is pursuant to the Act. "We're going to give you a bill because we responded to a hazardous discharge." Well, there was none. So that will give you the point.

The other issue I thought would be interesting, I found something out last week that if you recall, when you put together Senate Bill S-1070, on the Employee Trip Reduction Act. There was a big furor at the time.

SENATOR SCOTT: Bill S-1040.

MR. MORRESI: Bill S-1040. Bill S-1070 was the ECRA bill.

SENATOR SCOTT: That was ISRA.

MR. MORRESI: There was a big thing about U.S. EPA sanctions. And one of the things we're going through right now is, DEPE has promulgated a whole mass of new air pollution

regulations. The idea is we have to get them in place before November because the DEPE (sic) is going to cut off all our highway funds.

What I'm trying to get at is this perceived dishonesty in terms of are we rushing into regulations because of fear from the Federal government cutting off funds, without thinking through them, and forcing the Legislature to act quickly. "Well, we have to get this thing passed. For example, S-1040 couldn't be debated because we had to get it done. We were afraid of sanctions."

Well, it just so happens that Mr. Steven Refa (phonetic spelling) from the EPA was at a meeting I was at, and I'm going to give you his phone number and everything. You guys can call him up to talk about it, because I think it's interesting that the EPA doesn't even have a policy to consider what types of sanctions they will put in place.

I said, "Comes November, if we don't get our regulations in place, what is that going to mean to us?" He said, "Well, we don't have a policy. We don't even know what sanctions." So I said, "You're not going to cut off our highway funds in November?" He said, "How can we? We don't have a policy." I'm only going to just give you that flavor for something.

On the issue of pollution prevention, a quick one: A very simple issue is, the statute says that companies, our goals are going to be based on -- for reductions of toxic substances -- are going to be based on 1987. The regulations come out in 1993. Companies who have done a lot of hard work in those six years, and the Legislature recognized that, are not allowed to take account of that. So that could easily be corrected with Senator John Bennett's amended bill. It would be great if he could get that passed. It addresses those issues.

But you can see that even when the Legislature is very specific, and it says right in the 1987-- There is no way to take that into account.

Under the Clean Air Act, the statute says the DEPE shall apply state-of-the-art review of the controlling equipment and altered equipment. It says it cannot do that in the five-year renewal period. However, the regulations read that if you replace a piece of equipment that is more than five-years-old, you have to go through this state-of-the-art review. Again, it's stretching the regulation.

What that does is, if someone replaces a piece of equipment, and they have to get a permit, either they don't replace the piece of equipment -- like a vessel that's broken, and it's very easily that it could be broken -- or they have to shut down for three months until they get the permit. Three or four months, or five months, as you know that.

The other thing that I'd like to point out is, the regulations say you cannot have an odor beyond your property line that is injurious to human health, to the environment, or interferes with the right of someone to enjoy their life -- whatever the exact language is.

What happens in the translation in the regulation to your permit is, "Do you want your permit?" Well, if you want your permit, the DEPE writes in there, "No perceivable odor beyond the property line," which is a different standard, as you know. Somehow even the regulations -- they don't even apply their own regulations to the permit. And if you really want that permit, because you have to start production, put people to work, you're going to agree to anything.

The final thing, which I think is a very insidious thing that's behind the scenes that I'm trying to get some people interested in, is the issue of the Comprehensive Site List. That is a list that the DEPE is putting together, and they hope to put it into publication within the next couple of months.

The list is a list of-- Although I have not found the authority for it, and they are still looking-- I've called a number of times to request the authority for them to publish this list of 18,000 sites, which they believe -- which are on this list.

Now, I don't want to call them contaminated sites because they're not contaminated sites. But the perception by the public, and quite frankly by Jay Leno and David Letterman, is going to be that this is a big joke of a State. And the perception that the rest of the country is going to have that New Jersey has 18,000 sites when this list gets published, because it's that thick (indicates thickness), is ridiculous.

Now what's on that list? Any site that's ever been cleaned up, any site that's ever been through a review process, any site that's had a tank that's been altered or addressed. So if you have a gas station down at the corner that's had its tanks removed, you're on the list. That doesn't mean that it's going to be harmful to you, or it doesn't mean that-- Obviously it doesn't mean that there is a harm there.

What I perceive there is that you're going to have a drop in property values. We're going to be the laughing stock of the nation because we want to publish this list. If we want to publish a list, it should be a list of those things which are injurious to the health or the environment. That's the kind of list I want to know about in my neighborhood. The rest of it's a lot of baloney, and it just gives the wrong message.

SENATOR SCOTT: Any questions, Senator? (no response)

Thank you very much. We'll look into the 18,000. Maybe we can find out where these 18,000 sites are. I couldn't agree more that once it's published, it will look like we have 18,000 Superfund sites, and New Jersey will then have to put a wall around the borders to allow no one in and no one out because we're all radioactive, I guess. And we'll all die out. They can then do something with the rest of the State 30 or 40 years from now.

I want to thank everybody for testifying today, and being here. This information will be transcribed. We'll have it available; we'll take a look, and I can assure you we'll review each and every item. There were some very interesting items here for us to sink our teeth into.

I appreciate the specifics that were given. We all know the horror stories, but here you have provided us with specifics, and I think we will be able to act somewhat on that.

Thank you very much. This is officially closed.

(MEETING CONCLUDED)

APPENDIX

EMERGENCY PROCEDURES FOR KEYPORT PLANT:

- INJURY: (1) Contact Keyport Police by phone at 264-0706 and say:
 "I need First Aid at Fragrance Resources
 275 Clark Street Keyport"
- (2) Pause until person receiving message requests additional information. Respond as required.
- (3) Notify in order shown:

	<u>HOME</u>	<u>24 HR. PAGE</u>
A. Larry Zakreski	(908) 446-3643	(908) 834-0989
B. Frank Mara	(908) 291-5380	(908) 834-0988

- FIRE: (1) Contact Keyport Police by phone at 264-0706 and say:
 "We have a fire or explosion at Fragrance Resources
 275 Clark Street, Keyport"
- (2) Pause until person receiving message requests additional information. Respond as required.
- (3) Notify in order shown:

	<u>HOME</u>	<u>24 HR. PAGE</u>
A. Larry Zakreski	(908) 446-3643	(908) 834-0989
B. Frank Mara	(908) 291-5380	(908) 834-0988

EMERGENCIES REQUIRING PLANT EVACUATION

All personnel not directly involved in fire fighting or other emergency procedures are to leave the plant in a calm, orderly fashion and assembly by the Fragrance Resources sign - keeping clear of the main entrance to the facility for a head count.

KEYPORT POLICE: 264-0706

WELLS FARGO ALARM SERVICE: 609-452-1700

**EMERGENCY PROCEDURES AND NOTIFICATION
REQUIREMENTS FOR REPORTABLE RELEASES**

- A. New Jersey DEP Hot Line - 609-292-7172 (24hr/#)
If no answer, call NJ State Police - 609-882-2000

When calling NJDEPE, the required information to be provided to the Department by a responsible person within 15 minutes of the time he/she learns, or should have learned, of a reportable release, is as follows:

1. Name, title, affiliation, address and telephone number of the person reporting the release.
2. Location of the discharge:
 - a. Name of site, street address, municipality and county;
 - b. Water body and location of discharge with reference to fixed points, if the discharge is from a vessel;
 - c. Description of the area the discharge may reach.
3. The common name of the hazardous substance discharged.
4. A best estimate of the quantity of each hazardous substance discharged.
5. The date and time the discharge began.
6. The date and time the discharge was discovered.
7. The date and time the discharge ceased.
8. The actions proposed to contain, clean up and remove the hazardous substance discharged.
9. The name and address of any person responsible for the discharge.

After supplying the information to this Department or any agency, ask for the name and identification number of the person taking the information. Record this information and the time.

- B. U.S. EPA
(National Response Center) - 1-800-424-8802

This agency must also be notified as quickly as possible.

**EMERGENCY PROCEDURES AND NOTIFICATION
REQUIREMENTS FOR REPORTABLE RELEASES**
(continued)

- C. If the supervisor on the scene determines that the release is of such a magnitude that on-site personnel and equipment cannot secure, contain, or clean up the release, you must then notify our OUTSIDE Emergency Response Contractor and explain the situation and possible equipment necessary to assist in the clean up. FRAGRANCE RESOURCES, INC. utilizes Clean Up The Environment (C.U.T.E.) as our "first call" Emergency Contractor. All the telephone numbers are as follows:

Main Office #	-	201-427-2881
Nancy Williams Pager #	-	1-800-759-7243 PIN# 107694
Nancy Williams Car Phone #	-	201-394-6909
Nancy Williams Home #	-	201-427-4304
Dave Beeman Pager #	-	201-907-1597
John Longergan Pager #	-	201-907-1026
George Bernotsky Pager #	-	201-907-4466

C.U.T.E. will respond, at our request, to any emergency situation we may have.

EMERGENCY RESPONSE EQUIPMENT

The Emergency Response Equipment, located in the Emergency Response Room (per plot plant #10), is as follows:

1. 300# dry chemical on wheels (Emergency Equipment Room).
2. Low Density Alcohol/Solvent Suppression Foam Unit with 10 X 5 gallons of extra foam.
3. Spare SCBA air bottle.
4. Extra fire extinguishers.
5. Spill Crash Cart (contents listed below):
 - A. 1-55 Gallon 17-H Open Head Drum
 - B. 1-Crescent Wrench
 - C. 6-40# Bags of Speedy Dry
 - D. 1-Bundle Absorbent Pads
 - E. 1-Bundle Absorbent Boom
 - F. 1-Roll Barricade Tape
 - G. 1-Box of 3M Dust Mask
 - H. 2-3M Dual Cartridge Half Mask Respirators
 - I. 2-Industrial Protective Goggles
 - J. 6-Tyvek Suits
 - K. 1-Bundle Rubber Gloves
 - L. 1-Hand Lamp
 - M. 2-Spark Proof Shovels
 - N. 2-Squeegies
 - O. 2-Brooms
 - P. 1-10 # ABC Dry Chemical Fire Extinguisher

BUILDING IDENTIFICATION AND DETAILED LOCATIONS

(see General Locations Map)

Building #1	Administration
Building #2	Blending #2 2-A Blending
Building #3	Still Building 3-A Still Building
Building #4	250 H.P. Boiler House 4-A 20 H.P. Boiler House
Building #5	Production Warehouse/Blending #1 5-A Production Warehouse 5-B Blending #1 5-C Hot Room 5-D Bag Room 5-E Maintenance
Building #6	50 H.P. Boiler House/Emergency Response Equipment 6-A 50 H.P. Boiler House 6-B Emergency Response Equipment (contents listed on Appendix 1)
Building #7	Fragrance Center 7-A R&D Lab #3 Perfume Lab #1 7-B R&D Lab #2 Cosmetic Lab 7-C R&D Lab #5 Perfume Lab #2 7-D R&D Lab #4 Reaction/Distillation/ Waste Research 7-E R&D Lab #6 Perfume Lab #3 7-F Formula Security Room
Building #8	Fragrance Warehouse/Compounding 8-A Warehouse/Shipping & Receiving 8-B Fragrance Compounding Large 8-C Fragrance Compounding Small 8-D Q.C. Lab 8-E R&D Lab #1 G.C./M.S. 8-F Right to Know Center

6+

BUILDING IDENTIFICATION AND DETAILED LOCATIONS
(page 2)

Building #9	Flammable Storage 9-A Flammable Storage
Building #10	Fire Pump Room/File Storage 10-A File Storage 10-B Fire Pump Room
Building #11	Compressor Room 11-A Compressor Room
Outside	12-A Florals Cold Box 12-B Drum Storage Flammable 12-C Gylcol Chiller

All other locations are offices/lunch room or low hazard areas.

STORAGE TANK IDENTIFICATION

T-1	Citral
T-2	Nitrogen
T-3	Acetic Anhydride
T-4	Poly Phosphoric Acid
T-5	Dilute Waste Acid
T-6	Dilute Waste Acid
T-7	Dilute Waste Acid
T-8	Dilute Waste Acid
T-9	#2 Low Sulfur Fuel Oil
T-10	Virgin Toluene
T-11	Spent Solvent Waste Toluene
T-12	Spent Solvent Waste Toluene
T-13	Spent Solvent Waste Toluene

FRAGRANCE RESOURCES INC.

275 CLARK STREET

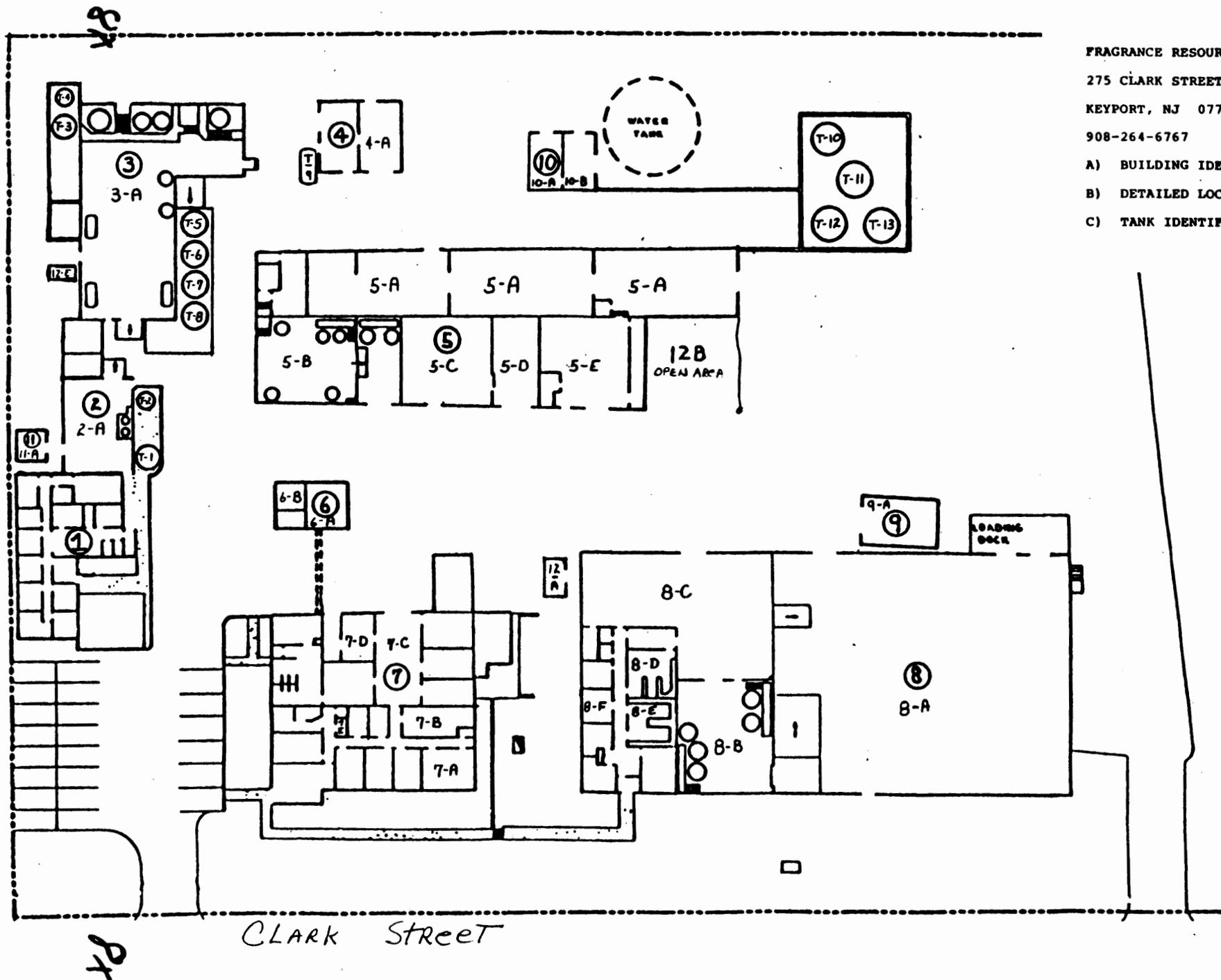
KEYPORT, NJ 07735

908-264-6767

A) BUILDING IDENTIFICATION

B) DETAILED LOCATIONS

C) TANK IDENTIFICATIONS



LOCATIONS WITH BRIEF DESCRIPTIONS

2A - Blending #2

3 Blending tanks from 700-2,000 gallons seldom used. This room is sprinkled.

3A - Still Building

This building contains 5 Stills and 4 Reactors. The Stills are operated under high vacuum - approximately 1 mm and high temperature - approximately 500° F, heated by hot oil. The Reactors are not operated under pressure. Acids, Caustics, Solvents and many different chemicals can be present at any given time. This building is sprinkled.

4A - 250 H.P. Boiler House

Contains 1-250 H.P. Clever Brooks Steam Boiler at 40 PSI oil fired and 2 Fulton 1,200,000 BTU Hot Oil Boilers operating at 40 PSI and 500°F - heating medium is Therminol 55 from Monsanto MSDS provided.

5A - Production Warehouse

Production storage - various essential oils, aroma chemicals, acids and caustics. Building not sprinkled.

5B - Blending #1

Contains 9 blending tanks from 200-2,500 gallons. Various aroma chemicals and flammable solvents used in this area. Not sprinkled.

5C - Hot Room

Temperature of this room is approximately 160°F year round. Used for melting down solids and viscous materials. Caustic and various aroma chemicals are present - approximately 100 55 gallon drums (not sprinkled).

5D - Bag Room

Storage of various powders in bags - approximately 200 100# bags ranging from salt to caustics and acids. Not sprinkled.

5E - Maintenance Shop Indoors

Storage of paints and various maintenance type solvents. Not sprinkled.

6A - 50 H.P. Boiler House

Contains 1 50 H.P. Clever Brooks Steam Boiler. Not in operation. This area is used to store small quantities of solid hazardous waste.

6B - Emergency Response Equipment

300# dry chemical on wheels; low density Alcohol/Solvent Suppression Foam Unit with 10x5 gallons of extra foam. Spare SCBA air bottle, extra fire extinguisher and spill crash cart.

7A - R & D Lab #3 Perfume Lab #1

Various types of chemicals in small quantities. Maximum amount in gallon jugs. This room is not sprinkled.

7B - R & D Lab #2 Cosmetic Lab

Various types of chemicals in small quantities. Maximum amount in gallon jugs. This room is not sprinkled.

7C - R & D Lab #5 Perfume Lab #2

Various types of chemicals in small quantities. Maximum amount in gallon jugs. This room is not sprinkled.

7D - R & D Lab #4 Reaction/Dist./Waste Research

Various types of chemicals in small quantities. Maximum amount in 5 gallon cans - this room is not sprinkled.

7E - Fragrance Cold Room

Contains finished fragrances with alcohol.

Sunday Star-Ledger

Vol. 78, No. 283

The Newspaper for New Jersey, December 8, 1991

50 Cents

Right-to-Know triviality drowns firms in paper

By GORDON BISHOP

The adhesive tape in the first aid kit at your workplace, as well as furniture polish, aerosol dispensers, cleaning agents and 3,000 other products, must now be registered as "hazardous materials" under the state's Community Right-to-Know law.

Cosmetics and medications in desk drawers or on cabinet shelves at worksites are also subject to regulation by the state, which requires some 40,000 businesses and all 567 municipal and 21 county governments to fill out extensive reports each year on exactly what kind and how many "hazardous" substances there are in the workplace.

"What started out as a good idea has turned into a blizzard of regulatory paperwork," observed James Sinclair, first vice president of the New Jersey Business & Industry Association, the largest statewide business organization in the nation with more than 13,000 member companies.

"We're not dealing with hazards anymore, but with information," Sinclair said. "The Right-to-Know Act was supposed to help local emergency responders, but can this really help them? It overwhelms them with unnecessary information."

Sinclair wants the Right-to-Know Act to be re-exam-

ined to remove the costly burden of reams of redundant paperwork on business and industry.

A. Welles Sumner, an environmental attorney who represents several companies and communities, said New Jersey's Right-to-Know Act began with the "admirable objective" of locating hazardous substances, but it has "degenerated into a program that buries the important with the unimportant, wastes public money and dissipates our state's economic resources."

Sumner, of Scotch Plains, said the original act required certain businesses and all government agencies to report information annually on the quantity of 161 substances on their premises.

But the staff of the Department of Environmental Protection and Energy (DEPE) included another 3,000 substances when the program instruction booklet was printed and mailed to public and private employers.

Among the thousands of materials that must be included in the forms are bullets used by police departments and matches or lighters placed on reception tables.

The government entities and business firms receiving

Please turn to Page 14

11 x

Trivialities in Right-to-Know law drown firms in sea of paperwork

Continued from Page One

the booklets are advised that reporting the additional 3,000 items is mandatory.

"The pages necessary to list the unauthorized substances in the booklet consume over a million pieces of paper, cost over \$20,000 to mail and are ultimately added to the state's waste stream," Sumner calculated.

The cost to 40,000 businesses and governmental entities of filling out forms on 20 times the number of substances authorized by law is incalculable, Sumner added.

"The data concerning the 161 authorized substances is obscured by the data on the 3,000 others," the veteran environmental lawyer complained.

Before any substance can be added to the 161 on the list, the environmental department must develop "documented scientific evidence" that a substance poses a threat to the public health and safety.

Moreover, adding a substance to the list must follow the Administrative Procedure Act, which requires public comment and scientific scrutiny. The department has not conducted public meetings on the list of additional substances mailed to employers this year, according to Sumner.

Fanwood, a small suburb in Union County, is a typical New Jersey municipality that must fill out state forms that make federal income tax forms look simple by comparison.

"The paperwork coming out of Trenton absolutely blows my mind," declared Fanwood Mayor Patricia Kuran, who completes her eighth year in office Dec. 31. "We have only a handful of people who run our community and they're spending more and more time on paperwork and less and less time on what they were hired to do."

Kuran admitted that small communities like Fanwood can no longer keep up with the increasing number of forms that must be filled out every year for everything from how much salt or lime is in the public works department to how much iodine and sundry medicines are in the office cabinet.

"Every department in the state mandates us to do something to stay in compliance or face penalties or lose state aid," Kuran said. "When will it ever end?"

Raymond Manfra, Fanwood's director of public works, said he still has the same staff he started with 30 years ago, but they're spending more time on paperwork than with the real



Photo by Wally Hennig

Paperwork generated by the state's 'Community Right-to-Know' law is too excessive, according to Fanwood Mayor Patricia Kuran, Lt. Robert Carbo, left, and Raymond Manfra, director of public works

business of maintaining the town's infrastructure.

"We're at our desks longer every evening to get through the forms and applications to meet the state's deadlines," Manfra said. "The lists are constantly changing, as are the rules and regulations. It's getting more confusing every year, even for veterans who have been doing it for years."

Manfra noted that the state's environmental department has 4,000 employees, compared with Fanwood's population of around 7,000.

"The amount of paperwork generated is out of control and a lot of it is unnecessary," Manfra remarked.

Kenneth Stahl, president of Stahl Soap Co., Hoboken, said he had to hire an outside consulting firm to do what his office staff had been doing routinely for many years.

"We simply could not handle the increasing workload any more," said Stahl, whose 40-year-old family firm moved from Brooklyn to Hoboken 14 years ago. "So it's become an added expense to our overhead."

He described the state surveys and reports as the "significant getting lost in the insignificant."

Stahl also wondered how emergency response teams could determine what's hazardous and important when

checking today's forms that contain just about everything except the water coming out of the faucet.

"We have fragrances in our soap making process that should probably be on the list, but there is no category on the list to place them," Stahl disclosed.

Fearing penalties for failing to list a particular substance, even though it's not required to be reported, Stahl put the fragrance in question in the "cosmetics" category, "just to be safe."

In the latest survey, due March 1, 1992, the Bureau of Hazardous Substances Information warns that the state may perform "random and unscheduled inspections" of any facility subject to the provisions of the Right-to-Know Act.

The purpose of an inspection is to review a facility's Right-to-Know survey and validate the accuracy of the chemical inventory information reported.

During a visit, an inspector can examine the facility's files for its Community Right-to-Know information, such as appropriate copies of the survey, chemical inventory lists and material safety data sheets.

Fines of up to \$2,500 can be imposed for not filing the survey should proof be unavailable of submissions to the state.

34:5A-24. Substances not included on hazardous substance lists; reporting; liability

Substances not included on the workplace hazardous substance list or the environmental hazardous substance list shall not be subject to the reporting provisions of this act. However, the absence of any substance from the workplace hazardous substance list or the environmental hazardous substance list, or the provision of any information by an employer to an employee or any other person pursuant to the provisions of this act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

L.1983, c. 315, § 24, eff. Aug. 29, 1984.

34:5A-4. Environmental hazardous substance list; environmental survey; Spanish translation

a. The Department of Environmental Protection shall develop an environmental hazardous substance list which shall include, but not be limited to, ~~substances used manufactured, stored, packaged, repackaged, or disposed of or released into the environment of the State which, in the department's determination, may be linked to the incidence of cancer; genetic mutations; physiological malfunctions, including malfunctions in reproduction; and other diseases; or which, by virtue of their physical properties, may pose a threat to the public health and safety.~~ The environmental hazardous substance list on shall include the list of substances developed and used by the department for the purposes of the Industrial Survey Project, established pursuant to P.L.1970, c. 33 (C.13:1D-1 et seq.) and P.L.1977, c. 74 (C.58:10A-1 et seq.), and any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. § 11023 and may include other substances which the department, based on documented scientific evidence, determines pose a threat to the public health and safety.

New Jersey Department of Environmental Protection and Energy
Community Right To Know Program
Bureau of Hazardous Substances Information
CN 405
Trenton, New Jersey 08625-0405

FIRST CLASS MAIL
US POSTAGE
PAID
TRENTON, N.J.
Permit No. 21

TO:

OFFICIAL BUSINESS

Submittal of your
**1992 Community
Right To Know Survey**

is due by

MARCH 1, 1993

15x

PART 2 CHEMICAL INVENTORY PAGE

DEQ-094

Page ___ of ___

IMPORTANT! Read instructions. Photocopy this page if you need additional forms.
Please type all responses.

Reporting Period: January 1 - December 31, 1992

CHEMICAL DESCRIPTION	HAZARDS	Inventory (Ranges)	STORAGE CODES AND LOCATIONS
Substance _____ CAS No. _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> <small>(Code) (Code) (Check if claiming)</small>	(Codes for all that apply.) _____, _____, _____, _____, _____	(Enter Code) Max. Daily _____ Avg. Daily _____ Days Onsite _____ <small>(Actual Number)</small>	(Enter Codes, except Location(s); supply narrative.) Container _____ Conditions _____, Location(s) _____ _____
Substance _____ CAS No. _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> <small>(Code) (Code) (Check if claiming)</small>	_____, _____, _____, _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ <small>(Actual Number)</small>	Container _____ Conditions _____, Location(s) _____ _____
Substance _____ CAS No. _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> <small>(Code) (Code) (Check if claiming)</small>	_____, _____, _____, _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ <small>(Actual Number)</small>	Container _____ Conditions _____, Location(s) _____ _____
Substance _____ CAS No. _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> <small>(Code) (Code) (Check if claiming)</small>	_____, _____, _____, _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ <small>(Actual Number)</small>	Container _____ Conditions _____, Location(s) _____ _____
Substance _____ CAS No. _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> <small>(Code) (Code) (Check if claiming)</small>	_____, _____, _____, _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ <small>(Actual Number)</small>	Container _____ Conditions _____, Location(s) _____ _____

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PERCENTAGE CODES	PHYSICAL STATE CODES	INVENTORY RANGE CODES (in lbs.)	CONTAINER CODES	STORAGE CONDITION CODES
61 Unknown 60 100% 59 90 - 99% 58 80 - 89% 57 70 - 79% 56 60 - 69% 55 50 - 59% 54 25 - 49% 53 10 - 24% 52 1 - 9% 51 0 - 0.9%	S - Solid L - Liquid G - Gas HAZARD CATEGORY CODES 70 Fire hazard 69 Sudden release of pressure 68 Reactive 67 Immediate (acute) health hazard 66 Delayed (chronic) health hazard	20 Greater than 10 million lbs. 19 1,000,001 - 10 million 18 500,001 - 1 million 17 250,001 - 500,000 16 100,001 - 250,000 15 50,001 - 100,000 14 10,001 - 50,000 13 1,001 - 10,000 12 101 - 1,000 11 11 - 100 10 1 - 10 09 Less than 1 lb.	50 Above ground tank 49 Below ground tank (steel) 48 Tank inside building 47 Steel drum 46 Can 45 Carboy 44 Silo 43 Fiber drum 42 Bag 41 Box 40 Cylinder 39 Bottles or jugs (glass) 38 Bottles or jugs (plastic) 37 Tote bin 36 Tank wagon 35 Railcar 34 Other (Describe) 33 Below ground tank (fiberglass) 32 Plastic drums	Pressure 01 Ambient* pressure 02 Greater than ambient pressure 03 Less than ambient pressure Temperature 04 Ambient temperature 05 Greater than ambient temperature 06 Less than ambient temperatures but not cryogenic (freezing conditions) 07 Cryogenic conditions (less than -200 degrees C) *Ambient means "normal", "surrounding" or "room" conditions



State of New Jersey
Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Programs
CN 424
Trenton, NJ 08625-0424

Scott A. Weiner
Commissioner

Gerald P. Nicholls, Ph.D.
Director

December 1992

Dear New Jersey Employer:

This booklet contains the forms and instructions for completing and submitting your 1992 Community Right to Know Survey by March 1, 1993. This date is also the date on which the federal SARA 312 inventory data is due for those employers required to report under the federal law.

All employers receiving this booklet must return at least the first page of the Community Right to Know Survey. If no hazardous substances were present at your facility during 1992, you must indicate that in Box B on Part 1 of the survey and return the signed form to the department.

Please review materials contained in this booklet. You will notice that 25 new substances have been included on Table A. This is due to a 1991 change in the Worker and Community Right to Know Act at N.J.S.A. 34:5A-4(a) that made all substances included on the 1978 Industrial Survey project list subject to Right to Know reporting as environmental hazardous substances. These are marked with a "+" sign in Table A of this booklet.

This booklet also contains a notice about new air pollution regulations that have recently been proposed by the department. Please review the notice to see if your company may be affected by these rules.

The department is planning four workshops, at no charge to participants, to provide assistance in completing the Community Right to Know Survey. The workshop schedule and registration information can be found on the following page of this booklet. If you have any questions regarding this survey, please call (609) 292-6714.

Submittal of your Community Right to Know Survey is required by law. We appreciate your cooperation in protecting the citizens and environment of New Jersey.

Sincerely,

Shirlee Schiffman, Chief
Bureau of Hazardous Substances
Information

RTK SURVEY WORKSHOPS

The Right to Know Program will be holding free Community Right to Know Workshops throughout the state prior to the March 1, 1993 due date. The workshops will assist you in understanding what is needed to complete an accurate and complete survey. You are encouraged to attend any of the following sessions.

Gloucester County Fire Academy
County House Road
Clarksboro, New Jersey 08020
Monday - January 11, 1993

Department of Environmental Protection and Energy Building
401 East State Street
1st Floor Hearing Room
Trenton, New Jersey 08625
Wednesday - January 13, 1993

Morrmouth County Fire Academy
1027 Highway 33 East
Freehold, New Jersey 07728
Tuesday - January 19, 1993

Bergen County Community College
400 Paramus Road
Room E-155 East Hall
Paramus, New Jersey 07652
Friday - January 29, 1993

All workshops will be from 9:00 am to 12:00 pm. If you plan to attend a workshop you must complete and mail back the attached registration form to the Community Right to Know Program by January 6, 1993.

I am planning to attend the following workshop:

WORKSHOP LOCATION: _____ WORKSHOP DATE: _____

NAME: _____ PHONE #: _____

EMPLOYER: _____

MAILING ADDRESS: _____

MAIL TO: NJDEPE - BHSI
COMMUNITY RIGHT TO KNOW PROGRAM
CN 405
TRENTON, NEW JERSEY 08625
ATTN: CINDY WOODS

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NOTICE OF PROPOSED NEW AIR POLLUTION RULE

Did you know that....

The 1990 federal Clean Air Act Amendments require that states, like New Jersey, having problems meeting the federal outdoor air quality standards, establish rules requiring major facilities to report their air emissions each year. This reporting is different than the federal Toxic Release Inventory (FORM-R) and state Release and Source Reduction Reports (DEQ-114) which require reporting of releases of toxic pollutants under Community Right to Know laws.

In response to the Clean Air Act, New Jersey proposed a new rule that would require certain facilities to report their air pollution emissions each year on an Emission Statement form. This form is separate from the Community Right to Know survey booklet.

In general, facilities which will be required to submit an Emission Statement form have air pollution permits or have been surveyed regarding their air emissions in the past, although some facilities may have been missed. Only facilities which exceed the emissions criteria contained in the emission statement rule will be required to report. The air pollutants and emissions criteria contained in the proposed emission statement rule are as follows: volatile organic compounds -- 10 tons per year, oxides of nitrogen -- 25 tons per year, carbon monoxide -- 100 tons per year, sulfur dioxide -- 100 tons per year, particulate matter -- 100 tons per year, and lead -- 5 tons per year.

The notice of the proposed new rule appeared in the New Jersey Register on September 8, 1992 and a public hearing was held on October 9, 1992.

If you want to know if your facility might be subject to this new rule or if you would like a copy of the proposed rule, please contact the Air Quality Regulation Development group at (609) 777-1345 and have your Plant ID# ready.

**INSTRUCTIONS AND REFERENCE GUIDE TO
1992 COMMUNITY RIGHT TO KNOW REPORTING**

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Keep this Reference Guide at your facility with your copy of the completed survey.

1 INTRODUCTION

1.1 WHAT IS THE NEW JERSEY COMMUNITY RIGHT TO KNOW SURVEY?

The Community Right to Know Survey is an annual report of inventories of hazardous substances which are stored, produced or used at a *place where business is conducted* (facility) in the State of New Jersey. This annual reporting is required by state and federal laws. The information collected is available to the public and emergency responders such as police and fire departments. It is also used to supplement other regulatory programs within the state and to allow proper planning for a response to an emergency at a facility which may threaten the surrounding community or environment. An emergency could involve a release of a hazardous substance due to a fire, explosion, or chemical spill.

Common substances often associated with business activities may pose a hazard to human health and the environment. Therefore, this inventory reporting is not limited to establishments engaged in heavy chemical use. The Community Right to Know Survey consists of two parts: Part 1 is for facility information and Part 2 is a chemical inventory form for listing hazardous substances present at the facility. Part 1 of the survey must be completed and returned *even if no hazardous substances are present* at the facility.

1.2 WHO MUST COMPLETE THE SURVEY?

The state and federal Community Right to Know (CRTK) laws have similar requirements. They include the reporting of hazardous substance inventories and releases of hazardous substances to the environment. New Jersey employers who are engaged in certain types of business activities specified by the New Jersey Worker and Community Right to Know Act are required to complete and return a survey for each of their facility locations. These employers are identified by the standard industrial classification (SIC) code assigned to them by the New Jersey Department of Labor. If an employer receives a survey reporting package in the mail, it is likely that the employer has been assigned one of the covered SIC codes and, therefore, must report. This can be readily verified by comparing the four digit number on the top of the mailing label against those listed in Table C, (SIC codes of covered New Jersey employers) on page 58 of this guide.

If an employer receives a survey but does not have a facility located in New Jersey, or has only a sales representative working from his home, Part 1 of the survey must be returned with a brief written explanation. If a facility has ceased operations during the 1992 calendar year, the employer must report any hazardous substances which were present at the facility until the time of closing. However, if the facility has closed and is undergoing a cleanup through the ECRA (Environmental Cleanup Responsibility Act) process, only Part 1 must be returned with an explanation and an ECRA case number.

New Jersey businesses whose SIC codes do not appear in Table C are required to complete the survey if the facility is required to maintain Material Safety Data Sheets (MSDSs) for hazardous substances in accordance with the OSHA Hazard Communication Standard, where quantities of these substances at the facility were at, or above 10,000 pounds at any one time. Also, any substances at the facility listed in Table D (Extremely Hazardous Substance List) on page 62, which exceeded 500 pounds or the Threshold Planning Quantity levels set in Table D, whichever is less, must be reported regardless of SIC code. In these cases, the completion of the survey replaces the forms required under the federal law known as Title III, Section 312 of the Superfund Amendments and Reauthorization Act (SARA). If a facility has a manufacturing activity SIC code with the first two digits 20 thru 39, hazardous substance release reporting may also be required. Contact the SARA Hotline (800) 535-0202 or the New Jersey Community Right to Know program at (609) 292-6714 for further information.

1.3 WHEN MUST THE SURVEY BE SUBMITTED?

The survey must be completed and returned to the DEPE Bureau of Hazardous Substances Information (BHSI) and agencies listed in Section 3.1 by the March 1, 1993 deadline. Failure to meet the reporting deadline may subject employers to enforcement action and possible penalties of up to \$2,500.

1.4 WHAT MUST BE REPORTED?

Hazardous substances reported on the survey are usually listed by common chemical name, not by product or generic name. An employer should review appropriate Material Safety Data Sheets (MSDSs) to determine if any products stored, produced or used at the facility contain hazardous substances. If MSDSs are not available, the employer should contact the manufacturer or supplier of the products to get that information.

Whether a hazardous substance must be reported is based on its *chemical name* and if its quantity *exceeds a set limit* (threshold) specified by law. There are three categories of hazardous substances which must be reported on the CRTK Survey (See Figure 1):

1. Any substance on the Environmental Hazardous Substance List/ Hazardous Materials Table (see Table A, page 19), must be reported at any quantity, if it was present at the facility in 1992. (Reporting of these substances is optional if you are an employer with an SIC code not covered by the New Jersey CRTK law.)
2. Any substance on the federal Extremely Hazardous Substance List (see Table D, page 62) must be reported if it was present at the facility at the threshold planning quantity listed in Table D, or 500 pounds, whichever is less. Please note that the majority of substances found on this list are also found on Table A (page 19).
3. Any product for which a MSDS is required in accordance with the OSHA Hazard Communication Standard must be reported, if it was present at the facility in 1992 at 10,000 pounds or more at any one time.

<u>SUBSTANCE</u>	<u>THRESHOLD</u>	<u>TABLE</u>
Environmental Hazardous Substances	Zero	(A)
USDOT Hazardous Materials Table	Zero	(A)
Extremely Hazardous Substances	Listed Threshold Planning Qty. or 500 lbs, whichever is less	(D)
OSHA Hazard Communication Standard (requires MSDS)	10,000 lbs or more	

FIGURE 1: Reporting Requirements

2 INSTRUCTIONS FOR COMPLETING THE SURVEY

2.1 COMPLETING PART 1 OF THE SURVEY

The first page of the Community Right to Know Survey (Part 1) must be completed and returned indicating whether or not your facility had hazardous substances to be reported. It is requested that all information be typewritten onto the survey forms. If you are unable to type onto the forms, please print clearly and legibly. A sample completed survey can be found in Section 2.3. It is strongly recommended that you use this aid. Incomplete or unreadable surveys submitted will be returned.

MAILING LABEL

Part 1 of the reporting package is a blank 1992 Community Right to Know facility information form with an attached preprinted mailing label. This label contains the current mailing address on record with the Department and several numbers at the top identifying your facility. Listed in order of appearance, these numbers are:

<u>New Jersey</u> Employer Identification Number (NJEIN)	11 Digits
Standard Industrial Classification (SIC) code	4 Digits
New Jersey County / Municipal (C/M) code	4 Digits

These numbers are unique identifiers for each facility location. Make corrections to the mailing label information if necessary. If you have more than one facility, a separate survey must be completed and returned for each facility location. If you have not received separate reporting packages for your other facilities, contact the Bureau of Hazardous Substances Information (BHSI) for additional forms at (609) 292-6714. The physical location for which a particular survey package is intended can be determined by checking the facility identification label on the inventory page (Part 2) of the survey form.

BOX A: FACILITY LOCATION

If your facility location is different than or absent from the facility identification label on Part 2, enter the correct location address of your facility in this box and make corrections to the facility identification label. If there is no facility identification label on Part 2, indicate your facility location in Box A and in the space provided in Part 2.

BOX B: APPLICABILITY

If you have determined after reading Section 1.4 of this guide and reviewing Tables A & D that reportable hazardous substances were present at the facility during the 1992 year, you must check YES and attach completed inventory page(s) (Part 2) to the survey.

If you did not use, store or produce hazardous substances, including compressed gases, check NO, and complete the remainder of Part 1 only and send it to the DEPE and other agencies listed in Section 3.1.

BOX C: NATURE OF BUSINESS

Briefly describe the *primary* function or operation of the facility, such as, "dyeing and finishing fabrics", "gasoline service station" or "sales office", etc.

24x

Completing Part 1 of the survey

BOX D: NUMBER OF EMPLOYEES

Enter the maximum number of employees who worked at the facility at any one time during the 1992 reporting year.

BOX E: NUMBER OF FACILITIES

Enter the number of facility locations the parent company has in New Jersey.

BOX F: DUN AND BRADSTREET NUMBER

Enter the Dun and Bradstreet identification number of the business. Please note that not all businesses have one.

BOX G: RESEARCH AND DEVELOPMENT LAB EXEMPTION

If your facility has a special area used primarily for research and development laboratory (R&D) activities, that portion of your facility may be exempt from filing the chemical inventory portion of the survey (Part 2). If your facility wishes to claim an exemption for this area, this may be done by completing a separately supplied R&D laboratory application and returning it for review with your completed survey. If your facility already has an approved R&D laboratory exemption, as evidenced by an approval letter from the DEPE, and there have been no changes in the R&D operations, or if you have attached a completed application, please check-off this box. You may contact BHSI at (609) 292-6714 for an R&D laboratory exemption application packet.

BOX H: POLICE AND FIRE DEPARTMENT INFORMATION

Provide names, addresses and telephone numbers for your local police and fire departments. Be certain to find out which local police and fire departments have jurisdiction over the facility. If your area has "911", please provide the regular business telephone number of the police and fire departments.

BOX I: EMERGENCY FACILITY CONTACT

Provide the name, title and telephone number of the person assigned to be contacted in case of an emergency at the facility, such as a fire, explosion or spill. The facility telephone number is the one used to reach the contact person during the regular working day, and the emergency contact telephone is the one used to reach the contact person after regular working hours.

CHECK-OFF BOX: CHANGES

Check off the box between Box I and Box J if any 1992 information is different from information you reported in Part 1 of the 1991 Community Right to Know Survey.

BOX J: CERTIFICATION

Provide the name, title and telephone number of the facility owner/operator or authorized representative. This individual must be someone who can be contacted to verify or clarify information that has been reported. This person is responsible for the accuracy of the report. This certification must be signed. Unsigned survey forms will be returned as incomplete, and may subject the facility to penalties of up to \$2,500.

2.2 COMPLETING THE CHEMICAL INVENTORY PAGE OF THE SURVEY (PART 2)

The chemical inventory page (Part 2) of the survey must be completed and returned with the first page of the survey if you answered YES in Box B. All information on the chemical inventory page should be typewritten. If not typewritten, print clearly and legibly. The original form with attached facility identification label must be used. You must photocopy this form if additional pages for your submittal are needed. To provide the information necessary on the chemical inventory page you may need Material Safety Data Sheets (MSDSs) to provide chemical information or breakdowns of products at your facility. These are available from the manufacturer or distributor.

Reporting Exemptions

You do not need to report substances which are part of items that make up the structure of your facility, such as walls and flooring, insulation or wiring. Also, you do not need to report the furnishings in your facility, such as desks, chairs, carpets and draperies. Stationery supplies in the office do not have to be reported unless they are being warehoused in the facility in larger than consumer quantities. When completing the survey you do not have to make employees account for their personal possessions, such as cosmetics or cigarette lighters. If the facility owns and operates a number of vehicles, do not report the gasoline, motor oil, etc. in those vehicles. However, you must report a gas tank if you have one on site for fueling the vehicles, and the motor oil or other reportable substances you might keep for maintenance.

FACILITY IDENTIFICATION LABEL

NJEIN

If you are missing the preprinted facility identification label, and do not know your NJEIN, you may inquire about your NJEIN by contacting the BHSI at (609) 292-6714. The NJEIN is the New Jersey Employer Identification Number found on the preprinted mailing label attached to Part 1. It is not a federal tax identification number, which your business may be using for other reporting requirements. If your facility identification label is missing, please write the 11 digit NJEIN for the facility carefully in the space provided.

FACILITY STREET ADDRESS and CITY

Check the facility street address and city on the label. If the facility information is correct, do not make any changes. Otherwise, make corrections on the label and include these changes in Box A of Part 1 of the survey. If the facility identification label is missing, enter this information in the spaces provided and in Box A of Part 1.

CHEMICAL DESCRIPTION

SUBSTANCE

Provide the common chemical name of the substance or name of the generic category you are reporting. Do not use trade names. In cases where a substance name cannot be found on Tables A or D,

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Completing the inventory page of the survey

a generic name may be used. In addition, certain generic categories may be used to report entire mixtures, with no further breakdown required. For example, "pesticides" is a generic category. Figure 2 shows these generic groups.

<u>Common Substance</u>	may be reported as	<u>GENERIC GROUP:</u>
Antifreeze		Antifreeze
Heating Oil		Fuel Oil
Gasoline, all types		Gasoline
Hazardous Waste		Hazardous Waste, n.o.s.*
Inks, except printers inks		Inks
Paints, most types		Paint, Enamels, etc.
Motor Oil, Transmission Fluid, Cutting or Lubricating Oils		Petroleum Oil
Waste oils		Waste Oil

* n.o.s. means "not otherwise specified"

FIGURE 2: Generic Groups

CAS NUMBER

Provide the Chemical Abstract Service number if available. This number will appear in Table A of this guide and should match that given on an MSDS. If it does not match, use the CAS number given on the hazardous substance list. Generic groups do not have a CAS number.

DOT NUMBER

Provide the U.S. Department of Transportation number found in Table A. If the substance you are reporting has no DOT number, leave the space blank.

SUBSTANCE NUMBER

Every substance and generic group on the NJ Environmental Hazardous Substance List/ Hazardous Materials Table (Table A) has a substance number assigned. Enter this number here.

PERCENT (CODE)

All codes can be found at the bottom of the inventory page or in Table B on page 57. Report percent ranges by code number, not by the actual percentage. For example, if a substance consists of 30% benzene, do not enter 30 on the report. Instead, provide the corresponding code for that range, which is 54. A substance must be reported separately for each percentage range in which it is present in a product or mixture. For example, if a company makes products containing 100% benzene, 65% benzene and 5% benzene, benzene must be reported three times.

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Completing the inventory page of the survey

STATE (Code)

Provide the code letter for the physical state of the substance, whether it is in Solid, Liquid or Gas form. See bottom of inventory page (Part 2) or Table B (page 57) for codes.

TRADE SECRETS

Mark this box if you are making a trade secret claim for a substance. If the substance is reportable under the New Jersey Worker and Community Right to Know Act, call the Bureau of Hazardous Substances Information (BHSI) at (609) 292-6714 to request a trade secret form.

If the substance for which you are making a trade secret claim is present at the facility at 10,000 pounds or greater, or is on Table D at reportable quantities, you must also supply trade secret documentation to the U.S. Environmental Protection Agency (USEPA). The regulations for the federal trade secret claims can be found in Title 40 of the Code of Federal Regulations, at Part 350 (40 CFR 350). For more information call the USEPA at (800) 535-0202. If information is claimed as a trade secret, confidential or proprietary on a Material Safety Data Sheet (MSDS) for a product that you use or store but do not produce, DO NOT mark this box.

HAZARD (CODES)

The USEPA has established five (5) hazard categories for reportable substances (see Figure 3 below). Review the MSDS for the substance to determine the hazard(s) of the substance you are reporting, and provide all applicable hazard codes. If you are using a MSDS as the basis of information for your reporting and it lists no hazards, leave this area blank. See inventory page or Table B on page 57 for codes. Use the hazards of the entire product to determine which codes to use, not the hazards of the individual components of the product.

<u>HAZARD CATEGORY</u>	Includes descriptions which say:
Fire Hazard	"flammable", "combustible liquid" "oxidizer", "pyrophoric"
Sudden Release of Pressure	"compressed gas", "explosive"
Reactive	"unstable" or "water reactive", "organic peroxide"
Immediate (acute) health hazard	"highly toxic", "toxic", "irritant" "sensitizer", "corrosive", or causes an adverse effect to a target organ which usually occurs rapidly as a result of short term exposure and is of short duration.
Delayed (chronic) health hazard	"carcinogen" or causes an adverse effect to a target organ which generally occurs as a result of long term exposure and is of long duration.

FIGURE 3: Hazard Categories

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Completing the inventory page of the survey

INVENTORY RANGE (CODES)

MAXIMUM DAILY QUANTITY (Code)

For each hazardous substance that you are reporting, enter the range code from Table B on page 59 representing the maximum number of pounds which was present on a single day at your facility. For ease of reporting you may convert gallons to pounds by multiplying gallons by 8.5. This value would be based on the greatest amount of inventory at any one time at your site.

Example: 1200 gallons fuel oil x 8.5 pounds = 10,200 pounds (Inventory range code 14).

If you are reporting a substance as a percentage in a mixture, report the substance as the weight of the entire mixture.

Example: Acetone contained in 500 gallons of solvent representing a 10 percent concentration.
500 gallons solvent x 8.5 lbs/gal = 4,250 pounds (Inventory range code 13).

AVERAGE DAILY QUANTITY (Code)

Estimate, in pounds, the average quantity of the substance that was present at your facility in 1992, and enter the corresponding code from Table B for that amount. Calculate this average based on the number of days the material was onsite (which may not necessarily be 365 days).

NUMBER OF DAYS ONSITE (No Code)

Enter the actual number of days that the hazardous substance was present at the facility in 1992. There are no codes for this answer. In many instances a hazardous substance is used constantly in the business operation. For example, ink at a print shop. In this case, report 365 days.

STORAGE CODES AND LOCATIONS

CONTAINER

Provide the corresponding code (see Table B, page 57) for the type of container in which the reportable substance is stored. If a hazardous substance is present in different containers, provide an individual entry for each type of storage container, giving the corresponding codes. For example, if a solvent is stored in both 55 gallon steel drums and glass bottles, two separate entries should be made for that solvent. It is not necessary to report more than the four most frequently used container types for any one substance.

CONDITIONS

For each hazardous substance that you are reporting, provide a code (see Table B page 57) for the "Pressure" and a code for the "Temperature" at which the substance is stored. If a substance is stored at room temperature and pressure, use the code for "ambient". If the substance is in a pressurized container, use the code for "above ambient" pressure, etc.'

29x

Completing the inventory page of the survey

LOCATION(S)

For each hazardous substance that you are reporting, provide a brief narrative description of where it is found at your facility, such as: "rear of first floor" "ground floor rear" "tank farm" "shelves, right front" "storage area for flammables" etc. If the substance is found commonly throughout the facility or a majority of the facility area, you may report it as "ubiquitous" or "plant-wide". When you provide location descriptions, assume that an emergency responder does not have a detailed layout of your facility.

30x

2.3 EXAMPLE OF COMPLETED SURVEY FORM (Part 1)

DEQ-094
9/92

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

PART 1

COMMUNITY RIGHT TO KNOW SURVEY FOR 1992

to satisfy requirements under SARA, Title III, Section 312
and New Jersey Community Right to Know

Please type this form.

N/EIN .. SIC .. County/Munic. 01035800000-3559-1511 ALBERTEC CORPORATION 10 Main Street Anycity, New Jersey 08527		(A) FACILITY LOCATION If the facility location is different than the address on the facility identification label on Part 2 or is not shown, enter the correct facility address below and correct the facility identification label.	
(B) Does this facility use, store or produce any compressed gases, or any flammable, combustible, reactive, corrosive or toxic substances? (See Reportable Substances and Thresholds) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		(D) Number of employees at facility 25	
(C) Briefly describe the nature of the operations or business conducted by your company at this facility: Assembly of machine parts		(E) Number of facilities in New Jersey 1	
(H) POLICE DEPT. Phone Number (609) 555-5678 Name Anyville South Station Municipality Anyville, NJ		(F) Dun and Bradstreet No. 00-123-4567	
(I) FACILITY EMERGENCY CONTACT Name John Jones Title Safety Director Facility Phone Number (609) 555-5000 Emergency Contact Phone Number (609) 555-4321		(G) Check the box if you have an approved R&D exemption or if you have attached a R&D exemption application. <input type="checkbox"/>	
(H) FIRE DEPT. Phone Number (609) 555-9876 Name Nearby Fire Department Municipality Nearby, NJ			

NOTE: Mark this box if there are any changes on this page (Part 1) since your last submittal.

(J) CERTIFICATION OF OWNER/OPERATOR OR AUTHORIZED REPRESENTATIVE — I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Signature Albert Smith Date 2/23/92 Phone # (609) 555-1234 Fax # () _____

Name Albert Smith Title President

* You are required to send copies to your COUNTY LEAD AGENCY, LOCAL EMERGENCY PLANNING COMMITTEE AND YOUR LOCAL POLICE AND FIRE DEPARTMENTS. KEEP A COPY AT YOUR FACILITY.
(County agency and local committee addresses in Instructions)

Return original to: NJDEP
COMMUNITY RIGHT TO KNOW
CN 405
Trenton, NJ 08625-0405

0 1 0 3 5 8 0 0 0 0 0

10 Main Street, Anycity

**PART 2
CHEMICAL INVENTORY PAGE**

DEQ-094

Page 1 of 1

IMPORTANT! Read instructions. Photocopy this page if you need additional forms.
Please type all responses.

Reporting Period: January 1 - December 31, 1992

CHEMICAL DESCRIPTION	HAZARDS	Inventory (Ranges)	STORAGE CODES AND LOCATIONS
Substance <u>Acetylene</u> CAS No. <u>74-86-2</u> DOT No. <u>1001</u> Substance No. (if available) <u>0015</u> Percent <u>60</u> State <u>G</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if claiming)	(Codes for all that apply.) <u>70, 69, 67,</u> <u>68, .</u>	(Enter Code) Max. Daily <u>12</u> Avg. Daily <u>12</u> Days Onsite <u>100</u> (Actual Number)	(Enter Codes, except Location(s); supply narrative.) Container <u>40</u> Conditions <u>02, 04</u> Location(s) <u>Assembly room in</u> <u>gear shop, rear wall</u>
Substance <u>Gasoline</u> CAS No. <u>8006-61-9</u> DOT No. <u>1203</u> Substance No. (if available) <u>0957</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if claiming)	<u>70, 67, 66,</u> <u>. . .</u>	Max. Daily <u>14</u> Avg. Daily <u>13</u> Days Onsite <u>365</u> (Actual Number)	Container <u>40</u> Conditions <u>01, 04</u> Location(s) <u>rear yard of vehicle</u> <u>maintenance shop</u>
Substance <u>Gasoline</u> CAS No. <u>8006-61-9</u> DOT No. <u>1203</u> Substance No. (if available) <u>0957</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if claiming)	<u>70, 67, 66,</u> <u>. . .</u>	Max. Daily <u>11</u> Avg. Daily <u>10</u> Days Onsite <u>250</u> (Actual Number)	Container <u>49</u> Conditions <u>01, 04</u> Location(s) <u>Front seat of vehicle</u> <u>maintenance shop</u>
Substance <u>Petroleum Oil</u> CAS No. <u> </u> DOT No. <u>1270</u> Substance No. (if available) <u>2651</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if claiming)	<u>70, 67, 66,</u> <u>. . .</u>	Max. Daily <u>12</u> Avg. Daily <u>11</u> Days Onsite <u>365</u> (Actual Number)	Container <u>47</u> Conditions <u>01, 04</u> Location(s) <u>Rear section of gear</u> <u>shop, products room</u>
Substance <u>Sulfuric Acid</u> CAS No. <u>7664-93-9</u> DOT No. <u>1831</u> Substance No. (if available) <u>1761</u> Percent <u>54</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if claiming)	<u>70, 67, .</u> <u>. . .</u>	Max. Daily <u>11</u> Avg. Daily <u>11</u> Days Onsite <u>50</u> (Actual Number)	Container <u>39</u> Conditions <u>01, 04</u> Location(s) <u>Assembly room in gear</u> <u>shop, rear of first floor</u>

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2.3 EXAMPLE OF COMPLETED SURVEY FORM (Part 2)

PERCENTAGE CODES	PHYSICAL STATE CODES	INVENTORY RANGE CODES (in lb.)	CONTAINER CODES	STORAGE CONDITION CODES
01 Unknown 00 100% 00 00-00% 00 00-00% 07 70-79% 06 00-00% 06 50-50% 04 25-40% 03 10-24% 02 1-0% 01 0-0%	S - Solid L - Liquid G - Gas HAZARD CATEGORY CODES 70 Fire hazard 00 Sudden release of pressure 00 Reactive 07 Immediate (acute) health hazard 00 Delayed (chronic) health hazard	20 Greater than 10 million lbs. 19 1,000,001 - 10 million 18 500,001 - 1 million 17 250,001 - 500,000 16 100,001 - 250,000 15 50,001 - 100,000 14 10,001 - 50,000 13 1,001 - 10,000 12 101 - 1,000 11 11 - 100 10 1 - 10 00 Less than 1 lb.	50 Above ground tank 49 Below ground tank (steel) 48 Tank inside building 47 Steel drum 46 Can 45 Carboy 44 Silo 43 Fiber drum 42 Bag 41 Box 40 Cylinder 39 Bottles or jugs (glass) 38 Bottles or jugs (plastic) 37 Tote bin 36 Tank wagon 35 Ratchet 34 Other (Describe) 33 Below ground tank (fiberglass) 32 Plastic drums	Pressure 01 Ambient pressure 02 Greater than ambient pressure 03 Less than ambient pressure Temperature 04 Ambient temperature 05 Greater than ambient temperature 06 Less than ambient temperatures but not cryogenic (freezing conditions) 07 Cryogenic conditions (less than -200 degrees C) *Ambient means "normal", "surrounding" or "room conditions"

3 SUBMITTING THE COMMUNITY RIGHT TO KNOW SURVEY

3.1 WHO SHOULD RECEIVE YOUR COMPLETED SURVEY BY MAIL?

After completing the survey make (5) copies for distribution as follows:

Original - Send the signed original to the NJDEPE. (The mailing address is also at the lower right hand corner of the first page of the survey).

NJDEPE
COMMUNITY RIGHT TO KNOW
CN 405
Trenton, NJ 08625-0405

Copy 1 - Send to the local police department entered in Box H of the survey.

Copy 2 - Send to the local fire department entered in Box H of the survey.

Copy 3 - Send to your county Right to Know agency. (Obtain from Appendix 1 of this guide.)

Copy 4 - Send to your Local Emergency Planning Committee. (Obtain from Appendix 2 of this guide.)

Copy 5 - Keep this copy for your files. It is required that your facility have a copy available for any inspection in the future. It is also important that you keep a copy because it will help you update future surveys.

3.2 ENFORCEMENT OF FILING RIGHT TO KNOW SURVEY.

The Department of Environmental Protection and Energy may perform random and unscheduled inspections of any facility subject to the provisions of the New Jersey Worker and Community Right to Know law. The purpose of an inspection is to review the facility's Community Right to Know Survey and validate the accuracy of the chemical inventory information reported.

During the inspection, the inspector will ask to examine the facility's files and review its Community Right to Know information, chemical inventory lists, and Material Safety Data Sheets. In addition, penalties of up to \$2,500 may be imposed if the information is incorrect or if there is not sufficient proof of submissions to the state or other agencies listed in section 3.1 above.

TABLE A NJ ENVIRONMENTAL HAZARDOUS SUBSTANCE LIST
/ HAZARDOUS MATERIALS TABLE

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
ACETAL	105-57-7	1088	2057
ACETALDEHYDE	75-07-0	1089	0001
ACETALDEHYDE AMMONIA	75-39-8	1841	0002
ACETALDEHYDE OXIME	107-29-9	2332	0003
ACETALDEHYDE, TRICHLORO	75-87-6	2075	0356
ACETALDOXIME	107-29-9	2332	0003
ACETAMIDE	60-35-5		2890
ACETAMIDE, N-(4-ETHOXYPHENYL)	62-44-2	1851	1483
ACETIC ACID	64-19-7	2789	0004
ACETIC ACID-tert-BUTYL ESTER	540-88-5	1123	1786
ACETIC ANHYDRIDE	108-24-7	1715	0005
ACETOIN	513-86-0	2621	0018
ACETONE	67-64-1	1090	0006
ACETONE CYANOHYDRIN	75-86-5	1541	0007
ACETONE OIL		1091	2058
ACETONITRILE	75-05-8	1648	0008
ACETOPHENETIDIN	62-44-2	1851	1483
ACETOZONE	644-31-5	2081	0011
ACETYL ACETONE PEROXIDE	37187-22-7	2080	0009
ACETYL BENZOYL PEROXIDE	644-31-5	2081	0011
ACETYL BROMIDE	506-96-7	1716	0012
ACETYL CHLORIDE	75-36-5	1717	0013
ACETYL CYCLOHEXANE SULFONYL PEROXIDE	3179-56-4	2082	0014
ACETYL IODIDE	507-02-8	1898	0017
ACETYL METHYL CARBINOL	513-86-0	2621	0018
ACETYL PEROXIDE	110-22-5	2084	0019
ACETYLACETONE	123-54-6	2310	1477
2-ACETYLAMINOFLUORENE	53-96-3		0010
ACETYLENE	74-86-2	1001	0015
ACETYLENE DICHLORIDE	540-59-0	1150	0653
ACETYLENE TETRABROMIDE	79-27-6	2504	0016
ACETYLSALICYLIC ACID	50-78-2	1851	0020
ACID BUTYL PHOSPHATE	12788-93-1	1718	0277
ACID MIXTURES, NITRATING		1796	2060
ACID MIXTURES, SPENT, NITRATING		1826	2061
ACID SLUDGE	64742-24-1	1906	2770
ACIDS, LIQUID, n.o.s.		1760	2282
ACRIDINE	260-94-6	2713	2064
ACROLEIN	107-02-8	1092	0021
ACRYLAMIDE	79-06-1	2074	0022
ACRYLIC ACID	79-10-7	2218	0023
ACRYLONITRILE	107-13-1	1093	0024
ACTINOMYCIN D	50-76-0	1851	0025
ADHESIVES		2067	3072
ADHESIVES, CONTAINING FLAMMABLE LIQUID		1133	2067
ADIPIC ACID	124-04-9	9077	0026
ADIPONITRILE	111-69-3	2205	0027
ADRIAMYCIN	23214-92-8	1851	0028
AEROSOL DISPENSERS		1950	2068
AGENTS, BLASTING			2173
AIR, COMPRESSED		1002	2070
AIR, REFRIGERATED LIQUID		1003	2076
ALCOHOL (ETHYL)	64-17-5	1170	0844
ALCOHOL, DENATURED		1986	2080
ALCOHOL, n.o.s.		1987	2079
ALCOHOLIC BEVERAGE		1170	2078
ALDEHYDE AMMONIA	75-39-8	1841	0002
ALDEHYDE, TOXIC, n.o.s.		1988	2082
ALDEHYDES, n.o.s.		1989	2081
ALDICARB	116-06-3	2757	0031
ALDOL	107-89-1	2839	0032
ALDRIN	309-00-2	2761	0033
ALIPHATIC NAPHTHA	8032-32-4	1115	0206
ALKALI METAL ALLOYS, LIQUID		1421	2083
ALKALI METAL AMALGAM, n.o.s.		1389	2084
ALKALI METAL AMIDES, n.o.s.		1390	2085
ALKALI METAL DISPERSIONS, n.o.s. or ALKALI EARTH		1391	2086
ALKALINE BOILER OR WATER TREATMENT COMPOUND		1760	2087
ALKALINE CORROSIVE LIQUID, n.o.s.		1719	2088
ALKALINE EARTH METAL ALLOYS, n.o.s.		1393	2089
ALKALINE EARTH METAL AMALGAMS, n.o.s.		1392	2090
ALKALINE EARTH METAL DISPERSIONS, n.o.s.		1392	2091
ALKALOID, SALTS, n.o.s., POISONOUS		1544	2093

NOTE:

+ means new EHS effective 1992 reporting year

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
ALKALOIDS, n.o.s. or ALKALOID SALTS, n.o.s.		1544	2093
ALKANE SULFONIC ACID	75-75-2	2584	0034
ALKYL PHENOL, n.o.s.		2430	2101
ALKYL, ARYL, or TOLUENE SULFONIC ACID, LIQUID containing more than 5% free Sulfuric Acid		2584	2097
ALKYL,ARYL,OR TOLUENE SULFONIC ACID, LIQUID containing not more than 5% free Sulfuric Acid		2586	2098
ALKYL,ARYL,OR TOLUENE SULFONIC ACID, SOLID containing more than 5% free Sulfuric Acid		2585	2099
ALKYL,ARYL,or TOLUENE SULFONIC ACID, SOLID containing not more than 5% free Sulfuric Acid		2583	2100
ALKYLAMINES or POLYALKYLAMINES, n.o.s., CORROSIVE flash point above 23c, boiling point 35-200c		2733	2094
ALKYLAMINES or POLYALKYLAMINES, n.o.s., flash point above 23c, boiling point 35-200c		2735	2095
ALKYLAMINES or POLYALKYLAMINES, n.o.s., flash point below 23c, boiling point 35-200c		2734	2096
ALLETHRIN	584-79-2	2902	2102
ALLYL ACETATE	591-87-7	2333	0035
ALLYL ALCOHOL	107-18-6	1098	0036
ALLYL AMINE	107-11-9	2334	0037
ALLYL BROMIDE	106-95-6	1099	0038
ALLYL CHLORIDE	107-05-1	1100	0039
ALLYL CHLOROCARBONATE	2937-50-0	1722	0040
ALLYL ETHER	557-40-4	2360	0610
ALLYL ETHYL ETHER	557-31-3	2335	0041
ALLYL FORMATE	1838-59-1	2336	0042
ALLYL GLYCIDYL ETHER	106-92-3	2219	0043
ALLYL IODIDE	556-56-9	1723	0044
ALLYL ISOTHIOCYANATE	57-06-7	1545	0045
ALLYL TRICHLOROSILANE	107-37-9	1724	0047
ALUMINUM (DUST AND FUME)	7429-90-5	1383	0054
ALUMINUM ALKYL CHLORIDE		2221	2104
ALUMINUM ALKYL HALIDES, IN SOLUTION		2220	2106
ALUMINUM ALKYL HALIDES, PURE		2221	2107
ALUMINUM ALKYL		2003	2547
ALUMINUM BOROHYDRIDE	16962-07-5	2870	2108
ALUMINUM BROMIDE	7727-15-3	1725	0055
ALUMINUM CARBIDE	12656-43-8	1394	0056
ALUMINUM CHLORIDE	7446-70-0	1726	0057
ALUMINUM FERROSILICON	12003-41-7	1395	0058
ALUMINUM HYDRIDE	7784-21-6	2463	0060
ALUMINUM LITHIUM HYDRIDE	16853-85-3	1410	1121
ALUMINUM NITRATE	13473-90-0	1438	0061
ALUMINUM OXIDE (FIBROUS FORMS)	1344-28-1		2891
ALUMINUM PHOSPHATE	7784-30-7	1760	0062
ALUMINUM PHOSPHIDE	20859-73-8	1397	0063
ALUMINUM POWDER, COATED		1309	2110
ALUMINUM POWDER, UNCOATED, NON-PYROPHORIC		1396	2111
ALUMINUM RESINATE	61789-65-9	2715	0064
ALUMINUM SILICON	50810-25-8	1398	0065
ALUMINUM SILICON	12042-55-6	1398	0066
ALUMINUM SILICON	58485-31-1	1398	0067
ALUMINUM SULFATE	10043-01-3	9078	0068
1-AMINO-2-METHYLANTHRAQUINONE	82-28-0		0076
2-AMINO-4-CHLOROPHENOL	95-85-2	2673	0070
2-AMINO-5-DIETHYL AMINOPENTANE	140-80-7	2946	0071
2-AMINOANTHRAQUINONE	117-79-3		0069
4-AMINOAZOBENZENE	60-09-3	1602	0508
4-AMINO BENZENE (see 4-AMINOAZOBENZENE)			
4-AMINOBI PHENYL	92-67-1		0072
2-(2-AMINOETHOXY)ETHANOL	929-06-6	1760	0073
N-AMINOETHYLPYPERAZINE	140-31-8	2815	0075
AMINOPHENOLS	27598-85-2	2512	0078
AMINOPROPYLDIETHANOLAMINE	4985-85-7	1760	0079
AMINOPROPYLMORPHOLINE	123-00-2	1760	0080
AMINOPTERIN	54-62-6	2588	2112
2-AMINOPYRIDINE	504-29-0	2671	0081
3-AMINOPYRIDINE	462-08-8	2671	0082
4-AMINOPYRIDINE	504-24-5	2671	0172
AMINOTRIAZOLE	61-82-5		0083
AMITON	78-53-5	2902	2113
AMITON OXALATE	3734-97-2	2783	2114
AMITROL (see AMINOTRIAZOLE)			
AMMONIA	7664-41-7	1005	0084
AMMONIUM ACETATE	631-61-8	9079	0085
AMMONIUM ARSENATE	7784-44-3	1546	0086
AMMONIUM BENZOATE	1863-63-4	9080	0087
AMMONIUM BICARBONATE	1066-33-7	9081	0088
AMMONIUM BICHRONATE	7789-09-5	1439	0097
AMMONIUM BIFLUORIDE	1341-49-7	1727	0089
AMMONIUM BISULFATE	7803-63-6	2506	0102
AMMONIUM BISULFITE	10192-30-0	2693	0090
AMMONIUM CARBAMATE	1111-78-0	9083	0091
AMMONIUM CARBONATE	506-87-6	9084	0092

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
COBALT COMPOUNDS, n.o.s.			3135 +
COBALT NAPHTHENATE	61789-51-3	2001	0523
COBALT RESINATE, PRECIPITATED		1318	2262
COBALTOUS BROMIDE	7789-43-7	9103	0524
COBALTOUS FORMATE	544-18-3	9104	0525
COBALTOUS SULFAMATE	14017-41-5	9105	2261
COCCULUS	124-87-8	1584	0526
COLCHICINE	64-86-8	1851	2263
COLLOIDION	9004-70-0	2556	1366
COLOGNE SPIRITS	64-17-5	1170	0844
COLUMBIAN SPIRITS	67-56-1	1230	1222
COMBUSTIBLE LIQUID, n.o.s.		1993	2267
COMPOUND, PAINT, etc., REMOVING, REDUCING, or thinning		1263	2268
COMPOUND, TREE or WEED KILLING, LIQUID, COMBUSTIBLE OR FLAMMABLE		1993	2269
COMPOUND, TREE or WEED KILLING, LIQUID, CORROSIVE		1760	2270
COMPRESSED OR LIQUIFIED GASES, FLAMMABLE, TOXIC, N.O.S.		1954	2272
COMPRESSED OR LIQUIFIED GASES, FLAMMABLE, NON-TOXIC, N.O.S.		1953	2273
COMPRESSED OR LIQUIFIED GASES, NON-FLAMMABLE, TOXIC, N.O.S.		1955	2271
COMPRESSED OR LIQUIFIED GASES, NON-FLAMMABLE, NON-TOXIC, N.O.S.		1956	2274
COPPER	7440-50-8		0528
COPPER ACETOARSENITE	12002-03-8	1585	0529
COPPER ARSENITE	10290-12-7	1586	0530
COPPER CHLORATE	26506-47-8	2721	0531
COPPER CHLORIDE	1344-67-8	2802	0532
COPPER COMPOUNDS, n.o.s.			3136 +
COPPER CYANIDE	14763-77-0	1587	0533
COPPER CYANIDE	544-92-3	1587	3061
COPPER SELENATE	15123-69-0	2630	2279
COPPER SELENITE	10214-40-1	2630	2280
COPPER, all inorganic compounds of			2871
COPPER-BASED PESTICIDE, FLAMMABLE, LIQUID, TOXIC, N.O.S., FLASH POINT LESS THAN 23C		2776	2275
COPPER-BASED PESTICIDE, FLAMMABLE, LIQUID, TOXIC, N.O.S., FLASH POINT BETWEEN 23C AND 61C		3009	2276
COPPER-BASED PESTICIDE, LIQUID, TOXIC, n.o.s.		3010	2277
COPPER-BASED PESTICIDE, SOLID, TOXIC, n.o.s.		2775	2278
CORROSIVE LIQUIDS, FLAMMABLE, n.o.s.		2920	2281
CORROSIVE LIQUIDS, n.o.s.		1760	2282
CORROSIVE LIQUIDS, POISONOUS, n.o.s.		2922	2283
CORROSIVE SOLIDS, FLAMMABLE, n.o.s.		2921	2284
CORROSIVE SOLIDS, n.o.s.		1759	2285
CORROSIVE SOLIDS, POISONOUS, n.o.s.		2923	2286
COSMETICS, CORROSIVE LIQUID, n.o.s.		1760	2287
COSMETICS, FLAMMABLE or COMBUSTIBLE LIQUID		1993	2288
COSMETICS, FLAMMABLE SOLID, n.o.s.		1325	2289
COSMETICS, OXIDIZER, n.o.s.		1479	2290
COSMETICS, SOLID, n.o.s.		1759	2291
COSMETICS, WITH FLAMMABLE SOLVENTS		1266	2292
COUMAFURYL	117-52-2	3027	0950
COUMAPHOS	56-72-4	2783	0536
CREOSOTE	8001-58-9	1993	0517
p-CRESIDINE	120-71-8		1467
CRESIDINE	7783-08-6	1905	1647
m-CRESOL	108-39-4	2076	1161
o-CRESOL	95-48-7	2076	1426
p-CRESOL	106-44-5	2076	1468
CRESOLS, mixed isomers	1319-77-3	2022	0537
CRESYLIC ACID (SEE CRESOLS, MIXED ISOMERS)			
o-CRESYLIC ACID	95-48-7	2076	1426
CRIMIDINE	535-89-7	2588	0351
CROTONALDEHYDE	123-73-9	1143	0538
CROTONALDEHYDE, inhibited	4170-30-3	1143	2888
CROTONIC ACID	3724-65-0	2823	0539
CROTONYLENE	503-17-3	1144	0540
CRUFOMATE	299-86-5	2765	0541
CUMENE	98-82-8	1918	0542
CUMENE HYDROPEROXIDE	80-15-9	2116	0543
CUMYL PEROXYNEODECANOATE	26748-47-0	2963	0544
CUMYL PEROXYPIVALATE		2964	2299
CUPFERRO	135-20-6		0545
CUPRIC ACETATE	142-71-2	9106	0546
CUPRIC ACETOARSENITE	12002-03-8	1585	0529
CUPRIC ARSENITE	10290-12-7	1586	0530
CUPRIC CHLORATE	26506-47-8	2721	0531
CUPRIC CHLORIDE	1344-67-8	2802	0532
CUPRIC NITRATE	3251-23-8	1479	0547
CUPRIC OXALATE	814-91-5	2449	0548
CUPRIC SULFATE	7758-98-7	9109	0549
CUPRIC SULFATE, AMMONIATED	10380-29-7	9110	2300
CUPRIC TARTRATE	815-82-7	9111	0550

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
CUPRIETHYLENEDIAMINE	13426-91-0	1761	0551
CUT-BACKS	8052-42-4	1999	0170
CYANIDE	57-12-5	1588	0553
CYANIDE compounds, n.o.s.		1588	2378
CYANIDE, all inorganic compounds			2872
CYANOBENZENE	100-47-0	2224	0211
CYANOGEN	460-19-5	1026	0554
CYANOGEN BROMIDE	506-68-3	1889	2302
CYANOGEN CHLORIDE	506-77-4	1589	0556
CYANOGEN IODIDE	506-78-5	1588	2303
CYANOPHOS	2636-26-2	3018	2304
CYANURIC TRICHLORIDE	108-77-0	2670	0557
CYCLOBUTANE	287-23-0	2601	0559
CYCLOBUTYLCHLOROFORMATE	81228-87-7	2744	0560
1,5,9-CYCLOODECATRIENE	4904-61-4	2518	0561
CYCLOHEPTANE	291-64-5	2241	0562
CYCLOHEPTATRIENE	544-25-2	2603	0563
CYCLOHEPTENE	628-92-2	2242	0564
CYCLOHEXANE	110-82-7	1145	0565
CYCLOHEXANOL	108-93-0	1986	0569
CYCLOHEXANONE	108-94-1	1915	0570
CYCLOHEXANONE PEROXIDE	12262-58-7	2117	0571
CYCLOHEXENE	110-83-8	2256	0572
CYCLOHEXENYL TRICHLOROSILANE	10137-69-6	1762	0573
CYCLOHEXIMIDE	66-81-9	2811	0574
CYCLOHEXYL ACETATE	622-45-7	2243	0575
CYCLOHEXYL ISOCYANATE	3173-53-3	2488	0577
CYCLOHEXYL MERCAPTAN	108-93-0	1986	0569
CYCLOHEXYL TRICHLOROSILANE	98-12-4	1763	0578
CYCLOHEXYLAMINE	108-91-8	2357	0576
CYCLONITE	121-82-4	0072	0579
CYCLOOCTADIENE	29965-97-7	2520	0580
CYCLOOCTATETRAENE	629-20-9	2358	0581
CYCLOPENTANE	287-92-3	1146	0583
CYCLOPENTANOL	96-41-3	2244	0584
CYCLOPENTANONE	120-92-3	2245	0585
CYCLOPENTENE	142-29-0	2246	0586
CYCLOPHOSPHAMIDE	50-18-0	1851	0587
CYCLOPROPANE	75-19-4	1027	0588
CYCLOTETRAMETHYLENETETRANITRAMINE	2691-41-0	0226	0589
CYMENE	25155-15-1	2046	0591
DAUNOMYCIN	20830-81-3	1851	0594
DAUNORUBICIN	20830-81-3	1851	0594
DBCP	96-12-8	2872	0595
DDD	72-54-8	2761	0646
DDE	72-55-9	2761	2979
DDT	50-29-3		0596
DECABORANE	17702-41-9	1868	0597
DECABROMODIPHENYL ETHER (SEE DECABROMODIPHENYL OXIDE)			
DECABROMODIPHENYL OXIDE	1163-19-5		0598
DECAHYDRONAPHTHALENE	91-17-8	1147	0599
DECALIN	91-17-8	1147	0599
DECANE	124-18-5	2247	0600
DECANOYL PEROXIDE	762-12-9	2120	0602
DECEMTHION	732-11-6	2783	0603
DEMETON-S-METHYL	919-86-8	3018	2886
DENATURATED ALCOHOL	64-17-5	1170	0844
DEUTERIUM	7782-39-0	1957	0605
DI(1-HYDROXYCYCLO-HEXYL) PEROXIDE	1758-61-8	2148	0723
DI(2-ETHYL HEXYL) PHTHALATE (SEE BIS (2-ETHYLHEXYL) PHTHALATE)			
DI(2-ETHYLHEXYL) PEROXY-DICARBONATE	16111-62-9	2123	0703
DI(2-ETHYLHEXYL)PHOSPHORIC ACID	298-07-7	1902	2334
DI(2-METHYLBENZOYL) PEROXIDE	3034-79-5	2593	0743
DI(3,5,5-TRIMETHYL-1,2-DIOXOLANYL-3) PEROXIDE, PASTE		2597	2373
DI(3,5,5-TRIMETHYLHEXANOYL) PEROXIDE		2128	2374
2,2-DI(4,4-DI-tert-BUTYL-PEROXY CYCLOHEXL)-PROPANE 42%		2168	2325
DI(4-tert-BUTYLCYCLOHEXYL)-PEROXYDICARBONATE	15520-11-3	2154	0813
1,2-DI(DIMETHYLAMINO)-ETHANE		2372	2329
1,1-DI(tert-BUTYLPEROXY)-3,3,5-TRIMETHYLCYCLOHEXANE	6731-36-8	2145	0818
2,2-DI(tert-BUTYLPEROXY)-BUTANE	2167-23-9	2111	0816
1,1-DI(tert-BUTYLPEROXY)-CYCLOHEXANE	3006-86-8	2179	0817
2,2-DI(tert-BUTYLPEROXY)PROPANE with at least 13% PHLEGMATIZER		2883	2318
2,2-DI(tert-BUTYLPEROXY)PROPANE with at least 50% PHLEGMATIZER		2884	2319
1,4-DI-(2-tert-BUTYLPEROXY ISOPROPYL)BENZENE OR 1,3-		2112	2314
DI-2,4-DICHLOROBENZOYL PEROXIDE, 52% as paste		2138	2327
DI-2,4-DICHLOROBENZOYL PEROXIDE, 52% in solution		2139	2328
DI-2,4-DICHLOROBENZOYL PEROXIDE, greater than 75% in water		2137	2326
DI-ISOBUTYLAMINE	110-96-3	2361	0724

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
IODINE	7553-56-2	1851	1026
IODINE MONOCHLORIDE	7790-99-0	1792	1027
IODINE PENTAFLUORIDE	7783-66-6	2495	1028
IODO PROPANE	26914-02-3	2392	1033
1-IODO-2-METHYLPROPANE	513-38-2	2391	1031
2-IODO-2-METHYLPROPANE	558-17-8	2391	1032
2-IODOBUTANE	513-48-4	2390	1029
IODOFORM	75-47-8	1851	1030
IRON CHLORIDE	7705-08-0	1773	1034
IRON OXIDE FUME	1309-37-1	1376	1036
IRON PENTACARBONYL	13463-40-6	1994	1037
IRRITATING AGENT, n.o.s.		1693	2493
ISOAMYL ALCOHOL	123-51-3	1105	1039
ISOAMYL BROMIDE	107-82-4	2341	0263
ISOBENZAN	297-78-9	2588	2494
ISOBUTANE	75-28-5	1969	1040
ISOBUTYL ACETATE	110-19-0	1213	1041
ISOBUTYL ACRYLATE	106-63-8	2527	1042
ISOBUTYL ALCOHOL	78-83-1	1212	1043
ISOBUTYL BROMIDE	507-19-7	2342	0264
ISOBUTYL FORMATE	542-55-2	2393	1046
ISOBUTYL IODIDE	513-38-2	2391	1031
ISOBUTYL ISOBUTYRATE	97-85-8	2528	1047
ISOBUTYL ISOCYANATE	1873-29-6	2486	1048
ISOBUTYL KETONE	108-83-8	1157	0760
ISOBUTYL PROPIONATE	540-42-1	2394	1050
ISOBUTYLAMINE	78-81-9	1214	1044
ISOBUTYLENE	115-11-7	1055	1045
ISOBUTYLMETHACRYLATE	97-86-9	2283	1049
ISOBUTYRALDEHYDE	78-84-2	2045	1051
ISOBUTYRIC ACID	79-31-2	2529	1052
ISOBUTYRIC ANHYDRIDE	97-72-3	2530	1053
ISOBUTYRONITRILE	78-82-0	2284	1054
ISOBUTYRYLCHLORIDE	79-30-1	2395	1055
ISOCYANATES, n.o.s., boiling point not less than 300c		2207	2495
ISOCYANATES, solutions, n.o.s., FLAMMABLE		2206	2496
ISOCYANATES, solutions, n.o.s., flash point greater than 23c		2206	2497
ISOCYANATOBENZO-TRIFLUORIDE	71121-36-3	2285	1056
ISOCYANIC ACID, 3,4-DICHLOROPHENYL ESTER	102-36-3	2250	0658
ISODODECANE	31807-55-3	2286	2498
ISODRIN	465-73-6	2761	2499
ISOFLUORPHATE	55-91-4	3018	2500
ISOHEPTENE	68975-47-3	2287	1058
ISOHEXENE	27236-46-0	2288	1059
ISONONANOYL PEROXIDE	58449-37-9	2128	1060
ISOCTANE	540-84-1	1262	1061
ISOCTENE	11071-47-9	1216	1062
ISOCTYL ALCOHOL	26952-21-6	1987	1063
ISOPENTANE	78-78-4	1265	1064
ISOPENTANOIC ACID	503-74-2	1760	1065
ISOPENTENES		2371	2501
ISOPENTYL ALCOHOL	123-51-3	1105	1039
ISOPHORONE	78-59-1	1224	1066
ISOPHORONE DIISOCYANATE	4098-71-9	2290	1068
ISOPHORONEDIAMINE	2855-13-2	2289	1067
ISOPRENE	78-79-5	1218	1069
ISOPROPANOL (SEE ISOPROPYL ALCOHOL)			
ISOPROPANOLAMINE DODECYLBENZENESULFONATE	54590-52-2	9127	1070
ISOPROPENYL ACETATE	108-22-5	2403	1071
ISOPROPENYL BENZENE	98-83-9	2303	1072
ISOPROPYL ACETATE	108-21-4	1220	1074
ISOPROPYL ACID PHOSPHATE	1623-24-1	1793	1075
ISOPROPYL ALCOHOL	67-63-0	1219	1076
ISOPROPYL BUTYRATE	638-11-9	2405	1078
ISOPROPYL CHLOROACETATE	105-48-6	2947	1079
ISOPROPYL CHLOROFORMATE	108-23-6	2407	1080
ISOPROPYL ETHER	108-20-3	1159	0730
ISOPROPYL FORMATE	625-55-8	2408	2504
ISOPROPYL ISOBUTYRATE	617-50-5	2406	1083
ISOPROPYL ISOCYANATE	1795-48-8	2483	1084
ISOPROPYL MERCAPTAN	75-33-2	2703	1085
ISOPROPYL NITRATE	1712-64-7	1222	1086
ISOPROPYL PEROXYDICARBONATE	105-64-6	2133	0731
ISOPROPYL PROPIONATE	637-78-5	2409	1087
ISOPROPYL-2-CHLOROPROPIONATE	40058-87-5	2934	1081
ISOPROPYLACETONE	108-10-1	1245	1268
ISOPROPYLAMINE	75-31-0	1221	1077
4,4'-ISOPROPYLIDENEDIPHENOL	80-05-7		2388

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
ISOPROPYLMETHYLPYRAZOLYL DIMETHYLCARBAMATE	119-38-0	2992	2505
ISOSAFROLE	120-58-1		0198
ISOSORBIDE DINITRATE MIXTURE with not less than 60% lactose,	87-33-2	2907	2508
KANAMYCIN	59-01-8	1851	1088
KELTHANE (SEE DICOFOL)			
KEPONE	143-50-0	2761	1090
KEROSENE	8008-20-6	1223	1091
KETONES, LIQUID, n.o.s.		1224	2510
KRYPTON	7439-90-9	1056	1093
LACQUER		1263	2628
LACQUER BASE OR LACQUER CHIPS, DRY		2557	2511
LACQUER BASE OR LACQUER CHIPS, LIQUID		1263	2512
LATEX, PAINTS		2810	2885
LAUROYL PEROXIDE	105-74-8	2893	1095
LEAD	7439-92-1		1096
LEAD ACETATE	301-04-2	1616	1097
LEAD ARSENATE	7784-40-9	1617	1098
LEAD ARSENITE	10031-13-7	1618	1099
LEAD AZIDE	13424-46-9	0129	1100
LEAD CHLORIDE	7758-95-4	2291	1101
LEAD CHROMATE	7758-97-6	2291	1102
LEAD COMPOUNDS, n.o.s.			3139 +
LEAD COMPOUNDS, SOLUBLE, n.o.s.		2291	2515
LEAD CYANIDE	592-05-2	1620	1103
LEAD DIOXIDE	1309-60-0	1872	1104
LEAD FLUOBORATE	13814-96-5	2291	1105
LEAD FLUORIDE	7783-46-2	2811	1106
LEAD IODIDE	10101-63-0	2811	1107
LEAD NITRATE	10099-74-8	1469	1108
LEAD PERCHLORATE	13637-76-8	1470	1109
LEAD PHOSPHATE	7446-27-7	2291	1110
LEAD PHOSPHITE, DIBASIC	15845-52-0	2989	2293
LEAD STEARATE	7428-48-0	2811	1111
LEAD STYPHATE	63918-97-8	0130	1112
LEAD SULFIDE	1314-87-0	2291	1113
LEAD SULPHATE	7446-14-2	2291	1114
LEAD THIOCYANATE	592-87-0	2291	1115
LEAD, all inorganic compounds		2291	2873
LEPTOPHOS	21609-90-5	2588	2516
LETHANE	112-56-1	2902	1116
LEWISITE	541-25-3	1556	2517
LIGHT GREEN SF (C.I. ACID GREEN 5)	5141-20-8		3140 +
LIGHTER FUELS, CIGAR OR CIGARETTE		1226	2251
LIGHTER, FOR CIGARS, CIGARETTES, etc., with flammable liquid		1226	2251
LIGHTERS, FOR CIGARS, CIGARETTES, etc., with flammable gas		1057	2250
LIME	1305-78-8	1910	0325
LIMONENE, inactive	138-86-3	2052	0792
LINDANE	58-89-9	2761	1117
LIQUEFIED PETROLEUM GAS	68476-85-7	1075	1118
LITHIUM	7439-93-2	1415	1119
LITHIUM ACETYLIDE ETHYLENEDIAMINE	50475-76-8	2813	1120
LITHIUM ALUMINUM HYDRIDE	16853-85-3	1410	1121
LITHIUM AMIDE	7782-89-0	1412	1122
LITHIUM BOROHYDRIDE	16949-15-8	1413	1123
LITHIUM CHROMATE	14307-35-8	9134	1125
LITHIUM FERROSILICON	64082-35-5	2830	1126
LITHIUM HYDRIDE	7580-67-8	2805	1127
LITHIUM HYDROXIDE MONOHYDRATE	1310-66-3	2680	1128
LITHIUM HYPOCHLORITE	13840-33-0	1471	1129
LITHIUM NITRATE	7790-69-4	2722	1130
LITHIUM NITRIDE	26134-62-3	2806	1131
LITHIUM PEROXIDE	12031-80-0	1472	1132
LITHIUM SILICON	68848-64-6	1417	1133
LONDON PURPLE	8012-74-6	1621	1134
LORAZEPAM	846-49-1	1851	1135
LPG	68476-85-7	1075	1118
LYE SOLUTION	1310-73-2	1823	1706
LYNESTRENOL	57-63-6	1851	0836
MACE	532-27-4	1697	0048
MAGNESIUM	7439-95-4	1869	1136
MAGNESIUM ALUMINUM PHOSPHIDE		1419	2524
MAGNESIUM AMIDE	7803-54-5	2004	1140
MAGNESIUM ARSENATE	10103-50-1	1622	1137
MAGNESIUM BROMATE	7789-36-8	1473	1138
MAGNESIUM CHLORATE	10326-21-3	2723	1139
MAGNESIUM DIAMIDE	7803-54-5	2004	1140
MAGNESIUM DIPHENYL	555-54-4	2005	1141
MAGNESIUM HYDRIDE	60616-74-2	2010	1142

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
MAGNESIUM NITRATE	10377-60-3	1474	1143
MAGNESIUM PERCHLORATE	10034-81-8	1475	1145
MAGNESIUM PEROXIDE	14452-57-4	1476	1146
MAGNESIUM PHOSPHIDE	12057-74-8	2011	1147
MAGNESIUM SILICIDE	39404-03-0	2624	1148
MAGNESIUM SILICOFLUORIDE	18972-56-0	2853	1149
MALATHION	121-75-5	2783	1150
MALEIC ACID	110-16-7	2215	1151
MALEIC ANHYDRIDE	108-31-6	2215	1152
MALONONITRILE	109-77-3	2647	1153
MANEB	12427-38-2	2968	1154
MANGANESE	7439-96-5		1155
MANGANESE COMPOUNDS, n.o.s.			3141 *
MANGANESE DIOXIDE	1313-13-9	1479	1157
MANGANESE NITRATE	10377-66-9	2724	1158
MANGANESE RESINATE	9008-34-8	1330	2526
MANNITOL HEXANITRATE	15825-70-4	0133	1160
MATCHES, n.o.s.		1331	2527
MDI	101-68-8	2489	1253
MECHLORETHAMINE	51-75-2	2810	1377
MEDICINES, n.o.s.		1851	2532
MEKP	1338-23-4	2127	1259
MELPHALAN	148-82-3	1851	1162
MENTETRAHYDROPHthalic ANHYDRIDE	25134-21-8	1760	2534
p-MENTHANE HYDROPEROXIDE	80-47-7	2125	1163
MEPHOSFOLAN	950-10-7	3018	2535
MEPROBAMATE	57-53-4	1851	1164
MERCAPTANS AND MIXTURES, LIQUID, n.o.s.		1228	2536
MERCAPTODIMETHUR	2032-65-7	2757	1165
MERCURIC ACETATE	1600-27-7	1629	1166
MERCURIC ARSENATE	7784-37-4	1623	1167
MERCURIC BENZOATE	583-15-3	1631	1168
MERCURIC BROMIDE	7789-47-1	1634	1169
MERCURIC CHLORIDE	7487-94-7	1624	1170
MERCURIC CHLORIDE, AMMONIATED	10124-48-8	1630	1184
MERCURIC CYANIDE	592-04-1	1636	1171
MERCURIC IODIDE	7774-29-0	1638	1172
MERCURIC NITRATE	10045-94-0	1625	1173
MERCURIC OXIDE	21908-53-2	2811	2537
MERCURIC OXYCYANIDE	1335-31-5	1642	1174
MERCURIC POTASSIUM CYANIDE	591-89-9	1626	1175
MERCURIC SUBSULFATE	1312-03-4	2025	1176
MERCURIC SULFATE	7783-35-9	1645	1177
MERCUROL	12002-19-6	1639	1178
MERCUROUS CHLORIDE	7546-30-7		1179
MERCUROUS CHLORIDE	10112-91-1		1180
MERCUROUS IODIDE	7783-30-4	1638	1189
MERCUROUS NITRATE	10415-75-5	1627	1181
MERCUROUS OXIDE	15829-53-5	1641	1191
MERCUROUS SULFATE	7783-36-0	1628	1182
MERCURY	7439-97-6	2809	1183
MERCURY AMMONIUM CHLORIDE	10124-48-8	1630	1184
MERCURY BROMIDE	10031-18-2	1634	1185
MERCURY CHLORIDE	10112-91-1		1180
MERCURY COMPOUNDS, LIQUID, n.o.s.		2024	2542
MERCURY COMPOUNDS, SOLID, n.o.s.		2025	2543
MERCURY FULMINATE	628-86-4	0135	1187
MERCURY GLUCONATE	63937-14-4	1637	1188
MERCURY NUCLEATE	12002-19-6	1639	1178
MERCURY OLEATE	1191-80-6	1640	1190
MERCURY OXIDE	15829-53-5	1641	1191
MERCURY POTASSIUM IODIDE	7783-33-7	1643	1192
MERCURY SALICYLATE	5970-32-1	1644	1193
MERCURY THIOCYANATE	592-85-8	1646	1194
MERCURY(1)BROMIDE(1:1)	15385-58-7	1634	1186
MERCURY, all inorganic compounds		2025	2874
MERCURY, AMMONIATED	10124-48-8	1630	1184
MERCURY-BASED PESTICIDES, LIQUID, FLAMMABLE, TOXIC, N.O.S.		3011	2538
MERCURY-BASED PESTICIDES, LIQUID, FLAMMABLE, TOXIC, N.O.S.		2778	2539
MERCURY-BASED PESTICIDES, LIQUID, TOXIC, N.O.S.		3012	2540
MERCURY-BASED PESTICIDES, SOLID, TOXIC, N.O.S.		2777	2541
MESITYL OXIDE	141-79-7	1229	1195
MESITYLENE	108-67-8	2325	1928
MESTRANOL	72-33-3	1851	1196
METAL ALKYL SOLUTION, n.o.s.		9195	2548
METAL ALKYLs, n.o.s.		2003	2547
METALDEHYDE	108-62-3	1332	1197
METHACRYLALDEHYDE	78-85-3	2396	1198

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
METHACRYLIC ACID	79-41-4	2531	1199
METHACRYLIC ANHYDRIDE	760-93-0	2531	2550
METHACRYLOYLOXYETHYL ISOCYANATE	30674-80-7	2206	2552
METHALLYL ALCOHOL	513-42-8	2614	1200
METHAMIDOPHOS	10265-92-6	2783	1201
METHANE	74-82-8	1971	1202
METHANE, DIBROMO (SEE METHYLENE BROMIDE)			
METHANE, DICHLORO (SEE DICHLOROMETHANE)			
METHANOL	67-56-1	1230	1222
METHENAMINE	100-97-0	1328	0996
METHIDATHION	950-37-8	2588	1206
METHIOCARB	2032-65-7	2757	1165
METHOMYL	16752-77-5	2757	1208
METHOTREXATE	59-05-2	1851	1209
4-METHOXY-4-METHYLPENTAN-2-ONE	107-70-0	2293	1215
METHOXYCHLOR	72-43-5	2761	1210
2-METHOXYETHANOL	109-86-4	1188	1211
2-METHOXYETHYL ACETATE	110-49-6	1189	1212
METHOXYETHYLMERCURIC ACETATE	151-38-2	2777	2554
METHOXYMETHYL ISOCYANATE	6427-21-0	2605	1214
4-METHOXYPHENOL	150-76-5	2761	1216
METHYL (N-AMYL) KETONE	110-43-0	1110	1279
METHYL ACETATE	79-20-9	1231	1217
METHYL ACRYLATE	96-33-3	1919	1219
METHYL ALCOHOL	67-56-1	1230	1222
METHYL ALLYL CHLORIDE	563-47-3	2554	1223
METHYL ALUMINUM SESQUIBROMIDE	12263-85-3	1926	2555
METHYL ALUMINUM SESQUICHLORIDE	12542-85-7	1927	1224
METHYL AMYL ACETATE	108-84-9	1233	1227
METHYL AMYL ALCOHOL	108-11-2	2053	1228
METHYL BROMIDE	74-83-9	1062	1231
METHYL BROMOACETATE	96-32-2	2643	1232
METHYL BUTYRATE	623-42-7	1237	1234
METHYL CELLOSOLVE	109-86-4	1188	1211
METHYL CELLOSOLVE ACETATE	110-49-6	1189	1212
METHYL CHLORIDE	74-87-3	1063	1235
METHYL CHLOROACETATE	96-34-4	2295	1236
METHYL CHLOROCARBONATE	79-22-1	1238	1238
METHYL CHLOROFORM (SEE 1,1,1-TRICHLOROETHANE)			
METHYL CHLOROFORMATE	79-22-1	1238	1238
METHYL CHLOROSILANE	993-00-0	2534	1240
METHYL CYCLOHEXANOL	25639-42-3	2617	1243
METHYL CYCLOPENTANE	96-37-7	2298	1245
METHYL DEMETON	8022-00-2	3018	1246
METHYL DICHLOROACETATE	116-54-1	2299	1247
METHYL DICHLOROARSINE	593-89-5	1556	1248
METHYL DICHLOROSILANE	75-54-7	1242	1249
METHYL DISULFIDE	624-92-0	2381	0756
METHYL ETHER	115-10-6	1033	0758
METHYL ETHYL ETHER	540-67-0	1039	1257
METHYL ETHYL KETONE	78-93-3	1193	1258
METHYL ETHYL KETONE PEROXIDE	1338-23-4	2127	1259
METHYL FLUORIDE	593-53-3	2454	1261
METHYL FORMATE	107-31-3	1243	1262
METHYL HYDRAZINE	60-34-4	1244	1265
METHYL IODIDE	74-88-4	2644	1266
METHYL ISOAMYL KETONE	110-12-3	2302	1267
METHYL ISOBUTYL CARBINOL	108-11-2	2053	1228
METHYL ISOBUTYL KETONE	108-10-1	1245	1268
METHYL ISOBUTYL KETONE PEROXIDE	37206-20-5	2126	1269
METHYL ISOCYANATE	624-83-9	2480	1270
METHYL ISOPROPENYL KETONE, inhibited	814-78-8	1246	2557
METHYL ISOPROPYL KETONE	563-80-4	2397	1271
METHYL ISOTHIOCYANATE	556-61-6	2477	1272
METHYL ISOVALERATE	556-24-1	2400	1273
METHYL MAGNESIUM BROMIDE	75-16-1	1928	1274
METHYL MERCAPTAN	74-93-1	1064	1275
METHYL MERCURY DICYANDIAMIDE	502-39-6	2777	1276
METHYL METHACRYLATE	80-62-6	1247	1277
METHYL N-BUTYL KETONE	591-78-6	1224	1280
METHYL NITRITE	624-91-9	2606	1281
METHYL ORTHO SILICATE	681-84-5	2606	1282
METHYL PARATHION	298-00-0	2783	1283
METHYL PENTYL KETONE	110-43-0	1110	1279
METHYL PHENKAPTON	3735-23-7	2783	2559
METHYL PHOSPHONIC DICHLORIDE	676-97-1	9206	2560
METHYL PHOSPHONOTHIOIC DICHLORIDE	676-98-2	1760	1287
METHYL PHOSPHONOUS DICHLORIDE	676-83-5	2845	1288

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
PHENYL ISOCYANATE	103-71-9	2487	1501
2-PHENYL PHENOL	90-43-7		1439
PHENYL PHOSPHOROUS DICHLORIDE	644-97-3	2798	0200
PHENYL PHOSPHORUS THIODICHLORIDE	3497-00-5	2799	2662
PHENYL TRICHLOROSILANE	98-13-5	1804	1506
PHENYL UREA PESTICIDES, FLAMMABLE LIQUID		2768	2665
PHENYL UREA PESTICIDES, FLAMMABLE LIQUID		3001	2666
PHENYL UREA PESTICIDES, LIQUID, TOXIC, N.O.S.		3002	2667
PHENYL UREA PESTICIDES, SOLID, TOXIC, N.O.S.		2767	2668
PHENYLACETONITRILE	140-29-4	2470	1490
PHENYLACETYL CHLORIDE	103-80-0	2577	1491
PHENYLBUTANE	104-51-8	2709	0282
PHENYLCARBYLAMINE CHLORIDE	622-44-6	1672	1492
PHENYLCHLOROFORMATE	1885-14-9	2746	1493
PHENYLDICHLOROARSINE	696-28-6	1556	1494
o-PHENYLENEDIAMINE	95-54-5	1673	1495
p-PHENYLENEDIAMINE	106-50-3	1673	1586
PHENYLHYDRAZINE	100-63-0	2572	1500
PHENYLHYDRAZINE HYDROCHLORIDE	59-88-1	2572	2659
PHENYLMERCURIC ACETATE	62-38-4	1674	1502
PHENYLMERCURIC COMPOUND, SOLID, n.o.s.		2026	2660
PHENYLMERCURIC HYDROXIDE	100-57-2	1894	1503
PHENYLMERCURIC NITRATE	55-68-5	1895	1504
o-PHENYLPHENOL (SEE 2-PHENYL PHENOL)			
PHENYLPHENOL (SEE 2-PHENYL PHENOL)			
PHENYTOIN	57-41-0	1851	1507
PHORATE	298-02-2	2783	1508
PHOSACETIM	4104-14-7	1681	2669
PHOSDRIN	7786-34-7	3018	1509
PHOSFOLAN	947-02-4	2783	2670
PHOSGENE	75-44-5	1076	1510
PHOSMET	732-11-6	2783	0603
9-PHOSPHABICYCLONANANE	13396-80-0	2940	1511
9-PHOSPHABICYCLONANANE	13387-02-0	2940	1512
PHOSPHAMIDOM	13171-21-6	2783	1513
PHOSPHINE	7803-51-2	2199	1514
PHOSPHONOTHIOIC ACID, METHYL-, O-(4-NITROPHENYL) O-	2665-30-7	3018	2672
PHOSPHONOTHIOIC ACID, METHYL-, O-ETHYL O-(4-METHYLTHIO)	2703-13-1	3018	2671
PHOSPHONOTHIOIC ACID, METHYL-, S-(2-(BISMETHYL	50782-69-9		2673
PHOSPHORIC ACID	7664-38-2	1805	1516
PHOSPHORIC ACID TRIETHYLENEIMINE	545-55-1	2501	0175
PHOSPHORIC ACID, DIMETHYL 4-(METHYLTHIO)PHENYL ESTER	3254-63-5	3018	2674
PHOSPHORIC ANHYDRIDE	1314-56-3	1807	1517
PHOSPHOROUS ACID, ortho	13598-36-2	2834	1519
PHOSPHOROUS PENTOXIDE	1314-56-3	1807	1517
PHOSPHORUS	7723-14-0	1338	1520
PHOSPHORUS (YELLOW)	7723-14-0	1381	1534
PHOSPHORUS HEPTA-SULPHIDE	12037-82-0	1339	1521
PHOSPHORUS OXYBROMIDE	7789-59-5	2576	1522
PHOSPHORUS OXYCHLORIDE	10025-87-3	1810	1523
PHOSPHORUS PENTABROMIDE	7789-69-7	2691	1524
PHOSPHORUS PENTACHLORIDE	10026-13-8	1806	1525
PHOSPHORUS PENTAFLUORIDE	7647-19-0	2198	1526
PHOSPHORUS PENTASULFIDE	1314-80-3	1340	1527
PHOSPHORUS PENTOXIDE	1314-56-3	1807	1517
PHOSPHORUS SESQUISULFIDE	1314-85-8	1341	1528
PHOSPHORUS TRIBROMIDE	7789-60-8	1808	1529
PHOSPHORUS TRICHLORIDE	7719-12-2	1809	1530
PHOSPHORUS TRIOXIDE	1314-24-5	2578	1532
PHOSPHORUS TRISULFIDE	12165-69-4	1343	1533
PHOSPHORUS, AMORPHOUS, RED	7723-14-0	1338	1520
PHTHALIC ANHYDRIDE	85-44-9	2214	1535
PHTHALIMIDE DERIVATIVE PESTICIDES, FLAMMABLE, LIQUID, NOS FLASH POINT LESS THAN 23C		2774	2678
PHTHALIMIDE DERIVATIVE PESTICIDES, FLAMMABLE LIQUID, FLASHPOINT BETWEEN 23C AND 61C		3007	2679
PHTHALIMIDE DERIVATIVE PESTICIDES, LIQUID, TOXIC, N.O.S.		3008	2676
PHTHALIMIDE DERIVATIVE PESTICIDES, SOLID, TOXIC, N.O.S.		2773	2677
PHYLLOQUINONE	84-80-0	1851	2680
PHYSOSTIGMINE	57-47-6	2757	2681
PHYSOSTIGMINE, SALICYLATE (1:1)	57-64-7	2757	2682
PICLORAM	1918-02-1	2588	1536
PICOLINE	1333-41-1	2313	1537
2-PICOLINE	109-06-8	2313	2955
PICRIC ACID	88-89-1	0154	1946
PICRITE, with greater than 20% WATER		1336	2683
PICROTOXIN	124-87-8	1584	0526
PINANE HYDROPEROXIDE	28324-52-9	2162	1538
PINDONE	83-26-1	2472	1546
PINE OIL	8002-09-3	1272	2684

TABLE A - continued

COMMON NAME	CAS NUMBER	DOT NUMBER	SUBSTANCE NUMBER
alpha-PINENE	80-56-8	2368	0052
PINENE	1330-16-1	2368	1539
PIPERAZINE	110-85-0	2579	1540
PIPERIDINE	110-89-4	2401	1543
PIPROTAL	5281-13-0	2902	2685
PIRIMICARB	23103-98-2	2757	1544
PIRIMPHOS-ETHYL	23505-41-1	3018	1545
PIVAL	83-26-1	2472	1546
PLASTICS MOULDING MATERIALS, EVOLVING FLAMMABLE VAPORS		2211	2686
PLASTICS, NITROCELLULOSE BASED, SPONTANEOUSLY COMBUSTIBLE		2006	2687
PLATINIC CHLORIDE	16941-12-1	2507	0406
POISONOUS LIQUID OR GAS, FLAMMABLE, n.o.s.		1953	2691
POISONOUS LIQUID OR GAS, n.o.s.		1955	2692
POISONOUS LIQUIDS, CORROSIVE, n.o.s.		2927	2693
POISONOUS LIQUIDS, FLAMMABLE, n.o.s.		2929	2690
POISONOUS LIQUIDS, n.o.s., OR POISON B LIQUIDS		2810	2694
POISONOUS SOLIDS, CORROSIVE, n.o.s.		2928	2695
POISONOUS SOLIDS, FLAMMABLE, n.o.s.		2930	2696
POISONOUS SOLIDS, n.o.s.		2811	2697
POLISH, METAL, STOVE AND FURNITURE		1142	2699
POLISHES, LIQUID		1263	2698
POLYBROMINATED BIPHENYLS	13654-09-6		3144 +
POLYBROMINATED BIPHENYLS, n.o.s.			3145 +
POLYCHLORINATED BIPHENYLS	1336-36-3	2315	1554
POLYCHLORINATED TRIPHENYLS (AROCOR 5442)	12642-23-8		3146 +
POLYSTYRENE BEADS, EXPANDED, MIXTURE WITH FLAMMABLE LIQUID		2211	2700
PONCEAU 3R (C.I. FOOD RED 6)	3564-09-8		3147 +
POTASSIUM	7440-09-7	2257	1555
POTASSIUM ARSENATE	7784-41-0	1677	1556
POTASSIUM ARSENITE	10124-50-2	1678	1557
POTASSIUM BICHROMATE	7778-50-9	1479	1564
POTASSIUM BIFLUORIDE	7789-29-9	1811	1568
POTASSIUM BISULFIDE	7646-93-7	2509	1569
POTASSIUM BOROHYDRIDE	13762-51-1	1870	1558
POTASSIUM BROMATE	7758-01-2	1484	1559
POTASSIUM CHLORATE	3811-04-9	1485	1560
POTASSIUM CHROMATE	7789-00-6	9142	1561
POTASSIUM CUPROCYANIDE		1679	2702
POTASSIUM CYANIDE	151-50-8	1680	1562
POTASSIUM DICHLOROISOCYANURATE	2244-21-5	2465	1563
POTASSIUM DICHROMATE	7778-50-9	1479	1564
POTASSIUM FLUORIDE	7789-23-3	1812	1565
POTASSIUM FLUOROACETATE	23745-86-0	2628	1566
POTASSIUM HEXAFLUOROSILICATE	16871-90-2	2655	1582
POTASSIUM HYDROGEN FLUORIDE	7789-29-9	1811	1568
POTASSIUM HYDROGEN SULFATE	7646-93-7	2509	1569
POTASSIUM HYDROSULFITE	14293-73-3	1929	1570
POTASSIUM HYDROXIDE	1310-58-3	1813	1571
POTASSIUM HYPOCHLORITE	7778-66-7	1791	1572
POTASSIUM METAVANADATE	13769-43-2	2864	1573
POTASSIUM NITRATE	7757-79-1	1486	1574
POTASSIUM NITRATE and SODIUM NITRITE, MIXTURE		1487	2704
POTASSIUM NITRITE	7758-09-0	1488	1575
POTASSIUM OXIDE	12136-45-7	2033	1576
POTASSIUM PERCHLORATE	7778-74-7	1489	1577
POTASSIUM PERMANGANATE	7722-64-7	1490	1578
POTASSIUM PEROXIDE	17014-71-0	1491	1579
POTASSIUM PERSULFATE	7727-21-1	1492	1580
POTASSIUM PHOSPHIDE	20770-41-6	2012	1581
POTASSIUM SALTS OF NITRO-AROMATIC DERIVATIVES, EXPLOSIVE		0158	2705
POTASSIUM SILICOFLUORIDE	16871-90-2	2655	1582
POTASSIUM SILVER CYANIDE	506-61-6	1588	2708
POTASSIUM SULFIDE	1312-73-8	1382	1583
POTASSIUM SUPEROXIDE	12030-88-5	2466	1584
POTASSIUM TETRACYANOMERCURATE (II)	591-89-9	1626	1175
POTASSIUM-SODIUM ALLOY	11135-81-2	1422	2709
PRAZEPAM	2955-38-6	1851	1587
PREDNISOLONE	50-24-8	1851	1588
PREDNISONE	53-03-2	1851	1589
PROCARBAZINE HYDROCHLORIDE	366-70-1	1851	1590
PROGESTERONE	57-83-0	1851	1591
PROMECARB	2631-37-0	2757	2710
PROPADIENE	463-49-0	2200	1593
1-PROPANAMINE	107-10-8	1277	1606
PROPANE	74-98-6	1978	1594
PROPANE MIXTURES	68476-85-7	1075	1118
PROPANE SULTONE	1120-71-4		1446
PROPANETHIOL	79869-58-2	2402	1595

on his Environmental Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the Environmental Survey for his facility every year.

SUBCHAPTER 4. HAZARDOUS MATERIALS LIST

7:1G-4.1 Designation of Hazardous Materials

(a) The substances contained in the Optional Materials Table in Title 49 of the code of Federal Regulations, Part 172.102, as amended by publication in the Federal Register, 48 Fed. Reg. Vol. 48, No. 211, pp. 50234-50279 (October 31, 1983) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L. 1983, c.315, N.J.S.A. 34:5A-1 et seq.

(b) The substances contained in the Hazardous Materials Table in Title 49 of the Code of Federal Regulations, Part 172.101, as amended by publication in the Federal Register, 49 Federal Register, Vol. 49, No. 189, pp. 38133-38134 (September 27, 1984) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L. 1982 c.315, N.J.S.A. 34:5A-1 et seq.

Amended by R.1988 d.89, effective February 16, 1988.

See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).

Added (b).

7:1G-4.2 Amendments to Hazardous Materials List

(a) The Department intends to establish a procedure for annually receiving information, advice, testimony, and recommendations from the Right to Know Advisory Council established pursuant to the Act, the public, and any other interested party, concerning the implementation of the Act. This procedure shall include a mechanism for revising the Hazardous Materials List.

(b) The Department will publish in the New Jersey Register, any revisions by the United States Department of Transportation (USDOT) to the Optional Materials Table and Hazardous Materials Table in Title 49 of the Code of Federal Regulations, as amended. Effective upon such publication in the Register, such amendments by the USDOT shall be incorporated into N.J.A.C. 7:1G-4.1.

Amended by R.1988 d.89, effective February 16, 1988.

See: 19 N.J.R. 438(a), 20 N.J.R. 387(a).

Added "Table and Hazardous Materials Table" and deleted "table".

SUBCHAPTER 5. EMERGENCY SERVICES INFORMATION (ESI) SURVEY

7:1G-5.1 Completion of ESI Survey

Within 90 days of receipt of an Emergency Services Information survey, an employer shall complete the survey concerning each of the Hazardous Materials at his facility, and transmit a copy of the completed survey to the department of Environmental Protection, the local fire department and the local police department. This deadline shall be extended for an additional period not to exceed 30 days, at the discretion of the department for good cause shown by the employer.

7:1G-5.2 Clarification of completed ESI Survey

The Department may require an employer to submit information clarifying any statement made on the Emergency Services Information Survey. The Department shall transmit this clarifying information to the local fire department and police department as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 30 days of notification, or other date specified by the Department.

Amended by R.1988 d.90, effective February 16, 1988.

Sec: 19 N.J.R. 703(a), 20 N.J.R. 388(a).

Information by employer is mandatory 30 days of notification or other date specified by department.

7:1G-5.3 Updating of ESI Survey

(a) Every employer shall update the Emergency Services Information (ESI) Survey for his facility every other year. If there is any significant change during a nonreporting year in the information reported on his ESI Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the ESI Survey for his facility every year.

7:1G-5.4 (Reserved)

Repealed by R.1988 d.89, effective February 16, 1988.

Sec: 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.

(f) for those employees with enforcement responsibilities, instruction in the identification and clear and concise expression of the elements of violations in notices of civil administrative penalty assessments;

(4) The Office of Administrative Law, with particular emphasis upon:

(a) the role of the Office of Administrative Law in government; and

(b) for those employees with enforcement responsibilities, instruction in the rules of the Office of Administrative Law concerning civil administrative penalty proceedings;

(5) The provisions of the New Jersey Tort Claims Act, with particular emphasis upon the duties and liabilities of government employees thereunder;

(6) Training in the provisions of the particular environmental laws, rules and regulations affecting the duties assigned to the individual employee.

b. Within ninety days of the effective date of P.L. , (C.) (pending in the Legislature as this bill), the Commissioner of the Department of Environmental Protection and Energy shall implement a plan under which the Commissioner shall cause and require each employee of the Department of Environmental Protection and Energy to complete the course of instruction set forth in (a) above, as follows: one-twelfth the number of the employees shall complete the course within each thirty-day period following implementation of the plan until all of the employees shall have completed the course. New employees of the Department of Environmental Protection and Energy shall complete the course within one hundred twenty days of commencement of employment.

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governmental units. Affected by the rule are the 567 municipalities, 21 counties, over 220 utility authorities and over 180 fire districts of the state. Failure to readopt these rules might result in financial instability of local governments throughout the State.

The rules are intended to protect the citizens of the State by overseeing the financial activities of the agencies conducting public business on their behalf. They were, in part, initially precipitated by bankruptcies and fiscal mismanagement in the 1930's. Those events were even presaged by statutory authority granted to the Department of Municipal Accounts in the early 1920's. The rules are part of the basic foundation of State oversight of local government unit fiscal integrity.

Periodically, a public entity is mismanaged or is damaged by corrupt officials. While an uncommon occurrence, the existence of the rules promulgated by the Local Finance Board in this and other chapters have a salutary influence, and acts as a preventative and precautionary vehicle against mismanagement and corruption in public agencies.

As these procedures have been in place for many years, the readoption will cause little or no impact on the regulated community or the public. The agencies have worked with them and understand their purposes. Little, if any comment, either positive or negative is anticipated, as there is little impact on the parties.

Economic Impact

Ultimately the public pays the costs of the rule through fees and taxes charged by the public agencies. Because the rules have been in effect for many years, these costs are part of the basic operating practices of the agencies. Agencies affected are noted above in Social Impact.

There is no statistical data that relates to these rules and their readoption, nor is there a specific statement of their impact on funding sources. However, as they are a part of the regulatory schema of the State's oversight of local units, their cost is determined to be necessary for protection of the public interest.

Because there are no fees being established or continued, nor new procedural or technical requirements being imposed, there will be no economic changes as a result of the readoption of these rules. While compliance with the rules may involve costs to the taxpayers, those costs are overshadowed by the resulting fiscal security. Failure to readopt the rules would remove many of the procedures that now protect New Jersey taxpayers against fiscal mismanagement of local tax dollars.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because rules proposed for readoption do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules affect only the regulation of local government units.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:30.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Regulations Proposed Amendments: N.J.A.C. 7:1G-1 through 5 and 7

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 34:5A-1 et seq., 13:1D-1 et seq. and 52:27D-223.

DEPE Docket Number: 24-93-03.

Proposal Number: PRN 1993-230.

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A public hearing will be held at 9:30 A.M. on Friday, May 21, 1993 at:

New Jersey Department of Environmental Protection and Energy
401 E. State Street
First Floor Hearing Room
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by June 19, 1993, to:

Janis E. Hoagland, Esq.
New Jersey Department of Environmental Protection and Energy
Office of Legal Affairs
401 E. State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (the Act), became effective on August 29, 1984, and established a comprehensive program for the disclosure of information to the Departments of Health and of Environmental Protection and Energy by designated categories of employers about hazardous substances in the workplace and the community, and provides for public access to this information.

In accordance with the Act, the Department of Environmental Protection and Energy (Department) developed a list of Environmental Hazardous Substances (EHSs) and prepared and distributed a two-part Environmental Survey to collect information on these substances and to provide this collected information to the public. The Environmental Survey provides chemical inventory as well as environmental release and waste transfer information concerning EHSs at a facility. The Department also promulgated regulations at N.J.A.C. 7:1G-5.1, 5.2 and 5.3 for an Emergency Services Information Survey (ESIS). The purpose of the ESIS was to collect chemical inventory information about hazardous materials and provide this information to emergency responders. The U.S. Department of Transportation (USDOT) Hazardous Materials List (49 C.F.R. 172.101-102) was adopted as the list of substances subject to ESIS reporting.

In October 1986, the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law. Title III of SARA, known as the Emergency Planning and Community Right to Know Act of 1986, established requirements for Federal, state and local governments and industry concerning emergency planning and community right to know reporting on extremely hazardous substances and toxic chemicals. Pursuant to Section 312 of Title III, a facility which has hazardous chemicals present during the calendar year in amounts equal to or exceeding specified threshold quantities must report such substances by March 1st of the following year. In addition, pursuant to Section 313 of Title III, a facility which manufactures, processes or otherwise uses certain toxic chemicals exceeding specified threshold quantities must report environmental release information concerning such toxic chemicals by July 1st of the following year. In New Jersey, these requirements apply in addition to the Environmental Survey's chemical inventory and environmental release reporting mandates of the Worker and Community Right to Know Act.

In 1987, the Department consolidated the chemical inventory reporting portion of the Environmental Survey, the ESIS and Section 312 of SARA into a single reporting form called the "Community Right to Know Survey." The combined form eliminated duplicative reporting and is still in use today. Environmental release, waste transfer and throughput information portions of the Environmental Survey are collected on the "Release and Pollution Prevention Report."

The Department is proposing changes to the Worker and Community Right to Know regulations (N.J.A.C. 7:1G) to increase reporting efficiency, clarify the requirements for reporting, and revise the penalties for non-compliance. The Department also proposes amendments to reflect changes in the Community Right to Know program brought about by the enactment of SARA and the New Jersey Pollution Prevention Act of 1991.

The Department is proposing to add and alter definitions in section N.J.A.C. 7:1G-1.2. On March 1, 1993 (25 N.J.R. 858(a)) the Department proposed an amendment to the definition of Environmental Survey to reflect that the Community Right to Know Survey and the Release and

Pollution Prevention Report are components of that survey and to define those surveys. These amendments appear in this proposal as well since the initial proposal is not yet adopted. The definition of "employer" is being amended to indicate that a person engaged in a business activity covered under the Act may or may not have employees, and to indicate changes which were made to the list of Standard Industrial Classification (SIC) codes through an amendment to the Act (P.L. 1985, c.543; N.J.S.A. 34:5A-3). This amendment added and deleted several SIC codes to the list of those covered under the Act when it was originally passed in 1983. The amended definition of employer also includes several SIC code redesignations made by the Federal Office of Management and Budget when its Standard Industrial Classification manual was updated in the late 1980's. The changes being proposed do not expand coverage under the Act; rather, they reflect changes that have already been made and are currently being implemented.

The Department is defining the term "Local Emergency Planning Committee" necessitated by the enactment of Title III of SARA. The Department is proposing to define the terms "administrative order," "designated county lead agency," "hazard code," "hazardous waste," "Environmental Hazardous Substance Number," "inventory range," "inventory range code," and "technically qualified person." The definition of "research and development (R&D) laboratory" has been clarified to specify that, for the purpose of chemical inventory reporting on the Community Right to Know Survey, more than 50 percent of the work time in the area designated as an R&D laboratory must be devoted to research and development activities.

The Department is proposing to add a burden of proof clause at N.J.A.C. 7:1G-1.3. This will specify that the onus is on the employer to demonstrate and provide clarification of reported information or documentation to the Department to prove eligibility for an exemption.

Proposed new section N.J.A.C. 7:1G-1.4 specifies who may certify the accuracy of submitted information and standardizes the language to be used in the certification to conform with that used in other of the Department's environmental programs.

As authorized by N.J.S.A. 13:1D-9 and N.J.S.A. 34:5A-29b, proposed new section N.J.A.C. 7:1G-1.5 gives notice to an employer that a representative of the Department has the right to enter his facility to conduct an unannounced inspection for determining compliance.

Proposed new section N.J.A.C. 7:1G-1.6 declares that the regulations are severable in the event that any provision of the regulations is found to be invalid.

The Department is proposing significant changes to subchapters 2, 3, 4 and 5. Proposed amendments to subchapter 2 will revise the list of Environmental Hazardous Substances subject to Right to Know reporting. The existing subchapters 4 and 5 concerning the Emergency Services Information Survey and the use of Federal USDOT Hazardous Materials Tables used for ESIS reporting are being deleted since the ESIS has been rendered unnecessary by the Community Right to Know Survey and certain classes of USDOT hazardous materials are being incorporated into the EHS list. Subchapter 3 is being expanded to specify Community Right to Know Survey reporting requirements. This subchapter will also include exemptions to reporting including thresholds that must be met before reporting is required.

A new subchapter 4 is being proposed to list requirements for environmental release and pollution prevention reporting. A new subchapter 5 is proposed to insure proper distribution of the Community Right to Know Survey and Release and Pollution Prevention Report components of the Environmental Survey.

The Department proposes to amend N.J.A.C. 7:1G-2.1 to reflect the inclusion of the following substances as EHSs subject to chemical inventory reporting:

- toxic chemicals listed in SARA Title III, Section 313;
- selected substances used for the Industrial Survey (N.J.A.C. 7:1F-Appendix A);
- Extremely Hazardous Substances listed in SARA, Title III, Section 302;
- Class 1 explosives and Class 7 radioactive materials on the USDOT Hazardous Materials Tables (49 CFR 171);
- Unusually Hazardous Substances pursuant to N.J.S.A. 52:27D-223; and
- Hazardous substances that are added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K-3.5.

In adding the phrase "as from time to time supplemented or amended" to the Federal lists being incorporated into the EHS list, the Department

is specifying that additions or deletions of chemicals to those lists result in similar changes to the EHS list without the need for rulemaking.

The Department is amending the EHS list to add the SARA 313 toxic chemicals and all substances on the Industrial Survey including those substances not originally included on the EHS pursuant to the changes to the Act at N.J.S.A. 34:5A-4 made when the Pollution Prevention Act was passed.

The Department is also incorporating SARA 302 chemicals into the EHS list to conform the State's program requirements to those of the Federal program. The Department is also establishing an Unusually Hazardous Substances List pursuant to N.J.S.A. 52:27D-1 et seq. defined by that Act, these substances become hazardous for fire and the community when exposed to fire.

The Department proposes to add language in N.J.A.C. 7:1G-4 to add a new N.J.A.C. 7:1G-4 to clarify the information required for completion of each component of the Environmental Survey. The changes clarify that the Community Right to Know survey portion is for chemical inventory reporting and the Release and Pollution Prevention Report portion is used for reporting of environmental release transfers of EHSs.

The proposed changes to the topics covered in existing subchapters 4 and 5 are noteworthy. First, the Department is proposing to repeal existing program policy by repealing the ESIS (subchapter 5). The survey, originally adopted to provide emergency responders with information concerning hazardous materials, is no longer being used to collect that information. Instead, the Department enlarged the scope of the Community Right to Know Survey to eliminate the need for employers to file two separate reports containing nearly identical information. The Department is also proposing to repeal subchapter 4 Hazardous Materials List. This change is being made for several reasons. The USDOT Hazardous Materials List was adopted for use with the ESIS, which is now obsolete. Recent changes to the Act made a time the Pollution Prevention Act was passed (August 1991), add the EHS list, specific chemicals and chemical categories from the SARA 313 list of toxic chemicals and chemicals from the or Industrial Survey list not already covered under the program. Changes to the list of SARA 313 toxic chemicals will now automatically be incorporated into the EHS list. Two separate petitions have been filed with the Federal government to place additional chemicals on the SARA 313 toxic chemicals list, and hence to the EHS list. In addition, the passage of pending Federal Right to Know More legislation will further expand the SARA 313 list. In order to better conform the State program to the Federal program to facilitate consistency and efficiency in reporting, and to assure that only substances presenting demonstrated hazard to public health and safety and the environment are subject to reporting requirements, the Department is proposing to delete the hazardous materials on the USDOT Tables from the lists of reportable substances for Community Right to Know reporting. The Department may, however, evaluate individual substances on the USDOT Hazardous Materials Table, on a case by case basis, to determine the need to add them to the EHS list through the rulemaking process. The Department is proposing to incorporate into the EHS list, two classes of USDOT hazardous materials, explosives and radioactive substances, in this proposal. The Department believes these substances pose serious risks to emergency responders and the community.

The Department is proposing to add a new section N.J.A.C. 7:1G-1.3 listing exemptions to Community Right to Know reporting requirements. Specifically, the Department is proposing to add threshold provisions below which EHSs need not be reported on the survey. The Department proposes that for certain substances which currently do not have a threshold established under section 302 of SARA Title III, the reporting of quantities under 500 pounds is not required. The Department believes that small quantities of EHSs are contained in many products in use by industry, and that a default level of risk due to these quantities assumed by emergency responders. These EHSs may be found in small amounts of cleaners, paints, etc., which are normally associated with maintenance and general office functions at a facility. The Department believes that the benefit derived from the collection of information concerning small quantities of hazardous substances in these circumstances is not nearly commensurate with costs incurred by the regulatory community and the Department in reporting, collecting and processing this data. In this situation, the information collected is considered of little value for emergency planning or response purposes.

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The Department has considered that there may be instances where hazardous substances may pose a threat to human health or the environment when present at quantities less than 500 pounds. For reporting of these substances, the Department will rely on the separate Federal requirement to report any Extremely Hazardous Substances listed at Section 302 of SARA at the Threshold Planning Quantity if it is less than 500 pounds. This reporting requirement for Extremely Hazardous Substances is already in effect in New Jersey and is now being satisfied by use of the Community Right to Know Survey for reporting. In addition, the Department is proposing to require reporting of USDOT Class 1 explosives and Class 7 radioactive materials at zero threshold or at any quantity, due to the high level of risk these materials pose in a fire.

In proposing the threshold exemptions at N.J.A.C. 7:1G-3.1, the Department limits the exemptions to Community Right to Know inventory reporting only. These exemptions in no way eliminate the need for chemical labelling, regulated under N.J.A.C. 8:59 which has been established to protect the community and public worker safety. Therefore, the amendment proposed at N.J.A.C. 7:1G-3.2(b) codifies the limit of the exemption only to CRTK reporting.

The Department is proposing to codify reporting exemptions at N.J.A.C. 7:1G-3.2. This section also discusses exemptions to the annual Right to Know fee assessment established pursuant to the Act. It specifies that employers who do not use, store or manufacture hazardous substances are exempt from the annual fee assessment as long as they advise the Department of their status on their annual survey. However, employers claiming reporting exemptions because their EHSs do not meet or exceed threshold quantities or because the employer has been granted a research and development laboratory exemption, are users of EHSs and are subject to the fee assessment. In addition, the Department is proposing to exempt employers engaged only in general office activities from the requirement to file annual surveys and the fee assessment once they notify the Department of their status.

The Department is also proposing rules at a new subchapter 4 concerning the completion and submittal of the Release and Pollution Prevention Report. The Release and Pollution Prevention Report is also known as Part II of the Environmental Survey and deals with the release of EHSs to the environment, materials throughput and waste transfer data. It should be noted that the Department used the Supplemental Information Report (DEQ-100) to collect this information in 1987. The DEQ-114 form (Release and Source Reduction Report) replaced the DEQ-100 form in 1990 when pollution prevention questions were added to the form. The adoption of regulations codifying requirements for Release and Pollution Prevention information is particularly important since this reporting form is expected to also be used for pollution prevention reporting pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D). Proposed new rule N.J.A.C. 7:1G-4.1 states the information requirements for the Release and Pollution Prevention Report and specifies that the thresholds for reporting shall be established pursuant to the Pollution Prevention Act. The Department is taking this reporting approach to maximize the usefulness of the information collected and minimize the reporting burden on the regulated community.

The Department is proposing to add a new subchapter 5 which contains the due dates for reporting and the requirements for distributing the Community Right to Know Survey and the Release and Pollution Prevention Report.

If the Department is to meet the public health protection goals of the Worker and Community Right to Know Act, it is essential that all employers covered by the Act comply with its mandates by submitting complete and accurate hazardous substance information to the Department. To this end, the Department is proposing to amend N.J.A.C. 7:1G-7. The proposed changes to N.J.A.C. 7:1G-7 have two major purposes: (1) to clarify the Department's existing Civil Administrative enforcement authority, and (2) to establish new Civil Administrative Penalties for non-compliance. The amendment at N.J.A.C. 7:1G-7.1 was added to provide for the issuance of Administrative Orders and Notices of Civil Administrative Penalties and cites N.J.S.A. 34:5A-31(a) and (b) as the enabling legislation. N.J.A.C. 7:1G-7.2 is being deleted and reserved for future use, with the exception of the definition of "Administrative Order" which will be moved to the general definition section at N.J.A.C. 7:1G-1.2. The proposed amendment to N.J.A.C. 7:1G-7.3 details the administrative enforcement powers available to the Commissioner pursuant to N.J.S.A. 34:5A-31(a), (b) and (d). It contains new language expressly providing for the issuance of administrative orders to compel compliance with the act or its implementing rules or regulations and

also specifies the civil administrative penalties may be assessed in conjunction with or independent of such administrative order. N.J.A.C. 7:1G-7.4 is being amended to reflect the conditions under which penalties may be compromised. Additionally, the proposed amendment of N.J.A.C. 7:1G-7.7 and the repeal of N.J.A.C. 7:1G-7.8, 7.9 and 7.10 eliminate the existing penalty assessment rules and replace them with new penalty assessments. The existing penalty rule provides for the assessment of penalties for time-related and non-time related infractions. Under that current rule, penalty assessments for non-time related infractions necessitate the use of the formula involving "seriousness" and "type of violation" factors. Because this format requires calculations, employers are not immediately aware of the precise monetary consequences of noncompliance. Confusion on the part of covered employers may lead them to underestimate the impact of their noncompliance. This is of concern to the Department because non-time related violations involve the non-reporting or inaccurate reporting of reportable substances and are often serious in nature.

The Department recognizes that these proposed amendments and new rules will be of interest to a wide spectrum of citizens, and it anticipates receiving comments addressing many provisions of the rules as proposed. Accordingly, the Department reserves the right in the adoption of these rules to include fewer than all proposed provisions.

Social Impact

New Jersey, the most densely populated state in the country, is also a major producer of chemicals. Many of the State's residential areas are also industrial zones and are frequently intermingled with industrial facilities. The proposed amendments and new rules are expected to have a positive social impact by increasing the amount of meaningful information collected and available to the public about hazards posed by chemical substances and by eliminating the reporting of small quantities of these substances which poses no significant threat to health, safety or the environment. The rules will foster the assembly of the information by clarifying the reporting requirements for the Community Right to Know Survey and the Release and Pollution Prevention Report components of the Environmental Survey and the dates each portion is due. Coordinating State and Federal requirements will have a positive social impact by educating the regulated community about the requirements of both programs and synchronizing the State and Federal reporting requirements.

The penalties set forth in proposed N.J.A.C. 7:1G-7.7 will induce employers to comply with the requirements of the Worker and Community Right to Know Act and will encourage the submission of timely, complete and accurate Community Right to Know Surveys and Release and Pollution Prevention Reports to the Department. The data that will be available to the Department as a result of increased compliance with the Act will enable the Department to more accurately determine the location and quantities of hazardous substances used, stored, released or disposed of in the State and enable the Department to make this information available to the public.

Chemical inventory and environmental release information concerning hazardous substances is valuable for many purposes. It can help the general public to become more aware of hazardous substances in the community. It can also help in prioritizing the planning and development of safety and response programs by facilitating the identification of those businesses which pose the highest risk to community safety and the environment. Information on releases of hazardous substances can assist local, county and State officials in the development of legislative and regulatory programs for pollution prevention.

Economic Impact

These proposed amendments and new rules impose no additional requirements on the regulated community; therefore, no economic burden is introduced by these amendments and new rules. However, the revised rules would have a positive economic impact in that some regulated facilities will need to invest less time to complete the Community Right to Know survey form, which will lower existing costs. This is due to the reporting thresholds proposed by the Department, which will alleviate the need for facilities to report small quantities of hazardous substances, and the repeal of the USDOT hazardous materials list of chemicals subject to reporting requirements.

The proposed amendments and new rules will have a negative economic impact only on those employers who do not submit a timely, accurate or complete environmental survey. The extent of the cost of non-compliance on such employers will depend on the type of violation. Under proposed N.J.A.C. 7:1G-7.7, an employer who fails to submit,

is late in submitting or fails to submit clarifying information when requested to do so by the Department, is subject to specified penalties ranging from \$500.00 to \$1,000. Further, under proposed N.J.A.C. 7:1G-7.7(c) an employer's failure to report all regulated substances may result in the imposition of a penalty ranging from \$500.00 to \$1,000. Penalties will also be assessed in the amount of \$500.00 to facilities which fail to maintain or make available copies of current surveys at their facility, or which fail to report to the required agencies pursuant to N.J.S.A. 34:5A-7.

Environmental Impact

The promulgation of these amended and new rules is expected to have a positive impact on the environment. More meaningful information concerning the types and quantities of hazardous substances which are manufactured, processed, stored, used, or released into the environment will be available to the Department. The substantial penalties set forth in proposed N.J.A.C. 7:1G-7.7 will increase the number of timely, complete and accurate Community Right to Know Surveys submitted to the Department. This information will better enable the Department to monitor the levels of hazardous substances which are released into the environment and develop strategies for promoting the reduction of their use and hence, reduce pollution at its source. The hazardous substances inventory and release information is being incorporated into several databases that meet the needs of different users for a variety of environmental protection and public health and safety programs.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.), the Department has determined that the proposed amendments will not impose additional recordkeeping, reporting or other compliance requirements on small businesses. Currently, approximately 35,000 employers are subject to reporting requirements under the Community Right to Know program. For many employers, similar information and reporting is required under Sections 302, 312 and 313 of SARA. Most of these employers are small businesses having fewer than 100 employees. For covered businesses there are expenses associated with computing the inventory and completing the Community Right to Know and/or Release and Pollution Prevention Report portions of the Environmental Survey. These expenses may include the hiring of consultants where the hazardous substances inventory is complex or taking staff from regular work assignments to complete the reporting forms. The extent of these costs is dependent on a number of factors including the complexity of the businesses' activities. Therefore, an exact estimate is not possible, but costs could range between \$100.00 and \$1,000.

Most of the businesses that have not complied with the Act are small businesses having fewer than 100 employees and, as such, are defined as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules do not impose any new reporting, recordkeeping or other compliance requirements on small businesses. Rather, the proposed amendments and new rules clarify reporting mandates, incorporate a threshold for reporting and reduce the number of chemicals subject to reporting which may eliminate the need for many small businesses to report. These amendments and new rules also provide the mechanism necessary to enforce the existing statutory requirements and incentives for voluntary compliance. The proposed amendments and new rules also make it easier to determine the costs of non-compliance.

In order for the rules to serve their intended purpose of providing meaningful information about hazardous substances in the community to the public and emergency responders, it is essential that broad based information be collected. The Department has balanced the need to protect public health and the environment against the economic impact of the rules and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and safety. Therefore, no exemption from coverage is provided for small businesses.

Full text of the proposal follows (additions shown in boldface thus; deletions shown in brackets [thus]):

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.

...

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

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

"Community Right to Know Survey" means the reporting which combines the chemical inventory reporting requirements: the Environmental Survey Part I, the Emergency Services Information Survey, 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.

"Department" means the New Jersey Department of Environmental Protection and Energy, however, for the purpose of N.J. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and Energy and the State Department of Health, 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.

"Emergency Service Information Survey" or "ESI Survey" means a written form prepared by the Department of Environmental Protection and Energy and transmitted to an employer, on which the employer shall provide certain information concerning each of the Hazardous Materials at facility, including, but not limited to, the following: the name of Hazardous Material and its United States Department of Transportation identification number, the United States Department of Transportation designated hazard class, the approximate range the maximum inventory quantity, the units of measure, the methods of storage or types of containers, and whether the substance is present in a mixture.]

"Employee" means a worker at a facility operated by an employer as defined in this section on a paid or unpaid basis and who is 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 whether he pays employees, in the State, engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within [Major Group numbers 20 through 39 inclusive (manufacturing industries) numbers 46 through 49 inclusive (pipelines, transportation services, communications, and electric, gas, and sanitary services), number 75 (wholesale trade, nondurable goods), number 76 (automotive repair services, and garages), number 77 (miscellaneous repair services), number 80 (health services), number 82 (educational services), a number 84 (museums, art galleries, botanical and zoological gardens). For the purposes of N.J.A.C. 7:1G "employer" means the State and local governments, or agency, authority, department, bureau, or instrumentality thereof.] Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services; Major Group Numbers 20-39 inclusive (Manufacturing Industries); Major Group Number 45 (Transportation by Air), or Industry Numbers 4512—Scheduled Air Transport, 4513—Air Courier Services, and Group Number 458—Airports, Flying Field and Airport Terminal Services; Major Group Number 46 (Pipeline except Natural Gas); Major Group Number 47, only Group Number 473—Arrangement of Transportation of Freight and Cargo, 474 Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation), Major Group Number 48 (Communication: only Group Numbers 481—Telephone Communications, and 482—Telegraph and other Message Communications—Major Group Number 49 (Electric, Gas, and Sanitary Services); Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishments

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Equipment and Supplies, and 5093—Scrap and Waste Materials; Major Group Number 51 (Wholesale Trade, Nondurable goods), only Group Numbers 512—Drugs, Drug Proprietaries, and Drugist's Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Non-durable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers—(New and Used), 552—Motor Vehicle Dealers (Used Only), and 554—Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers; Major Group Number 75 (Automotive Repair, Services, and Parking), only Group Number 753—Automotive Repair Shops; Major Group number 76 (Miscellaneous Repair Services) only Industry Number 7692—Welding Repair; Major Group Number 80 (Health Services), only Group Numbers 806—Hospitals; Major Group Number 82 (Educational Services) only Group Numbers 821—Elementary and Secondary schools, 822—Colleges, Universities, and Professional Schools, and Junior Colleges and Industry Number 8249—Vocational Schools, not elsewhere classified, and Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734—Testing Laboratories. Employer also means State and Local Governments, or any agency, authority, department, bureau or instrumentality thereof.

"Environmental Hazardous Substance" or "EHS" means any substance designated by the Department in N.J.A.C. 7:1G-2.

"Environmental Hazardous Substance Number" means the unique number assigned by the Department to each EHS.

"Environmental Survey" means a written form, entitled Part I or the Community Right to Know Survey, and Part II or the Release and Pollution Prevention Report [as the case may be], prepared by the Department of Environmental Protection and Energy and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility, including, but not limited to, the following:

- 1.-10. (No change.)
11. The total discharge of the environmental hazardous substance into publicly owned treatment works; [and]
12. The quantity and methods of disposal, of any wastes containing an environmental hazardous substance, the methods of on-site storage of these wastes, the location or locations of the final disposal site for these wastes, and the identity of the hauler of the waste[.];
13. The total quantity of EHSs generated at the facility, including hazardous substances generated as nonproduct output;
14. The quantity of EHSs recycled on-site and off-site; and
15. Information pertaining to pollution prevention activities at the facility.

"Extremely hazardous substances" means chemicals on the list developed by the USEPA pursuant to Section 302 of the Federal Superfund Amendments and Reauthorization Act (SARA).

["Hazardous Material" means any substance designated by the Department in N.J.A.C. 7:1G-4.

"Hazardous Materials List" means the list of Hazardous Materials designated by the Department in N.J.A.C. 7:1G-4.]

"Hazardous substance" means any substance defined by the State Department of Health in N.J.A.C. 8:59-9.

"Hazard Code" means a number assigned by the Department to represent each hazard category established by the US Environmental Protection Agency pursuant to the Superfund Amendments and Reauthorization Act (SARA), Title III.

"Hazardous waste" means any solid waste defined as hazardous waste by the Department pursuant to P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.)

"Inventory range" means the upper and lower limits of the quantity of a hazardous substance used, stored or manufactured on site.

"Inventory range code" is a representation of an inventory range for reportable hazardous substances.

"Local Emergency Planning Committee" means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

"Research and development laboratory" 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 environmental hazardous substances are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Community Right to Know Survey, "primarily" means greater than 50 percent.

"Right to Know Survey" means a survey prepared by the Department of Health and completed by a public sector employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.

"Superfund Amendments and Reauthorization Act" or "SARA" means the Federal Act (PL 99-499) establishing the "Emergency Planning and Community Right to Know Act of 1986" at Title III (42 USC 11001).

"Technically qualified person" in a research and development (R&D) laboratory means a person who has a bachelors degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to the hazardous substances used in the R&D laboratory.

"Trade secret docket number" means a code number temporarily or permanently assigned to the identity of information on the [environmental survey] Community Right to Know Survey or Release and Pollution Prevention Report by the Department of Environmental Protection and Energy.

"Transmit" means to send via first-class mail or otherwise distribute.

"Unusually hazardous" means likely to explode due to a highly volatile nature, a propensity to produce toxic fumes, or a tendency to react with water or common firefighting chemicals and any other property which the Department of Environmental Protection and Energy determines will make a substance an uncommon danger to firefighters and the surrounding community in the event of its exposure to a fire.

["Workplace Hazardous Substance List" means the list of hazardous substances developed by the Department of Health pursuant to N.J.S.A. 34:5A-5.

"Workplace survey" means a written document, prepared by the Department of health and completed by an Employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.]

7:1G-1.3 Burden of proof for exemptions

(a) A person claiming that they qualify for any exemption under this chapter or that they are not otherwise subject to the rules of this chapter shall demonstrate and appropriately document entitlement to such exemption.

(b) Employers claiming that a certain chemical, hazardous substance, or mixture is not an EHS, as designated or delineated in N.J.A.C. 7:1G-2, shall, at a minimum, submit in support of such claim, a Material Safety Data Sheet (MSDS) for the substance or mixture in question.

(c) Employers shall, upon request, submit information to the Department to clarify any statement made on the Community Right to Know Survey, Release and Pollution Prevention Report or in a request for an exemption. This information may include, but is not limited to: purchase records, sales records, production records, inventory records, or other business records or documents utilized by the employer or person. Submission of the clarifying information by the employer to the Department is required within 30 days of notification.

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7:1G-1.4 Certification

An employer shall submit a Community Right to Know Survey and/or Release and Pollution Prevention Report, or a Research and Development laboratory exemption to the Department which shall include an original certification signed by the employer or a duly authorized representative, which states the following:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete."

7:1G-1.5 Department right of entrance and inspection

Pursuant to N.J.S.A. 13:1D-9 and 34:5A-29b, the Department shall have the authority to enter any business premises or building during normal hours or other reasonable time to determine compliance with the rules and regulations of the Department hereunder. Failure to permit such inspection after presentation of official credentials is an offense punishable under N.J.S.A. 2C:29-1.

7:1G-1.6 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

7:1G-2.1 Designation of [substances] environmental hazardous substances (EHSs)

[The following substances and corresponding Chemical Abstract Services (CAS) numbers are designated as EHSs pursuant to the Act. Each substance has further been identified according to the classifications, in N.J.A.C. 7:1G-2.2. Substances may have numerous synonyms which are not included herein.]

Chemical	CAS Number	Group Number
ACETALDEHYDE	75-07-0	02
ACROLEIN	107-02-8	02
ACRYLIC ACID	79-10-7	01
ACRYLONITRILE	107-13-1	23
ALDRIN	309-00-2	28
ALLYL CHLORIDE	107-05-1	15
2-AMINOANTHRAQUINONE	117-79-3	31
ANILINE	62-53-3	06
O-ANISIDINE	90-04-0	06
ANTHRACENE	120-12-7	07
ANTIMONY AND COMPOUNDS	7440-36-0	19
ARSENIC AND COMPOUNDS	7440-38-2	19
ASBESTOS	1332-21-4	19
BENZAL CHLORIDE	98-87-3	16
BENZENE	71-43-2	07
BENZOTRICHLORIDE	98-07-7	16
BENZOYL CHLORIDE	98-88-4	01
BENZOYL PEROXIDE	94-36-0	27
BENZYL CHLORIDE	100-44-7	16
BERYLLIUM AND COMPOUNDS	7440-41-7	19
BIPHENYL	92-52-4	07
BIS(2-CHLORO-1-METHYLETHYL)ETHER	108-60-1	13
BIS(2-ETHYLHEXYL)ADIPATE	103-23-1	12
BIS(2-ETHYLHEXYL)PHTHALATE	117-81-7	12
BROMINE	7726-95-6	34
BUTADIENE	106-99-0	03
1-BUTYLENE OXIDE	106-88-7	11
C.I. ACID GREEN 3	4680-78-8	10
C.I. BASIC GREEN 4	569-64-2	10
C.I. BASIC RED 1	989-38-8	10
C.I. DIRECT BLACK 38	1937-37-7	10
C.I. DIRECT BLUE 6	2602-46-2	10
C.I. DIRECT BROWN 95	16071-86-6	10
C.I. DISPERSE YELLOW 3	2832-40-8	10
C.I. FOOD RED 5	3761-53-3	10
C.I. FOOD RED 15	81-88-9	10

C.I. SOLVENT ORANGE 7	3118-97-6	10
C.I. SOLVENT YELLOW 1	60-09-3	10
C.I. SOLVENT YELLOW 3	97-56-3	10
C.I. SOLVENT YELLOW 14	842-07-9	10
C.I. VAT YELLOW 4	128-66-5	10
CADMIUM AND COMPOUNDS	7440-43-9	19
CAPTAN	133-06-2	28
CARBARYL	63-25-2	28
CARBON TETRACHLORIDE	56-23-5	14
CATECHOL	120-80-9	29
CHLORDANE	57-74-9	28
CHLORINE	7782-50-5	34
CHLOROBENZENE	108-90-7	16
CHLOROFORM	67-66-3	14
CHLOROPRENE	126-99-8	15
CHLOROTHALONIL	1897-45-6	28
CHROMIUM AND COMPOUNDS	7440-47-3	19
COPPER AND COMPOUNDS	7440-50-8	19
P-CRESIDINE	120-71-8	06
CUMENE	98-82-8	07
CUMENE HYDROPEROXIDE	80-15-9	27
CYANIDE COMPOUNDS	57-12-5	19
2,4-D	94-75-7	28
DECABROMODIPHENYL OXIDE	1163-19-5	13
DIALLATE	2303-16-4	28
2,4-DIAMINOANISOLE	615-05-4	06
4,4'-DIAMINODIPHENYL ETHER	101-80-4	13
2,4-DIAMINOTOLUENE	95-80-7	06
1,2-DIBROMOETHANE	106-93-4	14
DI-N-BUTYL PHTHALATE	84-74-2	12
1,2-DICHLOROBENZENE	95-50-1	16
1,2-DICHLOROETHANE	107-06-2	14
1,4-DICHLOROBENZENE	106-46-7	16
3,3'-DICHLOROBENZIDINE	91-94-1	06
DICHLOROMETHANE	75-09-2	14
1,2-DICHLOROPROPANE	78-87-5	14
1,3-DICHLOROPROPYLENE	542-75-6	15
DICHLORVOS	62-73-7	28
DICOFOL	115-32-2	28
DIETHYL PHTHALATE	84-66-2	28
1,1-DIMETHYL HYDRAZINE	57-14-7	17
DIMETHYL PHTHALATE	131-11-3	12
DIMETHYL SULFATE	77-78-1	32
3,3'-DEMETHYLBENZIDINE	119-93-7	06
2,4-DEMETHYLPHENOL	105-67-9	29
2,4-DINITROTOLUENE	121-14-2	24
2,6-DINITROTOLUENE	606-20-2	24
DI-N-OCTYL PHTHALATE	117-84-0	12
1,4-DIOXANE	123-91-1	13
1,2-DIPHENYL HYDRAZINE	122-66-7	17
EPICHLOROHYDRIN	16-89-8	11
ETHYLBENZENE	100-41-4	07
ETHYLENE OXIDE	75-21-8	11
ETHYLENE THIOUREA	96-45-7	33
ETHYLENEIMINE	151-56-4	18
FLUOMETURON	2164-17-2	28
FORMALDEHYDE	50-00-0	02
HEPTACHLOR	76-44-8	28
HEXACHLOROBENZENE	118-74-1	16
HEXACHLOROCYCLOPENTADIENE	77-47-4	15
HEXACHLOROETHANE	67-72-1	14
HEXAMETHYLPHOSPHORAMIDE	680-31-9	30
HYDRAZINE	302-01-2	17
HYDROGEN CHLORIDE	7647-01-0	35
HYDROGEN FLUORIDE	7664-39-3	35
HYDROGEN SULFIDE	7783-06-4	35
HYDROQUINONE	123-31-9	29
LEAD AND COMPOUNDS	7439-92-1	19
LINDANE	58-89-9	28
MANEB	12427-38-2	28
MERCURY AND COMPOUNDS	7439-97-6	19

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METHOXYCHLOR	72-43-5	28
METHYL HYDRAZINE	60-34-4	17
METHYL IODIDE	74-88-4	14
METHYLMETHACRYLATE	80-62-6	12
4,4'-METHYLENE BIS(2-CHLOROANILINE)	101-14-4	06
4,4'-METHYLENEBIS(N,N-DIMETHYL) BENZENAMINE	101-61-1	06
4,4'-METHYLENEDIANILINE	101-77-9	06
METHYL ISOCYANATE	624-83-9	20
NAPHTHYLAMINE	91-29-3	06
1-NAPHTHYLAMINE	134-43-7	06
NICKEL AND COMPOUNDS	7440-02-02	19
5-NITRO-O-ANISIDINE	99-59-2	06
NITROFEN	1836-75-5	28
4-NITROPHENOL	100-02-7	29
2-NITROPROPANE	79-46-9	24
N-NITROSODIPHENYLAMINE	86-30-6	26
PARATHION	56-38-2	28
PENTACHLOROPHENOL	87-86-5	29
PERACETIC ACID	79-21-0	27
PHENOL	108-95-2	29
2-PHENYLPHENOL	90-43-7	29
PHOSGENE	75-44-5	01
PHOSPHORUS TRICHLORIDE	7719-12-2	35
POLYCHLORINATED BIPHENYLS	1336-36-3	16
PROPOXUR	114-26-1	28
PROPYLENE OXIDE	75-56-9	11
QUINOLINE	91-22-5	25
QUINTOZENE	82-68-8	28
SAFROLE	94-59-7	13
STYRENE	100-42-5	07
STYRENE OXIDE	96-09-3	11
1,1,2,2-TETRACHLOROETHANE	79-34-5	14
TETRACHLOROETHYLENE	127-18-4	14
TETRACHLORVINPHOS	961-11-5	28
4,4'-THIODIANILINE	139-65-1	06
THIOUREA	62-56-6	33
TOLUENE	108-88-3	07
TOLUENE-2,4-DIISOCYANATE	584-84-9	20
TOLUENE-2,6-DIISOCYANATE	91-08-7	20
O-TOLUIDINE	95-53-4	06
TOXAPHENE	8001-35-2	28
TRICHLORFON	52-68-6	28
1,2,4-TRICHLOROBENZENE	120-82-1	16
1,1,1-TRICHLOROETHANE	71-55-6	14
1,1,2-TRICHLOROETHANE	70-00-5	14
TRICHLOROETHYLENE	79-01-6	15
TRIFLURALIN	1582-09-8	28
URETHANE	51-79-6	09
VINYLDENE CHLORIDE	75-35-4	15
XYLENES	1330-20-7	07
2,6-XYLIDENE	87-62-7	06
ZINEB	12122-67-7	28]

5. Unusually hazardous substances defined at N.J.A.C. 7:1G-1.2:
i. Unusually hazardous substances as listed below by the Department pursuant to N.J.S.A. 52:27D-223:

Chemical	CAS Number
Boron Trifluoride Etherate	109-63-7
Diethyl Carbamyl Chloride	88-10-8
Diisobutyl Aluminum Hydride	1191-15-7
Triethylborane	97-94-9
Alkyl Aluminums (generic)	109-72-8
Chlorosulfonic Acid	7790-94-5
Lithium Tetrahydroaluminate	16853-85-3
Tert-Butyl Perbenzoate	614-45-9
Ammonium Permanganate	13446-10-1
Cobaltous Nitrate	10141-05-6
Cupric Nitrate	3251-23-8
Dibenzoyl Peroxide	94-36-0
Dichloro-s-Triazinetrione	2782-57-2
Nitrogen Peroxide	10102-44-0
Potassium Chromate	7789-00-6
Sodium Dichloro-s-Triazinetrione	2893-78-9
Thorium Nitrate	13823-29-5
Uranyl Nitrate	36478-76-9
Saran	
PVC	
Lopac	

ii. Hazard Class 1 Explosive Materials listed on the U.S. Department of Transportation Hazardous Materials Table established at 49 CFR §172.101 as from time to time supplemented or amended; and

iii. Hazard Class 7 Radioactive Materials listed on the U.S. Department of Transportation Hazardous Materials Table established at 49 CFR §172.101A as from time to time supplemented or amended; and

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

(b) Chemical inventory reporting on the Community Right to Know Survey shall include all EHSs listed at (a)1 through 5 above.

(c) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of Toxic Chemicals described at (a)1 and 6 above.

7:1G-2.2 [Chemical group and group numbers] (Reserved)

[The groups, and their designated group numbers, to which Environmental Hazardous Substances listed in N.J.A.C. 7:1G-2.1 belong, are designated herein, to reflect similarity in chemical structure, with the exception of Pesticides (Number 28) and Dyes (Number 10), which reflect commercial use:

Group No.	Chemical Group	Group No.	Chemical Group
01	Acids & acid chlorides	18	Imides
02	Aldehydes	19	Inorganics
03	Aliphatic hydrocarbons	20	Isocyanates
04	Amides	21	Ketones
05	Anhydrides	22	Lactams
06	Aromatic amines	23	Nitriles
07	Aromatic hydrocarbons	24	Nitro Compounds
08	Azo Compounds	25	Nitrogen heterocycles
09	Carbamates	26	Nitroso Compounds
10	Dyes	27	Organic peroxides
11	Epoxides	28	Pesticides
12	Esters	29	Phenols
13	Ethers & Lactones	30	Phosphoramides
14	Halogenated alkanes	31	Quinones & Anthraquinones
15	Halogenated alkenes	32	Sulfuric acid esters
16	Halogenated aromatic	33	Thioureas
17	Hydrazines	34	Halogens
		35	Inorganic Acids]

(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, 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 as from time to time supplemented or amended;

3. Chemicals designated as selected substances at N.J.A.C. 7:1F Appendix A for reporting on the Industrial Survey as from time to time supplemented or amended;

4. The following substances adopted pursuant to N.J.S.A. 34:5A-4:

<u>Chemical</u>	<u>CAS number</u>
Amitrol	61-82-5

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SUBCHAPTER 3. [ENVIRONMENTAL] COMMUNITY RIGHT TO KNOW SURVEY

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

[Within 90 days of receipt of Part I or Part II of the Environmental Survey, an employer shall complete the survey concerning each of the Environmental Hazard Substances at his facility, and transmit copy of the completed survey to the Department of Environmental Protection and the health department of the county in which the employer's facility is located (or county clerk if there is no county health department). This deadline shall be extended for an additional period not to exceed 30 days, at the discretion of the Department for good cause shown by the employer.]

(a) An employer shall complete and submit to the Department a Community Right to Know Survey for each facility covered by this chapter 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) An employer shall report on the Community Right to Know Survey, those EHSs that met or exceeded the thresholds listed in (b)1 through 4 below during the reporting year:

1. For EHSs appearing on the SARA Title III Section 302 list of extremely hazardous substances, as referenced in N.J.A.C. 7:1G-2.1(a)2, the Federal threshold of 500 pounds or the threshold planning quantity, whichever is less, present in aggregate at the facility at any one time shall apply.

2. For EHSs appearing on the list of unusually hazardous substances which are identified as explosive or radioactive in N.J.A.C. 7:1G-2.1(a)5ii and iii, a zero threshold shall apply and any quantity thereof shall be reported.

3. For EHSs which do not appear on the list of extremely hazardous substances or unusually hazardous substances as referenced in N.J.A.C. 7:1G-2.1(a)1 and 2.1(a)5ii and iii, a threshold of 500 pounds present in aggregate at the facility at any one time, shall apply.

4. The thresholds for reporting listed in (b)1, 2 and 3 above 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 and 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) 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.

(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.

7:1G-3.2 [Clarification of completed Environmental Survey] Reporting exemptions

[The Department may require an employer to submit informatic clarifying any statement made on Part I and Part II of the Environmental Survey. The Department shall transmit this clarifying information to the county health department (or county clerk if there is no county health department), as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 14 days of notification, or other date specified by the Department.]

(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;

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 Verification 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; and

(6) A signed certification that the information contained in the R&D laboratory exemption application is true, accurate and complete;

3. EHSs which are an integral part of a facility structure or furnishings;

4. EHSs which are the personal property and are for the personal use of an employee are not required to be reported on the Community Right to Know Survey; or

5. Ammunition when on the person of security personnel.

(b) The exemption from reporting at (a) above does not apply to container labeling pursuant to N.J.A.C. 8:59.

(c) An employer exempt from chemical inventory reporting in accordance with (a) above shall complete and return the first page of the Community Right to Know Survey indicating that an exemption from reporting is being claimed.

(d) An employer exempt from chemical inventory reporting in accordance with (a)1 and 2 above is subject to the Right to Know fee assessment pursuant to N.J.S.A. 34:5A-26.

(e) An employer having no EHSs is exempt from the annual Right to Know fee assessment in accordance with N.J.S.A. 34:5A-26.1 provided non-user status is indicated on the annual Community Right to Know Survey transmitted to the Department.

(f) An employer engaged only in administrative office activities is exempt from the annual Right to Know fee assessment and the requirement to annually transmit the Community Right to Know Survey after initial notification to the Department indicating such status is made.

7:1G-3.3 Updating of Environmental Survey

(a) Every employer shall update a complete Part I and II of the Environmental Survey for his facility every other year. If there is any significant change during a nonreporting year in the information

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reported on his Environmental Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the Environmental Survey for his facility every year.

SUBCHAPTER 4. [HAZARDOUS MATERIALS LIST] RELEASE AND POLLUTION PREVENTION REPORT

7:1G-4.1 [Designation of Hazardous Materials] Completion of Release and Pollution Prevention Report

(a) The substances contained in the Optional Materials Table in Title 49 of the code of Federal Regulations, Part 172.102, as amended by publication in the Federal Register, 48 Fed. Reg. Vol. 48, No. 211, pp. 50234-50279 (October 31, 1983) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right To Know Act, P.L. 1983, c.315, N.J.S.A. 34:5A-1 et seq.

(b) The substances contained in the Hazardous Materials Table in Title 49 of the Code of Federal Regulations, Part 172.101, as amended by publication in the Federal Register, 49 Federal Register, Vol. 49, No. 189, pp. 1189, pp. 38133-38134 (September 27, 1984) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L.1992, c.315, N.J.S.A. 34:5A-1 et seq.].

(a) An employer who is subject to the reporting requirements of SARA Title III Section 313, or other criteria established by the Department in accordance with the Administrative Procedures Act, shall submit to the Department a Release and Pollution Prevention Report by July 1 of the year following the reporting year.

(b) An employer shall complete a Release and Pollution Prevention Report subject to the threshold(s) for reporting established pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D).

(c) An employer shall provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey as defined at N.J.A.C. 7:1G-1.2 and any pollution prevention information deemed appropriate pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D-6b) on the Release and Pollution Prevention Report component of the Environmental Survey.

[7:1G-4.2 Amendments to Hazardous Materials List

(a) The Department intends to establish a procedure for annually receiving information, advice, testimony, and recommendations from the Right to Know Advisory Council established pursuant to the Act, the public, and any other interested party, concerning the implementation of the Act. This procedure shall include a mechanism for revising the Hazardous Materials List.

(b) The Department will publish in the New Jersey Register, any revisions by the United States Department of Transportation (USDOT) to the Optional Materials Table and Hazardous Materials Table in Title 49 of the Code of Federal Regulations, as amended. Effective upon such publication in the Register, such amendments by the USDOT shall be incorporated into N.J.A.C. 7:1G-4.1.]

SUBCHAPTER 5. [EMERGENCY SERVICES INFORMATION (ESI) SURVEY] SUBMITTAL OF THE COMMUNITY RIGHT TO KNOW SURVEY AND RELEASE AND POLLUTION PREVENTION REPORT

7:1G-5.1 [Completion of ESI Survey] Survey submittal

[Within 90 days of receipt of an Emergency Services Information survey, an employer shall complete the survey concerning each of the Hazardous Materials at his facility, and transmit a copy of the completed survey to the Department of Environmental Protection, the local fire department and the local police department. This deadline shall be extended for an additional period not to exceed 30 days, at the discretion of the department for good cause shown by the employer.]

(a) An employer subject to reporting under the Worker and Community Right to Know Act who does not meet the Federal

requirements for reporting shall transmit a Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located.

(b) An employer subject only to the reporting requirements of Section 312 of SARA shall transmit an original Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire department and local emergency planning committee.

(c) An employer shall transmit an original completed Release and Pollution Prevention Report to the Department by July 1 of the year following the reporting year. A copy shall also be transmitted to the county lead agency of the county in which the facility is located.

(d) An employer shall retain a copy of the Community Right to Know Survey and/or Release and Pollution Prevention Report at the facility and make it available to facility employees and representatives of the Department.

7:1G-5.2 [Clarification of completed ESI Survey] Submittal of Clarifying Information

[The Department may require an employer to submit information clarifying any statement made on the Emergency Services Information Survey. The Department shall transmit this clarifying information to the local fire department and police department as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 30 days of notification, or other date specified by the Department.]

The Department may require an employer to submit information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report, subject to the trade secret provision of N.J.S.A. 34:5A-15. The Department shall transmit such clarifying information to the county health department, local fire department and police department as it deems necessary. Clarifying information shall be submitted within 30 days of notification, or subsequent date specified by the Department.

[7:1G-5.3 Updating of ESI Survey] (Reserved)

[(a) Every employer shall update the Emergency Services Information (ESI) Survey for his facility every other year. If there is any significant change during a nonreporting year in the information reported on his ESI Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the ESI Survey for his facility every year.]

7:1G-5.4 (Reserved)

SUBCHAPTER 7. [ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES] 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) N.J.S.A. 34:5A-31(a) provides four options for enforcement actions whenever an employer is in violation of the Worker and Community Right to Know Act, or any rule or regulation issued pursuant to the Act. One of the options is to levy a civil administrative penalty in accordance with N.J.S.A. 34:5A-31(d). Under that section, the Commissioner is authorized to assess a 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 receipt of an order from the Department. N.J.S.A. 34:5A-31(d) further provides that, "Any amount imposed under this subpara-

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graph shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration." This subchapter establishes those ranges.]

(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 [assessment of civil administrative penalties] 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 [that] this Act by the Department of Environmental Protection and Energy.

7:1G-7.2 [Definitions] (Reserved)

[In addition to the definitions set forth in N.J.A.C. 7:1G-1.2, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Completed survey" as used in N.J.S.A. 34:5A-7 and this subchapter, means a survey form entirely filled out, and free from deficiencies, errors or omissions.

"Inventory range" means the range in which the quantity of the hazardous substance and material at the facility is reported on the Environmental Survey or on the Emergency Services Information Survey.

"Non-time related violation" means a violation other than a time related violation. These may occur when there is a failure to carry out a duty imposed by statute, order, or regulation. Examples of such violations include the failure to list all reportable substances and misrepresentation of information.

"Order" means any and all orders issued or entered into by the Department including, but limited to, Administrative Orders and Administrative Consent Orders.

"Reportable substance" means those substances and/or materials which are on the Environmental Hazardous Substance List set forth in N.J.A.C. 7:1G-2 or the Hazardous Materials List set forth in N.J.A.C. 7:1G-4.

"Time related violation" means that type of violation that occurs when there is a failure to meet a time limit or deadline imposed by statute, order or regulation. Examples of such violation are failure to submit the Environmental Survey or Emergency Services Information Survey within the required time frame and failure to supply clarifying information as requested by the Department within the required time frame.]

7:1G-7.3 Procedures for [assessment of civil administrative penalties] the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments

[(a) Before any assessment is levied pursuant to this subchapter, the alleged violator shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the statute, regulation, and/or order violated;
2. A concise statement of the facts alleged to constitute the violation;
3. A statement of the amount of civil administrative penalties sought to be imposed; and
4. A statement of the alleged violator's right to an adjudicatory hearing and notice of the procedure for requesting an adjudicatory hearing.]

(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 rule 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 procedures for requesting an adjudicatory hearing.

(b) A [notice of assessment of a civil administrative penalty] Notice of Civil Administrative Penalty Assessment may be issued separately or as part of an [administrative order] Administrative Order issued pursuant to N.J.S.A. 34:5A-31(b) requiring the alleged violator to take [affirmative] 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 the 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] Notice of Civil Administrative Penalty Assessment within which to deliver a written request for [a] adjudicatory hearing to:

[Assistant Director
Environmental Enforcement
Division of Environmental Quality
CN027
Trenton, New Jersey 08625]
Office of Legal Affairs
Attention: Adjudicatory Hearings
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

(d)-(f) (No change.)

(g) The adjudicatory hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Unified Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(h) After [a] an adjudicatory hearing, and upon finding that a violation has occurred, the Commissioner or his or her authorized representative may issue a final assessment of the amount of [fine] penalty specified in the notice or such lesser amount as [may be assessed pursuant to the provisions on compromise of N.J.S.A. 34:5A-31(d)]. If no hearing is requested or if the Department denies the request, the original [notice of] Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a final order upon the 21st calendar day following its receipt.

(i) Payment of an assessed civil administrative penalty is due when a final order is issued by the Commissioner or the notice becomes a final order. If the alleged violator fails to pay the penalty to the Department or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 34:5A-31(e) for a civil penalty not to exceed \$2,500 for each day during which the violation continues.

7:1G-7.4 Compromise of penalties

(a) At his or her discretion, the Commissioner or his or her authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, in the following circumstances and on the following terms and conditions:

- 1.-2. (No change.)
3. Upon any other terms or conditions acceptable to the Commissioner or his or her authorized representative[.];
4. Any other circumstances or conditions acceptable to the Department.

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7:1G-7.5 Alternative remedies

Neither the [assessment of a civil administrative penalty] issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment nor the payment of any such penalty shall be deemed to affect the availability to the Department of any enforcement provision provided for by N.J.S.A. 34:5A-31, or any other statute, in connection with the violation for which the assessment is levied.

7:1G-7.6 [Records of assessments] (Reserved)

(a) In order to promote consistency in the application of this subchapter, the Department shall collect and maintain in a discrete file a record of each assessment made pursuant to this subchapter. Such file shall be a public record and shall be kept available for public inspection pursuant to N.J.S.A. 47:1A-1 et seq.

(b) The file shall, at a minimum, include a copy of each notice and all final orders issued pursuant to N.J.A.C. 7:1G-7.3, and the terms of any compromise agreed to pursuant to N.J.A.C. 7:1G-7.4.]

7:1G-7.7 [Penalty for time related violations] Penalties

(a) The assessed penalty for a time related violation is determined by the number of weeks or fraction thereof that the Environmental Survey, the Emergency Services Information Survey or the clarifying information requested by the Department is overdue. The following table shall be used to determine the penalty:

1. Less than four weeks late	\$100.00
2. Four weeks to six weeks late	\$500.00
3. Six weeks to eight weeks late	\$1000.00
4. Eight weeks to ten weeks late	\$1500.00
5. Ten weeks to twelve weeks late	\$2000.00
6. More than twelve weeks late	\$2500.00]

(a) Failure to submit a Community Right to Know Survey pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(b) Failure to submit a Release and Pollution Prevention Report pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(c) Failure of an employer to report all EHSs pursuant to these regulations on the Community Right to Know Survey or Release and Pollution Prevention Report shall result in the assessment of a civil administrative penalty based on the number of substances omitted as follows: one to 10 substances, \$500.00; 10 or more substances, \$1,000.

(d) Failure to respond to the Department's request for clarifying information shall result in the assessment of a civil administrative penalty of \$1,000.

(e) Failure to submit a copy of a Community Right to Know Survey or a Release and Pollution Prevention Report to any required agency pursuant to N.J.A.C. 7:1G-5 shall result in the assessment of a civil administrative penalty in the amount of \$500.00.

(f) Failure of an employer to maintain or make available copies of the current Community Right to Know Survey or Release and Pollution Prevention Report at his or her facility pursuant to N.J.S.A. 45:5A-12 shall result in the assessment of a civil administrative penalty of \$500.00.

[7:1G-7.8 Penalty for non-time related violations

(a) The penalty which may be assessed for a non-time related violation under this subchapter is \$2,500 or a fraction thereof, to be determined pursuant to N.J.S.A. 34:5A-31(d) by application of factors indicative of the type, seriousness, and duration of the violation, as described below:

1. Seriousness factor: The seriousness of a violation is determined with reference to the maximum inventory of a chemical stored, handled, or manufactured at any one time at the facility but not reported or inaccurately reported. There are three degrees:

i. Major: The maximum inventory of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 13 to 20, inclusive (greater than 1,000), as defined in N.J.A.C. 7:1G-7.2.

ii. Moderate: The maximum inventory of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 11 or 12 (10 to 1,000).

iii. Minor: The maximum range of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 10 (less than 10).

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three degrees:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could have or should have foreseen and prevented but was not caused by a deliberate, knowing, or purposeful action or inaction by the violator.

iii. Unintentional and unforeseeable: An unintentional and unforeseeable violation is one which the violator could not be expected to have foreseen, even by the exercise of reasonable diligence.

3. Schedule of factor values: Penalties for non-time related violations shall be computed after assigning values to the seriousness and type factors from the table below:

i. Seriousness:	Values
(1) Major	1.00
(2) Moderate	0.50
(3) Minor	0.25
ii. Type:	Values
(1) Willfull	1.00
(2) Unintentional but foreseeable	0.50
(3) Unintentional and unforeseeable	0.25

4. In the event that the Department becomes aware through an environmental release of a reportable substance which was not reported or inaccurately reported to the Department on a survey, an additional value between 0.10 and 0.25, depending on inherent toxicity or harmful characteristics of the substance, shall be added to the type factor.

(b) Computation of penalty: The penalty for non-time related violations shall be computed as follow:

(seriousness) x (type) x (\$2,500) = penalty

1. If the penalty computed by this method is greater than \$2,500 for any violation the \$2,500 maximum penalty shall be assessed for each such violation.

7:1G-7.9 Daily penalty

(a) After receipt of an Administrative Order from the Department to cease a violation, either time related or non-time related, and for each day during which the violator fails to comply with the terms of the Administrative Order, a daily penalty shall be assessed, in addition to any other penalties provided for in this subchapter, based on the following table:

1. During first week after deadline	\$100.00/day
2. During second week after deadline	\$200.00/day
3. During third week after deadline	\$500.00/day
4. During fourth week after deadline and subsequently	\$1000.00/day

7:1G-7.10 Violations which are both time and non-time related

(a) In some cases a single offense may constitute both a time related and a non-time related violation. In such cases, the Department may elect to:

- 1. Assess penalties for the time related violation only; or
- 2. Assess penalties for the non-time related violation only; or
- 3. Assess penalties for both the time related violation and the non-time related violation.]

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SUGGESTED AMENDMENTS TO THE
ADMINISTRATIVE PROCEDURE ACT

52:14B-4. Notice and hearing; compliance with act for rule to be valid; notice of intent of proposed rule-making proceeding; petition by interested person for promulgation, amendment or repeal of rule

(a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law the text of the proposed rule, identifying the proposed additions, deletions or changes to the existing body of rules shall be published in the New Jersey Register and shall be filed with the President of the Senate and the Speaker of the General Assembly. No proposed adoption, amendment or repeal of any rule shall be published or filed, and no such proposal shall be validly made, unless it is accompanied by a written opinion signed by the Attorney General (not by a delegee) that the adoption, amendment or repeal proposed is within the agency's legal authority. The notice shall be additionally publicized in such manner as the agency deems most appropriate in order to inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations;

* * * * *

(f) An interested person may petition an agency to promulgate, amend or repeal any rule. Each agency shall prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

(1) The substance or nature of the rule-making which is requested;

(2) The reasons for the request and the petitioner's interest in the request;

(3) References to the authority of the agency to take the requested action.

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Within 30 days following receipt of any such petition, the agency shall either deny the petition, giving a written statement of its reasons, or shall proceed to act on the petition, which action may include the initiation of a formal rule-making proceeding. Where a petition to amend or repeal a rule asserts that the existing rule exceeds the agency's legal authority, the agency shall not deny the petition unless it first obtains a written opinion signed by the Attorney General (not by a delegee) that the existing rule is within the agency's legal authority. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition, including any opinion obtained from the Attorney General in connection therewith, shall also be filed with the division for publication in the Register.

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**SUGGESTED LEGISLATION PROVIDING TRAINING
TO PERSONNEL OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY**

a. Within ninety days of the effective date of P.L. _____, (C. _____) (pending in the Legislature as this bill), the Attorney General shall develop and provide to employees of the Department of Environmental Protection and Energy a course of not less than _____ hours of instruction for employees with non-managerial responsibilities and not less than _____ hours of instruction for employees with managerial responsibilities, the instructors of which course shall be attorneys duly admitted to practice in this State. The course of instruction shall consist of the following topics:

(1) The Constitution of the United States of America, with particular emphasis upon the first ten amendments thereof and upon the due process rights of individuals;

(2) The Constitution of the State of New Jersey, with particular emphasis upon:

(a) the powers and duties of the Legislature;

(b) the powers and duties of the Executive Branch;

(c) the source of and limitations upon the powers of agencies in the Executive Branch; and

(d) the powers of the Legislature to repeal agency rules and regulations;

(3) Administrative law and the provisions of the Administrative Procedure Act, with particular emphasis upon:

(a) the history of and reasons for the development and creation of administrative agencies;

(b) the role of administrative agencies in government;

(c) the requirements of the Administrative Procedure Act concerning the proposal and adoption of agency rules;

(d) the requirements of the Administrative Procedure Act concerning the commencement and conduct of administrative penalty proceedings, including the duties of an agency and the rights of those against whom such proceedings are brought;

(e) the roles of the agency staff and the head of the agency, and the differences between those roles in administrative penalty proceedings; and

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(f) for those employees with enforcement responsibilities, instruction in the identification and clear and concise expression of the elements of violations in notices of civil administrative penalty assessments;

(4) The Office of Administrative Law, with particular emphasis upon:

(a) the role of the Office of Administrative Law in government; and

(b) for those employees with enforcement responsibilities, instruction in the rules of the Office of Administrative Law concerning civil administrative penalty proceedings;

(5) The provisions of the New Jersey Tort Claims Act, with particular emphasis upon the duties and liabilities of government employees thereunder;

(6) Training in the provisions of the particular environmental laws, rules and regulations affecting the duties assigned to the individual employee.

b. Within ninety days of the effective date of P.L. , (C.) (pending in the Legislature as this bill), the Commissioner of the Department of Environmental Protection and Energy shall implement a plan under which the Commissioner shall cause and require each employee of the Department of Environmental Protection and Energy to complete the course of instruction set forth in (a) above, as follows: one-twelfth the number of the employees shall complete the course within each thirty-day period following implementation of the plan until all of the employees shall have completed the course. New employees of the Department of Environmental Protection and Energy shall complete the course within one hundred twenty days of commencement of employment.

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Rules that are Inconsistent with Legislative Intent
Outline of Testimony by:
Jack Kace - Hoffmann-La Roche Inc.

NJPDES FEES - N.J. CLEAN WATER ACT

Legislative Language - NJSA 58:10A-9.a.

Regulatory Approach Fee Formula -- NJAC 7:14A-1.8

Fee: \$660,000 for 1993

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mount importance and is in the interest of the public health and safety; and that the direct discharge of industrial wastes into the ocean waters of the State imperils the ecological integrity of the marine environment and presents a threat to the public health and safety.

"The Legislature therefore determines that it is in the public interest to prohibit the direct discharge of industrial wastes into the ocean waters of the State."

"3. The Commissioner of the Department of Labor shall establish a special program to provide job replacement and relocation assistance, and job retraining to any person who suffers a loss of employment as a direct result of the implementation of this act."

58:10A-8. Establishment of more stringent effluent limitations for point source or group of point sources

Whenever the commissioner finds that discharges from a point source or a group of point sources with the application of the effluent limitations authorized in this act, which effluent limitations are as stringent as the best available technology economically achievable as provided for in the Federal Act or State law, would interfere with the attainment and maintenance of applicable water quality standards, the commissioner may establish more stringent effluent limitations for each such point source or group of point sources, which effluent limitations can reasonably be expected to contribute to the attainment and maintenance of the applicable water quality standards. Prior to the establishment of any more stringent effluent limitations under this section, the commissioner shall publish a notice of his intent to establish such limitations and, upon request of a person affected by any such limitations, the commissioner shall hold a public hearing to determine if there is a reasonable relationship between the economic and social costs of achieving such limitations, including any economic or social dislocation in the affected community or communities, and the social and environmental benefits to be obtained, including the objective of restoring and maintaining the water quality of the State, and to determine whether such effluent limitations can be implemented with available technology or with other control strategies. If a person affected by any such limitations demonstrates at the hearing

that there is no reasonable relationship between the economic and social costs of compliance and the benefits to be obtained, the commissioner shall modify any such limitations as they may apply to that person.

58:10A-9. Applications for permits; fees; public notice; public inspection; hearing; employees to administer act

a. Applications for permits shall be submitted within such times, on such forms, and with such signatures as may be prescribed by the commissioner and shall contain such information as he may require. The commissioner shall, in accordance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits. Said fees shall be deposited to the credit of the State and be deemed as part of the General State Fund. The Legislature shall annually appropriate an amount equivalent to the amount anticipated to be collected as fees under this section of NJPDES program.

b. The commissioner shall give public notice of every complete application for a permit in a manner designed to inform interested and potentially interested persons, affected states and appropriate governmental agencies of his proposed determination to issue or deny a permit. The notice shall announce a period of at least 30 days during which the interested persons may request additional facts, submit written views, and request a public hearing on the proposed discharge or determination. All written comments so submitted shall be retained and considered by the commissioner in formulating his final determination with respect to the permit application. The commissioner may give combined notice of two or more permit applications and proposed determinations provided that the requirements of this section are observed for each application.

c. All permit applications, documented information concerning actual and proposed discharges, comments received from the public, and draft and issued permits shall be made available to the public for inspection and for duplication. At his discretion, the commissioner may also make available any other records, reports, plans

or information pertaining to permit applicants or permittees, but he shall protect from disclosure any information, other than effluent data, upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. The commissioner may prescribe reasonable fees to reimburse the department for duplication expenses under this section.

d. The commissioner shall hold a public hearing on a permit application before a final determination, if a significant showing of interest on the part of the public appears in favor of holding such a hearing. At his discretion, the commissioner may also hold such a hearing on his own motion or if requested to so do by any other interested person. Public notices of every public hearing under this subsection, including a concise statement of the issues to be considered therein, shall be given at least 30 days in advance, and shall be circulated at least as widely, as was the notice of the permit application. The commissioner may hold a single hearing on two or more applications. To the extent feasible, he shall afford all persons or representatives of all points of view an opportunity to appear, but may so allocate hearing time as to exclude repetitions, redundant, or irrelevant matter. All testimony and documentary material submitted at the hearing shall be considered by the commissioner in formulating his final determination.

e. The commissioner may appoint and employ such persons as he deems necessary to enforce and administer the provisions of this act, and determine their qualifications, term of office, duties and compensation, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes.

58:10A-10. Violations; remedies; fines and penalties; enforcement; forfeiture of conveyances.

a. Whenever the commissioner finds that any person is in violation of any provision of this act, he shall:

(1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or

(2) Bring a civil action in accordance with subsection c. of this section; or

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Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. The Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or authorization to discharge under a NJPDES general permit, or submit a NJPDES permit application or request for authorization.

2. The Department shall not assess any fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit, or that are issued an authorization to discharge under a final NJPDES general permit, shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application or request for authorization, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit or of an authorization to discharge under a final NJPDES general permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. The permittee may request a fee recalculation as provided at (a)6 below, once the first required monitoring report has been completed.

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
CN 402

Trenton, New Jersey 08625

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

i. Return the NJPDES permit application or request for authorization to the applicant;

ii. Deny issuance of a final permit or authorization under a final general permit;

7:14A-1.8 POLLUTANT DISCHARGE ELIMINATION SYSTEM

iii. Terminate a final permit (including termination of a permittee's authorization to discharge under a general permit); and/or

iv. Assess penalties pursuant to N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer. The selected 12 month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the Department or submitted by the permittee, or other permits issued by the Department.

8. The Department, upon the termination of a NJPDES permit, or revocation of a NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g) shall upon written request of the permittee prorate the fee for the number of days that the facility was in operation or was discharging under a valid NJPDES/SIU permit during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. The annual fee for all discharges is calculated by applying the formula: $\text{Fee} = (\text{Environmental Impact} \times \text{Rate}) + \text{Minimum Fee}$, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$\text{Rate} = \frac{(\text{Budget} - \text{Sum of Minimum Fees})}{\text{Total Environmental Impact}}$$

(1) Budget is the total budget for the category of Discharge.

(2) The Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge. The minimum fee is a base cost added to the calculated individual fee. The minimum fees are set forth in (h) below.

(3) Total Environmental Impact is the sum of environmental impact for all dischargers in the category.

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10. The Department shall use the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate environmental impact. The maximum fee to be assessed for any category of discharge shall be 10 percent of the budget for the category of discharge.

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. The Annual NJPDES Fee Schedule Report shall include the following:

i. A detailed financial statement of the actual administrative cost of the NJPDES program by account title;

ii. A detailed financial statement of the actual revenue collected, including any surplus which can be credited or any deficit to be assessed in determining the fee schedule.

iii. A detailed financial statement of the anticipated cost of the NJPDES program, including:

(1) A breakdown of the program by account title;

(2) An estimate of the amount of fees that will be collected;

and

(3) The current year's fee schedule.

iv. A report of the NJPDES program activities, including:

(1) A list of permits issued;

(2) A list of facilities inspected;

(3) A list of administrative orders and administrative consent orders issued by the Department (by type of order and discharge involved); and

(4) A summary of variance request activities under section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report. The Department shall provide public notice of the hearing at least 30 days prior to the date of the hearing:

i. In the New Jersey Register and one newspaper of general circulation; and

ii. By mailing a copy of the Report to each NJPDES applicant/permittee.

(c) Except as provided in (i) and (j) below, the annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) × (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee reports a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.

(2) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected at least once in the monitoring period, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations.

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ii. Heat Load is the average mBTU's (million British Thermal Units) per hour of the effluent discharged. Where heat load is not reported in mBTU's per hour, the Department shall estimate the heat load using the calculated difference between the influent and effluent temperature multiplied by the amount (in million gallons per day) of effluent discharged. The Department shall use an average influent temperature of 5.57 degrees centigrade during the period November to April and 18.87 degrees centigrade during the period May to October.

iii. Bioassay Factor is the effluent limit in the permit divided by the percent effluent resulting in the 96 Hour LC₅₀. Where the effluent limit set forth in the permit is less stringent than the Wastewater Discharge Requirements (N.J.A.C. 7:9-5.1 et seq.), an effluent limit of 50 shall apply. Where the effluent limit set forth in the permit requires No Measurable Acute Toxicity (N.M.A.T.), an effluent limit of 100 shall apply, except:

(1) Where Bioassay testing is not required by the permit, a Bioassay Factor of 1 will be used; or

(2) Where the permit specifies a limit of N.M.A.T. and the mortality is less than or equal to the control mortality, the Department will use a Bioassay Factor of 0.5.

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4. The Department shall use the most recent edition of New Jersey Water Quality Inventory Report.

2. The Department shall assess an additional fee to NJPDES permittees who request a variance under Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). The annual fee shall be assessed on the basis of the administrative cost that is incurred by the

NEW REGULATORY THRUST - AIR PERMITS FOR LABORATORY HOODS

Legislative Language - NJSA 26:2C-9.2(a)

Regulatory Approach -- NJAC 7:27-8.1
Existing and proposed version attached

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tion in accordance with the provisions of any applicable code, rule or regulation promulgated by the department and for this purpose shall have power to —

(a) Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution;

(b) Conduct and supervise State-wide programs of air pollution control education including the preparation and distribution of information relating to air pollution control;

(c) Require the registration of persons engaged in operations which may result in air pollution and the filing of reports by them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of effluent and such other information as the department shall prescribe to be filed relative to air pollution, all in accordance with applicable codes, rules or regulations established by the department. Registration reports filed with the department shall be privileged and not admissible in evidence in any court;

(d) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or noncompliance with any code, rules and regulations of the department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination, shall be kept confidential and shall not be admissible in evidence in any court or in any other proceeding except before the department as herein defined. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution;

(e) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution and institute legal proceedings for the prevention of air pollution and for the recovery of penalties, in accordance with this act;

(f) With the approval of the Governor, cooperate with, and receive money from, the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of air pollution.

(g) The department may in accordance with a fee schedule adopted as a rule or regulation establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall not be less than \$10.00 nor more than \$500.00 based on criteria contained in the fee schedule.

26:2C-9.1. Interference with performance of duties; entrance to premises

No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or of the act of which this act is amendatory and supplementary, or refuse to permit such personnel to perform their duties by refusing them upon proper identification or presentation of a written order of the department, entrance to any premises at reasonable hours.

26:2C-9.2. Equipment or control apparatus; installation or alteration permit; operating permit

(a) No person shall construct, install or alter any equipment or control apparatus, in other than a one or 2-family dwelling or a dwelling of 6 or less family units one of which is owner-occupied, until an application including plans and specifications, has been filed with the department and an installation or alteration permit issued by the department, in accordance with any codes, rules and regulations of the department except that subject to any such codes, rules and regulations the department may dispense with the filing of applications, plans and specifications. Information relating to secret processes or methods of manufacture or production is exempted from the plans and specifications and other pertinent information to which the department is entitled under this section.

(b) No person shall use or cause to be used for any such new or altered equipment or control apparatus for which an installation or alteration permit is required or issued until an operating certificate has been issued by the department.

(c) No operating certificate or renewal thereof, required by this act, shall be issued by the department unless the applicant shows to the satisfaction of the department that the equipment is designed to operate without causing a violation of any provision of this act or of any codes, rules and regulations promulgated thereunder and that, except in the case of a renewal certificate, the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.

(1) Before an operating certificate or any renewal thereof is issued, the department may require the applicant to conduct such tests as are necessary in the opinion of the department to determine the kind or amount of the air contaminant emitted from the equipment or whether the equipment or fuel or the operation of the equip-

ment is in violation of any of the provisions of this act or of any codes, rules or regulations promulgated thereunder. Such tests shall be made at the expense of applicant and shall be conducted in manner approved by the department and the test results shall be reviewed and professionally certified.

(2) An operating certificate or any renewal thereof shall be valid for a period 5 years from the date of issuance, unless sooner revoked by order of the department, and may be renewed upon application to the department.

(3) Upon receipt of an application for the issuance of an operating certificate or any renewal thereof, the department, in its discretion, may issue a temporary operating certificate valid for a period not to exceed 90 days.

26:2C-14. Order to cease violation; compliance with order; effect upon prosecution

Whenever the department has cause to believe that any person is violating a code, rule or regulation promulgated by the department, the department shall cause a prompt investigation to be made in connection therewith.

If upon inspection the department discovers a condition which is in violation of the provisions of this act or any code, rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps as are necessary to enforce such an order. The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, regulation, order, or permit condition violated; the amount of the fine which shall be imposed; a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing.

The person responsible shall make the corrections necessary to comply with the requirements of this act or code, rule or regulation promulgated pursuant thereto within the time specified in the order.

Nothing therein shall be deemed to prevent the department from prosecuting a violation of this act or any code, rule or regulation promulgated pursuant thereto notwithstanding that such violation is corrected in accordance with this order.

26:2C-14.1 Person aggrieved by order; time to request hearing; final order; penalty; stay of order

Any person aggrieved by an order of the department has 20 days from receipt of the order within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing, if requested, and upon a finding that a violation has

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operating conditions... nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term does not include the modification of information in a permit or certificate to reflect alteration of equipment or control apparatus.

"AP-42" means the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA.

"Banking" means reserving approved emission reductions for future use pursuant to N.J.A.C. 7:27-18.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Category I" means the following types of new or altered equipment and control apparatus which require a permit or certificate:

1. Any gasoline vapor recovery system constructed, installed, or operated at any gasoline dispensing facility; this does not include gasoline vapor recovery systems at bulk terminals;
2. Any woodworking equipment including, but not limited to, saws, planers, and sanders, that has particulate control apparatus which achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment;
3. Any metalworking equipment including, but not limited to, welders, grinders, and drill presses, that has particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment;
4. Fossil fuel burning equipment used only for the burning of liquid or gaseous commercial fuel and having a designed heat input rate of less than 10 million BTU per hour; this does not include any equipment used for the burning of coal or other solid fuel, non-commercial fuel, crude oil or process by-products in any form;

7:27-8.1

AIR POLLUTION CONTROL

5. Stationary storage tanks which have a capacity of less than 20,000 gallons and which are used for the storage of liquid substances and any control apparatus serving such tanks; this does not include any tank used to store a substance which is a TXS;

6. Emergency diesel generators with less than 10 megawatts of electrical output that operate less than 500 hours per year;

7. Any tank, reservoir, container or bin that is used for the storage of solid particles and has particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any tank, reservoir, container or bin that is used for the storage of any TXS;

8. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have particulate control apparatus that achieves a minimum collection efficiency of 99 percent and the particulate control apparatus serving the equipment; this does not include any equipment used to handle any material which is a TXS;

9. Any paint spray booth that has particulate control apparatus and that uses less than one half gallon of paint per hour and the particulate control apparatus serving the paint spray booth; this does not include any paint spray booth which emits any TXS; and

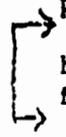
10. Any control apparatus that solely serves one or more laboratory hoods, ducts, vents, or similar devices used as conduits for exhausting fumes from laboratory operations.

"Category II" means any type of new or altered equipment and control apparatus which requires a permit or certificate, except those types which are defined above as belonging to Category I.

Equipment & control devices for manufacturing

700 Lab hoods at Hoffmann Ypsilanti

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7:27-1.31 Right to enter

(a) The Department and its representatives shall have the right to enter and inspect at any time, any facility or building, or portion thereof, including all documents and equipment on the premises, in order to ascertain compliance or noncompliance with this chapter or with any preconstruction permit, certificate, operating permit, order, authorization or other legal document issued pursuant thereto, or to verify any information submitted to the Department. This right is absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested, and compliance with appropriate safety standards. This right includes, but is not limited to, the right to:

1. Enter upon the premises of the facility;
2. Sketch or photograph any portion of the facility;
3. Enter upon the premises of a facility where records are maintained under the conditions of the preconstruction permit, certificate or operating permit;
4. Review any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;
5. Copy or photograph any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;
6. Inspect any part of the facility, including any equipment (including any equipment used for monitoring and any air pollution control apparatus), practices, or operations, regulated or required under the preconstruction permit, certificate or operating permit;
7. Interview any employee or representative of the owner or operator; and
8. Test or sample any substance or material.

(b) No person shall obstruct, hinder or delay the Department or its representatives in its exercise of its rights under (a) above.

(c) An owner or operator of a facility, and any employee or representative of any owner or operator, shall, upon request, assist the Department and its representatives in the performance of any inspection. Such assistance shall include, but shall not be limited to, making available sampling equipment and facilities necessary to conduct sampling and to determine the nature and quantity of any air contaminant emitted by the facility.

(d) During any sampling or testing conducted by the Department, any equipment, and all components connected to, attached to, or serving the equipment, shall be operated under normal operating conditions, or under conditions set forth in any preconstruction permit, certificate, operating permit, order or other State or Federal authorization covering the equipment.

7:27-1.39 Certification of information

(a) Except pursuant to (c) below, any person who submits an application, report or other document to the Department shall include, as an integral part of the application, report or other document, the following two-part certification:

1. A certification, signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the certified document. The certification shall state:

"I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:

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

(b) The certification at (a)2 above shall not be required if the individual required to sign the certification in (a)1 above is the same individual required to sign the certification in (c) above.

(c) For the purposes of emissions statements requirements pursuant to N.J.A.C. 7:27-21, the specific certification required N.J.A.C. 7:27-21 shall be used.

7:27-8.1 Definitions

The following words and terms, when used in this subchapter [shall] have the following meanings, unless the context clearly dictates otherwise.

"Administrative amendment" means a revision of information a preconstruction permit or a certificate pursuant to the procedure for administrative amendments at N.J.A.C. 7:27-8.14.

"Alteration" means any change made to equipment or control apparatus or the use thereof, except for change reported to Department pursuant to N.J.A.C. 7:27-8.3(c) as an amendment the permit in effect and repair or maintenance. Alteration includes but is not limited to:

1. Change in the location of the point of discharge of any contaminant from equipment or control apparatus into the outdoor atmosphere, unless the change is authorized in the permit certificate in effect;

2. Replacement of equipment or control apparatus or of substantial component thereof if:

i. The replacement equipment or control apparatus is not same kind as that which is being replaced;

ii. The replacement equipment or control apparatus is equivalent to, or better than, for the purpose of air pollution control that which is being replaced;

iii. The date of approval of the permit authorizing the installation of the equipment or control apparatus being replaced is more than five years prior to the date of installation of the replacement equipment or control apparatus; or

iv. No permit is in effect for the equipment or control apparatus.

3. The introduction of any new raw material to equipment or control apparatus for which no certificate is in effect, including change of contents of a storage tank for which no certificate is in effect;

4. Any reconfiguration to an alternate configuration authorized in the permit in effect;

5. Any of the following changes to equipment or control apparatus, or to the use thereof, if the change may increase concentration or rate of any air contaminant emission:

i. Addition, replacement, or removal of auxiliary devices or purtences;

ii. Change in the relative use, expressed in percent by weight any raw material in the operation of equipment or control apparatus or in the process, including the introduction of a raw material authorized in the permit or certificate in effect; or

iii. Change in the process in which the equipment or control apparatus is used;

6. Increase in the concentration or rate of emission of a contaminant above that authorized by the permit and certificate in effect;

7. Emission of any air contaminant not authorized by the permit and certificate in effect;

8. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate

i. The change is not in compliance with the stack height regulations promulgated at 40 CFR 51;

ii. The change may result in an increase in the ambient concentration of any air contaminant; or

iii. No permit is in effect for the equipment or control apparatus.

9. Any change in the concentration of any air contaminant influent to existing control apparatus above that authorized by permit or certificate;

10. Any increase in the total hours of operation per time or the rate of production above that authorized in the permit certificate; and

11. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any of the following:

Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any permit or certificate in effect.)

"Alteration" means any change made to equipment or control apparatus or the use thereof set forth as an alteration at N.J.A.C. 7:27-8.16. In respect to a facility for which an operating permit has been issued pursuant to N.J.A.C. 7:27-22, this term shall include any change which would constitute a significant modification or a minor modification of the operating permit.

"Alternative operating scenario" means a plan for operating a facility or a portion thereof using methods or processes, which are different from other methods or processes approved for use at the same facility, or the same portion thereof, at different times. For example, using a vessel to make product A on Tuesdays and product B on Wednesdays.

"Amendment" means any revision of information in a permit or operating certificate in effect which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term does not include the modification of information in a permit or certificate to reflect alteration of equipment or control apparatus.]

"Applicable Federal requirement" means any of the following standards, provisions or requirements as they apply to any source operation in a facility which is subject to this subchapter. Applicable requirements include requirements that have been promulgated or approved by EPA through rulemaking, but have future-effective compliance dates:

1. Any standard or other requirement provided for in New Jersey's approved SIP (or FIP, if applicable), including any approved revisions;
2. Any provision or condition of any preconstruction permit issued pursuant to N.J.A.C. 7:27-8;
3. Any NSPS or other standard or requirement under 42 U.S.C. §7411 including 42 U.S.C. §7411(d);
4. Any standard or other requirement concerning HAPs under 42 U.S.C. §7412, including any requirement concerning accident prevention under 42 U.S.C. §7412(r)(7);
5. Any standard or other requirement of the acid deposition control program under Title IV of the CAA or the regulations promulgated thereunder;
6. Any requirement established pursuant to the provisions for monitoring in Title V of the CAA at 42 U.S.C. §7661c(b) or pursuant to the monitoring requirements at 42 U.S.C. §7414(a)(3);
7. Any standard or other requirement governing solid waste incineration under 42 U.S.C. §7429;
8. Any standard or other requirement for consumer and commercial products under 42 U.S.C. §7511b(e);
9. Any standard or other requirement for marine tank vessels under 42 U.S.C. §7511b(f);
10. Any standard or other requirement of the program to prevent or control the emission of air contaminants from outer continental shelf sources under 42 U.S.C. §7627;
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the CAA, unless EPA has determined that such a requirement need not be contained in an operating permit;
12. Any of the following, but only as it would apply to temporary facilities permitted pursuant to 42 U.S.C. §7661c(e):
 - I. A NAAQS; or
 - II. An increment under 42 U.S.C. §7473; or
 - III. A visibility requirement under 42 U.S.C. §7491 or 7492.

"Applicable requirement" means any applicable State requirement or applicable Federal requirement.

"Applicable State requirement" means any provision, standard or requirement in any statute or rule, as it applies to a facility or source operation which is subject to this subchapter, but is not an applicable Federal requirement. This term includes requirements that have been promulgated by the Department and submitted to EPA

as SIP revisions but have not yet been approved by EPA. An example of an applicable State requirement is N.J.A.C. 7:27-8.8(f), as it relates to the control of nuisance odor.

"Architectural coating" means a surface coating formulation applied and dried at ambient conditions, and used to coat all or parts of stationary structures and their appurtenances, such as buildings, bridges, the interior or exterior of houses, and other items such as signs, curbs, and pavements.

"Banking" means [reserving approved emission reductions for future use] the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18, for future use as emission offsets.

"Category I" means the class of applications for preconstruction permits or certificates for the following types of [new or altered] equipment [and control apparatus which require a permit or certificate]:

- 1.-8. (No change.)
9. Any paint spray [booth] operation or other surface coating operation that has particulate control apparatus and that uses less than one half gallon of paint per hour and the particulate control apparatus serving the spray booth; this does not include any paint spray [booth] operation or surface coating operation which emits any TSS; [and]
10. Any applicable [control apparatus that solely serves one or more] laboratory hoods, ducts, vents, or similar devices used as conduits for exhausting fumes from laboratory operations;];
11. Any applicable enclosed sandblasting equipment that has a control apparatus that achieves a minimum particulate control efficiency of 99 percent;
12. Any applicable plastics grinding equipment; and
13. Any applicable open top surface cleaner which is equipped with a cover and free-board chiller. This does not include any surface cleaner which uses a HAP.

"Category II" means the class of application for a preconstruction permit or certificate for any type of new or altered equipment [and control apparatus which requires a permit or certificate], except those types which are defined above as belonging to Category I.

"Clean Air Act" or "CAA" means the Federal Clean Air Act (42 U.S.C. 7401 et seq.) which consists of Public Law 159 (July 14, 1955; Stat. 322) and all subsequent amendments thereto.

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks, railroad tank cars, or marine tank vessels.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Environmental improvement pilot test" means a sampling and analytical program using prototype equipment or processes on a temporary basis for the purpose of collecting data necessary for the design of a full scale process to achieve an environmental improvement, or for the purpose of determining the feasibility of using the equipment or process for a particular environmental improvement.

"Freeboard chiller" means a set of condensing coils which are located peripherally along the free board and which condense the solvent vapor before they escape from the surface cleaner.

"Graphic arts operation" means the application of one or more surface coating formulations non-uniformly across a surface, using one or more printing units, together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

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STATE OF THE AIR REQUIREMENT FOR AIR PERMITS - No published

Legislative Language New Jersey Air Pollution Control Act NJSA 26:2C - 9.2(c)

Regulatory Approach - NJDEPE uses internal guidelines to select certain permit applications for "State-of-the-Art" review.

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NEW JERSEY AIR LAWS /

tion in accordance with the provisions of any applicable code, rule or regulation promulgated by the department and for this purpose shall have power to —

(a) Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution;

(b) Conduct and supervise State-wide programs of air pollution control education including the preparation and distribution of information relating to air pollution control;

(c) Require the registration of persons engaged in operations which may result in air pollution and the filing of reports by them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of effluent and such other information as the department shall prescribe to be filed relative to air pollution, all in accordance with applicable codes, rules or regulations established by the department. Registration reports filed with the department shall be privileged and not admissible in evidence in any court;

(d) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or noncompliance with any code, rules and regulations of the department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination, shall be kept confidential and shall not be admissible in evidence in any court or in any other proceeding except before the department as herein defined. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution;

(e) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution and institute legal proceedings for the prevention of air pollution and for the recovery of penalties, in accordance with this act;

(f) With the approval of the Governor, cooperate with, and receive money from, the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of air pollution.

(g) The department may in accordance with a fee schedule adopted as a rule or regulation establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall not be less than \$10.00 nor more than \$500.00 based on criteria contained in the fee schedule.

26:2C-9.1. Interference with performance of duties; entrance to premises

No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or of the act of which this act is amendatory and supplementary, or refuse to permit such personnel to perform their duties by refusing them upon proper identification or presentation of a written order of the department, entrance to any premises at reasonable hours.

26:2C-9.2. Equipment or control apparatus; installation or alteration permit; operating permit

(a) No person shall construct, install or alter any equipment or control apparatus, in other than a one or 2-family dwelling or a dwelling of 6 or less family units one of which is owner-occupied, until an application including plans and specifications, has been filed with the department and an installation or alteration permit issued by the department, in accordance with any codes, rules and regulations of the department except that subject to any such codes, rules and regulations the department may dispense with the filing of applications, plans and specifications. Information relating to secret processes or methods of manufacture or production is exempted from the plans and specifications and other pertinent information to which the department is entitled under this section.

(b) No person shall use or cause to be used for any such new or altered equipment or control apparatus for which an installation or alteration permit is required or issued until an operating certificate has been issued by the department.

(c) No operating certificate or renewal thereof, required by this act, shall be issued by the department unless the applicant shows to the satisfaction of the department that the equipment is designed to operate without causing a violation of any provision of this act or of any codes, rules and regulations promulgated thereunder and that, except in the case of a renewal certificate, the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment.

(1) Before an operating certificate or any renewal thereof is issued, the department may require the applicant to conduct such tests as are necessary in the opinion of the department to determine the kind or amount of the air contaminant emitted from the equipment or whether the equipment or fuel or the operation of the equip-

ment is in violation of any of the provisions of this act or of any codes, rules and regulations promulgated thereunder. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the department and the test results shall be reviewed and professionally certified.

(2) An operating certificate or any renewal thereof shall be valid for a period of 5 years from the date of issuance, unless sooner revoked by order of the department, and may be renewed upon application to the department.

(3) Upon receipt of an application for the issuance of an operating certificate or any renewal thereof, the department, in its discretion, may issue a temporary operating certificate valid for a period not to exceed 90 days

26:2C-14. Order to cease violation; compliance with order; effect upon prosecution

Whenever the department has cause to believe that any person is violating any code, rule or regulation promulgated by the department, the department shall cause a prompt investigation to be made in connection therewith.

If upon inspection the department discovers a condition which is in violation of the provisions of this act or any code, rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order. The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, regulation, order, or permit condition violated; the amount of the fine which shall be imposed, a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing.

The person responsible shall make the corrections necessary to comply with the requirements of this act or code, rule or regulation promulgated pursuant thereto within the time specified in the order.

Nothing therein shall be deemed to prevent the department from prosecuting any violation of this act or any code, rule or regulation promulgated pursuant thereto notwithstanding that such violation is corrected in accordance with this order.

26:2C-14.1 Person aggrieved by order; time to request hearing; final order; penalty; stay of order

Any person aggrieved by an order of the department has 20 days from receipt of the order within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing, if requested, and upon a finding that a violation has

Clarification of procedural requirements for permit process.
Amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
New subsection (k) added.

Case Notes

Permit requirement for structural changes.

D.E.P. v. Midland Glass Co., 145 N.J. Super. 108 (App. Div. 1976), certif. den. 73 N.J. 65 (1977).

7:27-8.4 Applications for permits and certificates

(a) Applications for a permit or a certificate, or for a renewal thereof, shall be made to the Department on forms obtained from the Department. Application forms and information pertinent to applications, may be requested from:

Bureau of New Source Review
Environmental Regulation Program
Department of Environmental Protection
and Energy
401 East State Street, Second Floor
CN 027
Trenton, New Jersey 08625-0027

(b) The Department may require the applicant to submit such details

7:27-8.4

AIR POLLUTION CONTROL

determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information may include description of processes, raw materials used, operating procedures, physical and chemical nature of any air contaminant, volume of gas discharged, and such other information as the Department considers necessary. All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 and in compliance with N.J.A.C. 7:27-1.6 through 1.30.

(c) Before an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the permit and certificate and that only the air contaminants approved in the permit are being emitted. If such testing is required, the applicant shall:

1. Submit a source-specific testing protocol to the Department at least 60 days prior to the anticipated date of the testing, if such a protocol is required in the conditions of approval of the permit or certificate;
2. Obtain approval of any required source-specific testing protocol from the Department in advance of conducting the testing;
3. Conduct the testing in accordance with a standard testing procedure acceptable to the Department or the approved source-specific testing protocol approved in advance by the Department;
4. Give the Department at least seven days advance notice of the date and time of the start of any testing conducted pursuant to a source-specific testing protocol, except in cases where the Department has specified in the conditions of approval of the permit or certificate other time requirements for notice;
5. Submit the test report to the Department within 30 days after the completion of the sampling, unless a longer period for submission is approved in writing by the Department; and
6. Have the test report from any source emission testing reviewed

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CLEAN WATER ENFORCEMENT ACT - UPSET DEFENSE

Legislative Language NJSA 58:10A-3, 58:10A-10.2

Regulatory Approach - NJAC 7:14A-1.9 Similar to legislation. A quantitative internal policy is being developed by NJDEPE.

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exceeds the monthly average or, in a case of a pollutant for which no monthly average has been established, the monthly average of the daily maximums for an effluent limitation for the same pollutant at the same discharge point source by any amount in any four months of any six month period, or who fails to submit a completed discharge monitoring report in any two months of any six month period. The department may utilize, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier, if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. A local agency shall not be deemed a "significant noncomplier" due to an exceedance of an effluent limitation established in a permit for flow;

x. "Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works;

y. "Delegated local agency" means a local agency with an industrial pretreatment program approved by the department;

z. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the department or a delegated local agency;

aa. "Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works;

bb. "Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his representative, in conjunction with the department, and includes industrial facilities and municipal treatment works;

cc. "Significant indirect user" means a discharger of industrial or other pollutants into a municipal treatment works, as defined by the department, including, but not limited to, industrial dischargers, but

excluding the collection system of a municipal treatment works;

dd. "Violation of this act" means a violation of any provisions of this act, and shall include a violation of any rule or regulation, water quality standard, effluent limitation or other condition of a permit, or order adopted, issued, or entered into pursuant to this act.

58:10A-4. Code, rules and regulations

The commissioner shall have power to prepare, adopt, amend, repeal and enforce, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable codes, rules and regulations to prevent, control or abate water pollution and to carry out the intent of this act, either throughout the State or in certain areas of the State affected by a particular water pollution problem. Such codes, rules and regulations may include, but shall not be limited to, provisions concerning:

a. The storage of any liquid or solid pollutant in a manner designed to keep it from entering the waters of the State;

b. The prior submission and approval of plans and specifications for the construction or modification of any treatment work or part thereof;

c. The classification of the surface and ground waters of the State and the determination of water quality standards for each such classification;

d. The limitation of effluents, including toxic effluents as indicated herein;

e. The determination of pretreatment standards;

f. The establishment of user charges and cost recovery requirements in conformance with the Federal Act.

g. The establishment of a civil penalty policy governing the uniform assessment of civil penalties in accordance with section 10 of P.L.1977, c. 74 (C.58:10A-10).

58:10A-5. Powers of department

The department is empowered to:

a. Exercise general supervision of the administration and enforcement of this act and all rules, regulations and orders promulgated hereunder.

b. Assess compliance of a discharger with applicable requirements of State and Federal law pertaining to the control of pollutant discharges and the protection of the environmental and, also, to issue certi-

fication with respect thereto as required by section 401 of the Federal Act;

c. Assess compliance of a person with applicable requirements of State and Federal law pertaining to the control of the discharge of dredged and fill material into waters of the State and the protection of environment and, also, to issue, deny, modify, suspend, or revoke permits with respect thereto as required by section 404 of "Federal Water Pollution Control Act Amendments of 1972," as amended by "Clean Water Act of 1977," (33 U.S.C. §1344) and implementing regulations;

d. Advise, consult, and cooperate with other agencies of the State, the Federal Government, other states and interstate agencies, including the State Soil Conservation Committee, and with affected groups, political subdivisions and industries in furtherance of the purposes of this act;

e. Administer State and Federal grants to municipalities, counties and other political subdivisions, or any recipient approved by the commissioner according to terms and conditions approved by him in order to meet the goals and objectives of this act.

58:10A-6. Regulation of discharges of pollutants; permits; exceptions; right of enforcement by municipal treatment work

a. It shall be unlawful for any person to discharge any pollutant, except in conformity with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner pursuant to this act or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with this act, and regulations to be adopted by him. The commissioner may reissue, with or without modifications an NPDES permit duly issued by the Federal Government as NJPDES permit required by this act.

d. The commissioner may, by regulation, exempt the following categories

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omission of one or more effluent parameters, the permittee may submit, without liability for a civil administrative penalty assessed pursuant to this subsection or subsection c. of this section, the omitted information within 10 days of receipt by the permittee of notice of omission of the parameter or parameters.

e. If a violator establishes, to the satisfaction of the department, that a single operational occurrence has resulted in the simultaneous violation of more than one pollutant parameter, the department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to subsections b. and c. of this section, the violation of the interrelated permit parameters to be a single violation.

f. The requirement that the department assess a minimum civil administrative penalty pursuant to this section shall in no way be construed to limit the authority of the department to assess a civil administrative penalty or bring an action for a civil penalty for a violation at any time after a violation occurred or to assess a more stringent civil administrative penalty or civil penalty against a person pursuant to section 10 of P.L. 1977, c. 74 (C.58:10A-10).

g. The provisions of this section shall not apply to violations occurring prior to the effective date of this section.

58:10A-10.2. Affirmative defenses.

a. A person may be entitled to an affirmative defense to liability for a mandatory assessment of a civil administrative penalty pursuant to section of P.L. 1990, c. 28 (C.58:10A-10.1) for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error. A person shall be entitled to an affirmative defense only if, in the determination of the department or delegated local agency, the person satisfies the provisions of subsection b., c., e. or f., as applicable, of this section.

b. A person asserting an upset as an affirmative defense pursuant to this section, except in the case of an approved maintenance operation, shall notify the department or the local agency of an upset within 24 hours of the occurrence, or of becoming aware of the occurrence, and, within five days thereof, shall submit written documentation, including properly

signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating, as applicable, that:

(1) the upset occurred, including the cause of the upset and, as necessary, the identity of the person causing the upset, except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it is unable to identify the cause of the upset, or the person causing the upset;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received an approval therefor from the department or the delegated local agency; and

(4) the person complied with any remedial measures required by the department or delegated local agency.

c. A person asserting an unanticipated bypass as an affirmative defense pursuant to this section shall notify the department or the local agency of the unanticipated bypass within 24 hours of its occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating that:

(1) the unanticipated bypass occurred, including the circumstances leading to the bypass;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section; and

(4) the person complied with any remedial measures required by the department or delegated local agency;

(5) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(6) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive main-

tenance if, on the basis of reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

d. Nothing contained in subsection b. or c. of this section shall be construed to limit the requirement to comply with the provisions of paragraph (8) of subsection f. of section 6 of P.L. 1977, c. 74 (C.58:10A-6).

e. A person may assert an anticipated bypass as an affirmative defense pursuant to this section only if the person provided prior notice to the department or delegated local agency, if possible, at least 10 days prior to the date of the bypass, and the department or delegated local agency approved the bypass, and if the person is able to demonstrate that:

(1) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(2) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

f. A person asserting a testing or laboratory error as an affirmative defense pursuant to this section shall have the burden to demonstrate, to the satisfaction of the department, that a serious violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the control of the permittee.

g. A determination by the department on a claim that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error shall be considered final agency action on the matter for the purposes of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), and shall be subject only to review by a court of competent jurisdiction.

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any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems.

"UIC" means the Underground Injection Control program.

"Ultimate management" means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

"Underground injection" means a "well injection".

"Underground source of drinking water" ("USDW") means an "aquifer" or its portion:

1. Which supplies drinking water for human consumption; or
2. In which the ground water contains fewer than 10,000 mg/l "total dissolved solids"; and
3. Which is not an "exempted aquifer".

"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

"User" means any person, individual, firm, company, partnership, corporation, association, group or society, mobile source, and includes political subdivisions of this State and any Federal, State or interstate agency.

"U.S.D.A." means United States Department of Agriculture.

"USDW" means "underground source of drinking water".

"U.S.G.S." means United States Geological Survey.

"Valid final draft NJPDES permit or valid final DAC" means that such authorization has not expired pursuant to N.J.A.C. 7:14A-3.3(f) or 7.2(a)8 and 9.

"Variance" means any mechanism or provision under Sections 301 or 316 or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Federal Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Section 301(c), 301(g), 301(h), 301(i), or 316(a) of the Federal Act.

"Waste load" means the amount of chemical, physical, or biological matter contained within a waste discharge.

"Waste load allocation" means the assignment of maximum waste loads to point-source discharges so as to maintain water quality standards.

"Water quality criteria" means a designated concentration of a constituent that, when not exceeded, will protect an organism, an organismic community or a prescribed water use or quality.

"Water quality standards" means the physical, chemical, biological and esthetic characteristics of a water body as described by State water quality criteria or the water quality which would result from existing discharges under design conditions, whichever is more stringent as determined by the Department.

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

"Well injection" means the subsurface emplacement of "fluids through a bored, drilled or driven "well"; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Well log" means a log obtained from a well showing such information as relative location and depth of soils horizons and geologic units indicating textural and other petrologic characteristics. "Well logs" may also show geophysical properties such as resistivity, radioactivity, spontaneous potential and acoustic velocity as in function of depth.

"Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

"Well record" means a concise statement of the available data regarding a well, such as a scout ticket: a full history or day-by-day account of a well, from the

day the well was surveyed to the day production ceased.

"Well stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

"Well monitoring" means the measurement by on-site instruments or laboratory methods of the quality of water in a well.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Zone of saturation" means "saturated zone".

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR THE NJPDES PERMIT

7:14A-2.1 Applications for a NJPDES permit

(a) All applications for a NJPDES permit shall be submitted to:

Assistant Director
Wastewater Facilities Management Element
Division of Water Resources
CN-029
Trenton, N.J. 08625

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which include an activity regulated pursuant to this chapter; and
2. A person who currently operates any facility which includes an activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or 2 above, more than one person is required to obtain a NJPDES permit for one or more activities at a specific site, the Department shall issue a single permit which lists all of these persons as permittees.

(d) The Department shall not issue a permit before receiving a complete application, with the exception of an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 or when the Department issues an interim NJPDES permit based upon information the Department possesses, which may include applications previously filed with State, Federal or local agencies. An

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Exhibits to the Testimony of

Edward A. Hogan, Esq.

Legislative Agent No. 786-1

Porzio, Bromberg & Newman, P.C.

Morristown, New Jersey

On Behalf of the Commerce & Industry Association of New Jersey

Midland Avenue

Paramus, New Jersey

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Exhibit A. N.J.S.A. 58:10-23.11(e)

Exhibit B. N.J.A.C. 7:1E-5.1-5.3

Exhibit C. In Re Adoption of N.J.A.C. 7:1E, Chemical Industry Council of New Jersey v. New Jersey Department of Environmental Protection and Energy (App. Div. A-921-91T2F, April 8, 1992)

Exhibit D. Bergen County Ordinance No. 92-32

Exhibit E. Letter, Honorable Scott A. Weiner, Commissioner of the New Jersey Department of Environmental Protection and Energy to Ms. Mary E. Ward, Clerk, Bergen County Board of Chosen Freeholders and Order In the Matter of Bergen County Ordinance No. 92-32 Discharge Prohibition and Control

Exhibit F. Letter, Richard L. Duprey, Director of Government Relations, Commerce & Industry Association of New Jersey to Honorable Scott A. Weiner, Commissioner of the New Jersey Department of Environmental Protection and Energy, March 8, 1993

Exhibit G. Letter from Lance R. Miller, Assistant Commissioner of the New Jersey Department of Environmental Protection and Energy to Richard L. Duprey

Exhibit H. N.J.A.C. 7:1E-5.9

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- Exhibit I. "Bureaucratic Spiderweb, a
Costly Drain on Manufacturers"
by Gordon Bishop, The Star
Ledger, June 24, 1993
- Exhibit J. Letter from John R. Weingart,
Assistant Commissioner of the
New Jersey Department of
Environmental Protection and
Energy, to Interested Persons,
February 16, 1993
- Exhibit K. Letter of Edward A. Hogan,
Esq., Porzio, Bromberg &
Newman, P.C. to Barry
Chalofsky, Manager, Stormwater
Permitting Program, New Jersey
Department of Environmental
Protection and Energy,
March 18, 1993

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58:10-23.11e. Person responsible for discharge; notice to department

Any person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22¹ of this act.

L.1976, c. 141, § 6, eff. April 1, 1977. Amended by L.1979, c. 346, § 3.

¹ Section 58:10-23.11u.

Historical and Statutory Notes

Prior Laws: C. 58:10-23.6 (L.1971, c. 173, § 6).

1979 Legislation

The 1979 amendment rewrote the first sentence, which prior to this amendment, read: "Any person responsible for

causing a discharge shall immediately notify the department".

Effective date of L.1979, c. 346 and date of applicability of act to transfers of hazardous substances other than petroleum products, see Historical Note following § 58:10-23.11b.

Law Review Commentaries

Environmental penalties: The new emphasis. Marsha Wolf and Lewis Goldshore, 120 N.J.L.J. 85 (1987).

Reporting releases from clients' underground storage tank systems: Should at-

torneys have the hot line on speed dial. Harriett Jane Olson and Kathleen T. Kneis, 21 Seton Hall L.Rev. 1041 (1991).

Library References**American Digest System**

Natural water courses; pollution in general, see Waters and Water Courses ¶64 et seq.

Surface waters; pollution, see Waters and Water Courses ¶120.

Encyclopedias

Natural watercourses; pollution in general, see C.J.S. Waters § 43 et seq.

State regulation of environmental protection and pollution control; water

and stream pollution, see C.J.S. Health and Environment § 131.

Surface waters; pollution, see C.J.S. Waters § 123.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

58:10-23.11e1. Discharge of fuel by overhead aircraft; report of hazardous discharge; notice to affected municipality

Whenever an aircraft discharges fuel into the airspace over the land or waters of this State, the operator shall note the amount of fuel discharged, location in flight path of the discharge, wind speed and direction, and area likely to be affected by the discharge. The operator shall include this information in its report of a hazardous discharge to the department. Whenever the department receives notice of a discharge from an overhead aircraft, the department shall notify the governing body of each affected municipality of the discharge.

L.1989, c. 246, § 1, eff. Jan. 2, 1990.

Senate Energy and Environment Committee Statement

Assembly, No. 4461—L.1989, c. 246

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 4461.

This bill would supplement the "Spill Compensation and Control Act," P.L.1971, c.146 (C.58:10-23.11) to require the Department of Environmental Protection to notify affected municipalities of hazardous discharges from overhead aircraft. This bill would require the operator of an aircraft to include the following in the report of a hazardous discharge: the amount of fuel discharged, location in flight path of the discharge, wind speed and direction, and area likely to be affected by the discharge. Although fuel dumping is a reportable discharge under current law, there is no mechanism for notifying affected municipalities. In an incident late last year an overhead aircraft dumped 16,000 gallons of fuel and local officials had difficulty in determining the source of the pervasive smell of fuel and whether emergency measures needed to be taken.

The bill also requires the department to notify all airport operators in the State and all commercial airlines operating in the State of the reporting requirements of this bill.

Historical and Statutory Notes**1989 Legislation**

Sections 2, 3 of L.1989, c. 246, approved Jan. 2, 1990, provide:

"2. On or after the effective date of this act, the department shall notify all airport operators in the State and all commercial airlines operating in the State of the reporting requirements of this act.

"3. This act shall take effect immediately but shall remain inoperative until the 30th day after enactment."

Title of Act:

An Act concerning certain hazardous discharges and supplementing P.L.1976, c.141 (C.58:10-23.11 et seq.). L.1989, c. 246.

equivalent and an ornithologist stating that the environmentally sensitive areas protection plan identifies those environmentally sensitive areas that could be affected by a discharge from this facility and the seasonal sensitivity of those areas, provides for protection from, and mitigation of, any potentially adverse impact on the identified areas, and for an environmental assessment in the event of a discharge.

SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.1 Scope

This subchapter prescribes the rules of the Department for notification and reporting of discharges of hazardous substances, the reporting of malfunctions of discharge detection systems, and response to discharges of hazardous substances. The following rules shall govern the procedures for notification of the Department, response to a discharge of a hazardous substance, and follow-up reporting.

7:1E-5.2 Notification of discharges which occurred before the January 23, 1980, amendments to the Act

(a) All persons responsible for a discharge who know or suspect that a discharge has occurred prior to January 23, 1980 and who have not previously reported that discharge shall conduct a diligent inquiry and shall promptly upon completion of the diligent inquiry and discovery of a discharge notify the Department in writing of such discharge at the address given at N.J.A.C. 7:1E-5.8(e).

(b) All persons responsible for a discharge pursuant to (a) above who previously reported a discharge which occurred prior to January 23, 1980, shall promptly correct or supplement the prior notice to the Department if any of the information in the prior notice is determined to be false, misleading or inaccurate, or if additional relevant information is discovered which has not been previously reported to the Department.

7:1E-5.3 Discharge notification

(a) Immediately after a discharge commences, any person or persons responsible for a discharge who knows or reasonably should know of the discharge, shall immediately notify the Department at (609) 292-7172. In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

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

(c) Any notification performed by any person responsible for a discharge pursuant to (a) and (b) above shall include, but not be limited to, the following information.

1. The name, title, affiliation, address and telephone number of the person reporting the discharge;

2. The location of the discharge, with as much specificity as the Department requests, and in any event with sufficient specificity to enable the Department to direct its agents and employees and any other person to the discharge site, including:

i. For discharges from sites located on land, the name of the site, the street address, the municipality, and the county;

ii. For discharges on, under or into water, the name of the water body, location of the discharge with reference to a fixed point or points, and a description of the area which the discharge may reach.

3. The common name of the hazardous substance(s) discharged;

4. An estimate of the quantity of each hazardous substance discharged, including best estimates if the quantities are unknown;

5. The date and time at which the discharge began, the date and time at which the discharge was discovered, and, if the discharge has ended, the date and time at which it ended;

6. The actions such person proposes to take to contain, clean up and remove the hazardous substance(s) discharged;

7. The name and address of any person responsible for the discharge.

(d) A copy of the requirements in (c) above, printed in a conspicuous format, shall be displayed by the owner or operator of any vessel which is ordinarily docked in this State in a prominent place on the bridge or pilot house of any such vessel, and by the owner or operator or any onshore facility at any transfer areas and the operations center of any such facility.

Administrative Correction to (a).
See: 24 N.J.R. 581(a).

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-921-91T2F

IN RE ADOPTION OF
N.J.A.C. 7:1E

CHEMICAL INDUSTRY COUNCIL OF
NEW JERSEY,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION & ENERGY,

Respondent.

Argued March 10, 1992 - Decided APR 8-1992

Before Judges Shebell and D'Annunzio.

On appeal from the Commissioner of the New Jersey Department of Environmental Protection and Energy.

Michael J. Herbert argued the cause for appellant Chemical Industry Council of New Jersey (Picco, Mack, Herbert, Kennedy, Jaffe and Yoskin, attorneys; Mr. Herbert, of counsel; Susan C. Gieser, on the brief).

Gerard D. Burke, Deputy Attorney General, argued the cause for respondent Department of Environmental Protection and Energy (Robert J. Del Tufo, Attorney General, attorney; Joseph L. Yannotti, Assistant Attorney General, of counsel; David W. Bosted, Deputy Attorney General, on the brief).

The opinion of the court was delivered by

SHEBELL, J.A.D.

This appeal from the adoption of regulations first proposed on May 6, 1991, by the New Jersey Department of Environmental Protection and Energy (DEPE) to implement the July, 1990 amendments to the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11d1 - 23.24, comes to us on an expedited schedule. The DEPE repealed the previous provisions of N.J.A.C. 7:1E and replaced them with a comprehensive revision. The new regulations when first proposed were published in the New Jersey Register at 23 N.J.R. 1335(a). The public comment period closed on June 12, 1991. Appellant, Chemical Industry Council of New Jersey (CIC), along with other interested parties, submitted written comments on or prior to that date. The final regulations were published on September 3, 1991 at 23 N.J.R. 2656(a) and became operative on September 11, 1991.

On October 10, 1991, the CIC filed a notice of appeal with this court. CIC moved pursuant to R. 2:9-7 before the Commissioner of the DEPE for a stay of the implementation of N.J.A.C. 7:1E pending our review. The Commissioner denied this request. We also denied CIC's request for a stay; however, we ordered that the appeal be expedited.

CIC is a New Jersey based trade association representing approximately 105 chemical and allied product manufacturers in this State. The DEPE is a public agency empowered by our Legislature pursuant to the Spill Act to promulgate rules and regulations to implement the Spill Act. N.J.S.A. 58:10-23.11f6.

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In 1990, the Legislature, in response to an ever-increasing number of discharges of hazardous substances in this State and on its waterways, enacted a package of six bills with the purpose preventing and deterring spills and discharges of petroleum products, debris, and other hazardous substances. Five of these bills amended the Spill Act. Signed into law on July 21, 1990, these bills required the DEPE to undertake added responsibilities. The Commissioner of the DEPE accurately summarized the statutes and requirements under each as follows:

1. 1990 Assembly No. 3262 (P.L. 1990, Chapter 78). This law established an expanded Discharge Prevention, Containment and Countermeasure (DPCC) Program. DEPE must adopt rules specifying the contents of DPCC and discharge cleanup and removal (DCR) plans, provide criteria for identifying environmentally sensitive areas, review DPCC and DCR plans when submitted, and conduct on-site inspections to verify compliance with adopted standards. DEPE is also required to receive and, where appropriate, respond to notifications of discharges and leak detection equipment malfunctions. The statute also increases the tax on the transfer of hazardous substances from major facilities by \$0.0025 per barrel.

2. 1990 Assembly No. 3265 (P.L. 1990, Chapter 79). This law amended the Corporation Business Tax of 1945 and the New Jersey Gross Income Tax Act, eliminating as a deductible business expense any penalty or fine collected for violation of state or federal environmental law. Also eliminated as deductible expenses are treble damages to the State for cleanup and removal costs incurred as the result of the failure of a discharger to clean up an unauthorized discharge.

3. 1990 Assembly No. 3268 (P.L. 1990, Chapter 80). This law requires the illumination of marine transfers of hazardous

substances on state waterways during non-daylight hours. DEPE must specify the intensity and area of illumination.

4. 1990 Senate No. 2517 (P.L. 1990, Chapter 75). This statute gives DEPE added authority to set civil administrative penalties of up to \$10 million for discharges of 100,000 gallons or more of hazardous substances.

5. 1990 Senate No. 2520 (P.L. 1990, Chapter 76). This bill requires that protective measures, such as the placement of containment booms, be taken during the transfer of hazardous liquids at marine facilities. DEPE must prescribe the type of containment devices to be employed, how they must be deployed and identify the types of hazardous substances which require booming.

6. 1990 Senate No. 2521 (P.L. 1990, Chapter 77). The Hazardous Liquids Transportation Act requires registration for transmission pipelines carrying hazardous substances. DEPE must conduct a comprehensive pipeline safety study, including the feasibility of adopting appropriate standards for construction and materials, leak detection systems, and secondary containment for underwater pipelines.

One of the central provisions of the Spill Act, which has long been in effect, requires that any person who may be subject to liability for a "discharge" of a hazardous substance shall immediately report the occurrence to the DEPE. N.J.S.A. 58:10-23.11e. That provision presently reads as follows:

Any person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22 of this act. [N.J.S.A. 58:10-23.11e (footnote omitted)].

The disputed regulations which the DEPE adopted incorporate the statutory definition of "discharge" almost verbatim. The differences in the definitions are (1) that the regulation, N.J.A.C. 7:1E-1.6, reiterates the 1977 statutory provision that a discharge pursuant to a state or federal permit need not be reported, N.J.S.A. 58:10-23.11c, and (2) states that a "leak," as distinguished from a discharge, also need not be reported. "Leak" is defined as follows:

"Leak" or "leakage" means any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use into a secondary containment or diversion system or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State. [N.J.A.C. 7:1E-1.6].

Thus, the regulations on their face are more restrictive, not broader than, the enabling statute.

The enabling legislation which requires that the DEPE promulgate regulations under the Spill Act as amended states:

Within one year of the effective date of P.L. 1990, c. 78 (C. 58:10-23-11d1 et seq.), the department shall adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L. 1990, c. 78 (C. 58:10-23.11d1 et seq.). Pending adoption of rules and regulations, the department may require a major facility or transmission pipeline to take such action to upgrade the discharge and prevention capabilities at the facility or pipeline as the department may deem appropriate. [N.J.S.A. 58:10-23.11d14].

See N.J.S.A. 58:10-23.11f6. In GATX Terminal Corp. v. Department of Envtl. Protection, 86 N.J. 46 (1981), our Supreme Court upheld

The DEPE, in support of its position in adopting N.J.A.C. 7:1E-1.6 and thereby requiring that all discharges into the water or onto the lands of the State be immediately reported, urges that these rules serve a critically important role in protecting the environment from pollution through discharges of hazardous substances. The requirement that all discharges of hazardous substances into the waters or lands of the State be reported is intended, according to the agency, to make it aware of such discharges so DEPE can ensure prompt cleanups and liability assessment.

The statute designates two types of discharges:

"Discharge" means (1) any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or (2) into waters outside the jurisdiction of the State, when damage may result to the lands, waters or natural resources within the jurisdiction of the State. [N.J.S.A. 58:10-23.11b].

The statutory definition of "discharge" is basically unchanged since its initial enactment in 1977, but for the deletion of the extraneous phrase "from which it might flow or drain into said waters." It is clear that since the April 1991 deletion of a comma after "outside the jurisdiction of the State" in N.J.S.A. 58:10-23.11b, that the phrase "when damage may result" only applies to discharges "into waters outside the jurisdiction of the State." The Spill Act therefore defines "discharges" occurring within the State to include spills of hazardous substances without regard to whether damage may result.

Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. at 561; In re New Jersey Bd. of Pub. Utils., 200 N.J. Super. 544, 557 (App. Div. 1985). In reviewing a regulation, this "court may look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives." Long, 75 N.J. at 562.

The support for the conclusion that the regulations under N.J.A.C. 7:1E are within the contemplation of the enabling act is overwhelming. N.J.S.A. 58:10-23.11d14 specifically directs the DEPE to adopt regulations pursuant to the "Spill Act." It is clear that the regulations under N.J.A.C. 7:1E do not exceed the enabling legislation. Further, although not expressly stated by the Legislature, it can be inferred that the Legislature wanted the regulations to be broad enough to protect the "general health, safety, and welfare of the people of this State . . ." GATX, 86 N.J. at 48-52.

Appellant contends that the provisions of N.J.A.C. 7:1E coupled with the regulatory definitions of the terms "discharge" and "hazardous substance" impermissibly expand the scope of the Spill Act and are arbitrary as well as unreasonable. Appellant also maintains that the Legislature could not have intended that all discharges of hazardous substances be reported. It argues that reporting a discharge, even if it occurs within this State, should only be necessary "when damage may result" under N.J.S.A. 58:10-23.11bh, as failure to so limit the notification

regulations promulgated by the DEPE under the Spill Act after they were challenged as being beyond the scope of the statute.

The Court stated in 1981:

We find in N.J.S.A. 58:10-23.11d, and particularly in subparagraph (f) thereof which provides that the DEP "shall promulgate rules and regulations . . . establishing standards for the availability of preventative, cleanup and removal procedures, personnel and equipment" (emphasis added), a clear statutory basis for DEP authority to deal with the prevention of discharges, as well as with containment, cleanup and removal after a spill has occurred. [Id. at 52].

Generally, an administrative regulation is presumed to be valid and reasonable. City of Newark v. Natural Resource Council in Dep't of Envtl. Protection, 82 N.J. 530, 539, cert. denied, 449 U.S. 903, 66 L. Ed.2d 245 (1980); New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 561 (1978). Review of agency action requires the following inquiry:

(W)hether (1) the agency action violates the enabling act's express or implied legislative policies; (2) there is substantial basis in the record to support the findings upon which the agency based the application of legislative policies; and (3) in applying the legislative policies to the facts, the agency clearly erred by reaching a conclusion that could not have been reasonably made upon a showing of the relevant factors. In the Matter of Water Supply Critical Area, 233 N.J. Super. 280, 284, 558 A.2d 1321 (App. Div. 1989), citing Public Service Elec. v. DEP, 101 N.J. 95, 103, 501 A.2d 125 (1985). [In re Adoption of N.J.A.C. 7:26B, 250 N.J. Super. 189, 207 (App. Div.), cert. granted, 126 N.J. 387 (1991)].

It is also well-settled that a determination that an administrative regulation is ultra vires is disfavored. New

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requirement would result in nonsensical and unjust results. Appellant cites several hypothetical situations involving ordinary citizens and everyday mishaps to substantiate its position.

The DEPE argues that the Spill Act imposes strict liability for discharges occurring within the State without proof of damage and that no other limitation is acceptable. It notes that the Commissioner concluded that broad language was necessary "because the variety of types of discharges is great," but that a commonsense approach to enforcement would prevail.

A strong presumption exists in favor of finding a statute valid "and the burden of proving its unconstitutionality is 'an extremely formidable one.'" State v. Owens-Corning Fiberglas Corp., 100 N.J. Super. 366, 382 (App. Div. 1968), *aff'd*, 53 N.J. 248 (1969) (quoting Lavitt & Sons, Inc. v. Division Against Discrimination, 31 N.J. 514, 531 (1960)). The same standard is applicable to regulations. See Schwerman Trucking Co. v. Department of Env'tl. Protection, 125 N.J. Super. 14, 18 (App. Div. 1973). Further, where the clear purpose of the statute is the protection of the public health and welfare, this court should liberally construe the statute to accomplish its obvious beneficent objective. Owens-Corning Fiberglas Corp., 100 N.J. Super. at 382. Defendants maintain, however, that the broad powers to implement the Spill Compensation and Control Act, which powers shall be liberally construed, GATX, 86 N.J. at 52, are not without limitation. See In re Adoption of N.J.A.C. 7:26B, 250

N.J. Super. at 244-45 ("While ECRA is a remedial statute which is arguably liberally or generally construed . . . the courts . . . have carefully construed statutory language which imposes liability on a landowner . . .").

The definition of "discharge" in N.J.A.C. 7:1E-1.6 is almost identical to the definition of "discharge" in N.J.S.A. 58:10-23.11b. Both are set forth as follows:

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State. [N.J.S.A. 58:10-23.11bh].

"Discharge" means any intentional or unintentional action or omission, unless pursuant to and in compliance with a valid and effective Federal or State permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State. This term does not include "leak." [N.J.A.C. 7:1E-1.6].

The DEPE's interpretation that any "discharge" needs to be reported if it is onto lands of this State or into the waters of this State and that only those discharges that occur outside the State which may damage lands or waters in this State need to be reported is reasonably calculated to guarantee the Department will be made aware of discharges and able to identify those

persons who may be liable under the Spill Act. See N.J.S.A. 58:10-23.11a (setting forth the Legislature's "findings and declarations" that the "discharge of petroleum products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State.") We find no basis for deviating from what we consider to be the Legislature's mandate. Thus, the regulation definition of "discharge" cannot be considered to be beyond the scope of the enabling legislation. We are not here called upon to determine the extent to which, if at all, the ultimate liability of a person causing a non-damaging discharge is enlarged under the Spill Act.

Appellant also maintains that the terms "discharge" and "hazardous substances" are not adequately defined, citing various comments and responses made at the public hearings on the regulations in support of its contention. Again, these comments make it clear that the position of the DEPE is that ANY "discharge" of a "hazardous substance" must be reported.

"Hazardous substances" are defined in N.J.S.A. 58:10-23.11bk as follows:

k. "Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L. 1983, c. 315 (C. 34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency

pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, as amended by the Clean Water Act of 1977, Pub. L. 95-217 (33 U.S.C. § 1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L. 96-510 (42 U.S.C. § 9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this act;

Pursuant to this statute, the regulations contain a detailed and extensive list of hazardous substances as set forth in Appendix A under N.J.A.C. 7:1E. Thus, "discharge" and "hazardous substances" are described with adequate specificity in the regulations.

Defendant's concern that the regulations do not specify a "quantity" of the discharge of a hazardous substance was clearly answered during the commentaries to the regulations:

"The Department does not specify a percent concentration." "The definition of 'discharge' is not linked to the quantity of the hazardous substance released." "Any quantity of a hazardous substance released to the lands or waters of the State is a discharge" "The Department wants to be aware of all discharges that are occurring within New Jersey." "A de minimus standard is not appropriate for these rules." 23 N.J.R. 2671, 2706-2707.

DEPE's interpretation of "discharge" does not impermissibly expand the scope of individuals that the Legislature intended to regulate under the Spill Act. Rather, the regulations appear to further the Legislature's intent under the Spill Act.

Appellant also maintains that the definitions of the terms "discharge" and "hazardous substance" are void for vagueness.

Our Supreme Court has stated:

Clear and comprehensible legislation is a fundamental prerequisite of due process of law, especially where criminal responsibility is involved. Vague laws are unconstitutional even if they fail to touch constitutionally protected conduct, because unclear or incomprehensible legislation places both citizens and law enforcement officials in an untenable position. Vague laws deprive citizens of adequate notice of proscribed conduct, Lanzetta v. New Jersey, 306 U.S. 451, 453, 59 S. Ct. 610, 619, 83 L. Ed. 888, 890 (1939), and fail to provide officials with guidelines sufficient to prevent arbitrary and erratic enforcement. . . .

A law is void as a matter of due process if it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Constr. Co., 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322, 328 (1926). (Town Tobacconist v. Kimmelman, 94 N.J. 85, 118 (1983)).

Regulations must also "be sufficiently definite to inform those subject to them as to what is required." New Jersey Ass'n of Health Care Facilities v. Finley, 83 N.J. 67, 82, appeal dismissed, cert. denied, 449 U.S. 944, 66 L. Ed.2d 208 (1980).

N.J.S.A. 2C:17-2, which makes a violation of the Spill Act a criminal offense in some circumstances, provides:

(2) A person who, purposely or knowingly, unlawfully causes a hazardous discharge required to be reported pursuant to the "Spill Compensation and Control Act," P.L. 1976, c. 141 (C. 58:10-23.11 et seq.) or any rules and regulations adopted pursuant thereto, or who, purposely or knowingly, unlawfully causes a release of abandonment of hazardous waste as defined in section 1 of

P.L. 1976, c. 99 (C. 13:1E-38) or a toxic pollutant as defined in section 3 of P.L. 1977, c. 74 (C. 58:10A-3) commits a crime of the second degree. Any person who recklessly violates the provisions of this paragraph is guilty of a crime of the third degree. The provisions of N.J.S. 2C:1-6 to the contrary notwithstanding, a prosecution for a violation of the provisions of this paragraph shall be commenced within five years of the date of the discovery of the violation.

We have reviewed the regulations under N.J.A.C. 7:1E with the same scrutiny as a penal statute. See M. Wolf & L. Goldshore, Pollution's Price Not Just Cost of Doing Business, 127 N.J.L.J. 575 (Feb. 28, 1991) (cited by DEPE for the proposition that "[c]riminal penalties for environmental offenses are becoming more routine.") We find the regulations to be "sufficiently definite to inform those subject to them as to what is required." Finley, 83 N.J. at 82.

Appellant maintains that the DEPE's statement that "[t]he Department's enforcement of the law . . . will be based on a sensible, rather than literal, interpretation of the statutory text, with the purpose and reason for the legislation controlling," evidences that the regulations are vague. See Bolier Beverages, Inc. v. Davis, 38 N.J. 130, 152-53 (1962). Appellant concludes that "[b]y not specifying a quantity or concentration, the regulated community has no idea when the NJDEP's 'common sense' approach will result in a determination that a reportable discharge occurred."

The appellant also relies on in re Adoption of N.J.A.C. 7:26B, 250 N.J. Super. at 229, where this court invalidated

though it might be too vague as applied to others. See, e.g., Lee, supra, 96 N.J. at 167 (criminal statute found facially valid because not "impermissibly vague in all its applications," also found valid as applied, notwithstanding the possibility of other circumstances in which it would be too vague to apply); Lashinsky, supra, 81 N.J. at 18 (criminal statute prohibiting "obstruction" of another person acknowledged to be potentially vague but, nevertheless, found to be sufficiently clear as applied to defendant's conduct in the particular case).

To summarize, a law that is challenged for facial vagueness is one that is assertedly impermissibly vague in all its applications. A statute that is challenged as applied, however, need not be proven vague in all conceivable contexts, but must be shown to be unclear in the context of the particular case. In either a facial or as-applied vagueness attack, the level of judicial scrutiny and degree of required clarity will depend on the purpose of the statute, the context in which the law is challenged, the conduct that is subject to its strictures, the nature of the punishment that is authorized, and, finally, the potential impact of the statute upon activities and interests that are constitutionally protected. [Id.].

The CIC has facially challenged the regulations. It has not challenged them "as applied." There are innumerable applications of the regulations that are clear and not in any sense vague or subject to doubt. [Id. at 593]. Thus, even if the regulations may be subject to question in some of their applications, they are not "facially invalid." [Id.]. The statute and regulations "as applied" may be attacked as unconstitutionally vague or violative of a protected interest in the future if the circumstances of a particular case warrant it.

Affirmed.

regulations due to their lack of specificity and stated: "[w]e require the DEP to have a more articulate standard for its exemption to ECRA than its own 'satisfaction,' the only standard in current N.J.A.C. 7:26B-1.9." [Id.]. Thus, appellant maintains that the regulations in this case must also be found unconstitutional since the regulations "provide[] no objective standard." See id. at 225.

The premise is established that under the regulations adopted by DEPE any discharge of a hazardous substance, regardless of the quantity of the hazardous substance, must be immediately reported to the DEPE. So interpreted, the duty to report is not vague. Indeed, nothing could be clearer than the mandate established here. We are therefore constrained to find the regulations constitutional under the test set forth in State v. Cameron, 100 N.J. 586, 593-94 (1985), for attacks based on facial vagueness. There the Court stated:

Judicial analysis of statutory vagueness also depends upon whether a law is challenged as applied, or facially. A statute that is challenged facially may be voided if it is "impermissibly vague in all its application," that is, there is no conduct that it proscribes with sufficient certainty. Hoffman Estates, supra, 455 U.S. at 495, 102 S. Ct. at 1192, 71 L. Ed.2d at 369; Lee, supra, 96 N.J. at 167; Town Tobacconist, supra, 94 N.J. at 119. A statute so lacking in definitional certainty can be characterized as "perfectly vague." . . .

A statute can be challenged "as applied" if the law does not with sufficient clarity prohibit the conduct against which it sought to be enforced. . . . Conversely, if a statute is not vague as applied to a particular party, it may be enforced even

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Spill Act

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-921-91T2F

IN RE ADOPTION OF
N.J.A.C. 7:1E

CHEMICAL INDUSTRY COUNCIL OF
NEW JERSEY,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION & ENERGY,

Respondent.

D'ANNUNZIO, concurring, APR 8-1992

I concur in the rejection of appellant's facial attack on these regulations. I write separately because the Department has taken the position that a spill of a minimal amount of a hazardous substance triggers the obligation to "immediately notify the department," N.J.S.A. 58:10-23.11b, regardless of the spill's potential to cause injury or damage.

The Department, for example, takes the position that a homeowner who spills a small amount of gasoline on a lawn while filling a power mower must immediately notify the Department. Under the regulations, immediate means within 15 minutes. N.J.A.C. 7:1E-5.3(b). Non-compliance with the regulation subjects the homeowner to the Spill Act's penalty provisions.

N.J.S.A. 58:10-23.11u and 23.11ul.

I have substantial reservations regarding applicability of the Spill Act and, therefore, of the Department's regulations, to the example given and to similar de minimus events. Consequently, our affirmance of the regulations in the context of a facial attack on them must not be interpreted as a blank check to the Department to exceed the legislature's intent or to immunize the Department from attacks on its regulations in specific applications. See Roman v. Sharper, 53 N.J. 338, 341 (1969) (we should assume that Legislature intended a reasonable approach, and a statute should be construed to effect a reasonable approach); Schierstead v. Brigantine, 29 N.J. 220, 230-31 (1959) (statutes are to be read sensibly rather than literally; legislative intent is to be presumed as "consonant to reason and good discretion" and absurd consequences are to be avoided).

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Environmental Litigation

New Jersey Journal of

Board of Chosen Freeholders

County of Bergen, Hackensack, New Jersey

This is to certify that the attached RESOLUTION, consisting of 12 page (s),
is a true copy of a Resolution adopted by the BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF BERGEN at a REGULAR Meeting on the
4th day of NOVEMBER, 1992.

MARY E WARD

Clerk Board of Chosen Freeholders

96x



1992

BOARD OF CHOSEN FREEHOLDERS
ORDINANCE

Ord. # 92

MEMBERS	AYE	NAY	NOT VOTING	ABSENT
Cassano	✓			
Chapwick	✓			
Donohue	✓			
Molz	✓			
Sheehan	✓			
Van Dyke	✓			
O'Dowd, Chrm.	✓			
TOTALS	7	-	-	-

Date 11/4/92
Page 1 of 1

Subject: Hazardous Material Discharge

Purpose: Prohibition and Control

Offered by: Van Dyke
Seconded by: Chapwick
Approved by: B.N.P.

Account No. _____
Contract No. _____
Dollar Amount: _____

DISCHARGE PROHIBITION AND CONTROL ORDINANCE OF THE COUNTY OF BERGEN

ORDINANCE NO. 92.32

"An Ordinance Establishing a Prohibition on the Discharge, Leaking or Releasing of Pollutants, Hazardous Substances, Hazardous Materials, and Air Contaminants and Requiring the Prompt Containment and Removal of Such Pollution and Substances."

BE IT ORDAINED by the Board of Chosen Freeholders of the County of Bergen:

SECTION I. TITLE AND POLICY

1. Title: This Ordinance shall be known and cited as the Discharge Prohibition and Control Ordinance of the County of Bergen.

2. Findings and Declaration of Policy: It is hereby declared that Bergen County's lands and waters constitute a unique and delicately balanced resource and that the protection and preservation of these lands and waters promotes the health, safety, and welfare of the people of this County.

The County of Bergen in addition finds and declares that the discharge of petroleum products, pollutants, air contaminants, and other hazardous substances within or outside the jurisdiction of this County constitutes a threat to the economy and environment of this County. Further, such discharges pose a menace to the health, welfare, and comfort of the residents of the County of Bergen and are a cause of substantial damage to property.

It is therefore declared to be the policy of the County of Bergen to minimize such disruptions and damages as are caused by the discharge or leak of petroleum products, pollutants and other regulated hazardous substances, or by the air release of air contaminants, by exercising the powers of the County to impose liability for damages sustained within the County as a result of any release events involving any of these substances and by requiring the immediate notification of occurrences of such release

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agents and the proper administration of the same and pollutants and substances.

SECTION II. ENACTMENT

This Ordinance is enacted pursuant to N.J.S.A. 26:3A2-21 et seq., the County Environmental Health Act.

SECTION III. DEFINITIONS

1. "AIR CONTAMINANT" means solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere, excluding water vapor.

2. "AIR RELEASE" means any intentional or unintentional action or omission resulting in the emission of any air contaminant into the atmosphere within the jurisdictional boundaries of the County, or into the atmosphere outside the jurisdictional boundaries of the County when damage may result to the people, lands, waters or natural resources within the jurisdiction of the County.

3. "COUNTY" shall include the County of Bergen, its employees, agents, officers and officials.

4. "DISCHARGE" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any hazardous substance, hazardous waste, or pollutant into the waters or onto the lands within the jurisdiction of the County, or into waters or onto lands outside the jurisdiction of the County when damage may result to the people, lands, waters, or natural resources within the jurisdiction of the County. This term does not include "leak."

5. "HAZARDOUS SUBSTANCES" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the New Jersey Department of Environmental Protection and Energy pursuant to section 4 of P.L. 1983, c. 315 (C. 34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the Department of Environmental Protection and Energy, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L. 92500, as amended by the Clean Water Act of 1977, Pub.L. 95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. 9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this ordinance.

6. "HAZARDOUS WASTE" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms, or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8.

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7. "LEAK" or "LEAKAGE" means any escape of a regulated substance from the ordinary containers employed in the normal course of storage, transfer, processing or use, into a secondary containment or diversion system or onto an impervious surface from which it is promptly cleaned up and removed prior to its escape into the waters or onto the lands of the County.

8. "MUNICIPALITY" means any of the seventy incorporated municipalities within the County of Bergen, and shall include their employees, agents, officers and officials.

9. "PERSON" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents.

10. "POLLUTANT" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, and industrial, municipal, agricultural and construction waste or runoff or other residue discharged to the land, ground waters or surface waters of the County.

11. "REGULATED SUBSTANCE" means any pollutant, air contaminant, hazardous substance, or hazardous waste as herein defined.

12. "RELEASE EVENT" means any discharge, leak, or air release as herein defined.

13. "VEHICLE" means any motorized equipment, registered or unregistered, including, but not limited to, a passenger car, motorcycle, truck, tractor trailer, construction equipment, farm machinery, watercraft, aircraft and trains.

14. "VESSEL" means any container, drum, box, cylinder or tank used to hold or contain or carry or store any hazardous substance, hazardous waste, pollutant or air contaminant, whether or not said container was manufactured for containment of any of the aforementioned classes of materials.

SECTION IV. PROHIBITION

1. The discharge of a hazardous substance, hazardous waste, or pollutant is prohibited. The air release of an air contaminant is prohibited. This section shall not apply to discharges or air releases conducted in compliance with the conditions of a valid Federal or State permit.

SECTION V. NOTIFICATION

1. Immediately after a discharge, leak, or air release commences, any person or person responsible for a release event who knows or reasonably should know of the release event; shall within 15 minutes of discovery, notify the Bergen County Police Communications Center at (201)646-2705. Notifications received by the Communications Center within this time frame shall be considered immediate. The notification shall include, but not be limited to, the following information:

(a) The name, title, organization, address, and telephone number of the person reporting the discharge, leak, or air release;

(b) The location of the release event with as much specificity as the Communications Center requests, and in any event with sufficient specificity to enable the Communications Center to direct responding personnel to the incident site, including:

i. For discharges, leaks, or air releases from sites located on land, the name of the site, the street address, the municipality, and the county;

ii. For discharges on, under or into water, the name of the water body, location of the discharge with reference to a fixed point or points, and a description of the area which the discharge may reach;

(c) The common name of the hazardous substance(s), pollutants, or wastes discharged or leaked, or the air contaminants released;

(d) An estimate of the quantity of each regulated substance discharged, leaked, or released into the atmosphere, including best estimates if the quantities are unknown;

(e) The date and time at which the discharge, leak, or air release began, the date and time at which the release event was discovered, and, if the release has ended, the date and time at which it ended;

(f) The action such person proposes to take to contain, clean up and remove the regulated substance(s) discharged, leaked, or released to the atmosphere; and

(g) The name and address of any person responsible for the release event.

SECTION VI. REGULATED SUBSTANCE RELEASE EVENT RESPONSE

1. Any person who has discharged, leaked, or air released any regulated substance into the environment, or causes a situation in which such a release event is threatened, shall be responsible for all phases and stages of incident mitigation including but not limited to, removal to the extent technically feasible of the regulated material(s) from the environment, hiring of all necessary contractors, disposal of all hazardous and nonhazardous waste products generated during the course of mitigating the incident, and repair of all damages to affected properties, both public and private, in the possession of the responsible party(s) and other persons. All remedial activities shall be carried out in a safe, prompt and expeditious manner. Failure to comply with this regulation is prohibited.

2. Upon learning that a discharge, leak, or air release of a regulated substance has occurred, the County of Bergen or any affected municipality, or their agents, servants, or employees, may in their discretion act to contain, mitigate, clean up and remove the prohibited substance(s), unless it determines that such action will be done safely, properly and expeditiously by the person responsible for the discharge, or by any other authorized person.

3. Upon learning of a situation in which a discharge, leak, or air release is threatened, the County, any affected municipality, or their

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agents, servants, or employees, may in their discretion act to mitigate the effects of such an incident or situation.

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

SECTION VII. CONFIRMATION REPORT

1. Any person who may be subject to liability for a release event who is responsible under the provisions of this Ordinance to make a notification shall send to the Bergen County Department of Health Services a written confirmation report within 30 days of said notification.

2. Any person required to submit a confirmation report pursuant to this Ordinance shall include in the confirmation report:

(a) The name, title, affiliation, address and telephone number of the person reporting the discharge, leak, or air release;

(b) The name, address, and telephone number of the individual submitting the confirmation report if different from the individual identified in 2(a) above;

(c) If the person identified in 2(a) above is either not subject to the provisions of this Ordinance, or is submitting the confirmation report on behalf of another person, the name, address, and telephone number of the person subject to the provisions of this Ordinance for whom the confirmation report is being submitted;

(d) The name, address, and telephone number of each person in any way responsible for the release event,

(e) The name, address, and telephone number of each owner and operator of the facility at which the release event occurred, or the vessel or vehicle from which the release originated;

(f) The source of the release event, if known;

(g) The location of the discharge, as follows:

i. For release events from sites located on land, the name of the site, the street address, the tax lot and block, the municipality, the county, and a site map identifying the area in which the release event occurred and the surrounding area;

ii. For discharges on, under or into water, the name of the water body, the latitude and longitude of the place the discharge originated, and a map identifying the areas affected by the discharge;

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(h) A list of the common name and Chemical Abstract Service number of each of the regulated substances released;

(i) A list of the quantities of each regulated substance released, including best estimates if the quantities are unknown;

(j) The date and time at which the release event began, the date and time at which the release event was discovered, the date and time at which the release event ended, and the date and time at which the notification required by this Ordinance was made;

(k) A detailed description of the measures taken to contain, clean up and remove the regulated substances, summary of costs incurred, and proof of proper disposal of all regulated substances.

(l) The corrective actions or countermeasures taken, including a description of equipment repairs or replacements;

(m) Additional preventative measures taken or proposed to minimize the possibility of recurrence;

(n) The name, addresses and telephone numbers of all entities involved in containment, clean up or removal of the discharge;

(o) A description of the type, quantity, location and date of all samples taken at or around the site of the release event, whether before, during or after any containment, clean up or removal;

(p) The results of all analyses including all quality assurance and quality control data pertinent to the results.

SECTION VIII. ENFORCEMENT

1. Whenever the Director of the Bergen County Department of Health Services, or his designee, has cause to believe that any person is in violation hereof, an investigation shall be made by the appropriate personnel of the Bergen County Department of Health Services or by their appointed representative.

2. If, upon inspection, a condition in violation of this Ordinance is discovered, the Director of the Bergen County Department of Health Services, or his designee, may initiate a civil action in the Superior Court of New Jersey by filing and service of appropriate process. The Director or his designee may also initiate a civil action in any other court of competent jurisdiction.

3. The Director of the Bergen County Department of Health Services may appoint or designate any person employed by any municipality within the County, subject to written agreement, to administer and enforce the provisions of this Ordinance, pursuant to the permissions and restrictions enumerated below.

4. The Director of the Bergen County Department of Health Services may appoint or designate any person employed by the County of Bergen, subject to written agreement, to administer and enforce the provisions of this Ordinance, pursuant to the permissions and restrictions enumerated below.

5. The County of Bergen reserves the right to prosecute any and all civil violations of this Ordinance. The Director of the Bergen County

Department of Health Services, or a Department of Health Services designee, is authorized to waive this right and permit municipal enforcement of these provisions.

SECTION IX. INSPECTIONS AND RIGHT OF ENTRY

1. All buildings, premises, vehicles, and vessels subject to this Ordinance are subject to inspection from time to time by the Director or his designee. All rooms and areas in a building shall be available and accessible for such inspection which shall be made during usual business hours if the premises are used for non-residential purposes, provided, however, that inspections may be made at other times if:

(a) The premises are not available during the foregoing hours for inspection; or

(b) There is reason to believe that violations are occurring on the premises which can be determined and proved by inspection only during other than the prescribed hours; or

(c) There is reason to believe a violation exists of a character which is an immediate threat to life, health, safety, or the environment requiring inspection and abatement without delay.

2. Emergency inspections may be authorized without warrant if the Director or his designee has reason to believe that a condition exists which poses an immediate or potential threat to life, health, safety, or the environment. Such procedures shall only take place where the time taken to apply for and secure the issuance of a warrant would render ineffective the immediate action necessary to abate the condition.

3. Where the Director or his designee is refused entry or access, or is otherwise impeded or prevented by the owner, occupant, or operator from conducting an inspection of the premises, or from taking immediate action to abate a condition which poses an immediate or potential threat to life, health, safety, or the environment, such person shall be in violation of this Ordinance and subject to the penalties hereunder.

4. The Director or his designee may, upon affidavit, apply to the court having jurisdiction as set forth in SECTION VIII, Paragraph 2, for an administrative warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that a violation of this Ordinance may exist on the premises.

5. If the Court of competent jurisdiction as set forth in SECTION VIII, Paragraph 2, is satisfied as to the matter set forth in the said affidavit, the Court may authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation may exist.

SECTION X. CIVIL PENALTIES

1. Any person who shall violate any of the provisions of this Ordinance, or who shall fail to comply therewith or with any of the requirements thereof, shall be subject to a civil penalty as set forth below.

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2. Each day that a violation continues shall constitute a separate and distinct offense, punishable by the imposition of additional penalties as are set forth below.

3. For penalty determination purposes, any prior violation(s) of the same provision having occurred within the five years immediately preceding the current violation shall be considered in determining the rank of the current violation.

4. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance.

5. When a penalty amount not exceeding \$5,000 is specified by this Ordinance, the Director or his designee may initiate a civil action in the Special Civil Part of the Superior Court by the filing and serving of appropriate process.

When a penalty amount is not specified by this Ordinance, the Director or his designee may initiate a civil action in the Superior Court by the filing and serving of appropriate process. In such instances penalties shall not exceed \$50,000 for each separate and distinct offense.

Any penalty incurred under this Ordinance may be recovered with costs in a summary proceeding pursuant to the "Penalty Enforcement Law", N.J.S.A. 2A:58-1, et seq.

6. In those instances where a penalty dollar amount is specified for a particular violation, the basic penalty amount stated in the ordinance will be modified, as appropriate, by the applicable Penalty Adjustment Factors. In no case shall the assessed penalty be less than zero or more than \$5000 for these particular violations.

SECTION XI. CONSTRUCTION AND SEVERABILITY

1. This Ordinance is to be liberally construed to effectuate the purpose herein described. Nothing herein is to be construed as repealing or abridging the emergency powers of any agency of government except to the extent expressly set forth herein.

2. If any section, subsection, paragraph, sentence, clause, phrase, or word contained in this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

SECTION XII. REPEALER

1. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION XIII. EFFECTIVE DATE

1. This Ordinance shall take effect upon final adoption and publication in accordance with the law.

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	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EA SUBSEQUEN OFFENSE
<u>SECTION IV, Paragraph 1: PROHIBITION</u>				
<u>Pollutant Discharge: Basic Penalties</u>				
- Less than 10 gallons liquid or less than 50 lbs. solid	\$250	\$500	\$1,000	\$2,500
- 10 to 100 gallons liquid or 50 to 500 lbs. solid	\$500	\$1,000	\$2,500	.....
- Greater than 100 gallons liquid or greater than 500 lbs. solid	\$2,500	\$4,000	.....	.....

Penalty Adjustment Factors: For the preceding categories of violations the following factors shall be considered for penalty determination purposes where the stated basic penalty is less than \$5,000. Each applicable individual factor shall have the consequence of reducing or increasing the stated basic penalty by the amount indicated, except that no cumulative penalty for a single offense shall exceed \$5,000.

1. Cause of Discharge:
 - Intentional or Gross Negligence 50% increase from base
 - Operational No change from base
 - Accidental 50% reduction from base
 - Homeowner 10% reduction from base

2. Area of Impact:
 - Off of the facility No change from base
 - Contained on the facility 20% reduction from base
 - Impacts surface waters or storm drains 30% increase from base

<u>Hazardous Substance or Hazardous Waste Discharge: Basic Penalties</u>				
- Less than 1 gallon liquid or less than 5 lbs. solid	\$500	\$1,000	\$2,500	.....
- 1 to 10 gallons liquid or 5 to 50 lbs. solid	\$1,000	\$3,000	.....	.....
- Greater than 10 to 100 gallons liquid or greater than 50 to 500 lbs. solid	\$4,000	.....	.....	.....
- Greater than 100 gallons liquid or greater than 500 lbs. solid.	.....	.....	.....	.....

Penalty Adjustment Factors: For the preceding categories of violations the following factors shall be considered for penalty determination purposes where the stated basic penalty is less than \$5,000. Each applicable individual factor shall have the consequence of reducing or increasing the stated basic penalty by the amount indicated, except that no cumulative penalty for a single offense shall exceed \$5,000.

1. Cause of Leak or Discharge:
 - Intentional or Gross Negligence 50% increase from base
 - Operational No change from base
 - Accidental 50% reduction from base
 - Homeowner 10% reduction from base

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- Greater than 100 gallons liquid
or greater than 500 lbs. solid. \$5,000 -----

NOTE: Violations of this provision consisting solely of, or inclusive of air releases, shall, to the extent of the air release, be cited under authority of Ordinance 89-36, The Air Pollution Control Code of the County of Bergen, as revised by Ordinance 90-23, The 1990 Amendments to the Air Pollution Control Code of the County of Bergen. Such penalties as are prescribed therein shall be applied.

Penalty Adjustment Factors: For the preceding categories of violations the following factors shall be considered for penalty determination purposes where the stated basic penalty is less than \$5,000. Each applicable individual factor shall have the consequence of reducing or increasing the stated basic penalty by the amount indicated, except that no cumulative penalty for a single offense shall exceed \$5,000.

1. Notification Delay

Greater than 15 minutes to 30 minutes after incident discovery.	No change from base
Greater than 30 minutes to 1 hour after incident discovery.	20% increase from base
Greater than 1 hour to 4 hours after incident discovery.	40% increase from base
Greater than 4 hours to 24 hours after incident discovery.	60% increase from base
Greater than 24 hours after incident discovery.	100% increase from base

SECTION VI. Paragraph 1: REGULATED SUBSTANCE RELEASE EVENT RESPONSE

Failure to carry out remedial activities in a prompt and expeditious manner

<u>Pollutant Leak or Discharge</u>	\$250	\$500	\$1,000	\$2,000
<u>Hazardous Substance or Hazardous Waste Leak or Discharge</u>	\$500	\$1,000	\$2,000	\$4,000
<u>Air Contaminant Release</u>	\$500	\$1,000	\$2,000	\$4,000

Penalty Adjustment Factors: For the preceding categories of Violations the following factors shall be considered for penalty determination purposes where the stated basic penalty is less than \$5,000. Each applicable individual factor shall have the consequence of reducing or increasing the stated basic penalty by the amount indicated, except that no cumulative penalty for a single offense shall exceed \$5,000.

1. Initiate Response to Discharge after Incident Discovery

Poor; over 2 hours	50% increase from base
Fair; within 2 hours	No change from base
Good; within 1 hour	30% reduction from base
Excellent; within 15 minutes	100% reduction from base (no violator)

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SECTION VII. PARAGRAPH 1: CONFIRMATION REPORT

Failure to Submit a Written Confirmation
Report Within 30 Days:

\$100

\$250

\$500

\$1,000

SECTION IX. Paragraph 3: RIGHT OF ENTRY

\$2,500

\$5,000

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 William P. Schuber
 County Executive

- Approved
- Rejected

108x



State of New Jersey
Department of Environmental Protection and Energy
Office of the Commissioner
CN 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-984-3962

Scott A. Weiner
Commissioner

Ms. Mary E. Ward, Clerk
Bergen County Board of Chosen Freeholders
Court Plaza South
21 Main Street
Hackensack, New Jersey 07601

Re: Ordinance No. 92-32
Discharge Prohibition and Control

Dear Ms. Ward:

I have reviewed the Bergen County Discharge Prohibition Ordinance. For the reasons set forth in the enclosed order, I must disapprove the ordinance.

I understand that the process of developing the ordinance has been a protracted one. In the interest of expediting the process, I have directed my staff to work with the Bergen County Department of Health Services to draft an ordinance which will satisfy all legal requirements for approval. A member of my staff will be contacting the Department of Health Services within the next week to schedule a meeting on this issue.

If you have any questions, please contact Deborah Pinto, who manages the County Environmental Health Act program. She can be reached at (609) 292-6028.

Sincerely,



Scott A. Weiner, Commissioner

c: Lance Miller, Assistant Commissioner
Site Remediation
Marlen Dooley, Director
Office of Enforcement Coordination
Donald Patterson, Assistant Director
Air and Environmental Quality Enforcement
Deborah Pinto, Chief
Office of Local Environmental Management
Sheryl Telford, Legislative Liaison
John Renella, DAG, Division of Law
Anthony DeCandia, Bergen County
Department of Health Services

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Scott A. Welner
 Commissioner

STATE OF NEW JERSEY)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION AND ENERGY)
) ORDER
 IN THE MATTER OF)
 BERGEN COUNTY ORDINANCE 92-32)
 DISCHARGE PROHIBITION AND CONTROL)

This matter arises out of Ordinance No. 92-32 (the "Ordinance"), adopted by the Board of Chosen Freeholders of the County of Bergen (the "Board") on November 4, 1992. The Board has submitted the Ordinance for my review pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. ("CEHA"). For the reasons described below, I hereby disapprove the Ordinance.

CEHA authorizes the adoption of environmental health ordinances. CEHA expressly lists several appropriate subject matters for such ordinances; in addition to those subjects which are expressly listed, ordinances may also address any other threat to environmental health for which the Commissioner of the Department of Environmental Protection and Energy (the "Department") has delegated authority pursuant to CEHA. These ordinances are to be implemented in accordance with approved interagency agreements between certified local health agencies and the Department. N.J.S.A. 26:3A2-27.

CEHA requires that such ordinances be consistent with all applicable Federal and state statutes, rules and regulations, provided that an ordinance may be more stringent than the corresponding Federal or state statute, rule or regulation if the statute, rule or regulation allows the adoption of more stringent ordinances. Id. The Ordinance does not satisfy the above requirements.

Nonetheless, the Department believes that the environmental health services which are the subject of the Ordinance are appropriate for administration by a certified local health agency such as the Bergen County Department of Health Services (BCDHS). In the interest of expediting the approval of an

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ordinance which will satisfy the requirements of CEHA and of other Federal and state statutes, rules and regulations, the staff of the Department will consult with BCDHS and draft an ordinance which will satisfy these requirements.

The following findings describe the reasons for which I am constrained to disapprove the Ordinance:

1. Penalties. The Ordinance establishes penalties for violations of the Ordinance related to discharges and air releases. The penalties provided in the Ordinance for discharges of pollutants are inconsistent with the penalties provided in the corresponding state regulations, N.J.A.C. 7:14-8. Specifically, the amounts of the base penalties, the nature of the violation for which each base penalty is assessed, the escalation of penalties for repeated violations, and the criteria for adjusting the base penalties in the Ordinance all differ substantially from the corresponding provisions of the state regulations.

The Ordinance establishes penalties for discharges of hazardous substances. Discharges of hazardous substances are governed by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. CEHA expressly lists several "state statutes concerning environmental health," N.J.S.A. 26:3A2-23(o), and provides for the Commissioner to designate additional statutes; however, the Spill Act is not included in the CEHA list and its penalty provisions have never been designated by the Commissioner as appropriate for delegation. The Commissioner has designated certain aspects of the control of hazardous substances as being appropriate for delegation (for example, investigation of reports of releases of hazardous substances and cooperation with the Department in the removal of certain hazardous substances, N.J.A.C. 7:14-3.3), but the authority to assess penalties is not included in that designation. Instead, the Department's rules refer only to the ability to bring legal actions against persons responsible for causing spills, pursuant to the Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq. Therefore, I conclude that these penalty provisions are not authorized under CEHA.

The Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., allows for county ordinances which are more stringent than that statute or the state regulations promulgated pursuant to it. The Ordinance sets forth penalties for air releases in a manner which differs from the penalty provisions of the corresponding state regulations. As a result, the Ordinance will be more stringent (establishing higher penalties) for some types of violations, but less stringent (establishing lower penalties) for others. The Ordinance therefore is neither consistent with nor more stringent than the corresponding state regulations.

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2. In al notification: confirmation report. Section V of the Ordinance requires immediate notification to the Bergen County Police Department after a discharge, leak or air release commences.

The requirement of immediate notification for leaks is inconsistent with the state regulations concerning discharges of petroleum and other hazardous substances. Under the definition of "leak" in the Ordinance, a leak is contained within a secondary containment or diversion system, or on an impervious surface from which it is promptly cleaned up and removed prior to its escape into waters or onto lands of the County. For this reason, N.J.A.C. 7:1E-5.3 does not require notification of leaks.

Section VII of the Ordinance requires the filing of a confirmation report within 30 days after the discharge, leak or air release. For the reasons discussed below, this requirement as applied to leaks is inconsistent with the corresponding provision of the state regulations, N.J.A.C. 7:1E-5.8.

The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., require that notifications of discharges and certain air releases must be made to the Department. The Ordinance should reference these state notification requirements, to avoid the implication that the notification requirements under the Ordinance are in lieu of the state requirements.

3. Event response. Section VI of the Ordinance establishes requirements for responses to a discharge, leak or air release. These requirements differ substantially from applicable state and Federal response requirements. See, e.g., the response requirements for discharges of petroleum and other hazardous substances under N.J.A.C. 7:1E-5.7 and 40 CFR 300.

In addition, for the reasons discussed above, the imposition of response requirements for leaks is inconsistent with the corresponding state regulation. N.J.A.C. 7:1E-5.7.

4. Inspections and right of entry. Section IX of the Ordinance provides for inspections of and a right of entry to buildings, premises, vehicles and vessels. This provision is inconsistent with the corresponding provisions of state regulations because it places no restrictions on the purpose of the inspection or entry, and because it does not provide for prior consultation with the Department to avoid conflicts or duplication between state and county inspections.

Based on the express limitations of N.J.S.A. 26:3A2-27, I am constrained to disapprove the Ordinance in its entirety. However, a resubmission of a revision to the Ordinance developed in accordance with the process discussed above will be reviewed on an expedited basis.

DATE: 1-27-43


SCOTT A. WEINER, COMMISSIONER
Department of Environmental
Protection and Energy

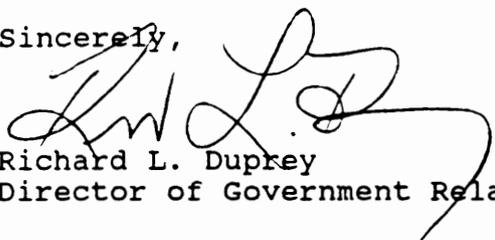
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ately upon completion. In this way, the notifications would be received promptly and the county health departments could ascertain whether the incident was a matter to which they ought to respond. We believe it would pose no particular burden as it would mean that only one additional fax would have to be sent for each notification.

The Association would enjoy learning of your thoughts regarding this proposal and the way in which it might be implemented. The Association's members want to avoid unnecessary regulatory burdens while at the same time seek to ensure that the services their taxes support are appropriately and fully utilized. The county health departments, however, are unable to fulfill their mission if they do not receive information which is in the possession of a coordinate branch of state government.

We look forward to hearing from you.

Sincerely,



Richard L. Duprey
Director of Government Relations

RLD/mm
Enclosure

cc: Colonel J.J. Dintino, Superintendent, New Jersey State Police
Major C.A. Williams, Emergency Management Section, New Jersey State Police
Lance Miller, Assistant Commissioner, Site Remediation, NJDEPE
Stan Delikat, Chief, Bureau of Emergency Response, NJDEPE
Elizabeth E. Randall, Esq., Bergen County Counsel
Mark A. Guarino, M.P.H., H.O., Director, Bergen County Department of Health Services
Edward A. Hogan, Chair, Environmental Issues Committee, Commerce and Industry Association of New Jersey

114X



Commerce and Industry Association of New Jersey
15 East Midland Avenue • P.O. Box 768 • Paramus, New Jersey 07653-0768
• (201) 261-4600 •

FJ - 7

RECEIVED

March 8, 1993

MAR 9 1993

FORZIO BROMBERG
& NEWMAN

Scott A. Weiner, Commissioner
New Jersey Department of Environmental Protection and Energy
401 East State Street
CN-402
Trenton, NJ 08625-0402

Dear Commissioner Weiner:

Last November the Bergen County Board of Chosen Freeholders adopted a discharge prohibition control ordinance which was modeled after, but considerably more expansive than, the Spill Compensation and Control Act. It was this Association's position that not only was this ordinance a duplicative effort, but it created significant compliance problems for business. A copy of a mailing sent to our Association's 1,600 members is enclosed for your reference.

It is our understanding that you have exercised your authority to reject this ordinance. While we are aware of that decision, we understand that the rationale for your rejection has not yet been made public. Our Association does, however, appreciate your efforts in preventing such unwarranted burdens on business.

Although our Association did not learn of this ordinance until after it was adopted by the Board of Chosen Freeholders, we took the liberty of scheduling a meeting with the Bergen County Department of Health Services to ascertain the impetus for the ordinance. At that meeting we learned that the enactment was an effort to eliminate the delay the County Department of Health Services had encountered in receiving notifications of spills and discharges. Apparently, many incidents reported to the New Jersey Department of Environmental Protection and Energy/State Police Spill Hotline were not forwarded to the county until weeks after the incident. It is apparent to us that many, if not all, of the concerns which gave rise to the proposed ordinance would be resolved if the NJDEPE/State Police and the county health departments had a better notification procedure.

The Association's Environmental Issues Committee recently met and discussed possible options which might facilitate such notifications. The consensus at the meeting was that the best resolution of this matter would be if the form completed by the Hotline operator (when operated either by the NJDEPE or the State Police) was faxed to the appropriate county health agency immedi-

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State of New Jersey
 Department of Environmental Protection and Energy
 Site Remediation Program
 CN 028
 Trenton, NJ 08625-0028
 Tel. # 609-292-1250
 Fax # 609-633-2360

Scott A. Weiner
 Commissioner

Lance R. Miller
 Assistant Commissioner

MAR 29 1993

Richard L. Duprey
 Director of Government Relations
 Commerce and Industry Association of New Jersey
 15 East Midland Avenue
 P.O. Box 768
 Paramus, NJ 07653-0768

Dear Mr. Duprey:

Thank you for your recent letter concerning the Bergen County Board of Chosen Freeholders' discharge prohibition ordinance. Commissioner Weiner asked me to respond on his behalf. I have enclosed a copy of Commissioner Weiner's decision which includes the rationale for his disapproval of this ordinance. I would like to take this opportunity to clarify both the notification procedures the Department currently utilizes and a method which is available to the Bergen County Department of Health Services (BCDHS) to facilitate the exchange of this important environmental notification data.

The Department's Bureau of Communications and Support Services is responsible for managing the operations of the Environmental Hotline and is required under the Hazardous Substance Discharge Reports and Notices Act (N.J.S.A. 13:1K-15 et seq.) to provide immediate notification, in writing and verbally, to the governing body and local board of health whenever it obtains any information that a hazardous substance discharge has occurred.

The Department, under the provisions of this Act, notifies the local police/fire department by telephone immediately upon receipt of a report of a hazardous substance discharge. When this Act became law, the Department requested each municipality identify a 24 hour contact who would be notified by telephone of each incident. Most municipalities identified their local police department as their 24 hour contact. Should the BCDHS choose to be the 24 hour A-310 contact for all municipalities within the county, then concurrence must be obtained by all municipalities and provided to the Department by the BCDHS. Designating the BCDHS as the A-310 contact would provide immediate notification of all incidents within the county.

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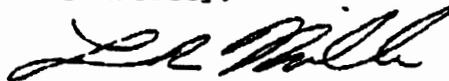
Since 1989, the Department has sent a written confirmation letter, which describes the incident, to the designated local health department and municipal official within ten days of notification of the incident. Although not required by the act, a courtesy copy of the written confirmation is also forwarded to county health departments recognized by the Department under the County Environmental Health Act (CEHA). The BCDHS has been receiving these reports as the recognized CEHA agent for Bergen County. Incidents not assigned to the Site Remediation Program are telefaxed to the appropriate CEHA agency the same day the Department receives the incident notification. This ensures that responses are coordinated between the Department and county agencies, thereby conserving limited resources and reducing any duplication of effort. Additionally, the Department's Bureau of Emergency Response notifies the appropriate CEHA agency immediately of any emergencies they are managing.

In addition to the verbal and written notifications, the Department has developed and made available to local and county health departments, a computerized notification acquisition system. This system provides properly equipped users a method of electronically accessing environmental incident notification data. Several county health departments are either already users or will soon be on-line with this system. However, BCDHS is not yet on-line.

I believe that the information and procedures which I have outlined demonstrate the Department's willingness, understanding and responsibility to work with local and county officials to enhance communications concerning environmental incident notifications and our common goal and mission of environmental protection.

Should you have any additional concerns or questions, please contact Wayne Howitz, Assistant Director, Discharge Response Element, at (609) 633-1421.

Sincerely,



Lance R. Miller
Assistant Commissioner

SAW:JS:kaw
Enclosure

c: Major Williams, NJSP
Mark A. Guarino, BCDHS
Wayne Howitz

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(c) Any person responsible for a discharge shall promptly notify the Department in writing of any additional or corrected information which becomes available after the submission of a confirmation report, within 10 days of the availability of that information. Such information shall reference the date, title and author of the confirmation report which is being supplemented.

(d) Any person required to submit a confirmation report for a discharge at a major facility or transmission pipeline shall submit the confirmation report to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
401 East State Street
CN 027
Trenton, New Jersey 08625-0027
Attention: Discharge Confirmation Report

(e) Any person required to submit a confirmation report other than those referenced in (d) above shall submit the confirmation report to:

Hazardous Waste Enforcement Element
New Jersey Department of Environmental Protection
401 East State Street
CN 028
Trenton, New Jersey 08625-0028

7:1E-5.9 Reporting responsibilities of the Department

(a) Upon obtaining any information which leads it to suspect that a discharge has occurred in a municipality's jurisdiction, the Department shall immediately notify orally the contact persons for the governing body of the municipality and the local board of health as specified in (b) below, unless these entities have been notified previously.

(b) The governing body of the municipality and the local board of health shall provide the Department with the name, address and telephone number of a 24 hour contact point and an alternate 24 hour contact point. The governing body of the municipality and the local board of health may change the contact point and alternate contact point upon written notice to the Department. If a contact point and an alternate contact point are not specified, the local police department or local fire department shall be the points designated by the Department to receive notification pursuant to (a) above.

(c) Within 10 days of the initial oral notification required by (a) above, the Department shall issue a letter confirming and, if appropriate, expanding upon that initial oral notification.

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(d) The Department shall take appropriate action to verify that a discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate Department official to investigate the site of the suspected discharge. Such investigation shall include conducting visual assessment of the site of the discharge and contacting any persons potentially responsible for the discharge.

(e) The agent(s) or officer(s) of the municipality shall report all findings to the Department.

7:1E-5.10 Discharge reporting requirements of local officials

(a) When any governing body of a municipality or local board of health obtains information which leads it to suspect that a discharge has occurred, the governing body or local board of health shall immediately notify, as specified in (b) below, the Department, unless the Department has already been notified of the discharge.

(b) The governing body or local board of health shall provide the Department with information regarding any discharge pursuant to (a) above in the format specified at N.J.A.C. 7:1E-5.3(a).

(c) The local governing body and the local board of health shall coordinate all responses to the discharge with the Department.

7:1E-5.11 Amendment of plans following a discharge

(a) Following submission of a confirmation report pursuant to N.J.A.C. 7:1E-5.8, the Department may review a facility's DPCC and DCR plans and may require the owner or operator of the facility to amend the plans if it finds that a plan does not meet the requirements of this chapter or that amendment of the plan is necessary to prevent and contain similar discharges.

(b) Amendments required by the Department shall become part of the DPCC or DCR plan within 30 days after approval by the Department, unless the Department specifies another effective date. The owner or operator shall implement the amendment of the plan as soon as possible, in accordance with a schedule submitted by the owner or operator and approved by the Department.

'Bureaucratic spider web' a costly drain on manufacturers

By GORDON BISHOP

This is a tale about a parking lot that cost more than \$1 million, most of it in state fines to control stormwater runoff that is cleaner than the nearby river water. And there are no cars parked in this expensive lot.

The story begins in 1977 when a dye house in Paterson applied for a "non-contact cooling water" permit from the U.S. Environmental Protection Agency (EPA).

Three years after submitting the application, the EPA finally responded to the request. By then, however, the dye house - which is Paterson's second largest employer (260 workers) - had abandoned that cooling water approach.

But EPA showed up anyway and inspected the industrial property. The federal inspector looked at the parking lot next to the factory and advised the plant manager to obtain a discharge permit for the stormwater runoff.

Because this was a dye house, EPA's chief concern was any color dyes leaving the property boundaries.

Runoff, however, fell under the jurisdiction of the New Jersey Department of Environmental Protection and Energy (DEPE).

STAR LEDGER SPECIAL REPORT

NOT

FIFTH OF A SERIES

Immediately, the Paterson factory (whose managers did not want to be identified for this story) went into the "endless DEPE pipeline" for discharge permits.

The DEPE requires a New Jersey pollution discharge elimination system permit, or NJPDES, which the regulators pronounce "Me Jip Dees."

The DEPE inspectors tested the stormwater runoff at the Paterson parking lot to see if it met the standards for pH (acids), BOD (biological oxygen demand from any organics), and total suspended solids, or TSS.

The standard for suspended solids, or bits of matter, is 100 parts per million. Occasionally, the stormwater running off the factory's parking lot slightly exceeded 100 ppm, according to Edward Hogan, an attorney with Porzio, Bromberg & Newman in Morristown, who represents the manufacturing firm.

The stormwater running down the street in front of the factory carried 1,400 parts per million of suspended solids, according to the DEPE.

The nearby river, when tested, contained

from 1,300 to 2,000 ppm of suspended particles, DEPE data revealed.

The parking lot, Hogan and his client learned, was discharging stormwater cleaner than what was on the street or in the river.

No matter. The DEPE used its Clean Water Enforcement Act - the only such state statute in the U.S. - to enforce the NJPDES permit.

Such industrial activity had long been covered by the 1972 state and federal Clean Water Acts. But the Legislature decided a few years ago to adopt a new law to enforce an old law, raising the stakes for "polluters."

The enforcement act imposes penalties up to \$50,000 a day for violations of water quality standards - in this case, the suspended particles, much of which are released into the water through the natural environment.

"This company wound up with \$900,000 in

Photo from Page 20

'Bureaucratic spider web' is a costly drain on Jersey manufacturers

Continued from Page One
...because of the stormwater," Hogan cautioned. "EPA was concerned about the color dyes. DEPE looked at the suspended solids."
The manufacturer was ordered to build an earthen berm around the parking lot to prevent runoff onto neighboring properties.
The parking lot, which is now empty, is swept twice a day to make sure no dirt or anything else escapes the property.
In the fall, a mechanical sweeper, which the company had to purchase, is used to remove the leaves in the empty parking lot.
The factory owner had to buy property across the street to park employees' vehicles. The new site did not need a NJPDES permit because it's adjacent to a manufacturing plant.
"Our client was forced to develop an Extraordinary Management Practices plan to reduce the presence of contaminants in stormwater runoff," Hogan said. "It cost more than \$1 million to comply with the DEPE order."
The company, by the way, named the empty berm-protected site the "Me Jip Dees Memorial Parking Lot."
Hogan, an environmental lawyer, mentioned another "DEPE horror story" one of many his law firm handles around the state.
"This is about two truck stops at Tinney's Point along the Delaware River in Gloucester County. Carrey's Steel is a major industrialized area in South Jersey and home of the huge duPont manufacturing complex, one of the largest chemical factories in the world.



Thomas Heller, president of Republic Tool in West Caldwell, says keeping up with DEPE regulations is time-consuming and drains his company's resources. He is with his father, Leonard, chairman of the small business association.

One truck stop installed a mechanical separator that skims oil off stormwater. The truck stop owner, Hogan noted, volunteered to do it to prevent runoff of any contaminants into the environment.

The other truck stop owner decided not to make such an investment, voluntarily.

The moment you install a "water

treatment" device - even a simple, passive, mechanical one - you are immediately classified as a "water treatment works" under DEPE's pollution control laws.

The truck stop owner had to get a "Me Jip Dees" permit from the DEPE. The standards for pH, BOD and TSS automatically apply.

Samples revealed that the truck

stop exceeded the BOD in its stormwater runoff. It took the owner and his environmental engineering consultants 14 months to find the cause of the BOD exceedance.

It turned out to be the concrete cleaner used to scrub down the truck stop's parking lot to make it spotless.

The identical truck stop facility next door had not installed any con-



Gabriel, left, and Michael Papers look over equipment at the Allis' Can Co. in Clifton. The latter says a state tax on copper puts a New Jersey can manufacturer at a competitive disadvantage.

Porzio,
Bromberg
& Newman
A Professional Corporation

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trois; therefore, it was not regulated by the DEPE, Hogan said.

"Because this stop voluntarily wanted to improve its operation—to do the right environmental thing—it was penalized \$210,000," Hogan said.

Through extensive negotiations, Hogan was able to bring the fine down to \$155,000.

"As a result of such overkill, companies are now challenging their permits," Hogan said. "About 80 to 85 percent of the state's permits are now on appeal before the DEPE."

Hogan said such unconscionable actions by the DEPE are "making New Jersey businesses nuts!"

The lawyers and consultants, he admitted, "are making a lot of money" because of the "irrational" way the DEPE implements its programs with the business community.

New Jersey's canning industry has also been a "victim" of some convoluted bureaucratic thinking, according to Michael Papera, controller of his family business, Alistate Can Co. in Clifton.

New Jersey outlawed the use of lead in the production of tin and steel cans because lead causes serious disorders in humans. Copper replaced lead to fuse the side seams of cans.

But copper is subject to a state tax. This tax, Papera said, puts a New Jersey can manufacturer at a competitive disadvantage.

As a result, the Papera family has built a manufacturing plant in Michigan, which doesn't tax copper in the production of containers.

"In 1963, more than 40 percent of our sales from our Clifton plant were shipped in-state," Papera said. "Last year, in-state sales fell to 15.5 percent."

The copper tax led to the closing of American Can Co. in Edison and the loss of hundreds of jobs, and the moving of Phelps-Dodge in Linden to Norwalk, Conn., where there is no tax on copper.

"Why a manufacturer would want to stay in New Jersey is beyond me," Papera said. "Taxing telephone calls also drives up the cost of business."

Papera's biggest battle with the state is the tax on personal business property. The tax is calculated on the value of business property (machinery, parts, etc.) purchased before Jan. 1, 1977—a penalty for a company which continues to maintain business in New Jersey.

Companies which move into the state today would not pay this tax, Papera pointed out. "There's no incentive to expand or stay in New Jersey for older companies." Papera's grandfather founded the company in 1949 and moved to the Clifton plant from New York City in 1954.

Another law, the 1982 state Litter Control Tax, applies only to those containers shipped to customers in New Jersey. An out-of-state competitor shipping to the same New Jersey customers would not pay the litter tax.

"Can you explain the logic in this?" Papera has been asking the state since the tax became effective last year.

Thomas Foster, vice president of Phelps-Dodge, said his company has scaled back operations in New Jersey, where it once had several manufacturing plants, including its copper production plant in Linden, which closed after the copper tax was levied.

"We have one small operation in Elizabeth with less than 100 workers,"

Foster said. "Ten years ago there were 250 employees there."

Foster blames the demise of manufacturing in New Jersey on too many "senseless regulations and taxes."

The state government, he said, "never gave Phelps-Dodge a reason to upgrade its manufacturing operations and remain in New Jersey."

Seabrook Farms in South Jersey, whose name is synonymous with frozen foods, was fined \$10,000 for filing a report with the DEPE 17 days late.

But the company was only following instructions from the DEPE inspector, according to James Seabrook Sr., chairman and CEO.

"The state inspector told us to get the report ready for him to look at when he came back to the plant to check the ammonia refrigeration system," Seabrook said. "Instead, they

'Because this (truck) stop voluntarily wanted to improve its operation—to do the right environmental thing—it was penalized \$210,000.'

—Edward Hogan, lawyer

hit us with a penalty without any warning." Seabrook has also been fined \$40,000 for returning water to a stream 10 degrees warmer than the temperature of the stream.

"We want to comply with every regulation, but they just come in and slap fines on us instead of allowing us to respond to whatever they want us to do," Seabrook said. "It's a hostile way of working with business. We're here to cooperate, not to be punished."

Seabrook is now spending \$100,000 a year to add sodium hydroxide to raise the pH (alkaline) level of its discharges to the stream.

"The inspectors who come here are nice people, but it's the regulators at headquarters who levy the fines without warning," Seabrook said.

Thomas Heller, president of Re-

TOMORROW: Regulatory Reform

public Tool in West Caldwell, calls the DEPE "an overwhelming bureaucratic spider web in which businesses feel trapped."

Heller, whose grandfather established Republic Tool in 1945, has gone from some 50 employees in the late 1970s to 13 employees having to contribute to their health costs if the business is to remain competitive.

"Responding to and keeping abreast of regulations drain our resources," Heller complained. "If I could invest that time and money into sales, we'd have a booming business."

A smaller operation, he said, makes it easier to comply with government regulations. "The more you have, the more paperwork you generate for government," Heller said.

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RECEIVED Feb 19 1993

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

John R. Weingart
Assistant Commissioner

February 16, 1993

Dear Interested Person:

The Department of Environmental Protection and Energy (Department) would like your comments regarding the effect of federal "antibacksliding" provisions on a suggestion that the Department should allow stormwater discharges that are currently authorized by permits with traditional numerical effluent limitations to instead be authorized by general permits whose essential effluent limitation is the implementation of best management practices (BMPs). ("Antibacksliding" provisions essentially prohibit the issuance of a permit for a given discharge that would be less stringent than the permit currently or previously authorizing that discharge.) The Department would also like your comments on several other issues related to its recent stormwater permitting rules. A more detailed discussion of these issues is set forth below.

On October 1, 1992, the Department issued two final New Jersey Pollutant Discharge Elimination System (NJPDES) general permits for discharge to surface waters (DSW) of stormwater associated with industrial activity. These general permits, along with other associated amendments to the NJPDES rules, N.J.A.C. 7:14A, became effective when they were published in the New Jersey Register on November 2, 1992. (24 N.J.R. 4088(a), 4364(a)).

A major distinction between the new general permits and traditional DSW permits is that the general permits do not contain numerical effluent limitations. Most traditional DSW permits, including those authorizing stormwater discharges, contain such numerical effluent limitations, e.g., "Chemical Oxygen Demand--100.00 mg/l." By contrast, the major effluent limitation in the general permits is a requirement for the implementation of BMPs. For the "industrial" general permit (NJ0088315), this essentially translates into a requirement for the preparation and implementation of a stormwater pollution prevention plan that must include the BMPs necessary to ensure

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that there is no discharge of stormwater exposed to the industrial materials included within the permit's definition of "source materials".

The industrial general permit declares that certain types of discharges of industrial stormwater are ineligible for the permit, thus essentially requiring that those discharges be authorized by an individual permit. The ineligible types of discharge include those "[s]tormwater discharges from facilities with any stormwater discharges authorized under another NJPDES Discharge to Surface Water (DSW) permit (including an expired permit)." (See N.J.A.C. 7:14A-3, Appendix A, Part I.B.1.b.) The rules do provide for a procedure whereby a permittee can apply to have its individual DSW permit revoked or modified and at the same time obtain authorization under a general permit. (See N.J.A.C. 7:14A-3.9(b)3v.) However, the revocation or modification procedure does require the expenditure of some resources, and the permittee must establish through that procedure that the shift from one type of permit to the other would not constitute backsliding.

The Department proposed the above-described ineligibility provisions for two primary reasons. First, it was concerned that it would be difficult to administer multiple stormwater permits at a single facility. Second, it was concerned that federal antibacksliding provisions* might be violated if it allowed discharges regulated by existing numerical effluent limitations to instead be regulated by the requirement to implement BMPs.

In response to its proposal, the Department received a number of comments to the effect that the eligibility section of the industrial general permit should be amended so that

*As previously mentioned, antibacksliding provisions essentially prohibit the issuance of a permit for a given discharge that would be less stringent than the permit that previously authorized that discharge. Antibacksliding provisions are found in Section 401(o) of the federal Clean Water Act (33 U.S.C. §1342(o)), in 40 CFR 122.44(1), and in N.J.A.C. 7:14A-3.13(a)12. The applicability of these provisions depends, in some cases, on the basis of the effluent limitation in the previous DSW permit and the new DSW permit. Many numerical effluent limitations in individual DSW permits (and the 1987 general permit) were technology-based effluent limitations based on Best Professional Judgment exercised pursuant to Section 402(a)(1)(B) of the Federal Clean Water Act (33 U.S.C. §1342(a)(1)(B)) and N.J.A.C. 7:14A-3.13(a)1. However, some of the effluent limitations were based on requirements under Section 301(b)(1)(C) of the Federal Clean Water Act (33 U.S.C. §1311(b)(1)(C)).

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discharges that happened to be authorized by existing permits would be eligible for the industrial general permit. The comments suggested that the permit as proposed was inequitable. As indicated in its response to those comments, the Department agrees that it probably is inequitable to continue to preclude discharges authorized by an individual permit from eligibility for the general permit. (See comment and response #24 at 24 N.J.R. at 4092.) However, as also indicated there, the Department is concerned that federal antibacksliding provisions might be violated if the Department were to allow discharges regulated by numerical effluent limitations to instead be regulated by the requirement for BMPs contained in the general permits. In an effort to resolve that concern, the Department has determined to issue the present request for public comment.*

Thus, the Department hereby solicits public comment as to whether the federal antibacksliding provisions preclude it from taking a mass permit action that would replace existing numerical effluent limitations for stormwater in a large number of individual permits (and possibly the Department's 1987 general permit for industrial stormwater, NJ0070211) with the best management practices required by its recently issued stormwater general permits.** Further, if the Department is not absolutely precluded from taking such an action, it further seeks public comment as to whether it needs to state any conclusions or make any findings in order to satisfy the antibacksliding requirements before finalizing the foregoing mass permit action. Finally, if it must state conclusions or make findings, the Department seeks public comment as to what would constitute adequate conclusions or findings and adequate grounds to support same. For example, can the Department draw the necessary conclusions on a broad basis or must it instead draw them on a permit-by-permit (or even parameter-by parameter) basis.

*Although the Department received comments regarding only the eligibility provisions of the industrial general permit, most of the foregoing discussion would also apply to the provision rendering ineligible for the "construction" general permit (NJ0088323) those discharges from mining or quarry operations authorized by an individual permit. (See N.J.A.C. 7:14A-3, Appendix B, Part I.B.2.e.)

**The Department has determined that a mass modification/revocation is a more appropriate means than a modification of the general permit because, even if the general permit were modified, the Department would still have to take some kind of action on the existing individual permit before the permittee could cease to comply with that individual permit.

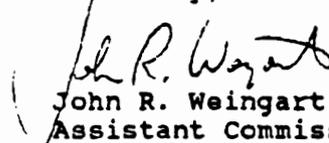
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Although the Department does not believe that Part I.B.1.b of the industrial stormwater general permit should be rescinded, the Department does believe that Part I.B.1.b should be modified to make it clear that Part I.B.1.b was never intended to apply to two special classes of DSW permits. The first of these is the construction stormwater general permit. The Department always envisioned that under a variety of scenarios it would be appropriate for an industrial facility to have both the industrial stormwater general permit and the construction stormwater general permit. (An example would be construction activity to expand an existing industrial plant.) The second are DSW permits that do not authorize any stormwater discharge other than stormwater that is combined with domestic wastewater or process waste water, prior to treatment. The influent to many wastewater treatment plants includes some stormwater, which is treated along with the rest of the influent. Such stormwater is controlled through the wastewater treatment process, and should neither be eligible for the industrial stormwater general permit nor preclude other stormwater discharges at the facility from being eligible for that permit. A preliminary draft of the modification to Part I.B.1.b is enclosed with this letter.

Please submit your written comments regarding the above described antibacksliding issue or modification of Part I.B.1.b of the industrial stormwater general permit within 30 days of the date of this letter to Barry Chalofsky, P.P., Manager, Stormwater Permitting Program, Office of Land and Water Planning, Department of Environmental Protection and Energy, CN 423, Trenton, NJ 08625. If, after reviewing such comments with the Department of Law and Public Safety, the Department decides to proceed further, the Department will invite industrial facilities to participate in the mass revocation/modification, and may issue a draft mass revocation/modification for the permits of some or all of the facilities that respond to the invitation (and a draft modification to Part I.B.1.b). Opportunity for public comment on these draft permit actions would then be provided in accordance with the NJPDES rules and other applicable procedures.

If you have any specific questions on this matter, you may contact William Minervini, Supervising Environmental Specialist, Office of Land and Water Planning at (609) 633-7021.

Sincerely,


John R. Weingart
Assistant Commissioner

Enclosure

JRW:WM/wm

125X

PRELIMINARY DRAFT MODIFICATION TO PART I.B.1.b of NJPDES PERMIT
NO. NJ0088315

b. Stormwater discharges from facilities with any stormwater discharges authorized under another NJPDES Discharge to Surface Water (DSW) permit (including an expired permit)[.] except:

i. NJPDES Permit No. NJ0088323 (a separate general permit for stormwater discharges from certain construction and mining activities); and

ii. A DSW permit which does not authorize any stormwater discharge other than the discharge of stormwater that is combined with domestic wastewater or process waste water, prior to treatment. (Stormwater discharges that are combined with such wastewater prior to treatment are ineligible for this permit.)

126x

PORZIO, BROMBERG & NEWMAN

A PROFESSIONAL CORPORATION

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MORRISTOWN, NJ 07962-1997
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JOSEPH P. THOMAS *
STEPHEN L. WILLIS

N. J. & N.Y. BARS
* N. J. BAR ONLY
+ N.Y. BAR ONLY

March 18, 1993

VIA FEDERAL EXPRESS

Barry Chalofsky, P.P., Manager
Stormwater Permitting Program
Office of Land & Water Planning
New Jersey Department of Environmental
Protection & Energy
CN423
Trenton, New Jersey 08625-0423

Re: Impact of Federal Antibacksliding Provisions on Mass
Permit Action to Replace Numerical Effluent
Limitations of Stormwater Discharges With Best
Management Practices

Dear Mr. Chalofsky:

In a letter dated February 16, 1993 the New Jersey Department of Environmental Protection & Energy ("NJDEPE" or "the Department") solicited written comments concerning whether the Federal Antibacksliding provisions precluded the NJDEPE from taking a "mass permit action" that would replace existing numerical effluent limitations in individual stormwater New Jersey Pollutant Discharge Elimination Systems Discharge to Surface Water ("NJPDDES/DSW") permits, with Best Management Practices ("BMPs") required by Stormwater General Permit NJ0088315 (hereafter referred to as "the Stormwater General Permit") recently issued by the NJDEPE. This letter provides comments on behalf of Daicolor Pope Inc. and Johanna Dairies Inc. with regard to this issue.

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OVERVIEW

Part I of this letter addresses the substantial administrative benefits to the NJDEPE and to the individual permittees that would result from a mass revocation of the individual NJPDES/DSW permits. This will allow a better use of resources and provide greater protection of the natural resources of the state. In addition general principles of equity dictate that similarly situated facilities be treated equally. Part II of this letter addresses the Department's recognition that BMPs will provide a major benefit to reducing levels of pollutants in the waters of the State of New Jersey and concludes that allowing facilities with NJPDES permits with numerical effluent limitations to change to permits requiring BMPs is not "backsliding". As a result of implementing BMP plans, facilities will be able to significantly reduce levels of pollutants. Part III of this letter explains why anti-backsliding regulations would not prohibit mass revocation of individual NJPDES/DSW permits. Finally, the Constitution of the United States, the Constitution of New Jersey as well as common law demands that the NJDEPE revoke individual, stormwater NJPDES/DSW permits with numerical effluent limitations and replace those permits with the Stormwater General Permit requiring BMPs. Treating facilities with existing permits differently is a violation of the Equal Protection Clause. This argument is explained in Part IV of this letter.

For your convenience, below is a Table of Contents outlining the discussion in this letter.

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I. POLICY CONSIDERATION - BMP PERMITS ARE A BETTER USE OF RESOURCES

The NJDEPE in adopting the General Stormwater Permit correctly notes that BMPs represent a pollution prevention philosophy which should result in a more effective, less costly control of stormwater discharges compared to traditional individual NJPDES permits with specific numerical effluent limitations. Nationwide, pollution prevention has been recognized as the most cost-effective way to address pollution. BMPs are based upon the philosophy of pollution prevention and the Department has recognized that this represents significant steps forward in the regulatory process. In proposing amendments to the New Jersey Pollutant Discharge Elimination System Statewide Stormwater Permitting Program, the NJDEPE stated the following:

In recent years, there has been a growing public recognition of the limitations of "End-Of-The-Pipe" treatment and other similar regulatory mechanisms that provide only an after-the-fact attempt at cleaning up contamination that has already occurred. Not only is this form of pollution control expensive and time consuming for the department to administer, it is often very costly to the regulated community, and does not always provide adequate improvement in water quality.

24 N.J.R. 2352 (July 6, 1992).

Numerical effluent limitations merely monitor pollutants at the end of pipe and do not prevent pollutants from entering into the waters of the state. BMPs, however, represent an important aspect of pollution prevention and will result in improving water quality.

The recently issued Stormwater General Permit states that certain types of discharges of industrial stormwater are ineligible for the permit. The ineligible types of discharge include those "[s]tormwater discharges from facilities with any stormwater discharges authorized under another NJPDES/DSW permit (including an expired permit)." See N.J.A.C. 7:14A-3, Appendix A, Part I.B.1.6).

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For the following reasons, it is unfair and inequitable for permittees with existing or expired NJPDES/DSW permits, who would otherwise be eligible for the Stormwater General Permit, to be required to comply with numerical effluent limitations:

- 1) Effluent limitations place an unfair burden on permittees since the stormwater which flows onto their property may already be heavily contaminated by offsite sources. The contaminant levels fluctuate depending on the nature of industrial activity on a particular day in the area immediately surrounding the facility and natural factors such as leaves which may fall adding to COD and TSS levels. Pollutants in the inflowing water may not be generated by a permittee's operations and therefore a permittee should not be held responsible for these pollutants.
- 2) If a permittee is required to comply with numerical effluent limits, it must install a treatment works at great expense.
- 3) It is a basic principle of equity that similarly situated facilities should be treated in a like manner. Many facilities are not subject to individual permits with numerical limitations. Requiring only certain facilities to meet numerical limitations in discharge permits, while others are subject to no permits or only BMP permits is an undue economic burden on the facilities with individual permits. This may render the operation of facilities with individual permits uncompetitive, and may eventually force such facilities to close their doors.
- 4) Continuing to enforce numerical effluent based permits limits issued for stormwater discharges, rather than allowing those permits to be replaced by coverage under the Stormwater General Permit requiring BMPs, will result in businesses leaving New Jersey for states which are allowing facilities with permits including numerical discharge limits to be covered by a general permit requiring BMP. This loss of New Jersey business will eventually lead to a reduction in

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the tax base and concomitant degeneration of the socioeconomic structure of the State.

- 5) If the NJDEPE does not allow a mass revocation of individual permits, certain permittees, due to technologically limiting factors, may continue to discharge pollutants at levels close to or above its existing limits. This will result in such facilities incurring mandatory penalties under the Clean Water Enforcement Act, N.J.S.A. 58:10A-10 et seq. These penalties could be substantial and could drive such permittees out of business. Thus, it is necessary to allow such permittees to obtain Stormwater General Permits in order to avoid this unfair result.

The progressive approach requiring BMPs in lieu of specific effluent limitations reduces levels of pollutants in stormwater more efficiently. Facilities with permits which contain specific numerical effluent limitations are currently required to conduct monthly monitoring and face potential liability for minute exceedances of such effluent limitations. These facilities are being deprived of the opportunity to apply valuable resources to implement BMPs. Monthly monitoring of parameters required by permits which contain specific numerical effluent limitations is expensive and time consuming. Additionally, facilities which exceed the numerical effluent limitations are subject to mandatory penalties pursuant to the New Jersey Clean Water Enforcement Act. The resources currently being used to monitor pollutants at the end of pipe and in some cases to defend enforcement actions and in others to pay considerable penalties for permit exceedances may instead be utilized for actual environmental benefit by applying such resources to the implementation of BMPs.

In addition, caselaw recognizes that administrative agencies can consider the administrative burden in making decisions regarding permits. In Natural Resource Defense Council, Inc. v. Costle, 568 F.2d 1369 (U.S. Court of Appeals, District of Columbia, 1977), the court reviewed whether the Administrator of the USEPA had the authority to exempt certain categories of sources from permitting requirements under the Federal Water Pollution Control Act. The USEPA argued that it may exempt point sources from permitting requirements because of the administrative burden associated with processing the vast number of permits involved. The court acknowledged that the USEPA may use general permits to address a class of point source discharges and conceded the necessary flexibility in shaping

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permits. The court discerned an intent by Congress to give the USEPA flexibility in the structure of permits, in the form of general or area permits. Thus, to address the administrative burden associated with reviewing each permit with numerical effluent limitations on a case-by-case basis, the NJDEPE is authorized to take a mass permit action revoking such limitations and replacing them with BMPs.

Considerable administrative resources would be saved by taking a mass permit action.

II. ANTIBACKSLIDING IS NOT APPLICABLE

A. Mass Revocation of Individual NJPDES Permits with Numerical Effluent Limitations and Replacement with Stormwater General Permit Requiring BMPS is not Backsliding.

Antibacksliding generally prohibits modification of existing permits so that subsequent terms are less stringent. The general goal of the NJPDES permitting system is to reduce the level of contaminants in the waters of New Jersey. General Stormwater Permits requiring the implementation of Best Management Practices are not less stringent than individual NJPDES permits with numerical effluent limitations because the net result of such permits will be to reduce the overall level of contaminants entering the waters of the state. BMPs will require facilities to undertake substantial measures to ensure that contaminants do not even reach stormwater flow. Compared to the implementation of numerical effluent limitations, BMPs are anticipated to reduce contaminant levels significantly. Accordingly, neither Federal or State antibacksliding prohibitions would prevent the NJDEPE from taking a mass permit action to replace stormwater NJPDES Permits with numerical effluent limitations with a general stormwater permit requiring BMPs.

B. Antibacksliding Does Not Apply to Existing Individual NJPDES Permits

The United States Environmental Protection Agency ("USEPA") and NJDEPE have developed permits for the discharge of stormwater associated with industrial activity. The Water Quality Act of 1987 added Section 402(p)(3) to the Federal Water Pollution Control Act to require that permits for stormwater discharges associated with industrial activity must meet all applicable provisions of §402 and §301, including the technology based requirements. Technology based requirements under §301(b)

establish the level of technological control that must be imposed in a permit issued under §402 of the Federal Water Pollution Control Act. Best Conventional control Technology ("BCT") applies to the control of conventional pollutants. Best Available Technology Economically Available ("BAT") applies to toxic pollutants and to pollutants which are neither toxic nor conventional. The USEPA promulgated a final rule establishing general permit requirements and reporting requirements for stormwater discharges associated with industrial activity. 57 Fed Reg. 11394 (April 2, 1992). Likewise, the NJDEPE has adopted a general stormwater permit. 24 N.J.R. 4088 (November 2, 1992). The Stormwater General Permit requires BMPs. The USEPA has taken the position that such a General Stormwater Permit without numerical effluent limitations complies with the BAT/BCT technology requirements of the Federal Water Pollution Control Act.

Generally, technology based requirements are established in permits based on USEPA categorical effluent standards or on a case by case basis by the permit writer under §402(a)(1) of the Federal Water Pollution Control Act. Permit limits established in a case by case basis must apply the "Best Professional Judgment" ("BPJ") of the permit writer.

NJPDES permits either incorporate categorical limitations or establish effluent limitations on a case by case basis. When establishing effluent limitations on a case by case basis EPA regulation 40 C.F.R. 125.3 requires specific factors to be considered when establishing BPJ permits.

Federal regulations applicable in New Jersey specify that in setting case-by-case limitations (i.e. Best Professional Judgment Permits) the permit writer must consider the following factors in determining BCT:

- (i) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;
- (ii) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

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- (iii) The age of equipment and facilities involved;
- (iv) The process employed;
- (v) The engineering aspects of the application of various types of control techniques;
- (vi) Process changes; and
- (vii) Non-water quality environmental impact (including energy requirements).

40 C.F.R. 124.3(d)(2).

NJPDES permits issued in New Jersey must meet the federal standards set forth above. N.J.A.C. 7:14A-3.13(a).

It is our understanding that the effluent limitations established in many NJPDES permits were based on a USEPA Region II policy memorandum dated 1978 regarding surface water and cooling water discharges. To our knowledge, no scientific data supports the effluent limitations contained in that memorandum, nevertheless the guidance was used by New Jersey to establish numerical effluent limitations.

The factors required to be considered in establishing BPJ limits were not considered in setting effluent limitations in existing BPJ Permits. For example, existing permits with numerical effluent limitation failed to consider the relationship between the costs of attaining a reduction in contaminant levels and the effluent reduction benefits that may be derived.

III. EVEN IF INDIVIDUAL NJPDES PERMITS ARE SUBJECT TO ANTIBACKSLIDING, FEDERAL AND STATE REGULATIONS PROVIDE EXCEPTIONS WHICH ARE APPLICABLE TO EXISTING INDIVIDUAL STORMWATER PERMITS

Legislation addressing antibacksliding has been enacted by both Congress and the New Jersey Legislature. The USEPA and NJDEPE have adopted regulations to implement those federal and state statutes.

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A. Federal Antibalancing Regulations Allow Mass Revocation of Existing Stormwater NJPDES Permits.

The 1987 amendments to the Federal Water Pollution Control Act mandate the inclusion of an antibalancing requirement for Best Professional Judgment Permits. §33 U.S.C.A. 1342(o). This section recognizes that exceptions are appropriate in order to ensure that a facility is not being unfairly burdened with overly stringent effluent limitations.

Section 402(o) of the Federal Water Pollution Control Act establishes antibalancing requirements applicable when a permittee seeks to revise a technology based effluent limitation in a BPJ permit to reflect a subsequently promulgated effluent guideline which is less stringent.

The USEPA promulgated regulations implementing the statutory requirements regarding antibalancing. These regulations, found at 40 C.F.R. 122.44(1)(2), are discussed below.

1. A technical mistake occurred when numerical limits were established in existing BPJ permits

A technical mistake made at the time a permit was issued is grounds for modification and/or revocation of the permit under 40 C.F.R. 122.44(1)(2) and 40 C.F.R. 122.62(a)(15).

As previously discussed in Part II.B., *infra*, the analysis required by the BPJ regulations were not followed in initially issuing a permit. Numerical permit limits are not economically achievable and do not represent BPJ. BPJ requires economics to be considered. BMPs will reduce contaminants to a greater extent than numerical effluent limitations and at a far lower expense.

In setting limits based on BPJ, the permit writer must consider the factors which are required to be considered in establishing BCT limits. 40 CFR 125.3(d)(2). BCT requires the consideration of economic factors among others. In fact we are aware of no analysis performed by the USEPA or NJDEPE in developing BPJ permits with numerical effluent limitations. This technical mistake is grounds for permit modification and permits the NJDEPE to take mass permit action revoking numerical effluent limitations.

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2. A less stringent effluent limitation is necessary because of events over which the permittee has no control

Federal regulations allow backsliding if a less stringent effluent limitation is necessary because of an event over which the permittee has no control and for which there is no reasonably available remedy. 40 CFR 122.44(1)(2) Permittees have no control over offsite and regional urban runoff. Accordingly mass revocation of existing permits with numerical effluent limitations is permitted.

3. Additional federal regulations allow backsliding

Federal regulations also allow backsliding if "[m]aterial and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation," or "[i]nformation is available which was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance." 40 C.F.R. 122.44(1)(2).

These exceptions are discussed below in the section regarding New Jersey antibacksliding regulations. Pursuant to these exceptions the NJDEPE is permitted to take mass permit action revoking numerical effluent limitations.

B. New Jersey Antibacksliding Regulations Allow Mass Revocation of Existing Stormwater NJPDES Permits.

Similarly, the New Jersey Legislature implicitly recognizes there may be a need to relax standards and states in N.J.S.A. 58:10A-6(k) that:

No permit may be issued, renewed, or modified by the department or a delegated local agency so as to **relax any water quality standard or effluent limitation** until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing....
(emphasis added)

NJDEPE regulations addressing antibacksliding are found at N.J.A.C. 7:14A-3.13(a)12 and provide the following:

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- i Except as provided in (a)12ii below when a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under N.J.A.C. 7:14A-2.12) shall be included in such permit.

- ii When effluent limitations were imposed under Section 402(a)(1) of the Federal Act or Section 4 of the State Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, (a)12ii of this section shall apply unless:

* * *

(2) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (Section 301(b)(2)(E) of the Federal Act);

(3) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under N.J.A.C. 7:14A-2.12;
or

(4) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste

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loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

N.J.A.C. 7:14-3.13(a)12ii(2) states that backsliding is permissible when subsequently promulgated effluent guidelines are based upon BCT. As discussed above, the Federal Water Pollution Control Act and USEPA regulations 40 C.F.R. 125.3(d)(2) define BCT. The NJDEPE regulations, N.J.A.C. 7:14A-1.13(a), adopt the federal regulations requiring BCT. The USEPA has indicated that general permits addressing stormwater discharges associated with industrial activity which include BMP are designed to comply with the technology based standard requirement of BCT, i.e., BMP is BCT. Since the NJDEPE regulations adopt the federal standard of BCT pursuant to N.J.A.C. 7:14A-3.13(a) the establishment of BCT for the purposes of federal law is controlling and establishes BCT in New Jersey. Thus, backsliding to a general permit requiring BMP is permissible in New Jersey. The preamble to the USEPA proposed rules regarding the draft permits to address stormwater associated with industrial activity states

the draft permit conditions reflect EPA's decision to select a number of best management practices and traditional stormwater management practices which prevent pollution in stormwater discharges as the BAT/BCT level of control for the majority of stormwater discharge is covered by these permits. The draft permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in stormwater discharges associated with industrial activity.

56 Fed. Reg. 40974 (August 16, 1991).

The preamble also states

the pollution prevention or BMP requirements in these permits operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source

control technologies which, in the context of these general permits, are the best available of the technologies economically achievable for the equivalent BCT finding).

Id.

Since a general permit requiring BMPs is BCT, existing NJPDES permits with numerical limitations may be revised to reflect BCT by requiring the implementation of BMPs.

1. Backsliding is permissible when there have been changed circumstances which would constitute cause for permit modification

N.J.A.C. 7:14A-3.13(a)12 allows "backsliding" if the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification under N.J.A.C. 7:14A-2.12.

N.J.A.C. 7:14A-2.12 includes the following as cause for modification, suspension, or revocation of a permit:

New information has been received by the Department. Permits other than for UIC Class II and III wells may be modified, suspended, or revoked during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For DSW general permits (N.J.A.C. 7:14A-3.9) this cause shall include any information indicating that the cumulative effects on the environment are unacceptable.

In addition to the above, New Jersey Regulations allow modification of a discharge to surface water permit (DSW) to incorporate new information and/or applicable water quality standards, effluent standards, other standards or judicial decisions. N.J.A.C. 7:14A-2.12(c)(13).

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- a. New information has been received by the NJDEPE which justifies the mass revocation of existing permits with numerical effluent limitations.

New Jersey regulations provide that permits may be modified if new information has been received by the NJDEPE, the information was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and the availability of such information would have justified the application of different permit conditions at the time of issuance.

When existing permits were issued, the NJDEPE had relatively little information regarding contamination caused by non-point sources and point sources in urban areas. Only after various USEPA studies were conducted did information become available about levels of contaminants in urban runoff. For example, the Nationwide Urban Runoff Program ("NURP") provides a significant amount of information regarding the extent of contamination due to urban runoff. These and other studies provided the support for the development of the comprehensive stormwater program addressing all facilities through a general permit system.

IV. TREATING FACILITIES WITH EXISTING PERMITS DIFFERENTLY IS A VIOLATION OF THE EQUAL-PROTECTION CLAUSE

The Equal-Protection Clause of the Federal Constitution requires that state action does not discriminate and treat similarly situated facilities differently.

Federal equal-protection analysis employs different tiers of review: strict scrutiny when an act involves a fundamental right or a suspect class; intermediate scrutiny when an act involves a semi-suspect class; and minimal rational-basis scrutiny in all other cases. Drew Associates of New Jersey v. L.P. Travisano, 122 N.J. 249, 258 (1991) (involving the challenge of an Act exempting pre-existing cooperative apartments from a realty transfer tax) see also Brown v. City of Newark, 113 N.J. 565, 573, 552 A.2d 125 (1989) (involving the validity of an ordinance regulating peddlers in the City of Newark).

The NJPDES/DSW permit issue does not involve a suspect or semi-suspect class nor does it effect a fundamental right. Thus it "need be only rationally related to a legitimate state interest to satisfy federal equal protection requirements" Id.

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This rational basis standard is the functional equivalent of the due-process requirements of the fifth and fourteenth amendments. Under due-process analysis, a statute will survive a challenge if it is supported by a "conceivable rational basis". Greenberg v. Kimmelman, 99 N.J. 552, 563, 494 A.2d 294 (1985). (Provision which restricted any member of the immediate family of any state officer or employee (in this case the spouse of a Superior Court Judge) from employment by a casino licensee was upheld in light of the paramount interest in preserving the integrity of the judiciary from the potentially corrupting influence of the casino industry).

The exception to the NJDEPE Stormwater General Permit which makes facilities with stormwater discharges authorized under another NJPDES/DSW permit (including expired permits) ineligible for the new Stormwater General Permit does not advance any state interest and might actually prevent the implementation of measures aimed at reducing the levels of pollutants entering the waters of the state. Accordingly the blanket ineligibility of individual permit holders for the Stormwater General Permit fails to meet the rational basis standard required under equal-protection analysis.

The NJDEPE has specifically recognized that treating facilities with existing permits unequally has no rational basis. In the preamble to the regulations adopting the Stormwater General Permit, the NJDEPE stated:

The major concern with the existing exclusion is that it treats two similarly situated facilities differently, without a clear environmental benefit justifying the differential treatment.

24 N.J.R. 4092 (November 2, 1992).

Based on the foregoing the NJDEPE itself has recognized that the blanket exclusion of NJPDES/DSW permittees from the Stormwater General Permit is unfair and not supported by a conceivable rational basis.

CONCLUSION

Based on the foregoing, antibacksliding provisions do not preclude the Department from taking a mass permit action that would replace existing numerical effluent limitations in existing permits for stormwater with the BMPs required by its recently issued Stormwater General Permits.

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Barry Chalofsky, P.P., Manager
March 18, 1993
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PORZIO, BROMBERG & NEWMAN

On behalf of Daicolor Pope, Inc. and Johanna Dairies, Inc., we thank you for the opportunity to comment on this important issue.

Very truly yours,

PORZIO, BROMBERG & NEWMAN, P.C.

By: _____

Edward A. Hogan
A Principal of the Firm
Attorneys for
Daicolor Pope, Inc. and
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September 8, 1993

Mr. George Klein
Assistant Director
Site Remediation/Program Support
401 East State Street, Floor 6
Trenton, New Jersey 07625-0028

Dear Mr. Klein:

It was a pleasure meeting with you and the NJDEPE staff last week. You and your staff should be commended for the very hard diligent work you have performed thus far. We had a very good flushing of the issues.

However, one issue that is paramount and I neglected to bring to the table is that, which of the proposed 18,000 sites on the comprehensive site list (CSL) is injurious to public health and/or the environment? This issue eluded us in discussing the legislative mandate regarding residential vs. non-residential standards, engineering and institutional controls, regional pollution problems and in discussing the purpose of the CSL.

However, as a representative of business and more importantly as a member of the public (as I discussed with the group), I am interested in these matters. More specifically, I am interested in these matters if they are a problem to me and my family and that is where I believe we have to draw the line. The legislative mandate is quite clear: Residential standards are "clean". The NJDEPE is hard at work to put a notice mechanism in place for other standards and controls. The list the NJDEPE must publish is one that identifies a site as injurious to public health or the environment. All other information is superfluous. It is nice to have it available, but not where it can be misinterpreted as part of a contaminated site list. We must be forward looking and not flood the public with information of little value.

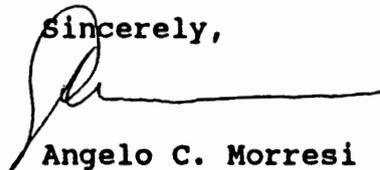


Mr. Klein
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The CSL can be a very valuable tool if there are clear distinctions as to what is harmful and what is not. By mixing clean sites (NFA) and contaminated sites and underground tank upgrades and removal sites in with sites that pose a risk to human health and the environment will only promote public numbness and de-value the CSL. The list will become a crying wolf list and the public will pay no heed.

Thank you for the opportunity to meet with you and be part of the committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angelo C. Morresi', with a long horizontal line extending to the right.

Angelo C. Morresi

ACM/ca

cc: Mr. Lance Miller
Ms. Jeanne Fox

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NJ Health Products Council
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SUBJECT: Site Remediation Program Advisory Group
Subcommittee: Release of CSL Data

Dear Mr. Morresi,

In preparation for the subject meeting, I would like to provide you with an agenda of topics for discussion, as well as a brief description of the Comprehensive Site List (CSL) and our current method of reporting CSL information to the public.

The Comprehensive Site List (CSL)

The CSL has been developed by the Site Remediation Program (SRP) as a method for improving the SRP's ability to manage its remedial activities in a consistent, efficient manner. This central inventory of known and suspected contaminated sites in New Jersey facilitates comprehensive, consistent reporting, tracking and resource planning. The CSL, as a defined universe of sites, further ensures that prioritization of these sites results in remediation of the "worst case first."

The SRP's CSL includes ISRA (Industrial Site Recovery Act), UST (Underground Storage Tank), landfill, responsible party, and publicly funded sites in New Jersey. Sites on the CSL are grouped into three categories: sites that need to be evaluated; sites that have been determined to be contaminated; and, sites that require no further action. Information maintained on each site includes the site name, location, remedial lead, and unique identifier (EPA ID or CSL-generated number).

Current Method of Releasing CSL Information to the Public

Through the SRP's Site Information Program, prospective home buyers and sellers, real estate agents, legal professionals, lending institutions and government agencies request information concerning contaminated sites at or near properties of interest. Prior to the implementation of the CSL, the SRP used a database of approximately 1,400 known and suspected sites to respond to these requests. Through the integration of remedial databases from throughout the SRP, we can now offer information on more than 18,000 sites in the form of radius searches or lists of sites in particular municipalities or counties.

The sites contained in these lists to the public are limited to:

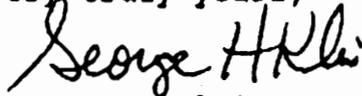
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1) sites where it has been determined that no further action on the part of the SRP is required, 2) sites that are awaiting assignment to a remedial program upon the availability of resources, and 3) sites that are currently assigned to a remedial program.

Due to the existing need for extensive review of the data recently downloaded into the CSL, the SRP cannot fully ensure the accuracy of the CSL data at this time. For this reason, a cover letter (enclosed) accompanies all releases of CSL information to the public, advising that the data be interpreted with care, and that the remedial lead program indicated on the lists be contacted for further information, and confirmation of the data contained on the lists.

We look forward to meeting with you on September 2, 1993 and hearing your ideas on how you see the CSL serving the needs of the general public in the future. Also, we hope to solicit your input on educating the public about this resource and making the information more widely accessible. I am providing this letter with enclosures to Mr. Drew Kodjak of NJPIRG, and Mr. Greg DeLozier of the New Jersey Association of Realtors, as well as the NJDEPE members who will be in attendance on 9/2/93. If you have any questions prior to our meeting, please contact me at 609-984-2908.

Very truly yours,



George H. Klein
Assistant Director

enclosures

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Comprehensive Site List

Enclosed is the portion of the Comprehensive Site List you requested. There are currently over 18,000 sites on the list statewide. This includes sites handled by all the various groups within the Site Remediation Program of the New Jersey Department of Environmental Protection and Energy (DEPE).

Please be aware that this list was compiled as an internal working document. Inclusion of a site does not necessarily confirm the presence of environmental hazards, hazardous materials and/or substances at the given location at the present time or at any time in the past or future. Inclusion of a site does not necessarily confirm that the named site is the source of contamination which may be present.

Many of the sites on this list may be classified NFA (No Further Action). Those sites have had cleanups completed or it was determined after the initial assessment that cleanup was not necessary. They are considered to pose no hazard, but remain listed for future reference.

This list represents the best data available at this time. There are also sites which have not been identified yet or reported to the DEPE and, therefore, do not appear in this inventory.

This information is not intended to be a warranty that individual properties are fit for any purpose. Please exercise care in using this document as errors are possible given the current status of our development of the list. If you have further questions or require additional assistance, please call the Site Information Program at the number below.

To:	
Fax #:	
From:	
Date:	# of Pages (including cover):
DEPE #:	

DRAFT

8/93

New Jersey Department of Environmental Protection and Energy
Site Remediation Program
(609) 984-3081 • Bureau of Community Relations



