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**ENVIRONMENTAL PROTECTION  
DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH  
Discharges of Petroleum and Other Hazardous Substances**

Proposed Readoption with Amendments: N.J.A.C. 7:1E

Proposed New Rule N.J.A.C. 7:1E-2.16

Authorized By: Lisa P. Jackson, Commissioner  
Department of Environmental Protection

Authority: N.J.S.A. 58:10-23.11, 58:10-46 to 50, 13:1K-1 et seq., and 13:1D-125 through 133

Calendar Reference: See summary below for explanation of exception to calendar requirement

DEP Docket Number: 17-06-08/509

Proposal Number: PRN 2006-334

A public hearing concerning this proposal will be held on Wednesday, November 15, 2006, at 10 A.M. at:

Department of Environmental Protection  
Station Plaza 4  
Large Conference Room, 3rd Floor  
22 South Clinton Avenue  
Trenton, New Jersey

Submit written comments by December 15, 2006 to:

Leslie Ledogar, Esq.  
Attn.: DEP Docket No. 17-06-08/509\_  
Office of Legal Affairs  
Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (the Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. The Department prefers Microsoft Word™ 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at

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<http://www.nj.gov/dep/rules>.

The agency proposal follows:

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to readopt with amendments the Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E (the DPHS rules). The DPHS rules implement the Spill Compensation and Control Act (the Spill Act or the Act) (N.J.S.A. 58:10-23.11a *et seq.*), which sets stringent standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances. In accordance with the “sunset” provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*, the DPHS rules are scheduled to expire on August 31, 2006. Pursuant to N.J.S.A. 52:14B-5.1(c), this notice of proposal extends the expiration date of the DPHS rules to February 27, 2007.

The DPHS rules contain 10 subchapters and two chapter appendices. Subchapter 1 establishes the general provisions for the discharge prevention program, including the definitions that are used throughout the chapter. Subchapter 2 establishes the rules of the Department applicable to storing, transferring, processing or using hazardous substances and sets the standards for equipment and procedures utilized at major facilities. The registration requirements for transmission pipelines are contained in Subchapter 3. Subchapter 4 establishes minimum requirements for the preparation and submission of Discharge Prevention, Containment and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) plans, including the information they are to contain and the schedules for their submission. Subchapter 5 establishes the procedures for notification and reporting of discharges of hazardous substances, the reporting of malfunctions of discharge detection systems, and the response to discharges of hazardous substances. Civil administrative penalties and grace period applicability for certain violations of the Act and this chapter are established in Subchapter 6, as well as the procedures for requesting an adjudicatory hearing. Subchapters 7, 8, 9 and 10 establish the manner in which information obtained from regulated facilities is to be asserted, determined and maintained as confidential. Appendix A contains the list of hazardous substances, and Appendix B contains forms to be used to demonstrate financial responsibility.

The Department proposes readopting the DPHS rules with amendments that revise, add and delete definitions, update citations, clarify the wording of various sections, update addresses, recodify provisions into more appropriate sections, reorganize some sections to streamline them and make them easier to understand, and delete outdated or redundant provisions. The Department proposes to revise each instance of “DPCC or DCR” to “DPCC and DCR.” These two plans are always submitted and considered as a package. One would not be submitted or approved without the other. Therefore, “and” is more appropriate than “or.”

In addition, the Department is proposing the following substantive amendments: (1) expansion of the rules applicable to integrity testing of aboveground tanks, (2) a requirement to perform soil permeability testing within existing secondary containment systems as requested by the Department, (3) updates to the sections on employee training and standard operating

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procedures, (4) additional information requirements for inclusion in DPCC and DCR plans and the establishment of a distinction between plan amendments and plan renewals, (5) revisions to mapping requirements, (6) amendments to the certification requirements, (7) revisions to the penalty subchapter to accommodate the changes anticipated in the rest of the chapter and to be consistent across Departmental enforcement programs, and (8) deletion of some substances from the list of hazardous substances contained in Appendix A and the addition of other substances to this list. The proposed amendments are discussed in more detail below.

### Subchapter 1. General Provisions

The Department proposes to amend N.J.A.C. 7:1E-1.1(a) with the word “operational” to clarify that this chapter includes operational requirements, as well as registration, reporting, design and maintenance requirements.

N.J.A.C. 7:1E-1.6, Definitions, contains the definitions of terms used throughout this chapter. The Department proposes amending this section by adding definitions for “ASTM D5856,” “ASTM D93,” “field-erected storage tank,” “financial reporting year,” “grace period,” “out-of-service,” “repair,” “shop-built storage tank,” “soil permeability testing,” “SP001” and “STI.”

“ASTM D5856” is a standard developed and maintained by the American Society of Testing and Materials for measuring the hydraulic conductivity of soil. This term is used in an amendment to N.J.A.C. 7:1E-2.6(c)3i concerning protecting the groundwater from leaks of hazardous substances.

“ASTM D93” is a standard test used for measuring the flash point of a liquid. Flash point is a criterion for determining if a boom must be predeployed around a vessel prior to the commencement of a transfer under N.J.A.C. 7:1E-2.7. This definition clearly defines how flash point is to be determined for the application of the booming provisions of N.J.A.C. 7:1E-2.7.

The proposed amendments to the integrity testing requirements at N.J.A.C. 7:1E-2.2(a) and 2.16, discussed below, make it necessary to distinguish between the various types of aboveground tanks, including their method and materials of manufacture. Therefore, the Department proposes defining “field-erected storage tank” and “shop-built storage tank” because these terms describe the two means of assembling aboveground storage tanks. Field-erected tanks are built in place. These tanks are generally too large to be transported from a place of manufacture to the site where they will be used. Shop-built tanks are built in a manufacturing facility and transported to their final installation. In New Jersey, the largest tanks that can be transported on the public roads are tanks of approximately 50,000 gallons. Based on these two manufacturing methods, as well as other factors, different types of initial and ongoing integrity testing are required.

The Department is proposing a new definition for “financial reporting year.” This term is currently used in N.J.A.C. 7:1E-4.4(g), but not defined. The Department has found that owners or operators are sometimes confused as to the intended timeframe. Different companies use different time periods as their financial reporting year. Some are calendar-year based. Others

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run from July 1 to June 30, or some other twelve-month period. A few owners or operators have inquired as to whether they would have to revise their financial reporting year to conform to a State standard. That was never the intent. The proposed definition of “financial reporting year” clarifies that existing timeframes, as long as they meet the proposed definition, are acceptable.

The Department proposes adding a definition of “grace period,” since this phrase is used in Subchapter 6, Civil Administrative Penalties and Requests for Adjudicatory Hearings. A grace period is a period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 *et seq.*, for a person to correct a minor violation to avoid imposition of a penalty that would otherwise be applicable for that violation.

In order to clearly establish which storage tanks must be included in major facility determinations pursuant to N.J.A.C. 7:1E-1.6, the Department proposes adding a definition of “out-of-service.” This definition clarifies when the Department will consider a storage tank no longer capable of storing hazardous substances. In addition, this definition is used in establishing when pipes must be cleaned and blank-flanged pursuant to N.J.A.C. 7:1E-2.4(e) because they are no longer in use.

In order to promote consistency between State and Federal regulation in the area of discharge prevention, the Department proposes adding a definition for “repair” that is similar to the Federal definition for this term in 40 CFR 112, and deleting the terms “major maintenance” and “major repair” as extraneous. The proposed new definition of “repair” more clearly distinguishes between day-to-day maintenance, routine repairs, such as those performed following integrity testing, and unexpected repairs.

The Department has been requiring soil permeability testing in order for the owner or operator of a major facility to establish that they can protect groundwater in accordance with N.J.A.C. 7:1E-2.6(c)3i. As this requirement is being applied to all relevant situations, it is being incorporated into N.J.A.C. 7:1E-2.6(c)3i. Thus, a definition of “soil permeability testing” is being proposed in order to clarify what type of testing is expected.

“SP001” is a standard on aboveground storage tank testing promulgated by the Steel Tank Institute. The Department proposes to define “SP001” and incorporate the standard by reference into these rules so that the owners and operators of shop-built aboveground storage tanks can utilize it in the testing of their tanks. The Steel Tank Institute is commonly abbreviated as “STI,” and the Department also proposes defining that term, including the STI’s address and website information.

Definitions proposed for deletion are “affiliate,” “API 574,” “bulk storage,” “handling,” “paved or surfaced” and “SPCC plan.” The proposed amendment to the definition of “controlling interest” removes the term “affiliate,” which is the only place in the chapter that that term is used. The proposed revision to the integrity testing requirements removes the reference to API 574. The terms “bulk storage” and “handling” have their standard meanings and thus do not need to be defined for these rules. The proposed revision to N.J.A.C. 7:1E-2.3(a) eliminates the use of the phrase “paved or surfaced.” Finally, “SPCC plan” is not used in this chapter.

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The Department proposes amending the definitions of the following terms: “API,” “ASME,” “ASTM,” “ASTM E1067,” “controlling interest,” “discharge cleanup organization,” “guarantor,” “hazardous substances,” “integrity testing,” “internal visual inspection,” “petroleum” or “petroleum products,” “response coordinator,” “standard operating procedure” or “SOP,” “static head product testing,” “storage capacity” and “storage tank.”

The Department is proposing to revise the definitions of “API,” “ASME,” and “ASTM” to include address and website information.

The Department is proposing to substitute “01” for “96” in the definition of “ASTM E1067.” This amendment clarifies that the 2001 version of this standard, which is currently in effect, is expressly called-for in the definition.

The financial responsibility section of the DPHS rules is based on those promulgated by the U.S. Environmental Protection Agency (USEPA) for underground storage tanks at 40 CFR 280. At 40 CFR 280.92, the definition of “controlling interest” is simply the direct ownership of at least 50 percent of the voting stock of another entity. The proposed revisions to the definition of “controlling interest” in the DPHS rules makes it consistent with the Federal definition, while retaining important State defined terms, such as “person.” Also, the definition of “guarantor” is proposed for revision, to make it consistent with the requirements for a guarantor as established in 40 CFR 280.96(a). The types of persons eligible to be guarantors under the DPHS rules are established as the same as those in the Federal rules, with the possession of a controlling interest or the existence of a substantial business relationship being the fundamental criteria.

The Department proposes clarifying the definition of “discharge cleanup organization” by using the defined phrase “cleanup and removal activities” in lieu of “the recovering, containing, cleaning up or removing of discharges.” The proposed amendments to the definition of “hazardous substances” will change it so that it simply references N.J.A.C. 7:1E-1.7 without the inclusion of categories of substances. This clarifies that all substances listed in N.J.A.C. 7:1E-1.7 are hazardous substances, whether they fall into one of the categories being deleted from the definition or not. “Standard operating procedure” or “SOP” is proposed for amendment to reference N.J.A.C. 7:1E-2.14, as this is the section of the rules that establishes what constitutes an SOP.

Proposed amendments to the requirements for integrity testing of aboveground storage tanks require that the definitions of “integrity testing,” “internal visual inspection” and “static head product testing” be amended. The Department proposes replacing the definition of “integrity testing” with a definition that cross references proposed new N.J.A.C. 7:1E-2.16. There are a wide variety of methods to test aboveground storage tanks based on, among other possible factors, their method of construction, material of construction, and usage. As such, it is not possible to have an all-encompassing single definition. Therefore, a reference to N.J.A.C. 7:1E-2.16 allows the Department to establish different types of testing for different types of tanks.

Similarly, the Department proposes replacing the definition of “internal visual inspection.” The proposed definition of “internal inspection” deletes the use of the word

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“visual” and cross-references proposed new N.J.A.C. 7:1E-2.16. A visual inspection alone is not sufficient for many types of aboveground tanks. By referencing proposed new N.J.A.C. 7:1E-2.16 in the definition of “internal inspection” and deleting the use of “visual” from this term, the Department can clarify when visual inspection is sufficient and when something more is required.

The Department also proposes revising the definition of “static head product testing” to the more general “static head testing.” The current definition limits the test to be performed to the filling of the tank with the substance generally stored in the tank. The proposed changes would allow for the use of a standing liquid test, which can be water, the substance generally stored in the tank, or some other substance that may be appropriate, or for a pressure test on an aboveground storage tank to check for active leaks.

The Department proposes revising the terms “petroleum” or “petroleum products” to specifically include synthetic oils. Synthetic oils have equivalent chemical compositions, usage, and environmental effects as naturally derived petroleum products. In order to provide the greatest environmental protection, synthetic oils should be regulated in the same manner as other petroleum oils.

The Department proposes amending the definition of “response coordinator.” As currently defined, the response coordinator is an individual at a major facility (also a defined term) who (1) is responsible for the management of the DPCC and DCR plans at the facility, and (2) who possesses sufficient corporate authority and technical background to resolve issues relating to the execution of the DPCC and DCR plans. The DPCC rules require at N.J.A.C. 7:1E-3.4(a)4 that the owner or operator of a transmission pipeline submit information concerning his or her response coordinator. Additionally, owners or operators of major facilities must appoint a response coordinator who is responsible for insuring compliance with the DPCC plan and the underlying statute and rules (see N.J.A.C. 7:1E-4.2(a)) and who is authorized to hire contractors and release funds for discharge response, containment, cleanup and removal (see N.J.A.C. 7:1E-4.3(a)1).

From a practical standpoint, the individual appointed by the owner or operator of a major facility to manage DPCC and DCR plans need not have the corporate authority and technical background to also execute these plans in the event of an emergency. In fact, the Department has found that these two duties are often held by separate individuals at major facilities, and that a major facility may have several response coordinators, depending on the nature of the anticipated emergency, the expertise required to effectively respond, and the scope and expanse of the facility’s operations.

Accordingly, the Department proposes to amend the definition of “response coordinator” to incorporate transmission pipelines, because both major facilities and transmission pipelines are required to appoint a response coordinator. It also proposes deleting the duties of DPCC/DCR plan management from the definition of response coordinator. As will be discussed further below, these duties will be assumed by a facility contact for transmission pipelines (see N.J.A.C. 7:1E-3.4(a)4 as proposed to be amended) and for major facilities (see proposed new N.J.A.C. 7:1E-4.2(a)2). However, owners and operators of transmission pipelines and of major

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facilities will still be required to appoint a response coordinator (see N.J.A.C. 7:1E-3.4(a)4 and proposed new N.J.A.C. 7:1E-4.3(a), respectively). Under the proposed new definition, the response coordinator will be a person with the technical background, backed by full corporate authority, to hire contractors and obligate funds to implement cleanup and removal activities. Additionally, under the new definition, the response coordinator will also be responsible for interfacing with on-scene coordinators that represent those Federal, State, and local agencies that have responded to the emergency.

The Department proposes amending the definition of “storage capacity” to utilize the proposed new term “out-of-service,” described above, to clearly indicate when a storage tank or other storage area is no longer considered as part of the total capacity for the facility. This affects determinations of major facility status. It provides a fair and transparent standard for exclusion of storage tanks from capacity determinations. The proposed amendments to this term also add an exclusion for containers of five gallons or less in size. In most cases, a discharge to the environment from a container of five gallons is highly unlikely because of the storage and handling conditions associated with smaller containers. Therefore, excluding facilities that store primarily small containers from regulation as major facilities will not reduce protection of the environment but will reduce the burden on the regulated community. However, small containers at a major facility will still be regulated and discharges from small containers, no matter where their location, must still be reported in accordance with N.J.A.C. 7:1E-5.3.

The current definition of “storage tank” is confined to those tanks containing hazardous substances. In the course of inspecting facilities, the Department has learned that there is confusion about which tanks are regulated and which are not. Accordingly, the Department is proposing amendments to N.J.A.C. 7:1E-4.2(d)1 that would require the inclusion of information about all tanks at a major facility in the DPCC plan for that facility, regardless of the nature of the substance stored in that tank. The proposed inclusion of this information in the plan would make it much easier to distinguish clearly between regulated and non-regulated tanks. Accordingly, the Department proposes broadening the definition of storage tank to include all tanks used to store solids, liquids or gases.

N.J.A.C. 7:1E-1.8, Environmentally sensitive areas, lists all of the areas that shall be considered environmentally sensitive areas for the purposes of developing and implementing a DPCC and DCR plan. The Department proposes amending N.J.A.C. 7:1E-1.8(a)6 to refer to transition areas, as well as wetland buffers, which are both described in the referenced section of the Coastal Zone Management rules at N.J.A.C. 7:7E-3.28. Additionally, the Department proposes deleting N.J.A.C. 7:1E-1.8(a)7 through 9 and replacing these subparagraphs with a single one at N.J.A.C. 7:1E-1.8(a)7 containing the phrase “critical wildlife habitats.” Critical wildlife habitat is defined in N.J.A.C. 7:7E-3.39. By cross-referencing N.J.A.C. 7:7E-3.39, the Department is promoting consistency across programs. The term “critical wildlife habitats” includes all the areas currently listed under N.J.A.C. 7:1E-1.8(a)7, 8 and 9. No environmentally sensitive area will be removed by this proposed amendment, and the regulated community will have a single standard and definition for this important type of habitat. Accordingly, paragraphs (a)10 through 16 are proposed to be recodified as paragraphs (a)8 through 14, with no change in text. The Department also proposes recodifying N.J.A.C. 7:1E-1.8(a)17 as N.J.A.C. 7:1E-1.8(a)15 with an amendment that corrects the terminology to “wild and scenic river corridors.”

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N.J.A.C. 7:1E-1.9, Access, governs the right of the Department and its representatives to enter and inspect facilities, vessels, buildings and equipment to ascertain compliance with the Spill Act, its implementing rules and any orders issued thereto. The Department proposes recodifying part of N.J.A.C. 7:1E-4.6(h) at reserved subsection (b) and deleting reserved subsection (c). Because existing N.J.A.C. 7:1E-4.6(h) provides that “The Department may inspect major facilities prior to approving DPCC or DCR plans,” it is more appropriately codified with the access provisions of N.J.A.C. 7:1E-1.9. The remainder of existing N.J.A.C. 7:1E-4.6(h), “and at reasonable intervals thereafter in order to ascertain compliance with the plans,” is already covered by the general authority to perform inspections contained in N.J.A.C. 7:1E-1.9(a), and thus is to be deleted from N.J.A.C. 7:1E-1.9 as recodified.

## Subchapter 2. Prevention and Control of Discharges at Major Facilities

Subchapter 2 prescribes the rules of the Department applicable to the owners or operators of major facilities. N.J.A.C. 7:1E-2.2 concerns storage of hazardous substances. At N.J.A.C. 7:1E-2.2(a)1, the Department proposes deleting “an adequate means of” because N.J.A.C. 7:1E-2.6 establishes what is adequate for secondary containment and diversion systems, rendering the deleted phrase redundant.

At N.J.A.C. 7:1E-2.2(a)2, the Department proposes adding the phrase “or the bottom is being replaced.” As currently worded, this paragraph exempts existing storage tanks from the requirement that the base underlying the storage tank shall be made of or surfaced with a material impermeable to passage or chemical attack by the stored substance under the conditions of storage prevailing within the tank, until such time as the tank requires substantial reconstruction or replacement. “Substantial reconstruction” is defined as any restoration, refurbishment, renovation or relocation of existing equipment which incurs costs equal to 50 percent or more of the replacement value of the tank. However, tank bottom replacement is an ideal time to upgrade the base underlying the tank or to provide an equivalent means of protection, such as a double bottom with corrosion protection and leak detection. Therefore, the Department proposes adding this phrase here to ensure that protection of the environment from leaks through the bottom of a tank is addressed at the most appropriate and cost efficient time.

At N.J.A.C. 7:1E-2.2(a)3, the term “pipe rupture” is being proposed for replacement by “pipe failure.” “Failure” is a more general term than “rupture,” provides greater protection, and is more appropriate for what is required.

The Department proposes deleting N.J.A.C. 7:1E-2.2(a)4, 5, 6 and 7 and replacing these subparagraphs with proposed new N.J.A.C. 7:1E-2.2(a)4. The extensive revisions being proposed to the integrity testing requirements have made it necessary to place them in a new section of the rules, N.J.A.C. 7:1E-2.16, discussed later on. Therefore, the existing integrity testing requirements are proposed to be replaced with a reference to the new integrity testing section.

The Department proposes amending the requirements that apply to high level alarms and high high level cutoffs at N.J.A.C. 7:1E-2.2(d) by adding the phrase “set to activate at a

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predetermined level and,” and replacing “overfills” with “high liquid level conditions.” These proposed amendments clarify the purpose of this requirement, which is to prevent overfills. It is better to discontinue a tank filling operation before the tank is overfilled than to be warned that an overfill is occurring. An alarm set to trigger when conditions are approaching an overfill is the best protection against overfilling. In addition, the phrase “directly responsible for the filling operation” is proposed to be added to ensure that those who can act to prevent an overfill are the ones alerted by the alarm.

At N.J.A.C. 7:1E-2.2(d)1, the Department proposes adding the phrase “on a circuit separate from the high liquid level alarm.” This will ensure that the redundant system being required by this section is truly redundant. A circuit failure means that neither the high level alarm nor the high high level cutoff device would work, resulting in an overfill. At a facility using electronic alarms and cutoffs, an electrical failure would leave a facility with no backup means of detecting potential overfills. The purpose of providing a high high level cutoff is that in the event of the failure of the high level alarm, an imminent overfill can still be detected and prevented.

The requirements concerning flooding and washout contained in N.J.A.C. 7:1E-2.2(g) are codified at N.J.A.C. 7:1E-2.9. Therefore, the Department proposes deleting the description of what is required, and replacing it with a cross-reference to N.J.A.C. 7:1E-2.9. This will help ensure consistency in the application of standards associated with flooding or washout.

In enforcing the DPHS rules, the Department has encountered a variety of storage containers in use at major facilities. In order to ensure that all types of containers used at major facilities are properly provided with secondary containment, the Department proposes replacing the phrase “[d]rum and other storage areas” in N.J.A.C. 7:1E-2.2(h) with “[t]ote, drum, bag, and other small container storage areas.” This proposed amendment will ensure that all types of containers used to store hazardous substances are placed within appropriate secondary containment so that even small leaks will not become discharges. Also, the Department proposes deleting the word “adequate” because N.J.A.C. 7:1E-2.6 establishes what is adequate for secondary containment and diversion systems, rendering the deleted word redundant.

The loading and unloading of hazardous substances from tank trucks and tank cars is covered by N.J.A.C. 7:1E-2.3, which requires that all such activities occur within secondary containment. The Department proposes amending N.J.A.C. 7:1E-2.3(a) to eliminate overlapping requirements for secondary containment. The Department proposes deleting the phrase “paved or surfaced with impermeable materials” because this requirement is already contained in N.J.A.C. 7:1E-2.6, which is cross-referenced in this paragraph, and deleting the phrase “an adequate means of,” as N.J.A.C. 7:1E-2.6 establishes what is adequate for loading and unloading area secondary containment. In addition, the phrase “or diversion” is proposed to be revised to “or a diversion system” to more accurately describe the types of systems regulated at N.J.A.C. 7:1E-2.6.

The Department proposes new N.J.A.C. 7:1E-2.3(b) which will require that loading and unloading operations must be performed in accordance with an SOP that is prepared in accordance with N.J.A.C. 7:1E-2.14. As a companion amendment, the Department proposes

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amending N.J.A.C. 7:1E-2.14(e) to require that SOPs for tank car loading and unloading areas must contain procedures to document inspection of drains and outlets, the method used to secure the tank car or truck during loading or unloading to prevent premature departure and the name(s) or the person(s) in attendance during loading or unloading. The purpose of these proposed requirements is to ensure that appropriate measures are taken at tank car loading and unloading operations to ensure that these operations are supervised and that measures are taken to prevent releases. The remainder of the provisions in this section would be recodified accordingly. Also, the phrase “in accordance with the appropriate SOP” is proposed for deletion from recodified subsections (c), (d), (f) and (g), because this is now covered in proposed new subsection (b), discussed above.

In recodified subsection (d) of N.J.A.C. 7:1E-2.4, the beginning phrase “During filling and prior to” is proposed to be revised to “Prior to.” The Department has determined that the examination of valves and outlets during filling of tank cars and tank trucks is an excessive burden when such activities occur within secondary containment. However, the rule will continue to require that valves and outlets be examined prior to a tank car or tank truck leaving the secondary containment. The purpose of this requirement is to ensure that hazardous substances do not drip on the public roadways during transport.

The Department proposes deleting the phrase “such as a physical barrier (that is, wheel chocks) or brake interlock system” from N.J.A.C. 7:1E-2.3(d), to be recodified as (e). There are systems other than physical barriers or brake interlock systems available for preventing the departure of tank cars or tank trucks prior to disconnecting from the loading or unloading operation. Rather than circumscribe the methods that can be used and thus require owners or operators to request alternative measures pursuant to N.J.A.C. 7:1E-1.11(e), references to specific methods are proposed for deletion.

The Department proposes separating existing N.J.A.C. 7:1E-2.3(e) into two subsections, (f) and new (g). This places the attendance requirements for tank cars and those for tank trucks in two different paragraphs. The provisions applicable to each type of operation are not being modified, but this separation will clarify that the requirements are different for tank cars and for tank trucks.

A new subsection (h) is proposed at N.J.A.C. 7:1E-2.3. It establishes that “attended” for loading and unloading operations means having an employee within 100 feet of the tank car or tank truck with an unobstructed view. This standard is based on the U.S. Department of Transportation’s requirement for the attendance of motor vehicles contained in 49 CFR 397.5(d).

The Department proposes amending subsection (a) of N.J.A.C. 7:1E-2.4, In-facility pipes for hazardous substances, to delete the phrases “where practicable” and “indicate the substance transferred through it” in favor of requiring the pipe to be sufficiently marked to enable facility personnel to identify any substance being leaked or discharged from that pipe. The Department has found that this provision as currently worded is confusing and subject to misinterpretation. By clarifying that the pipes must be sufficiently marked for the purpose of identifying any leaked or discharged substances that come from a given pipe, the types of markings that can be used are expanded. Knowing what substance is being leaked or discharged is an important part of the

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response to the release. Ensuring that in-facility pipes are marked in such a way as to easily convey this information is important.

Owners and operators have found the provisions of N.J.A.C. 7:1E-2.4(b) confusing. In order to clarify that new buried piping must be either double walled or have secondary containment, the Department proposes inserting the word “either” before “double walled,” and deleting “adequate” because this word adds unnecessary redundancy to this provision. N.J.A.C. 7:1E-2.6, which is cross-referenced in this paragraph, establishes what is adequate.

The provisions of N.J.A.C. 7:1E-2.4(c) have also been the subject of some confusion concerning which existing buried pipes must have state-of-the-art leak detection devices and for which pipes a maintenance and repair program must be instituted, or whether both are required. Accordingly, the Department proposes dividing this subsection into two paragraphs in order to clearly establish that existing buried pipes must have either a product sensitive leak detection device or follow an inspection and maintenance program such as API 570.

The Department proposes to amend N.J.A.C. 7:1E-2.4(e) to substitute “pipes removed from service” with the proposed new term “out-of-service pipes.” This amendment gives consistency to the determination of when a pipe or piece of equipment is no longer in use.

The Department proposes replacing “should” with “shall” in N.J.A.C. 7:1E-2.4(f). This provision should be a requirement rather than a recommendation. Protecting pipes from abrasion and contact corrosion is an important aspect of preserving the overall integrity of the pipes.

The Department proposes to delete “at major facilities” from the heading of N.J.A.C. 7:1E-2.5, Process areas at major facilities for hazardous substances. Because this subchapter applies only to major facilities, this phrase is redundant here.

The Department proposes rewriting N.J.A.C. 7:1E-2.5(a) to read “Process areas shall be provided with a means of secondary containment or diversion designed and built pursuant to N.J.A.C. 7:1E-2.6.” This phrasing eliminates several redundancies. Process areas can be contained in all types of structures, or can be out-of-doors, thus simply referring to process areas covers all of these possibilities. Also, the purpose of secondary containment or diversion is to handle leaks, so “for leaked hazardous substances” is excessive. In addition, the facility owner or operator cannot ensure that existing process areas were designed and built to provide secondary containment at the time of their installation. However, secondary containment or diversion can be retrofitted to these areas, and thus is required.

The Department proposes deleting the last sentence of N.J.A.C. 7:1E-2.5(b). Since all secondary containment or diversion systems must be in compliance with N.J.A.C. 7:1E-2.6, and N.J.A.C. 7:1E-2.6(b)4 already requires that precipitation be retained and handled properly, it is unnecessary to repeat this requirement at N.J.A.C. 7:1E-2.5(b).

All standards applicable to secondary containment and diversion systems are contained in N.J.A.C. 7:1E-2.6, Facility drainage and secondary containment. The Department proposes deleting “impermeable” from the beginning of N.J.A.C. 7:1E-2.6(b). This section delineates the

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types of structures that can be used for secondary containment or diversion, while N.J.A.C. 7:1E-2.6(c) establishes the standards that such structures must meet. Since impermeability is a standard, it is best codified at N.J.A.C. 7:1E-2.6(c).

Several amendments are proposed in N.J.A.C. 7:1E-2.6(c). The Department proposes replacing the phrase “drum utilizing the system” with “container within the area” in N.J.A.C. 7:1E-2.6(c)2i. This is a more general standard, which is necessary because hazardous substances can be stored in drums, bags, totes, or other types of containers, and they all are required to have secondary containment. In N.J.A.C. 7:1E-2.6(c)2iv, the word “maximum” is proposed for addition before “volumetric flow rate.” The worst case leak must be protected against, and the maximum flow rate in a process area would result in the largest size leak.

N.J.A.C. 7:1E-2.6(c)3i through iii exempts existing secondary containment or diversion systems for existing aboveground storage tanks from the requirement that they be made of or lined with impermeable materials, maintained in an impermeable condition. In the past, the Department accepted a statement from the owner or operator that existing secondary containment for an existing tank could protect the groundwater, in accordance with N.J.A.C. 7:1E-2.6(c)3i through iii. Recently, the Department has requested that owners or operators prove that they can protect the groundwater in the case of a worst case leak into a secondary containment system that does not meet the definition of “impermeable.” In several cases, when actual soil permeability measurements are made and the actual depth to groundwater is considered, data submitted to the Department indicated that the groundwater would not be protected by the existing secondary containment system. Therefore, the Department is proposing to amend N.J.A.C. 7:1E-2.6(c)3i to clearly state that the Department may require the owner or operator of the facility to provide proof that an existing secondary containment system has the ability to protect groundwater, including soil permeability testing (a test used to determine how quickly a substance will move through the existing soil), knowledge of depth to groundwater in affected sections of the facility, and information on how long it would take to clean up the contents of the largest tank within the system. This information can be used to directly determine whether the groundwater will be affected or not.

The Department proposes amending N.J.A.C. 7:1E-2.6(c)3iii, to cross-reference N.J.A.C. 7:1E-2.10 because N.J.A.C. 7:1E-2.10 is the section that governs visual inspections and monitoring. This proposed amendment clarifies that these inspections must be performed in accordance with the standards in these rules that apply to inspections.

The Department proposes deleting N.J.A.C. 7:1E-2.6(c)5 because the requirement that “catchment basins, lagoons and so forth, shall not be located in a manner that would subject them to flooding” is already covered at N.J.A.C. 7:1E-2.9 and lagoons are regulated by other programs within the Department. In its place, the Department is proposing a standard requiring that diversion systems be designed to handle the reasonably expected flow rate into the system. This is necessary because the Department has found that some diversion systems have been designed without regard for the largest leaks they will be required to handle. Equipment in the system, such as pumps and pipes, must be capable of moving leaked hazardous substances at a rate sufficient to ensure that the system is not overwhelmed. Without such a design standard, diversion systems will not provide the required protection.

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The Department proposes deleting the first sentence of N.J.A.C. 7:1E-2.6(c)7 because the requirement to promptly remove leaked hazardous substances from a secondary containment or diversion system is more succinctly set forth at N.J.A.C. 7:1E-2.11(c).

The Department proposes to delete N.J.A.C. 7:1E-2.6(d) in its entirety. The requirements contained in this subsection are redundant of those contained in N.J.A.C. 7:1E-4.3. N.J.A.C. 7:1E-4.3 covers all requirements for clean up and removal equipment that may be needed at a major facility, including that to contain and clean up discharges on water.

N.J.A.C. 7:1E-2.7, Marine transfer facilities, regulates transfers of hazardous substances between a vessel and a facility and between vessels at a facility. The Department proposes combining N.J.A.C. 7:1E-2.7(b) and (c) into one subsection. N.J.A.C. 7:1E-2.7(b) provides that a length of flotation boom or other containment device sufficient to totally enclose a vessel must be available when oil or other non-miscible lighter-than-water hazardous substance is transferred at the facility. The intent of subsection (c) is that the provisions of subsection (b) also apply to vessel to vessel transfers at a facility. However, as currently worded, N.J.A.C. 7:1E-2.7(c) does not effectuate this intent. Accordingly, the Department proposes to clarify this section by consolidating the two subsections to ensure that the regulated community understands that the conditions concerning non-miscible lighter-than-water hazardous substances applies to transfers to or from a vessel at a facility and to transfers between vessels at a facility.

The proposed amendments to recodified N.J.A.C. 7:1E-2.7(c) incorporate the proposed term “ASTM D93.” The reference to the Penske Martens closed cup flash test is proposed to be deleted, as that is the test described by ASTM D93.

Existing N.J.A.C. 7:1E-2.7(f) and (g) are proposed to be combined into one subsection and recodified as N.J.A.C. 7:1E-2.7(e). Both of these subsections establish that a solid dock or pier can be used as part of the containment for a vessel. The type of structure is not critical, other than it must be able to act as an effective barrier. The provisions make it clear that a containment device must encircle the rest of the vessel. Therefore, in order to ensure that no type of dock is inadvertently left out of the description in the rules, the generic term “dock” is being used. Also, “transfer” is defined to include unloading and offloading from vessels, thus the phrase “or receiving” is unnecessary, especially with the addition of the phrase “to or from.” Finally, the term “moored” is being used instead of “docked,” as it the more appropriate term. The proposed combining of existing subsections (f) and (g) into one new subsection (e), necessitates the recodification of the remainder of the subsection in this section.

The Department proposes substituting the phrase “rain, snow, sleet” with “precipitation” at N.J.A.C. 7:1E-2.7(i)1, to be recodified at N.J.A.C. 7:1E-2.7(g)1. The use of this more general term makes it clear that all types of storm events, including those with mixed precipitation, are covered by this provision.

The Department proposes updating information about national contingency planning at N.J.A.C. 7:1E-2.7(i)8, to be recodified at N.J.A.C. 7:1E-2.7(g)8. The proper name of the national contingency plan is the National Oil and Hazardous Substances Pollution Contingency

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Plan. The proper citation for this plan is 40 CFR 300, not 1510.

The Department proposes rewording N.J.A.C. 7:1E-2.7(j), to be recodified at N.J.A.C. 7:1E-2.7(h) to clarify the intent of this subsection. The Department has always required that any hazardous substances being held within a deployed containment device be cleaned up prior to the removal of the containment device. The current wording has proven somewhat confusing to the regulated community, so the leading phrase of the paragraph is being changed to read “Prior to the removal of a deployed containment device.”

The Department proposes amending N.J.A.C. 7:1E-2.7(k), to be recodified at N.J.A.C. 7:1E-2.7(i), to clarify that deployed containment devices must be retrieved and secured when they are no longer in use. The Department understands that for some facilities, the containment device is removed from the water, while at others it is kept in the water or immediately adjacent to it. In either case, it cannot be allowed to interfere with shipping lanes or present a safety or environmental hazard. Also, the Department proposes to replace the phrase “cleaned or disposed of” with the sentence “If the containment device is contaminated, it must be properly cleaned or disposed of” at the end of the subsection. This makes clear the Department’s intent of ensuring that contaminated devices are not returned to the water to cause further discharges.

The Department proposes relocating a part of N.J.A.C. 7:1E-5.3(d) at new N.J.A.C. 7:1E-2.7(j), with amendments that set forth posting of discharge notification requirements at marine transfer facilities. The posting of the notification requirements is a standard applicable to major facilities that have marine transfer operations, rather than a part of a notification requirement. Accordingly, it is more logical to codify this provision in this subchapter than in the notification subchapter, Subchapter 5.

N.J.A.C. 7:1E-2.9, Flood hazard areas, requires that hazardous substances that are stored within the 100-year flood hazard area of any water course as delineated by the Department in the Flood Hazard Area Control rules, N.J.A.C. 7:13, or stored within an area known by the owner or operator of the major facility to be subject to a high probability of flooding to be adequately protected so as to prevent the hazardous substances from being carried off by or being discharged into flood waters. The Department proposes separating this requirement into two subsections, with amendments. Proposed new N.J.A.C. 7:1E-2.9(a) would cover delineated areas and proposed new N.J.A.C. 7:1E-2.9(b) would cover areas known by the owner or operator of the major facility to be subject to high probability of flooding or washout.

Additionally, the Department proposes deleting the reference to the 100-year flood hazard area. When the Department was checking the citation given in this subsection, it was found that 100-year flood hazard area is no longer the term used in defining areas subject to flooding. Instead, the Department delineates floodways only in those instances where the Federal Emergency Management Agency does not delineate tidal floodplains. Accordingly, the Department proposes that proposed new N.J.A.C. 7:1E-2.9(a) require that any hazardous substances stored in the tidal floodplain, as delineated by the Federal Emergency Management Agency, or in the floodway of any watercourse, as delineated by the Department, must be protected from being carried off or discharged into floodwaters.

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Proposed new N.J.A.C. 7:1E-2.9(b) emphasizes that the same protection be afforded to hazardous substances stored in an area that the owner or operator knows is subject to a high probability of flooding or washout. Both of these provisions are designed to ensure that drums or other small containers are not dislodged or carried off by floodwaters, that aboveground storage tanks are not knocked or floated off their foundations, and that other possible discharge threats due to flooding do not occur. However, hazardous substances stored in areas that the owner or operator of the facility knows is subject to washout may not only be discharged into floodwaters, but may also be discharged to the ground when the soil underneath them is washed away or weakened, causing the containers they are in to collapse or fall over.

The phrase “as well as all cleanup and removal equipment and supplies” is proposed to be added to N.J.A.C. 7:1E-2.10(a). While inspecting facilities for compliance with these rules over the years, the Department has found that owners or operators often use cleanup and removal supplies or equipment to address the small everyday leaks and discharges that can occur at a major facility, but then fail to replace them. A problem then arises when a new, perhaps larger, release occurs, and the necessary equipment and materials to address it are not readily available. Therefore, the Department is adding cleanup and removal equipment and materials to the items that need to be inspected on a periodic basis.

The Department propose to amend N.J.A.C. 7:1E-2.10(a)6, which itemizes those things that must be inspected on a quarterly basis, to include the cleanup and removal equipment and materials proposed for addition at N.J.A.C. 7:1E-2.10(a), described above. The Department proposes breaking this paragraph into subparagraphs, so that each item to be inspected and what the inspection entails is clearly delineated. Thus, aboveground valves, pumps, flanges, connections and equipment; security fences and locks; and cleanup and removal equipment would each have its own subparagraph within N.J.A.C. 7:1E-2.10(a)6 under the proposed amendments.

The phrase “in accordance with N.J.A.C. 7:1E-2.15” is being proposed for addition to the first sentence in N.J.A.C. 7:1E-2.10(b). This will clearly establish that records of visual inspections must be kept in compliance with the recordkeeping requirements of this chapter. Also, the Department has found that many records of visual inspections contain little or no useful information. Therefore, the minimum information about an inspection that the Department expects to see in a record is being proposed for revision. The information expected includes the date and time of the inspection, the person performing it, any problems found, including if no problems were found, and the subsequent correction of such problems. This information will enable the Department to determine that proper inspections have been done in the required intervals, and that identified problems have been properly addressed.

N.J.A.C. 7:1E-2.10(c) is being proposed for deletion. The Department has never required that an owner or operator install a groundwater monitoring program solely to detect leaks or discharges, as it is not an acceptable means of leak or discharge detection. By the time a hazardous substance is detected in the groundwater, there is already a large contamination problem. Also, it means that a leak or discharge has gone undetected for a rather long time. The Department believes that the standards in this chapter provide better, more efficient means of detecting leaks and discharges than does a groundwater monitoring program.

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In N.J.A.C. 7:1E-2.11, Housekeeping and maintenance, N.J.A.C. 7:1E-2.11(d) is proposed to be revised to reflect changes proposed in N.J.A.C. 7:1E-4.3(a), discussed below. This subsection currently reads “such small leaks or discharges as may be expected to occur in the ordinary operation of the facility.” The amendments to N.J.A.C. 7:1E-4.3(a) will require that the owner or operator of the facility establish a demarcation for those leaks and discharges that will be dealt with by facility personnel and equipment and those that will require the services of a discharge cleanup organization. Therefore, materials to be kept on hand must be adequate for “those leaks and discharges that facility personnel will respond to, as described in the DCR plan in accordance with N.J.A.C. 7:1E-4.3(b)7.”

The term “gas masks” is proposed to be replaced with the term “respiratory protection” in N.J.A.C. 7:1E-2.11(e). Respiratory protection is a more general term than gas mask, and encompasses the many different ways that facility personnel can be protected from inhalation hazards.

In N.J.A.C.7:1E-2.11(f), the phrase “free of debris, and” is proposed to be added after “in good repair.” While inspecting major facilities over the past 10 years, the Department has found that owners or operators often do not maintain secondary containment or diversion systems by cleaning out accumulated dead vegetation, such as leaves, or removing silt or other built up deposits. These can interfere with the proper functioning of the secondary containment or diversion system by reducing capacity or blocking flow. It is therefore important to ensure that such accumulations are promptly dealt with.

Based on the experience of the past five years, the Department is proposing substantial changes to N.J.A.C. 7:1E-2.12, Employee training. It has found that in some instances the current requirements are too rigid to accommodate the changing needs of the regulated community. Therefore, in order to reduce the burden on the owners and operators of major facilities in New Jersey, while maintaining important training requirements that help protect the environment from harmful discharges, the following amendments are being proposed to this section.

N.J.A.C. 7:1E-2.12(a) requires that owners or operators of major facilities, among other things, maintain a written description of their employee training program that covers the handling of hazardous substances. N.J.A.C. 7:1E-2.12(b) sets forth the contents of the written description of the training program. The Department proposes amending N.J.A.C. 7:1E-2.12(b)1 to delete the requirement that education and experience be included in the written job description. Often, the combination of education and experience appropriate to a given position can be quite varied. Incorporating all the combinations that would be acceptable for a candidate for the job is burdensome. However, it is important that the job functions involving hazardous substances be included in the description, as well as the training that is necessary to properly perform the job. As indicated by the proposed amendments at N.J.A.C. 7:1E-2.12(c)2, the training may be required prior to starting the position, or may be on-the-job.

The Department proposes recodifying N.J.A.C. 7:1E-2.12(b)2 as (b)3 without amendment and recodifying N.J.A.C. 7:1E-2.12(b)3 as (b)2 with amendments that delete the

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second and third sentences of this paragraph. In the context of a training program, periods of training to perform a given job precede determining that an employee has demonstrated competence in a given position. The Department has determined that in many cases it is not appropriate to establish tracking systems and maximum periods of time for achieving qualified status. Circumstances often require revisions to established systems or time schedules. While the Department believes it is important to have established tracking systems and specified periods for qualification, these will no longer be required to be part of the training program description for the purposes of these regulations. Ultimately, it is the demonstration of the ability to perform the job that is most important.

The Department proposes combining important aspects of training currently contained in N.J.A.C. 7:1E-2.12(c) and (d) into subsection (c), and deleting subsection (d). The requirement for general orientation training in N.J.A.C. 7:1E-2.12.(c)1 remains unchanged. Paragraph (c)2 is proposed to require job-specific training that can be classroom, on-the-job, or both, as appropriate for the position, as opposed to only classroom training. In some industries, classroom training is not appropriate or useful. In others, extensive classroom training is needed before exposing a new employee to the workplace. The remaining proposed amendments to this section recodify those training topics currently codified at subsection (d) that the Department believes are essential to the proper performance of an employee's job.

The Department proposes adding new N.J.A.C. 7:1E-2.12(c)3 to require employee training on updated or new SOPs. Since SOPs establish the procedures that employees are to follow, it is important that they know about new or revised ones as soon as possible. Such training may not take a long time, but can be critical in ensuring that employees properly perform their jobs.

The phrase "and which can be combined with such training required under any other State or Federal requirement" is being proposed for addition to the end of N.J.A.C. 7:1E-2.12(c)4. It has always been Department policy to allow the combining of this refresher training requirement with any other refresher training mandated for a major facility, but this now establishes that policy as part of the rules.

Because N.J.A.C. 7:1E-2.12(d) is proposed for deletion, the final three subsections of this section are proposed to be recodified, two of them without amendment. N.J.A.C. 7:1E-2.12(e) is proposed to be recodified at N.J.A.C. 7:1E-2.12(d) and N.J.A.C. 7:1E-2.12(g) is proposed to be recodified at N.J.A.C. 7:1E-2.12(f), with no change in the text. The documentation required to be kept under N.J.A.C. 7:1E-2.12(f), to be recodified at N.J.A.C. 7:1E-2.12(e), is proposed to change from evaluation and qualifying activities to only final qualifying activities. For the purposes of these rules, it is necessary to determine only that a given person has qualified for the position he or she holds. Information concerning interim qualifying activities is not needed. Also, the phrase "shall be kept in accordance with N.J.A.C. 7:1E-2.15" is to be used in place of "shall be kept at the facility." This makes the retention of training records subject solely to the standard recordkeeping requirements of these rules. Finally, "their job titles" is to be deleted from the documentation requirements. Information about job titles is available through other records, and can change between the time the training occurs and the time the records are reviewed. Elimination of this datum requirement simplifies the records that must be kept.

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In N.J.A.C. 7:1E-2.13, Security, the phrase “during hours of darkness” is proposed to be deleted from N.J.A.C. 7:1E-2.13(a). During inspections, the Department has found that illumination is often required even during hours of daylight. Indoor areas may need to be adequately lit at any time, especially interior areas without windows or other sources of natural light. Therefore, the elimination of this phrase makes it clear that illumination must be used anywhere and at any time it is necessary to detect intruders, leaks or discharges.

The Department has found that defining full fencing on land as being adequate to prevent unauthorized entry is not appropriate. Therefore, the phrase “(full fencing on land)” is proposed for deletion from N.J.A.C. 7:1E-2.13(b)1. What fencing is adequate to prevent unauthorized entry needs to be evaluated on a case-by-case basis, and not specified by regulation.

Based on the past five years of inspecting for compliance with these rules and reviewing plan submittals, the Department has determined that N.J.A.C. 7:1E-2.14, Standard operating procedures, needs to be revised to reduce the burden on the regulated community and make it easier to achieve compliance, while still providing the requisite protection of the environment. To that end, the Department is proposing to revise what is required to be included in a standard operating procedure (SOP). In N.J.A.C. 7:1E-2.14(d)1, the requirement for a process description is proposed to be replaced with a requirement for a description of the operation, including all requirements from this subchapter. This makes it clear that all types of action involving hazardous substances undertaken at a major facility need to have SOPs, not just those involving the processing of hazardous substances. It also clarifies the need to address the standards established in this subchapter in the SOP. For example, tank trucks must be attended at all times during loading or unloading in accordance with recodified N.J.A.C. 7:1E-2.3(g). How this attendance is accomplished needs to be described in the SOP on loading and unloading of tank trucks.

The Department is also proposing to revise the order of items to be included in an SOP, to make them more logically follow the actual order that an employee would encounter each item. Thus, the requirement for visual inspection of equipment is proposed to be recodified from paragraph (d)5 to (d)2 in N.J.A.C. 7:1E-2.14(d), and paragraph (d)2 is recodified as (d)3 with no change in the text.

Proposed revisions to N.J.A.C. 7:1E-2.14(d)4 require a description of leak monitoring equipment and alarms. The type, location and purpose of containment systems and devices, currently required at N.J.A.C. 7:1E-2.14(d)4, is information beyond the scope of an SOP and is covered by training requirements elsewhere in these rules. However, it is important for an employee to recognize a leak condition in order to properly respond to it; thus the Department proposes the requirement that monitoring equipment and alarms be covered in the SOP.

Existing N.J.A.C. 7:1E-2.14(d)3 is proposed to be recodified as paragraph (d)5 and amended to add the phrase “from the operation” after “which could occur.” The existing language is too general and can be interpreted to mean any leak or discharge condition that could occur anywhere within the major facility. For a given SOP, only the leak or discharge conditions that could occur during the operation described in the SOP should be included.

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The wording of N.J.A.C. 7:1E-2.14(e) is proposed to be revised to make it clear that the items delineated in this subsection must be included in an SOP only when it is appropriate to the operation.

The Department proposes simplifying the wording of N.J.A.C. 7:1E-2.14(e)6 to read “Procedures to perform and inspect maintenance work.” This eliminates reference to preparing the equipment for maintenance and to performing inspections prior to placing equipment back in service. The Department has determined that it is best to let the owner or operator decide what are the best means of performing and inspecting maintenance work on the equipment they use. Dictating that certain timeframes or procedures be used is not efficient or necessary. The owner or operator can determine what is best and incorporate it into the SOP.

The phrase “where appropriate to the operation” is proposed to be deleted from the end of N.J.A.C. 7:1E-2.14(e)7 as redundant.

Finally, N.J.A.C. 7:1E-2.14(h) is proposed to be revised to make the index of SOPs more useful. It is proposed that the index include the title, identification number, and latest date of issue for each SOP in use at the major facility. The current language only requires the date of issue. The Department has found that owners or operators use a wide variety of designations when compiling their indices and has determined that requiring certain basic information will make it easier to compile and review SOPs.

Several amendments are proposed for N.J.A.C. 7:1E-2.15, Recordkeeping. At N.J.A.C. 7:1E-2.15(a), records of inspections of cleanup and removal equipment are proposed to be added and the phrase “hazardous substance” is being replaced by “facility.” A proposed amendment to N.J.A.C. 7:1E-2.10(a)6 would require the quarterly inspection of cleanup and removal equipment, so this proposed amendment would require that those inspections be documented and the records kept. “Facility inventory” is a defined term in N.J.A.C. 7:1E-1.6, while “hazardous substance inventory” is not.

N.J.A.C. 7:1E-2.15(b) requires that certain records must be maintained for a period of 10 years. However, as currently worded, it is not clear whether the 10 year retention period applies to all of the enumerated records. Therefore, the Department proposes splitting N.J.A.C. 7:1E-2.15(b) into two subsections. N.J.A.C. 7:1E-2.15(b) would be amended to require that documentation of discharges that are not required to be reported under N.J.A.C. 7:1E-5.3(e), but must be properly cleaned up and removed, and confirmation reports required pursuant to N.J.A.C. 7:1E-5.8, must be retained for 10 years.

Proposed new N.J.A.C. 7:1E-2.15(c) provides that records of inspection and repair (as proposed to be defined by this proposal) must be maintained for 10 years, or the lifetime of the equipment, device, or structure, whichever is shorter. This makes it clear that a shorter time period than 10 years applies when a piece of equipment has a useful life span of less than 10 years.

The proposed amendments to N.J.A.C. 7:1E-2.15(c) recodify this subsection as N.J.A.C.

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7:1E-2.15(d) and delete “major maintenance” and “major repair” in favor of “repair,” defined in the amendments proposed herein. The proposed amendments do not alter the requirement that records for aboveground storage tanks must be kept for the lifetime of the tank. This time period is appropriate because the history of testing and maintenance on an aboveground storage tank is vital to the determination of its continued usefulness and integrity.

The Department proposes to recodify N.J.A.C. 7:1E-2.15(d) as (e) with no change in text, and to recodify N.J.A.C. 7:1E-2.15(e) as (f), with an amendment to insert a comma after “microfiche” to more clearly separate the two parts of the sentence.

Proposed new N.J.A.C. 7:1E-2.16, Integrity testing, replaces existing N.J.A.C. 7:1E-2.2(a)4, 5, 6 and 7, which are proposed for deletion. The Department convened a workgroup of interested stakeholders, including owners or operators of major facilities and tank integrity testers, and held a series of meetings on integrity testing. The information gathered about the types of integrity testing available and their utility and applicability to different situations was used to develop the proposed standards.

Proposed new N.J.A.C. 7:1E-2.16(a) establishes that all aboveground storage tanks with a capacity greater than 2,000 gallons that were installed and in use prior to July 22, 1990, must have undergone integrity testing or static head testing by August 1, 1993. This synthesizes all the requirements currently contained in N.J.A.C. 7:1E-2.2(a)4 and Tables 1 and 2 into one requirement. The requirement to perform initial integrity testing on existing tanks is now nearly 15 years old. The Department has determined that the current rule that distinguishes whether the testing was required in 1992 or 1993 is not significant; rather, it is whether the test was completed that is the relevant factor.

Proposed new N.J.A.C. 7:1E-2.16(b) establishes the requirements for the initial integrity testing of all aboveground storage tanks with a capacity greater than 2,000 gallons that were installed and operated after July 22, 1990. This replaces N.J.A.C. 7:1E-2.2(a)6, which requires integrity testing as currently defined in N.J.A.C. 7:1E-1.6 or a certification from the manufacturer for a shop-built tank. During the discussions held with the workgroup, it was determined that it is more appropriate for field-erected tanks to follow the requirements of the industry standard used to design and build them. For example, API Standard 650, concerning the construction of field-erected welded steel tanks, includes a protocol for testing the tank once it is built, to ensure that it is structurally sound and leak tight. Because these testing requirements are designed to check for the problems most likely to arise from the defined construction method, they are the most appropriate for use before placing a new tank in service. Therefore, proposed new N.J.A.C. 7:1E-2.16(b)1 establishes that testing in accordance with the construction standard is required for new field-erected tanks.

Tanks that were constructed or installed some time ago but are being placed into service for the first time, or are being returned to service, must undergo integrity testing prior to being reactivated. When a tank is sitting idle, small defects can accumulate without notice. Corrosion, especially on the underside of a tank bottom, continues to occur. If paint and other appurtenances to a tank are not properly maintained, leaks and other problems can develop. It is, therefore, important to test these tanks prior to putting them in service. Because they are not

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newly constructed, and in some cases it is not certain what standard to which they were constructed, the use of the construction standard to establish integrity is not appropriate. The workgroup therefore concluded that an established standard must be used to test such tanks before placing them in service. Accordingly, proposed new N.J.A.C. 7:1E-2.16(b)2 provides that integrity testing using one of the standards set forth in these rules should be performed.

Similarly, the workgroup agreed that a manufacturer's certification of a shop-built tank at the site of manufacture does not take into account problems that can arise due to damage in shipping or incorrect installation at the site of use. The consensus among members of the workgroup that had installed new shop-built tanks was that, at a minimum, a static head test or similar leak tightness test should be performed to ensure that all connections and the tank are leak-tight. Therefore, that is the standard established by N.J.A.C. 7:1E-2.16(b)3.

Proposed new N.J.A.C. 7:1E-2.16(c) requires that all records of integrity testing be kept in compliance with N.J.A.C. 7:1E-2.15, the recordkeeping provisions of this subchapter.

Proposed new N.J.A.C. 7:1E-2.16(d) contains the requirements for integrity testing of field-erected steel aboveground storage tanks with a storage capacity greater than 2,000 gallons. Integrity testing is an ongoing program. Periodic tests are performed on storage tanks to ensure that they are still structurally sound and capable of containing the substances stored within them. The consensus of the workgroup was that API 653 is the most appropriate and useful standard for testing field-erected steel tanks operated at atmospheric pressure. API 653 was originally promulgated in December of 1991. It has since gone through several additions. Many owners or operators of major facilities have been using API 653 since it was first introduced, or shortly thereafter. At the current time, the Department has no knowledge of any other testing standard for aboveground field-erected steel tanks operating at atmospheric pressure. The Department agrees that it is a good protocol for testing and maintaining field-erected storage tanks. It is cited in the current rules as one of several possible industry standards that can be used to show compliance with the integrity testing requirements.

However, over the years, API 653 has been revised, and two changes that have been made to the standard with which the Department disagrees. They are the use of similar service and risk based inspections. Similar service involves grouping tanks together based on the date of construction, tank contents, and other factors that make the tanks "similar." Then, only one of the grouped tanks is actually tested, and the others in the group are assumed to have the same wear and corrosion patterns. In practice, similar service has not proven effective in discovering tanks with bottoms that are leaking or in poor condition. Similar service can be used to establish the initial schedule, but once that schedule is set, every tank must be inspected. Risk based inspection allows the intervals between tests to be determined by factors other than those already established in API 653, which are primarily the corrosion rates. The Department believes that API 653 is already a risk based standard and that allowing additional factors to be used to determine inspection intervals is not appropriate or sufficiently protective of the environment. Therefore, the Department is proposing the use of API 653 in N.J.A.C. 7:1E-2.16(d)1, without similar service or risk based inspections, for the integrity testing of tanks operated at atmospheric pressure.

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For tanks that operate under pressure, there are two established industry standards, API 510 and ASME Section VIII. Only a small number of pressure tanks are regulated under these rules. From the information the Department was able to obtain from the workgroup and from its experience implementing and enforcing the rules, these two standards are equally appropriate for the testing of tanks operating under pressure. Therefore, proposed new N.J.A.C. 7:1E-2.16(d)2 establishes that the use of either of these standards is acceptable for such tanks.

Proposed new N.J.A.C. 7:1E-2.16(e) sets forth the integrity testing requirements for shop-built steel aboveground storage tanks. The Steel Tank Institute (STI), which is a not-for-profit organization whose members include the manufacturers of such tanks, has developed and promulgated a standard for the testing of steel shop-built tanks. A diverse committee of manufacturers, users, regulators and testers worked on this standard, entitled SP001, Standard for the Inspection of Aboveground Storage Tanks, the latest edition of which was adopted in July 2005. The Department has found that this standard provides an acceptable means of determining integrity with a less strenuous series of tests and inspections than is currently required under N.J.A.C. 7:1E. For shop-built tanks, which in New Jersey are unlikely to exceed 50,000 gallons in size, SP001 ensures the necessary measure of protection afforded from testing aboveground tanks at a cost commensurate with the risk associated with the catastrophic failure of a tank of this size. However, for owners or operators who prefer, the use of API 653 also is permitted for shop-built tanks. It should be noted that API 653 is not appropriate for double-walled shop-built tanks, and cannot be applied to them. And as explained when discussing field-erected tanks above, the use of similar service and risk based inspection scheduling is not allowed.

In the course of regulating major facilities, the Department has observed that a large number of fiberglass reinforced plastic (FRP) tanks are used to store chemicals at such facilities. Neither API 653 nor SP001 apply to these tanks because the tanks are not manufactured from steel. Therefore, new N.J.A.C. 7:1E-2.16(f) addresses the testing of FRP tanks. Corrosion is not an issue for FRP tanks. Delamination, cracking and chemical etching of the plastic are problems that need to be detected. The workgroup determined that the best means of detecting these types of problems in FRP tanks is an acoustic emission test in combination with internal and external inspections by an experienced, qualified inspector. The acoustic emission test can locate delamination, cracks and other defects in the shell of an FRP tank. An inspector can identify some types of cracks, chemical etching, and other types of shell wear. In combination, the test and inspections can prevent the catastrophic failure of a tank and give an owner or operator an idea of when a tank needs to be replaced. A five year time interval is recommended because this is the shortest useful life span of an FRP tank identified by members of the workgroup.

A small but significant number of homogeneous plastic tanks are in use at major facilities in New Jersey. Proposed new N.J.A.C. 7:1E-2.16(g) addresses such tanks. Corrosion and cracking are generally not of concern for plastic tanks. Failure of homogeneous plastic tanks is usually caused by softening of the plastic, seam failure, or sudden shattering. The workgroup determined that the best means of protecting against these risks is internal and external inspections of the tank every five years by an experienced, qualified inspector.

The current DPHS rules contains a five-year testing protocol in N.J.A.C. 7:1E-2.2(a)4. This protocol is being proposed in new N.J.A.C. 7:1E-2.16(h) for those owners or operators who

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currently use it and wish to continue to do so, or for those that cannot utilize one of the other protocols. For instance, if a tank is not built to a known standard, it may not be able to use API 653. However, the Department is proposing to tighten this protocol to make it more useful and better able to protect against tank failures. To that end, N.J.A.C. 7:1E-2.16(h)1 proposes that the shell and the bottom of the tank undergo thickness testing, as opposed to a simple visual inspection of the bottom currently allowed. A visual inspection is incapable of detecting bottom-side corrosion of the tank bottom plates. An actual thickness test will give the owner or operator a better idea of the condition of the bottom of the tank. In addition, proposed N.J.A.C. 7:1E-2.16(h)2 contains a requirement for a visual inspection of the support structure and ancillary equipment of the storage tank. Foundation settling can lead to tank failure. Corrosion of attached equipment can affect the storage tank. A visual inspection of the outside of the tank is a quick and easy means of detecting signs of problems with the integrity of the tank.

The Department understands that even with the information gathered through the workgroup and the experience of implementing and enforcing the rules, there may be cases where none of the proposed testing protocols is appropriate. To account for such cases, proposed new N.J.A.C. 7:1E-2.16(i) allows the owner or operator of a major facility to propose a protocol to the Department for approval, in accordance with N.J.A.C. 7:1E-1.11(e).

Finally, the provisions of existing N.J.A.C. 7:1E-2.2(a)7 are being relocated as N.J.A.C. 7:1E-2.16(j).

### Subchapter 3. Transmission Pipelines

Subchapter 3 contains the requirements for information to be submitted to the Department as part of the registration of transmission pipelines. N.J.A.C. 7:1E-3.2(a) requires each owner or operator of a transmission pipeline to register that pipeline by February 1 of the registration year. The registration year occurs every five years, beginning on February 1, 1992. The next registration will be required in 2007.

The Department proposes new N.J.A.C. 7:1E-3.2(a)2 to require the inclusion of the name or designation of a transmission pipeline and information for a contact person for that transmission pipeline. The purpose of this proposed new paragraph is to help the Department distinguish between pipelines that are operated by the same person. Several transmission pipelines may have the same business name because they are owned and operated by the same company. A name or designation for the specific pipeline will make it easier to differentiate the various lines. The purpose of the proposed amendment to require inclusion of a contact person's name, title and telephone number is to enable the Department to inform the appropriate person of issues affecting the registered pipeline, such as impending inspections or registration renewal deadlines. The contact person and the response coordinator, required under N.J.A.C. 7:1E-3.4(a)4, for the transmission pipeline do not need to be the same person, as they have different functions, but they can be, if the owner or operator of the transmission pipeline so desires.

The Department proposes to recodify N.J.A.C. 7:1E-3.2(a)2 as (a)3, with no change in text.

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The phrase “and location, including street address and municipality” is proposed for addition to N.J.A.C. 7:1E-3.2(a)3, proposed to be recodified as paragraph (a)4. It is not only important to know the capacity of any storage facility associated with a pipeline, but also its location. Risks associated with storage locations (such as leaks from tanks) are different from the risks associated with the pipeline itself. Individual transmission pipeline companies operate up to 175 miles of pipeline within New Jersey. A storage location could be anywhere along those miles of pipeline. Location information will enable the Department to better identify these storage facilities.

The Department proposes recodifying N.J.A.C. 7:1E-3.2(a)4 as (a)5, with an amendment that adds the phrase “including maximum quantities of each substance stored at any one time.” This information is necessary so that the Department can determine if the owner or operator of the transmission pipeline is adequately prepared for any leaks or discharges that may occur from the pipeline. The quantities of cleanup and removal equipment and personnel needed are a direct function of the quantity of hazardous substance that is discharged. Information on the amount of hazardous substances stored, held, handled, transferred or transported, in combination with the information required by N.J.A.C. 7:1E-3.2(a)5, proposed to be recodified as paragraph (a)7 without change in text, enables the Department to determine whether worst case scenarios and the resources necessary to address them were considered by the owner or operator of the transmission pipeline when formulating his or her planned response to a discharge.

The Department proposes a new N.J.A.C. 7:1E-3.2(a)6. This proposed provision will require that information about facilities that are served by the transmission pipeline, including the physical address, be included in the registration. This information is necessary so that if there is an incident at one of the facilities served by the pipeline, the Department may use this information to contact the owner or operator of the transmission pipeline in order to initiate any necessary action, such as discontinuing transfers to that site. Information on the facilities served will better enable the Department to disseminate information during an emergency.

The Department proposes recodifying N.J.A.C. 7:1E-3.2(a)6 as (a)8 with amendments that require that the submitted maps be compatible with the Department’s Geographic Information System (GIS) (the requirements of which are prescribed at N.J.A.C. 7:1E-4.10), and delete the last sentence, referencing maps submitted to the U.S. Department of Transportation. It is likely that maps that meet the U.S. Department of Transportation’s standards will not meet the standards necessary to make them compatible with the Department’s GIS. Digital maps are being required because the Department can then combine the location information submitted by the owners or operators of the transmission pipelines with data the Department has on environmentally sensitive areas, land use, and area access points. In emergency situations, this combination of information will enable the swiftest and most efficient response.

The Department is proposing to correct the title of 49 CFR 195 in N.J.A.C. 7:1E-3.3, Standards, with the addition of the word “Hazardous” before “Liquids.”

Several amendments are proposed for N.J.A.C. 7:1E-3.4, Discharge cleanup information. Amendments are proposed to N.J.A.C. 7:1E-3.4(a)2 and 3 to make these provisions consistent with those in N.J.A.C. 7:1E-4.3. The Department proposes to add the sentence “A copy of all

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current contracts or agreements between the owner or operator and a discharge cleanup organization for emergency response service shall be included” to the end of N.J.A.C. 7:1E-3.4(a)2 to make this provision consistent with the standard applicable to major facilities at N.J.A.C. 7:1E-4.3(a)5 concerning lists of containment and removal equipment that must be provided. In addition, the Department proposes to add the phrase “and whether personnel are employed by the owner or operator or by a discharge cleanup organization” to N.J.A.C. 7:1E-3.4(a)3. This also is what is required to be submitted by the owner or operator of a major facility. Finally, the Department proposes deleting “operations” at the end of N.J.A.C. 7:1E-3.4(a)5 in favor of “activities.” “Cleanup and removal activities” is a defined term for the DPHS rules. “Cleanup and removal operations” is not.

#### Subchapter 4. Plans

Subchapter 4 sets forth the minimum requirements for the preparation and submission of Discharge Prevention, Containment and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) plans. This subchapter also contains the requirements for discharge cleanup and removal activities, financial responsibility at major facilities, and establishes what information must be included in DPCC and DCR plans. Accordingly, the Department proposes amending N.J.A.C. 7:1E-4.1, Scope, to more accurately reflect the scope of this subchapter.

In reviewing DPCC plans over the last five years, the Department has determined that additional information should be included in these plans to make them more complete and useful. Accordingly, the Department proposes splitting existing N.J.A.C. 7:1E-4.2(a) into two paragraphs. Proposed new N.J.A.C. 7:1E-4.2(a)1 would contain the existing requirement that the owner or operator of a major facility prepare a DPCC plan in compliance with N.J.A.C. 7:1E-2. The rest of existing N.J.A.C. 7:1E-4.2(a) is proposed to be recodified at proposed new N.J.A.C. 7:1E-4.2(a)2, with an amendment that replaces “response coordinator” with “facility contact.” As discussed above in connection with the proposed amendment to the definition of “response coordinator,” the facility contact would be a person who has the specific duty of ensuring compliance with the DPCC plan and this chapter. Pursuant to the proposed amendments to the definition of “response coordinator,” the response coordinator would no longer be responsible for the management of the DPCC and DCR plans at the facility. Rather, this person would have full authority to hire contractors and obligate funds to implement cleanup and removal activities and to act as a liaison with the Federal, State or local on-scene coordinators during an emergency event. However, it is imperative that someone at the facility be responsible for ensuring compliance with the DPCC plan. The facility contact and the response coordinator can be the same person, but they are not required to be. Also, insuring compliance with the Spill Act as a whole is proposed to be deleted from this paragraph. There are several programs that derive at least some authority from the Spill Act. A facility contact appointed under this chapter is only responsible for insuring compliance under this chapter, not other chapters authorized by the Spill Act and promulgated by other programs.

Proposed new N.J.A.C. 7:1E-4.2(b)3 would require that the DPCC plan contain information about the facility contact appointed pursuant to proposed N.J.A.C. 7:1E-4.2(a)1 so that the Department can contact the proper person at the facility when problems arise, or during the review of facility plans or other submissions.

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Proposed new N.J.A.C. 7:1E-4.2(b)5 would require that if the facility is served by or operates a transmission pipeline, the facility provide to the Department the name or designation of the transmission pipeline, and the mailing address and telephone number of the pipeline owner or operator. This information will enable the Department to identify how hazardous substances arrive at the major facility and therefore what types of discharge prevention planning are needed. It will also enable coordination in the case of an emergency at the major facility that also involves the transmission pipeline.

A requirement for a brief description of the facility, including the types of operations undertaken there is proposed at new N.J.A.C. 7:1E-4.2(b)6. An understanding of what occurs at a major facility enables the Department to anticipate what types of storage, equipment, and discharge prevention structures and equipment are, or should be, in use there. It will also help the Department to implement technology transfer; for example, when a major facility incorporates new protective measures or equipment at its site, the Department can then recommend their use at other major facilities that perform the same types of functions.

The Department proposes recodifying N.J.A.C. 7:1E-4.2(b)4 as (b)7 with amendments that delete the extraneous language in favor of the cross-reference to N.J.A.C. 7:1E-4.10. N.J.A.C. 7:1E-4.10, as proposed to be amended, lists the requirements for the format and content of a general site plan.

The Department proposes recodifying N.J.A.C. 7:1E-4.2(b)5 and 6 as (b)8 and 9 respectively, with amendments that also delete extraneous language in favor of the cross-reference to N.J.A.C. 7:1E-4.10, the rule that, as proposed, will contain the requirements for map submissions. For example, drainage and land use maps are required to show wells and direction of surface water runoff. Topographic maps are required to include identified types of environmentally sensitive areas. These amendments will make the provisions for all the maps required under this chapter consistent, easily located, and difficult to overlook.

Existing N.J.A.C. 7:1E-4.2(b)7 is proposed for recodification as paragraph (b)10, with the only proposed amendment being to add an “and” to the end of the provision to lead into proposed new N.J.A.C. 7:1E-4.2(b)11. This proposed new provision is a combination of existing N.J.A.C. 7:1E-4.2(c) and existing N.J.A.C. 7:1E-4.9(e). Both of these existing provisions require the submission of information on discharges along with plan submissions. However, the requirement in existing N.J.A.C. 7:1E-4.2(c) is for the initial submission of plans and covers only the 12 months prior to plan submission, and then only if there have been two or more discharges. Existing N.J.A.C. 7:1E-4.9(e) is for the submission of plan renewals, and covers the time period since the last plan approval. The Department has found that the regulated community is confused by these differing requirements and often submits incorrect information, or fails to submit the information at all. Therefore, the Department is proposing that the requirement to submit information on discharges be part of the general information section of the DPCC plan in all cases. For consistency, the time period to be covered will be the previous 36 months. Also, the information to be included is the substance(s) discharged, the quantity(ies) discharged, the location(s) of the discharge(s), the case number(s) for those discharges that were reported, and the corrective actions taken. Then, because most of this requirement has been

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incorporated into proposed N.J.A.C. 7:1E-4.2(b)11, existing N.J.A.C. 7:1E-4.2(c) is proposed for deletion. The requirement at N.J.A.C. 7:1E-4.2(c) to include plans to prevent recurrences is not included at proposed new N.J.A.C. 7:1E-4.2(b)11 because the DPCC plan itself incorporates this requirement.

N.J.A.C. 7:1E-4.2(d) contains the list of all technical information that must be included in a DPCC plan. Because DPCC plans can be combined with other plans, such as the U.S. Environmental Protection Agency's (USEPA's) Spill Prevention, Control and Countermeasure (SPCC) plan, this provision was written to require that the DPCC plan be keyed to the paragraphs in this section. The Department has found that the regulated community does not understand what is being required by this provision. Therefore, the Department proposes amending this section (to be recodified as N.J.A.C. 7:1E-4.2(c)) to read "The DPCC plan shall include, at a minimum, the following technical information, in the following order or indexed to this order." This makes it very clear that the Department expects the DPCC plan to contain the technical information in the order established in N.J.A.C. 7:1E-4.2(d), or that there be an index in this order showing where in the DPCC or combined plan the information can be found.

In reviewing DPCC plans, the Department has found that additional information would be useful in ensuring and determining compliance. Therefore, this additional information is being proposed for inclusion in N.J.A.C. 7:1E-4.2(c). The first such additional information concerns storage. The Department proposes that the information required for the various types of storage that can be utilized at a major facility be specifically outlined in the rule, rather than the current generic requirement for "the size and contents of storage tanks, drum storage areas, and all other storage areas." It is therefore proposed that N.J.A.C. 7:1E-4.2(c)1 address only aboveground storage tanks, as opposed to all storage areas, with individual information requirements listed separately. These include tank identification, such as name or number, and location; material of construction and tank orientation, whether horizontal or vertical; tank size and contents, and whether or not the contents are hazardous; overfill protection measures; and the schedule for integrity testing. All of this information is necessary to determine compliance. Tank identification and location ensures that all tanks are covered in the DPCC plan and shown on the general site plan. The general site plan can be used as the location information, as long as each tank is uniquely and consistently identified. Construction material, tank orientation, tank size, and contents are all used to establish which tank integrity testing protocols are applicable to the tanks. Information on tank contents helps the owner or operator and the Department identify which tanks are regulated by the DPHS rules and which are not.

Proposed new N.J.A.C. 7:1E-4.2(c)2 sets forth the information that must be included in the DPCC plan for all underground storage tanks. This chapter does not impose any additional requirements on such tanks above that which is required by N.J.A.C. 7:14B. However, information on the location and contents of underground storage tanks will enable the Department to determine if associated loading or unloading areas are regulated under these rules. The general site plan can be used as the location information, as long as each tank is uniquely and consistently identified.

A description of all other storage areas other than aboveground or underground storage tanks is required pursuant to proposed new N.J.A.C. 7:1E-4.2(c)3. This proposed description

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must include the location and identification, such as name or number, of the storage area, the type and size of containers stored, and the substances stored and whether or not they are hazardous. In enforcing this requirement, the Department anticipates that the location may be given on the general site plan, as long as the areas are uniquely and consistently identified. Information on the type and size of containers is used in determining the size of the secondary containment required. The substances stored affect what is acceptable as impermeable for secondary containment, or whether secondary containment is required.

The Department proposes recodifying N.J.A.C. 7:1E-4.2(d)2 as (c)4, with an amendment providing that the description requirements of the paragraph are not inclusive, to ensure that infrequently encountered items, such as alternative means of compliance approved under N.J.A.C. 7:1E-1.11(e), are included in the description of tank car and tank truck loading or unloading areas. It is also proposed that the location and identification, such as name or number, of the loading and unloading areas be included, along with which substances are loaded or unloaded. The general site plan can be used as the location information, provided that each loading or unloading area is uniquely and consistently identified. This will enable the Department and the major facility to avoid repeated questions about areas that are not identified in the plan and therefore have no known regulatory status.

The Department proposes to recodify the requirement for the description of the marking of in-facility pipes from N.J.A.C. 7:1E-4.2(d)3 as (c)5, with amendments that require a more thorough description of such pipes. The information proposed to be the description is the location and identification, such as name or number; the marking system used; any product-sensitive leak detection devices in use on buried piping; any maintenance and repair program for buried pipes; and procedures for minimizing the chance of a vehicular collision with overhead pipes. In enforcing this requirement, the Department anticipates that location information can be given on the general site plan, provided that the in-facility pipes are uniquely and consistently identified.

Currently, the only description of process areas required to be contained in the DPCC plan is included under existing N.J.A.C. 7:1E-4.2(d)4, and only covers the secondary containment for such areas. This is insufficient for determining compliance with the requirements that are applicable to process areas. Therefore, the Department proposes new N.J.A.C. 7:1E-4.2(c)6 to cover process areas. The description proposed to be included in the DPCC plan must cover location and identification, such as name or number, of the process area and the largest vessel or maximum volumetric flow rate in each area. In enforcing this requirement, the Department anticipates that the location information can be included on the general site plan, provided that the process areas are uniquely and consistently identified. This information is needed in order to determine where secondary containment needs to be located and what size it needs to be.

The Department proposes to recodify the requirements for the description of secondary containment from N.J.A.C. 7:1E-4.2(d)4 as (c)7, with an amendment adding the phrase “addressing all standards under N.J.A.C. 7:1E-2.6, including, but not limited to.” This proposed amendment clarifies that all the requirements of N.J.A.C. 7:1E-2.6 must be addressed. The “but not limited to” ensures that out-of-the-ordinary situations are still properly described in the plan.

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This proposed requirement does allow inclusion of this information with the overall description of each area required to have secondary containment, as that is often the most efficient and succinct way to do it.

The Department proposes recodifying N.J.A.C. 7:1E-4.2(d)5 as (c)8 without amendment, and recodifying N.J.A.C. 7:1E-4.2(d)6 as (c)9 with amendments. The phrase “and washout” is proposed for addition after “flood waters.” The requirements of proposed N.J.A.C. 7:1E-2.9 clearly cover both flood waters and washout. Therefore, both need to be described in the DPCC plan, along with measures in place to protect hazardous substances.

The heading of N.J.A.C. 7:1E-2.10 was changed from “leak detection and monitoring” to “visual inspection and monitoring” many years ago. However, that change was not reflected in existing N.J.A.C. 7:1E-4.2(d)7. Therefore, the Department proposes that N.J.A.C. 7:1E-4.2(d)7 be recodified as paragraph (c)10 with “leak detection or” revised to “visual inspection and.”

The Department proposes to recodify N.J.A.C. 7:1E-4.2(d)8 as (c)11 without amendment.

The Department has determined that a more complete description of the training program in place at the major facility needs to be included in the DPCC plan. The training program required under N.J.A.C. 7:1E-2.12 should be thoroughly reviewed as part of the plan review process. To that end, the requirement for additional information is proposed to be included in N.J.A.C. 7:1E-4.2(d)9, proposed to be recodified as paragraph (c)12. Now, instead of an outline, a description covering the types of training, time periods for performing that training, and training procedures will be required in the DPCC plan. This will enable the Department to evaluate the training program and its compliance with the standards.

The Department is proposing to recodify N.J.A.C. 7:1E-4.2(d)10 as (c)13, with an amendment that adds the phrase “including lighting.” Owners or operators often overlook the fact that lighting requirements are contained in N.J.A.C. 7:1E-2.13, and thus do not describe what is in place at the facility. This proposed amendment clarifies that lighting is to be included in the description required by this provision.

The Department proposes to recodify N.J.A.C. 7:1E-4.2(d)11 as (c)14, with an amendment that revises the phrase “catalog list” to “current index.” This is the phrase used in N.J.A.C. 7:1E-2.14, and thus makes this provision consistent with that usage.

The Department proposes to recodify N.J.A.C. 7:1E-4.2(d)12 as (c)15 without amendment.

The wording of N.J.A.C. 7:1E-4.2(e) is proposed to be amended to clarify that an upgrade schedule is not required as part of a DPCC plan, but may be included as necessary. Thus, the Department proposed to replace “shall” with “may.” Also, the Department is proposing to add the word “any” before “equipment and the word “those” before “portions” to ensure that it is understood that the remainder of these requirement applies only to equipment and facility structures that existed prior to plan submission. The phrase “that existed prior to the submission

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of the owner or operator's first DPCC plan to the Department" is proposed for be addition to clarify that new structures or equipment installed after the plan is in place must meet the standards in these rules prior to being placed in service. This is further enforced by the proposed addition of the requirement that all equipment and portions of the facility installed after the first approval of a DPCC plan meet all applicable standards in these rules. An owner or operator cannot install new equipment that does not meet the standards contained in N.J.A.C. 7:1E-2 and then upgrade it later to meet those standards. As N.J.A.C. 7:1E-4.2(e) currently provides, equipment and facilities that are in place prior to the approval of the DPCC plan must be upgraded in accordance with an upgrade schedule. The proposed amendment would distinguish this equipment from newly installed equipment, which must be installed in compliance with the applicable standards in these rules.

The Department proposes to delete N.J.A.C. 7:1E-4.2(f). Most of these records are covered by other sections of the rules. Those that are not, such as process flow, and piping and instrumentation diagrams, have never been inspected by the Department under this program. It is, therefore, unreasonable to expect the regulated community to maintain these records.

N.J.A.C. 7:1E-4.3, Discharge cleanup and removal plan, contains the requirements for equipment and personnel related to discharge cleanup and removal activities and the information that must be included in the DCR plan submitted to the Department.

The Department proposes a new N.J.A.C. 7:1E-4.3(a) which recodifies the requirement that a response coordinator be appointed from N.J.A.C. 7:1E-4.2(a). As was explained when describing the proposed amendments to the definition of "response coordinator" and to N.J.A.C. 7:1E-4.2(a), it is more appropriate for a facility contact to be responsible for compliance with the requirements of N.J.A.C. 7:1E-4.2. However, a response coordinator is the person best suited to deal with compliance with DCR plan provisions. Therefore, it is more appropriate to codify the requirement that a response coordinator be appointed at N.J.A.C. 7:1E-4.3. This person may be the same one as the facility contact, but that is not required.

The Department proposes to recodify N.J.A.C. 7:1E-4.3(a) as (b) with an amendment to add the phrase "in the following order or indexed to this order." The Department expects the sections of a DCR plan to be presented in the order of the requirements in the rule. However, because the DCR plan can be combined with other State or Federal response plans, such as SPCC plans, the Department must be able to find the sections of a combined plan that show compliance with these rules. An index of the requirements in the order given in the rules fulfills this need.

There have been many inquiries as to whether an actual response to a discharge can be used as a drill as required under N.J.A.C. 7:1E-4.2(a)4, proposed to be recodified as paragraph (b)4. The Spill Act specifically requires a simulated emergency response drill (N.J.S.A. 58:10-23.11d3b(1)). Therefore, an actual response action cannot be used as a drill. To make this clear, the wording is proposed to read "an annual simulated emergency response drill." This drill can be combined with other drill requirements under other State or Federal programs, such as the Toxic Catastrophe Prevention Act (TCPA) or the Federal Facility Response Plan regulations. However, it must test personnel familiarity with the DCR plan; accordingly, the Department

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proposes to add “and this DCR plan.” Also, the Department has found that some owners or operators perform the same type of drill, such as a tabletop, every year. It is important to test various aspects of emergency response capabilities, including the knowledge facility personnel have of the location and use of cleanup equipment and materials. A tabletop drill does not test this knowledge. Therefore, the addition of the phrase “and cannot be of the same type, such as a table top drill, in consecutive years” is proposed.

The Department proposes recodifying N.J.A.C. 7:1E-4.3(a)5 and 6 as (b)5 and 6, with amendments that incorporate the provisions of existing N.J.A.C. 7:1E-4.3(b), which is then proposed for deletion. The sentence “Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization, adequate equipment to clean up any discharge that occurs at the facility” is proposed for addition to the end of N.J.A.C. 7:1E-4.3(a)5, proposed to be recodified as paragraph (b)5, while “Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization, adequate personnel to clean up any discharge that may occur at the facility” is proposed for addition to N.J.A.C. 7:1E-4.3(a)6, recodified as paragraph (b)6. These are the more logical places for these provisions to appear, as they are directly related to the rest of the content of the relevant paragraphs. The only other proposed change in these two paragraphs is to add the word “minimum” before “quantities” in recodified N.J.A.C. 7:1E-4.3(b)5. This makes it clear that the list of containment and removal equipment and materials must contain the minimum amount of each item that will be maintained on site or be available through contract.

Existing N.J.A.C. 7:1E-4.3(a)7 is proposed to be split into two provisions and recodified. The Department proposes recodifying N.J.A.C. 7:1E-4.3(a)7i as paragraph (b)7, with amendments requiring information about the types and sizes of discharges that facility personnel will respond to, as opposed to calling in a discharge cleanup organization. The response measures are for both leaks and discharges. This is necessary because N.J.A.C. 7:1E-2.6(c)3 allows secondary containment for aboveground storage tanks to be waived from the impermeability requirement as long as groundwater can be protected for as long as it takes to clean up the largest leak. How long it takes to clean up a leak is a direct function of the response measures that will be taken.

Although the Department would prefer that on-site response measures keep a discharge on site, it understands that that is not always the case. Therefore, it is necessary to have off-site response measures. The Department proposes recodifying N.J.A.C. 7:1E-4.3(a)7ii through iv as subparagraphs (b)8i through iii. All of these provisions apply to off-site response measures. In addition, the citation in N.J.A.C. 7:1E-4.3(a)7iv, proposed to be recodified as subparagraph (b)8iii is proposed for revision to N.J.A.C. 7:1E-4.11(f). N.J.A.C. 7:1E-4.11 contains several different certifications, but the one in subsection (f) is the one that is applicable to the protection of off-site environmentally sensitive areas.

The Department proposes recodifying N.J.A.C. 7:1E-4.3(a)8 as (b)9, with amendments. The first proposed amendment adds “housekeeping or” before “cleanup.” The housekeeping requirements in N.J.A.C. 7:1E-2.11(c) and (d) require the clean up of leaks and discharges. The material gathered during such cleanup activities must be properly handled. Recycling or disposal options need to be established for these materials as well. The second proposed

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amendment is to replace “operations” at the end of the section with “activities.” “Cleanup and removal activities” is a defined term in this chapter. “Cleanup and removal operations” is not.

The Department proposes recodifying N.J.A.C. 7:1E-4.2(a)9 as (b)10 without amendment.

The Department proposes recodifying N.J.A.C. 7:1E-4.3(a)10 as (b)11, with an amendment deleting the phrase “A copy of” from the beginning of the paragraph. The regulated community has been confused by the term “copy.” For certain types of financial responsibility documents, the original document containing an original signature must be submitted. For example, the letter from the chief financial officer required by N.J.A.C. 7:1E-4.4(g) is written to the Department and must be the original. However, for group insurance, an original is not required. To avoid confusion as to what is meant by “copy,” the use of this word is proposed for elimination.

In N.J.A.C. 7:1E-4.4, Financial responsibility, the Department is proposing the deletion of the phrase “and for the removal of any abandoned structure owned or operated, as the case may be, by the owner or operator” from N.J.A.C. 7:1E-4.4(a). The Department has not required that financial responsibility be demonstrated for the removal of an abandoned structure and has no plans to do so.

The standards for financial responsibility contained in N.J.A.C. 7:1E-4.4(g) through (n) are based on those contained in the Federal Underground Storage Tank rules at 40 C.F.R. 280, Subpart H. Although the DPHS rules are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements, the Department has attempted to be consistent with similar or overlapping Federal rules. Thus, the wording in these subsections of the DPHS rules were compared with the current Federal rules. Amendments are being proposed to make these standards consistent with the Federal requirements. The Department believes this makes the financial responsibility requirements easier to understand and to comply with.

Additionally, in subsection (g), the Department proposes deleting the word “fiscal” and inserting the phrase “financial reporting.” “Financial reporting year” is used at the end of this paragraph and, as discussed above, the Department is proposing a definition of this term to clarify the intended timeframe. The proposed addition of this phrase makes it necessary to split the existing single sentence into two for better readability. Therefore, the phrase “The owner or operator must” is proposed to replace “and.”

The Department proposes to replace the phrase “the test” by “a financial test” in N.J.A.C. 7:1E-4.4(g)1i. Similar financial tests may be used by owners or operators to show financial responsibility under other State and Federal programs, and the current wording limits the tests included under this provision to the one for the DPHS rules. Both the underground storage tank program and the Federal Resource Conservation and Recovery Act program allow the use of a financial test. These tests use the same standards as those contained in N.J.A.C. 7:1E-4.4(g), but are not specifically indicated when the phrase “the test” is used. All financial tests that are based

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on the financial strength of the owner or operator must be disclosed as they reduce the assets available to support additional tests of financial responsibility.

The Rural Electrification Administration, referred to in the current rule text at N.J.A.C. 7:1E-4.4(g)1ii and 2iii, has been replaced by the Rural Utilities Services. Therefore, the Department proposes to replace the Rural Electrification Administration with the Rural Utilities Services in N.J.A.C. 7:1E-4.4(g)1ii and 2iii. Also, the Board of Public Utilities is proposed to be added to these two sections. Some owners or operators of utilities do not operate on a national basis and therefore do not submit information to a Federal agency. For these types of owners or operators in New Jersey, submission of financial statements to the State Board of Public Utilities is equivalent and acceptable.

The Department proposes adding the phrase “if independently audited” to N.J.A.C. 7:1E-4.4(g)1iii. This makes it clear that not every owner or operator is required to have his or her financial statements independently audited, but that the standard applies for those that do.

In order to be consistent with the Federal requirements, the Department proposes the replacing “from” in N.J.A.C. 7:1E-4.4(g)2 with “as issued by.” Also, the word “aggregate” is proposed for addition before “amount” and the phrase “in (b) above, plus any other liability coverage provided by a financial test” is proposed for addition after. The net working capital required is six times the total of all financial responsibility demonstrated by financial tests.

The Department proposes a similar amendment for N.J.A.C. 7:1E-4.4(g)2ii. The phrase “in (b) above plus any other liability coverage provided by a financial test” is proposed for addition to the end of this subparagraph. U.S. assets must be at least six times the total of all financial responsibility demonstrated by financial tests.

The Department proposes further amending N.J.A.C. 7:1E-4.4(g)2iii to make this provision consistent with 40 CFR 280, Subpart H. The current requirement that the financial statements be examined by a certified public accountant and accompanied by the accountant's report of the examination is proposed to be replaced with one similar to 40 CFR 280.95(c)(5) for a special report by an independent certified public accountant stating that the data specified in the letter from the chief financial officer have been compared to the data in the latest financial statements and that no matters have come to his or her attention which cause him or her to believe that the data should be adjusted. This is a more defined standard with a clear requirement that can be readily complied with.

The Department proposes two amendments to N.J.A.C. 7:1E-4.4(g)3 for consistency with 40 CFR 280, Subpart H. These amendments are the inclusion of the phrase “and wishes to use a bond rating as the basis of the financial test” after “local government” in N.J.A.C. 7:1E-4.4(g)3 and the proposed inclusion of the phrase “other than municipal bond insurance” after “credit enhancement” in N.J.A.C. 7:1E-4.4(g)3ii.

The sentence “The owner or operator must maintain onsite a letter signed by the chief financial officer worded as specified in Appendix B, incorporated herein by reference” is proposed for addition to N.J.A.C. 7:1E-4.4(g)3 and 4. Currently, the rules do not require that the

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documents contained in Appendix B be prepared. However, these completed documents are how compliance is demonstrated, so their use must be required.

The Department proposes to replace the phrase “of self-insurance” with “to provide financial responsibility” in N.J.A.C. 7:1E-4.4(h). The important aspect of the financial test is that it is being used to show financial responsibility under the DPHS rules. If the person preparing the document is a guarantor, the document is not for self-insurance, but is to provide financial responsibility for an affiliated owner or operator. Because the financial test is being used to show financial responsibility, if the owner or operator or guarantor can no longer pass the test, he or she can no longer use it to show compliance.

Several subsections in N.J.A.C. 7:1E-4.5, Preparation and submission of plans, are proposed for amendment. The Department proposes the addition of the phrases “or of an existing facility that plans to increase its storage capacity to such an extent that it will meet the definition of a major facility,” and “as a major facility” in N.J.A.C. 7:1E-4.5(d). A facility can become “major” in two ways. One is the addition of storage capacity of any kind which can place an existing facility over the threshold (thresholds for major facilities are listed in the definition of “major facility” at N.J.A.C. 7:1E-1.6). The other is a newly built facility with storage capacity over the threshold. In either case, a DPCC and DCR plan must be prepared and submitted to the Department at least 180 days prior to operation as a major facility and the facility may not be operated unless the owner or operator has received approval of the plans and is implementing them.

The Department proposes that N.J.A.C. 7:1E-4.5(e) be deleted. It is redundant of N.J.A.C. 7:1E-4.2(e).

The Department proposes recodifying N.J.A.C. 7:1E-4.5(g) as (f), with an amendment adding the phrase “for good cause shown.” This proposed amendment makes this requirement consistent with the Spill Act (N.J.S.A. 58:10-23.11d9b). It also ensures that owners or operators understand that they are expected to respond to requests for information in a timely manner, but that the Department will take circumstances into account when additional time is needed.

At N.J.A.C. 7:1E-4.6, Approval and conditional approval of plans, the last half of subsection (a) is proposed for deletion. The Department proposes to use the 180-day time period for review of an administratively complete plan. The issuance of treatment works approval will not affect the time period established for review.

The Department proposes to delete N.J.A.C. 7:1E-4.6(b). This is redundant of N.J.A.C. 7:1E-4.5(g), recodified as subsection (f), which covers all additional information that must be submitted pursuant to this subchapter.

The Department proposes to expand the circumstances under which a conditional approval will be granted under N.J.A.C. 7:1E-4.6(c), to be recodified as subsection (b). Currently, conditional approval involving maps is granted only for drainage and land use maps and topographic maps showing environmentally sensitive areas. The proposed amendment will allow conditional approval of the DPCC and DCR plan when the general site plan is not in

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The Department proposes recodifying N.J.A.C. 7:1E-4.6(i) as (g) without change.

The heading of N.J.A.C. 7:1E-4.7 is proposed for revision from “Denial or revocation of approval of DPCC or DCR plans or amendments” to “Denial or revocation of approval of plans.” Amendments are dealt with separately in N.J.A.C. 7:1E-4.8, and that section covers their approval and denial. Also, DPCC and DCR plans are the only plans required under this subchapter, so mentioning them in the title of the section is redundant.

The Department proposes to delete the phrase “or amendments thereto” from N.J.A.C. 7:1E-4.7(a) and (d). As plan amendments are covered by N.J.A.C. 7:1E-4.8, reference to them here is inappropriate and redundant.

The final proposed amendment in this section is in N.J.A.C. 7:1E-4.7(b). The Department proposes to revise the phrase “the facility’s plan into compliance” to “the facility into compliance.” The schedule for upgrades permitted under N.J.A.C. 7:1E-4.2(e) is for equipment or portions of the facility, not the DPCC and DCR plans. The DPCC and DCR plans must show compliance before they are approved. Parts of the facility can have a time period for achieving compliance with the standards in the rules. It is failure to comply with the schedule for achieving this type of compliance that can result in the revocation of the approval of a plan.

Several amendments are being proposed for N.J.A.C. 7:1E-4.8, Amendment of plans by owners or operators. First, the Department proposes deleting “by owners or operators” from the heading of this section. The only person responsible for amending the plan is the owner or operator and it is redundant to include it here.

The Department proposes amending N.J.A.C. 7:1E-4.8(a) by adding the requirement that the written notices of proposed new construction, installation, substantial modification or replacement contain information on the project proposed and a preliminary schedule for the proposed work. This subsection requires that the Department be notified of certain types of changes sixty days prior to commencement of the work, but currently does not require that the owner or operator specify what that work is in the notice. It is important for the Department to know what changes are being initiated at a major facility so that advice and guidance can be provided on compliance with the rules.

The Department is proposing to amend N.J.A.C. 7:1E-4.8(b) to clarify which changes at facilities require a DPCC and DCR plan amendment. Additionally, the Department proposes deleting the requirement that the owner or operator report to the Department any change in facility design, construction, operation or maintenance which will materially affect the facility's potential for discharges of hazardous substances or the substance of existing plans. The owner or operator is already required to notify the Department prior to the commencement of certain modifications at a major facility pursuant to N.J.A.C. 7:1E-4.8(a). An amendment of the plan is required within 30 days of the modification or other change pursuant to N.J.A.C. 7:1E-4.8(b). Accordingly, a report of the change is redundant and unnecessary. The amendment can function as this report. Finally, the sentence “The amendment shall consist of only those pages of the

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DPCC and DCR plan requiring changes.” is being added to the end of the subsection. The Department prefers that only the pages that entail changes be submitted as a plan amendment, as this simplifies the review.

The Department proposes amending of N.J.A.C. 7:1E-4.8(c) to delete the phrase “administratively complete proposed” and add the phrase “of an administratively complete submission,” to clarify that the 60-day time frame for reviewing a plan amendment does not begin until the Department has received all information necessary to commence the review.

Amendments to plans are submitted after the change at the major facility has occurred. Therefore, the requirement at N.J.A.C. 7:1E-4.8(d) that amendments must be implemented promptly upon approval is illogical. The Department proposes deleting this requirement and replacing it with a new requirement that a second copy of the approved amendment be submitted within 30 days of receipt of approval. This is necessary because the Department maintains two copies of the plan, one within the discharge prevention program and the other with the emergency response program. One copy of the amendment is submitted for approval, and once it is approved, then the second copy is requested. This reduces the need for multiple copies of interim versions of the amendment.

N.J.A.C. 7:1E-4.9, Plan renewals, sets forth the requirements for renewing DPCC and DCR plans. The Department proposes to recodify the first sentence of existing N.J.A.C. 7:1E-4.9(b) as the second sentence of N.J.A.C. 7:1E-4.9(a). As amended, the first sentence of this subsection will establish that the plans must be renewed, and the second sentence will establish how this is to be accomplished. Then, because the remainder of N.J.A.C. 7:1E-4.9(b) contains the requirements for what constitutes a plan renewal, it is proposed that the phrase “including all exemptions pursuant to N.J.A.C. 7:1E-4.10(g) and alternative measures pursuant to N.J.A.C. 7:1E-1.11(e)” be added to the first sentence to clarify that the approval of alternative measures or of exemptions from current requirements in the rules are subject to review and possible revision or revocation. The circumstances leading to the approval of alternative measures, pursuant to N.J.A.C. 7:1E-1.11(e), or exemptions, pursuant to N.J.A.C. 7:1E-4.10(g), can change, and must be reconsidered when plans are renewed.

The Department proposes to recodify the last sentence of existing N.J.A.C. 7:1E-4.9(b) at new N.J.A.C. 7:1E-4.9(c). The requirement to submit a second copy following receipt of approval of a renewal is a separate issue from the rest of existing N.J.A.C. 7:1E-4.9(b) and as such should be a separate provision. Existing N.J.A.C. 7:1E-4.9(c) is then proposed to be recodified as subsection (d), without amendment.

The Department proposes to delete N.J.A.C. 7:1E-4.9(d) and (e). The final deadline for submission of digital versions of general site plans was November 15, 2003, and the final deadline for drainage and land use maps was January 1, 2006. The requirements of existing N.J.A.C. 7:1E-4.9(e) are proposed for recodification at N.J.A.C. 7:1E-4.2(c)11. This amendment was discussed earlier in this summary in connection with the proposed amendments to N.J.A.C. 7:1E-4.2.

The Department proposes recodifying N.J.A.C. 7:1E-4.9(f) as (e) without amendment.

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The Department proposes to recodify N.J.A.C. 7:1E-4.9(g) as (f), with an amendment that clarifies that the existing plan does not automatically expire when it is under review, but only if it has not been submitted at all. The Department has found that even with a 180-day review period, sometimes DPCC and DCR plan renewals are not approved prior to the expiration date of the plan. In these cases, as long as the renewal has been submitted and it is actively under review, the existing plan is considered in effect until the review process is completed.

N.J.A.C. 7:1E-4.10, Mapping criteria, contains the specifications for general site plans, drainage and land use maps, and topographic maps. The Department proposes to reorganize this section so that all standards that apply specifically to general site plans are codified at N.J.A.C. 7:1E-4.10(a). Some standards that are currently in N.J.A.C. 7:1E-4.2(b)4 are proposed, with some amendments, to be recodified as N.J.A.C. 7:1E-4.10(a)1. As amended, N.J.A.C. 7:1E-4.10(a) will still require that the general site plan accurately reflect the current facility, but based on the review of general site plans for the past five years, the Department has found that it is important to include the property boundary. This enables the Department to ensure that proper planning is done by the owner or operator for both on-site and off-site responses.

The Department is proposing to add a requirement to N.J.A.C. 7:1E-4.2(b)4, proposed to be recodified at N.J.A.C. 7:1E-4.10(a)1, that owners or operators delineate and identify, by labeling or other means, structures and areas on their general site plan, rather than simply state that such structures must be shown on the map. Showing an area is a rather generic requirement and does not demand precision in its execution. Delineating and identifying the features set forth at this new paragraph ensures that they appear at the proper place and at the proper scale on the general site plan, and that they will be readily identifiable. Also, this proposed amendment requires that all structures, storage tanks, storage areas, and other features must be on the general site plan, and not just those features that are associated with hazardous substances. The Department has found that when owners or operators are permitted to leave out structures because no hazardous substances are stored or handled in them, questions constantly arise during subsequent inspections and reviews concerning the use or contents of such structures. By including all features on the general site plan and having them properly labeled, such questions are less likely to arise. In addition, it is proposed that “drum storage areas” be expanded to “small container storage areas” to ensure that all areas where containers are stored are shown on the general site plan, not just those that store drums.

The Department proposes to recodify N.J.A.C. 7:1E-4.10(a)1 as (a)2, with an amendment that permits a change in scale or the use of insets to satisfy the legibility requirement of this paragraph. This will ensure that all general site plans include information that is easily discernible, while making them more user friendly. For example, if the scale of a general site plan makes it difficult to read tank designations, but a larger scale would make the general site plan large and unwieldy, the scale could be retained for the site plan as a whole, and an inset at a larger scale could be included so that tank designations are legible.

The Department proposes to recodify N.J.A.C. 7:1E-4.10(a)2 as (a)3 without amendment.

N.J.A.C. 7:1E-4.10(b) as proposed contains all of the provisions specific to drainage and

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land use maps. The requirement that the drainage and land use map cover the area within 1,000 feet of the facility's boundary is being proposed to be recodified at the beginning of this paragraph, and deleted from N.J.A.C. 7:1E-4.10(b)2, to be recodified at N.J.A.C. 7:1E-4.10(b)3.

Also at N.J.A.C. 7:1E-4.10(b), the Department proposes deleting the requirement in paragraph (b)1 concerning the use of commercially available mylar orthophoto basemaps (quarterquads) or other comparable current basemaps in favor of a simplified requirement to use current basemaps. With the requirement for digital drainage and land use maps, most owners or operators have maps that use digital basemaps. In any case, the Department has not received a drainage and land use map that uses a mylar orthophoto basemap in the past 10 years. This requirement is out-of-date and inconsistent with Department requirements. Also, the scale designation is proposed for revision so that the units are consistent with the scale units in N.J.A.C. 7:1E-4.10(a).

At new N.J.A.C. 7:1E-4.10(b)2, the Department proposes adding the requirement that the facility boundary must be shown on each drainage and land use map to permit the Department to determine if the required 1,000-foot zone around the facility required to be mapped pursuant to this paragraph is correctly delineated.

The Department proposes to recodify N.J.A.C. 7:1E-4.10(b)2 as (b)3 with an amendment that deletes the sentence "This boundary includes all lands owned or used by the owner or operator at a given location" as extraneous, since this requirement is to be addressed at proposed new N.J.A.C. 7:1E-4.10(b)2. Additionally, the Department proposes deleting the extraneous phrase "shall be included" and adding "Delineate and label" at N.J.A.C. 7:1E-4.10(b)3, to clarify that the various listed land use categories must be shown on the map. The land use coverage around the facility is the important aspect of this requirement. It enables the owner or operator to properly plan for offsite effects in the event of a discharge.

The categories of land use listed in N.J.A.C. 7:1E-4.10(b)2, recodified as (b)3, are not consistent with the categories in use within the Department. The Department maintains data on a variety of land use categories, pursuant to its guidance document "Land Use Land Cover Classification System (Derived from: A Land Use and Land Cover Classification System for Use with Remote Sensor Data)" developed by the Bureau of Geographic Information Systems. See <http://www.nj.gov/dep/gis/digidownload/metadata/lulc95/anderson.html>. These data are available to the public for use in, for example, mapping required by N.J.A.C. 7:1E-4.10. The Department compared the list of land use categories in this rule with the list of land use categories for which the Department maintains data. Based on that comparison, the Department proposes revising the categories listed at N.J.A.C. 7:1E-4.10(b)2, recodified as (b)3, to be consistent with the Department's system and to be listed in the order given in the guidance document.

The Department proposes recodifying N.J.A.C. 7:1E-4.10(b)3 as (b)4 without amendment.

The Department is proposing to delete N.J.A.C. 7:1E-4.10(b)4. Information concerning wells and wellhead protection areas within a 1,000 feet of a major facility has not resulted in

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improved response plans. In the event of a sudden, acute incident, for which the drainage and land use map is a planning tool, groundwater wells most likely will not experience immediate effects. The provisions of N.J.A.C. 7:1E-2 are designed to protect against the chronic, small events that lead to groundwater contamination. The Department has, therefore, determined that the inclusion of well and wellhead protection area information on the drainage and land use map is unnecessary.

The digital requirements that apply to the general site plans, the drainage and land use maps, and the transmission pipeline maps are contained in N.J.A.C. 7:1E-4.10(c). The Department is proposing that the subsection be rewritten for clarity and amended to include transmission pipelines. As discussed above, N.J.A.C. 7:1E-3.2(a)8 requires accurate maps of transmission pipelines and the Department proposes amending that subparagraph to cross-reference N.J.A.C. 7:1E-4.10(c). Next, N.J.A.C. 7:1E-4.10(c)2 is proposed for amendment. The first is in N.J.A.C. 7:1E-4.10(c)2i. The Department has found that the majority of maps submitted under the DPHS rules are in three formats, AutoCAD, Arc View and Arc GIS. Also, these formats are the most widely used, readily available, and easiest to incorporate into the Department's GIS. Thus, the Department is proposing to replace the phrase "are delineated in N.J.A.C. 7:1D, Appendix A" with these three formats as compatible ones.

The Department proposes to amend N.J.A.C. 7:1E-4.10(c)2ii to replace the requirement that maps must contain at least four widely spaced reference points (tics) for which geographic coordinates are known in New Jersey State Plane feet (North American Datum 1983) with the requirement that they be projected in New Jersey State Plane feet (North American Datum 1983). The Department has found that maps that are projected in New Jersey State Plane feet are more readily compatible with the Department's GIS. It is also easier for both the preparer of the map and the Department to determine that the map is properly oriented and that the data on the map is correct. The delineated features on a map projected in New Jersey State Plane feet will line up with the images of the features on the orthophoto quarterquads that are part of the Department's GIS, and available to the public.

The Department is proposing to amend N.J.A.C. 7:1E-4.10(c)2iii to require the addition of two data items to the legend block. The first proposed addition is the name and location of the facility. This information is necessary to ensure both that the map submitted is for the correct facility and that the digital version can be properly identified if separated from the rest of the plan. The second proposed addition is the date of preparation of the map. When a map is under review it may go through several revisions. A date of preparation enables the Department to ensure that it retains the most recent revision.

N.J.A.C. 7:1E-4.10(d) contains the provisions specific to topographic maps showing environmentally sensitive areas (ESA). Several amendments are proposed for this subsection to make it easier to comply with and more aligned with what the Department would like to receive as part of the DPCC and DCR plan.

The Department is proposing similar amendments to N.J.A.C. 7:1E-4.10(d) as it is proposing for N.J.A.C. 7:1E-4.10(b)1. As explained above, the requirement for the use of commercially available mylar orthophoto basemaps (quarterquads) or other comparable current

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basemaps is proposed to be revised to simply require the use of current basemaps. The Department has never required the use of mylar orthophoto basemaps for topographic maps. Because it has never been required and there are no plans to do so, the provision for mylar basemaps is proposed for deletion. Also, the Department is proposing to revise the scale designation to be consistent with the units in which maps required by N.J.A.C. 7:1E-4.10(a) are drawn.

The Department proposes to replace N.J.A.C. 7:1E-4.10(d)2. The existing requirement for the use of mylar overlays has always been contingent on the phrase “if required for clarity.” The Department has not required overlays and has no plans to do so. Therefore, the Department proposes to replace this requirement with the requirement that topographic maps clearly show the location of the facility for which the maps were prepared. These maps are a useful tool only if the possible origination point of a discharge is known. The area that is downgradient of the facility is dependent upon the location of the facility and the surrounding topography.

The Department proposes to delete N.J.A.C. 7:1E-4.10(d)4. This paragraph requires that delineations on the maps be made with a specific type of pen and be of a specific size and accuracy. The Department has never enforced this requirement. It does not contribute to the usefulness of the maps and only adds to the difficulty and expense of preparing them.

The Department proposes recodifying N.J.A.C. 7:1E-4.10(d)5 as (d)4 with no change in the text.

The Department proposes to recodify N.J.A.C. 7:1E-4.10(d)6 as (d)5, with amendments that require that the name of the facility for which the maps are prepared and the date of preparation appear in the legend block. The name of the facility is needed so the Department can identify for which physical location the maps were prepared. In many parts of New Jersey, there are several major facilities in close proximity. Also, some owners or operators have facilities in different parts of the State. The name of the owner or operator is insufficient to identify such a facility. The date of preparation ensures that the Department can determine if changes in the area covered by the maps, such as new construction or wetlands restoration, require that changes be made to the maps.

The Department proposes recodifying N.J.A.C. 7:1E-4.10(d)8 as (d)7 with no change in the text.

The Department proposes to recodify N.J.A.C. 7:1E-4.10(d)9 as (d)8, with the following amendments. The Department proposes deleting the list of the types of ESAs that must be shown on topographical maps, currently codified at N.J.A.C. 7:1E-4.10(d)9i through iii, in favor of a cross-reference to N.J.A.C. 7:1E-1.8, which contains this list. When these rules were first adopted in 1991, limited information was available on the location of these various areas. Since that time, a large amount of information has been gathered and is available for inclusion on the topographic maps. It is important that the maps contain as much relevant information as possible so that informed decisions can be made about incident response. Complete maps provide the best planning tool for the owner or operator in determining where a discharge response will make the greatest positive impact. Therefore, the Department has determined that it is no longer

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necessary or prudent to restrict the types of ESAs that are included on the maps.

The Department proposes amending N.J.A.C. 7:1E-4.10(f) to delete “or mylar” in the two places it occurs in this subsection to make this subsection consistent with the amendments that delete the requirement to use mylar from N.J.A.C. 7:1E-4.10(d). The proposed amendment that deletes the final sentence concerning the optional submission of the topographic maps in digital form brings this paragraph into line with current Departmental requirements.

The phrase “valid until the plan must be renewed” is proposed for addition after “exemption” in N.J.A.C. 7:1E-4.10(g). The Department wishes to clarify that an exemption from submitting any of the maps required by this subchapter is not valid indefinitely. Each time the DPCC and DCR plans are renewed, this exemption must be renewed as well. As provided in the current rule, the exemption is based on the cost of the maps in combination with the financial strength of the owner or operator. Both of these will change with time, making it necessary to review the exemption.

N.J.A.C. 7:1E-4.11, Certifications, sets forth the requirements for certifying any test results, plans, plan amendments, plan renewals or confirmation reports submitted to the Department. The Department proposes amending N.J.A.C. 7:1E-4.11(a) to add the requirement that the certification contain a signature block consisting of a signature, the signatory’s typed name, title, company name, and the date of the signature. Signatures are sometimes difficult to read. A typed name will ensure that the Department understands who at the facility is signing the certification. The title enables the Department to determine that someone with the appropriate authority and responsibility has signed the certification. Inclusion of the company name ensures that if the certification inadvertently is separated from the document, it can be properly identified and replaced. And finally, because multiple amendments to a plan can be submitted, a date on the certification permits it to be associated with the appropriate amendment or renewal.

In complying with N.J.A.C. 7:1E-4.11(b), many members of the regulated community have informed the Department that obtaining the signature of a vice president is very difficult and time consuming. In considering the difficulties involved and the purpose of the certification contained in this paragraph, the Department has determined that defining who must sign this certification from a functional standpoint is more appropriate and will ease the burden of obtaining the necessary signature on the regulated community. USEPA currently has a similar certification requirement in 40 CFR 112, and that was used as a model. The requirement for someone at the facility with a specific title to be the one signing this certification is proposed to be replaced with the following description of the level of authority necessary: “at a level of authority to commit the necessary resources to fully implement the plan, plan amendment, plan renewal or transmission pipeline registration.” Thus, if the plant manager has this level of authority, his or her signature will suffice, and a signature will not have to be obtained from a vice president who is out of state, or in some cases out of country.

The professional engineer certification required under N.J.A.C. 7:1E-4.11(e) has also garnered comments from the regulated community. It is written in such broad terms that almost any change to the DPCC plan submitted to the Department requires a professional engineer’s

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certification. In order to address the concerns expressed by the regulated community, the Department proposes to align the language in this subsection more closely with the requirements of the Spill Act, and make this requirement more consistent with similar Federal requirements. The first proposed amendment clarifies what plan amendments must include this certification. The term “a plan amendment for a change requiring the application of sound engineering practice” is proposed to replace “a plan amendment.” This addition tracks the Spill Act requirement at N.J.S.A. 58:10-23.11d2a. The effect of this proposed amendment would be that, for example, amendments to the plan that do not involve construction or substantial modification to structures, will not need a professional engineer’s certification.

The second proposed amendment changes “that the plan complies” to “that attests that he or she has reviewed the plan and that it complies.” This proposed amendment also brings the language in N.J.A.C. 7:1E-4.11(e) into line with that in the Spill Act at N.J.S.A. 58:10-23.11d2a. It ensures that the engineer certifying the plan is familiar with the plan and the requirements of this chapter.

#### Subchapter 5. Discharge Notification, Response and Reporting

Subchapter 5 contains the standards applicable to the reporting of discharges and other events to the Department, the response to be made both by the person responsible for the discharge and the Department, and the follow up reporting required of the owners and operators of major facilities and transmission pipelines.

All reports of environmental abuses are made to the Department’s environmental hotline, operated by the Department’s Communications Center. The operators who answer the telephones at this hotline have a standard set of data that they obtain. The Department considered that standard set of data when reviewing N.J.A.C. 7:1E-5.3, Discharge notification. Based on this review, the Department proposes amending N.J.A.C. 7:1E-5.3(c)5. The end of the paragraph, which currently reads “the date and time at which the discharge was discovered, and, if the discharge has ended, the date and time at which it ended,” is proposed to be amended to “and whether the discharge is continuing, intermittent or terminated,” as this is the information the hotline operators request.

The Department proposes to relocate, with amendments, the phrase “and by the owner or operator of any onshore facility at any transfer areas and the operations center of any such facility” from N.J.A.C. 7:1E-5.3(d) to N.J.A.C. 7:1E-2.7(j). The remainder of existing N.J.A.C. 7:1E-5.3(d) is most appropriately contained here because vessels are not subject to the standards applicable to major facilities.

The Department has found that the regulated community continues to misread the requirements of N.J.A.C. 7:1E-5.3(e). This exemption from immediate reporting of a discharge under N.J.A.C. 7:1E-5.3(a) and (b) is predicated on the requirement that the discharge not be required to be reported under any other State or Federal statute, rule or regulation. Thus, if the discharge exceeds a reportable quantity established under the Comprehensive Environmental Response, Compensation and Liability Act, it must be reported under these rules, even if it meets the remainder of the standards established under N.J.A.C. 7:1E-5.3(e)1. In order to make this

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requirement more prominent, the Department is proposing to delete the leading phrase “For the purposes of this section” from N.J.A.C. 7:1E-5.3(e).

While verifying the citations in N.J.A.C. 7:1E-5.3(e)1, the Department determined that the name of the plan required under 40 CFR 112 used in this paragraph is incorrect. The word “Facility” is proposed for addition before “Response Plan” to correct this error.

The Department proposes amending N.J.A.C. 7:1E-5.3(e)1iii by deleting requirements applicable to the retention, availability and timeframes of retention of records, and replacing them with a cross-reference to N.J.A.C. 7:1E-2.15. All standards that apply to recordkeeping, including time periods for retention, and conditions for inspection of records are contained in N.J.A.C. 7:1E-2.15, and having recordkeeping standards elsewhere in the chapter could lead to conflicts or redundancies.

The Department proposes reordering the subparagraphs in N.J.A.C. 7:1E-5.7(a)2 to reflect the actual steps that would be followed after a discharge. Additionally, the Department proposes deleting “the action plan in” from N.J.A.C. 7:1E-5.7(a)2ii, since there is no requirement for an action plan as part of the DCR plan.

At N.J.A.C. 7:1E-5.7(b), the Department proposes updating the name of the National Oil and Hazardous Substances Pollution Contingency Plan.

Based on the review of discharge confirmation reports submitted over the last five years, the Department is proposing amendments in N.J.A.C. 7:1E-5.8, Confirmation report. Most of the proposed amendments are in N.J.A.C. 7:1E-5.8(c), which contains the requirements for what must be included in a confirmation report.

The first proposed amendment is the addition of an item to the confirmation report, at proposed new N.J.A.C. 7:1E-5.8(c)4, which would require the inclusion in the confirmation report of the case number assigned by the Communications Center hotline operator when the discharge was reported to the hotline. This 12-digit number uniquely identifies the report of the discharge and enables the Department to correctly match discharge confirmation reports to the initial report in the Department’s database. The Department proposes recodifying N.J.A.C. 7:1E-5.8(c)4 as (c)5 with no change in the text.

The Department proposes to recodify N.J.A.C. 7:1E-5.8(c)5 as (c)6, delete the phrase “comma-delimited State Plane coordinates of the point of discharge” from subparagraphs (c)6i and ii, and replace this phrase with “a site map identifying the point at which the discharge occurred and the surrounding area” in (c)6i, and the phrase “a map identifying the source of the discharge” in (c)6ii. The Department has found that the coordinates of the point of origin of the discharge are not as useful as a drawing showing the equipment and surrounding area involved in the discharge. For discharges that occur on, under, or into water, the source of the discharge is the important piece of information. If the discharge spreads any distance, the requirements of N.J.A.C. 7:1E-5.8(c)5iii, recodified as (c)6iii will ensure that the area that is affected is mapped.

The Department proposes to recodify N.J.A.C. 7:1E-5.8(c)8 as (c)9 with an amendment

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that separates the information required to be submitted into a list. It is proposed that this paragraph begin with the phrase “The following chronology,” with the dates and times required to be included listed as separate subparagraphs. This will ensure that the person submitting the report includes all the necessary chronology of the discharge. Currently, the Department finds that one or more of the required sets of dates and times is overlooked and omitted from the report.

It is proposed that current N.J.A.C. 7:1E-5.8(c)12 be deleted. Existing N.J.A.C. 7:1E-5.8(c)12 requires that information concerning samples taken by submitted, as well as that the requirements of N.J.A.C. 7:26E be followed. It also contains recordkeeping requirements. This is not an appropriate place for any of these requirements. The information about samples is not useful in the context of the discharge confirmation report. The requirements of N.J.A.C. 7:26E are applicable independent of their citation in the DPHS rules. Additionally, the Discharge Prevention Program does not review these records, so it is not appropriate for it to establish recordkeeping requirements.

The Department also proposes to delete N.J.A.C. 7:1E-5.8(c)13. The financial responsibility document is submitted as part of the plan and reviewed during annual inspections by the Department. It is an unnecessary burden on the owner or operator to include a certification that the financial responsibility is in full force and effect.

It is proposed that subsection (b) of N.J.A.C. 7:1E-5.11, Amendment of plans following a discharge, be deleted, and that a cross reference to N.J.A.C. 7:1E-4.8 be added to the remaining section of text. The requirements governing amendments, including the proposal of upgrade schedules and the effective dates of amendments, are already codified at N.J.A.C. 7:1E-4.8.

#### Subchapter 6. Civil Administrative Penalties and Requests for Adjudicatory Hearings

N.J.A.C. 7:1E-6.1, Scope, provides that this subchapter establishes provisions applicable to all rules and regulations promulgated pursuant to the Spill Act. This is not the case. Other programs within the Department have separate rules promulgated to implement other aspects of the Spill Act. These other rules have their own civil administrative penalty provisions and procedures for requesting an adjudicatory hearing. Therefore, the word “any” is proposed to be deleted. Also, it is proposed that the final “the Act” be replaced by “this chapter.” Thus, the scope section will not imply application to rules other than N.J.A.C. 7:1E.

The Department proposes amending N.J.A.C. 7:1E-6.3(b)3 by inserting the phrase “notice of” before “such denial.” It is notice of the denial that would be received by the violator, not necessarily the denial itself. This also makes this provision consistent with other Department rules.

The Department proposes amending N.J.A.C. 7:1E-6.4, Procedures for requesting and conducting adjudicatory hearings, to incorporate the current procedures used by the Department. At N.J.A.C. 7:1E-6.4(b), the Department proposes requiring that all hearing requests must be submitted on forms provided by the Department, that a copy of the final agency action to be appealed be attached to the appeal, that defenses be enumerated and that a statement as to

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whether the appellant is willing to negotiate settlement be included with the appeal. Also, the Department proposes requiring that a copy of the hearing request be sent to the Bureau of Release Prevention. This will enable the bureau to begin the settlement process, if the appellant indicates a willingness to negotiate.

In N.J.A.C. 7:1E-6.6, Civil administrative penalty for submitting inaccurate or false information, a new N.J.A.C. 7:1E-6.6(c) is proposed. This proposed new subsection makes each day that the violator knew or had reason to know that he or she had submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, an additional, separate and distinct offense. This provision codifies the Spill Act provision at N.J.S.A. 58:10-23.11u.c(1) that permits the Department to assess a civil administrative penalty for, among other things, each day of a violation that involves giving or causing to be given false information.

The Department proposes recodifying N.J.A.C. 7:1E-6.6(c) as (d), without amendment, and proposes a new N.J.A.C. 7:1E-6.6(e). This proposed new subsection establishes that violations under this section are non-minor and, therefore, are not subject to a grace period. Because the submission of false information is a purposeful or knowing violation, it is not eligible for a grace period in accordance with the Grace Period Law, N.J.S.A. 13:1D-125 *et seq.*

Two amendments are proposed for N.J.A.C. 7:1E-6.7, Civil administrative penalty for failure to allow lawful entry and inspection. First, the Department proposes adding the word “vessel” to N.J.A.C. 7:1E-6.7(b). The addition of this word will make this section consistent with the access provisions of N.J.A.C. 7:1E-1.9. The second amendment is the proposal of a new N.J.A.C. 7:1E-6.7(d). This proposed new subsection establishes that violations under this section are non-minor and therefore are not subject to a grace period. Because refusing to allow access is a purposeful or knowing violation, it is not eligible for a grace period in accordance with the Grace Period Law, N.J.S.A. 13:1D-125 *et seq.*

The Department proposes deleting the cross-reference to N.J.A.C. 7:1E-6.8(c)4 currently contained in N.J.A.C. 7:1E-6.8(a). This paragraph concerns the assessment of penalties when there is an approved schedule for upgrading. There are no provisions of N.J.A.C. 7:1E-4 that can be placed on an upgrade schedule, so this provision does not apply.

Two of the factors that can be applied to the base penalty for a discharge are proposed for deletion in N.J.A.C. 7:1E-6.8(c)1. The Cause of Discharge factor is proposed to be deleted because it is not clearly defined and the Department has found that in application it is not a fair assessment. The effects of a discharge are not changed or mitigated by any of the conditions included under this factor, therefore adjusting the penalty based on this factor is not justified. The second factor proposed for deletion is the Initiate Response to Discharge factor. It has proven difficult to consistently apply this factor. When the clock starts and when response has been initiated are both very amorphous set points. Therefore, because this factor cannot be uniformly and consistently applied, it is proposed to be deleted.

One minor amendment is proposed in the Area of Impact factor. “And” is proposed to

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replace “but” in the last listed category. Both conditions must exist in order for the reduction to apply, not just one or the other.

The many changes proposed in N.J.A.C. 7:1E-6.8(c)2 are all due to the revisions proposed for Subchapter 2. Citations and penalties for N.J.A.C. 7:1E-2.2(a)4 through 7 are proposed for deletion. N.J.A.C. 7:1E-2.2(a)5, 6 and 7 are all proposed to be deleted, and N.J.A.C. 7:1E-2.2(a)4 refers to the standards in N.J.A.C. 7:1E-2.16, for which new penalties are proposed. The Category of Offense language for N.J.A.C. 7:1E-2.2(h) is proposed for revision to reflect the fact that all types of small containers are now covered by this provision. Proposed recodifications in N.J.A.C. 7:1E-2.3 are reflected in proposed amendments in the Citation column. In addition, the Category of Offense language for recodified N.J.A.C. 7:1E-2.3(e) is proposed to read “Failure to utilize a system to prevent premature departure.” Also, the phrase “or tank truck” is proposed for deletion from the end of the Category of Offense for proposed recodified N.J.A.C. 7:1E-2.3(f) and a proposed new Category of Offense is included for proposed new N.J.A.C. 7:1E-2.3(g), which covers tank trucks. The proposed penalties are \$2,500 for the first offense, \$5,000 for the second, and \$12,500 for a third or subsequent offense. This is less than that for the similar offense involving tank cars because tank trucks are of a smaller volume than tank cars and thus represent a relatively smaller risk.

The word “adequate” is proposed to be deleted from the language in the Category of Offense for N.J.A.C. 7:1E-2.4(b), as that word is proposed to be deleted from the cited provision. Existing N.J.A.C. 7:1E-2.4(c) is proposed to be split into two paragraphs, N.J.A.C. 7:1E-2.4(c)1 and 2, so a citation for each is proposed to be incorporated into N.J.A.C. 7:1E-6.8(c)2. The proposed use of the newly defined term “out-of-service” in N.J.A.C. 7:1E-2.4(e) is reflected in proposed revisions to the Category of Offense language for this citation. None of these penalty amounts or minor/non-minor designations are proposed for revision.

The phrase “or inspected” is proposed for deletion from the Category of Offense language for N.J.A.C. 7:1E-2.6(c)3. The inspection requirements are covered under N.J.A.C. 7:1E-2.10, and the Department would not cite an owner or operator under two provisions within the same subchapter for the same violation. The Category of Offense language for N.J.A.C. 7:1E-2.6(c)5 is proposed to reflect the amendments proposed for this provision. N.J.A.C. 7:1E-2.6(d) is proposed for deletion, thus the penalty associated with it is also proposed deletion. The same is true for N.J.A.C. 7:1E-2.7(c) and (g). The Category of Offense language for N.J.A.C. 7:1E-2.7(b) is proposed to add the word “length of” after “adequate” because this provision specifically addresses how much boom or other containment device must be maintained at the facility, not whether the devices are adequate in terms of performance. Once again, none of the penalty amounts or minor/non-minor designations are proposed for revision.

Because of the proposed consolidation of provisions in N.J.A.C. 7:1E-2.7, many of the paragraphs are proposed to be recodified. These recodifications are reflected in the amendments proposed for the citations to N.J.A.C. 7:1E-2.7. The Category of Offense language for recodified N.J.A.C. 7:1E-2.7(i) is proposed to add the phrase “secure or” to reflect the change proposed for this provision. In addition, a new Category of Offense is proposed for proposed recodified N.J.A.C. 7:1E-2.7(i) to provide penalty information for when a contaminated containment device is not cleaned or disposed of. The proposed penalties are \$5,000 for the first

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offense, \$10,000 for the second, and \$25,000 for the third and each subsequent offense, and the violation proposed to be classified as non-minor. Placing a contaminated containment device back into the water without cleaning it will result in an immediate discharge. This is a serious offense and merits high penalties. Also, a part of N.J.A.C. 7:1E-5.3(d) is proposed as new N.J.A.C. 7:1E-2.7(j). The proposed penalty amounts and grace period application is the same as that for N.J.A.C. 7:1E-5.3(d).

The single paragraph that N.J.A.C. 7:1E-2.9 currently contains is being divided into two. Therefore, subsections (a) and (b) are proposed to be added to the citation for this section. The penalties under either citation are the same.

Because N.J.A.C. 7:1E-2.10(a)6 is proposed to be divided into three subparagraphs, a Category of Offense is being proposed for each. The phrase “and security” is proposed for deletion from the Category of Offense language for existing N.J.A.C. 7:1E-2.10(a)6, and the citation is proposed to be revised to N.J.A.C. 7:1E-2.10(a)6i. All of the proposed Categories of Offense carry the same penalty amounts and are non-minor. The proposed deletion of N.J.A.C. 7:1E-2.10(c) necessitates the proposed deletion of the Category of Offense and penalties for that citation.

With the proposed addition of the phrase “free of debris” to N.J.A.C. 7:1E-2.11(f), the Department is proposing a new Category of Offense for this citation. The current Category of Offense will remain, and the proposed new one will cover failure to keep secondary containment or diversion systems free of debris. The proposed penalties are one half of the amounts included for failure to maintain such structures in good repair. While poor condition of secondary containment or a diversion system will lead directly to a discharge, debris in such a structure may only impair its function or create a larger clean up problem within the secondary containment. Thus, because the risk of a discharge is lower, the proposed penalties are lower.

N.J.A.C. 7:1E-2.12 has numerous amendments proposed, mostly recodifying or deleting various provisions. The proposed amendments to the Categories of Offense and associated citations and penalties reflect these proposed amendments. All proposed penalties are consistent with those currently in the rules. The majority of the violations for N.J.A.C. 7:1E-2.12 are designated minor. N.J.A.C. 7:1E-2.14 is proposed for similar amendments, and the proposed amendments to the Categories of Offense and associated citations and penalties are also similar. The majority of the violations for N.J.A.C. 7:1E-2.14 are designated minor.

Because existing N.J.A.C. 7:1E-2.15(b) is being split into two parts, a Category of Offense is proposed each. The existing provision is still correct for N.J.A.C. 7:1E-2.15(b) as proposed. Adding “10 years or” to the language in the Category of Offense for N.J.A.C. 7:1E-2.15(c) makes it correct for this proposed provision. A new Category of Offense is then proposed for recodified N.J.A.C. 7:1E-2.15(d) to cover records that must be kept for aboveground storage tanks. The proposed penalty amounts are established at the same level as the other citations for this section. Finally, a new penalty is proposed for recodified N.J.A.C. 7:1E-2.15(f). It is at \$1,000 for the first offense, \$2,000 for the second, and \$5,000 for the third and each subsequent offense. This is a higher amount than the other citations in this section because not adequately backing up records can mean the loss of years worth of data which will

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not be replaceable. The higher risk justifies a higher penalty.

New penalties for integrity testing violations are proposed. The penalties for initial integrity testing that was due to be completed almost 15 years ago are proposed at three times the penalties for tanks that have been placed into service more recently. This reflects the fact that an owner or operator of a tank subject to the requirements of N.J.A.C. 7:1E-2.16(a) has had a long period of time during which he or she did not incur the cost of compliance with the integrity testing requirements. Also, these violations are proposed to be designated non-minor because failure to perform integrity testing poses more than a minimal risk to the environment and the public.

The Department proposes that failure to follow the established protocol for testing of a given tank will result in a penalty based, in part, on the size of the tank. Tanks that utilize API 653 or API 510 are larger tanks that pose a greater risk. Therefore, the penalties for failing to test these tanks is proposed at a higher level than those for fiberglass reinforced plastic, plastic or shop-built tanks, which are much smaller in size. Because the protocols established by N.J.A.C. 7:1E-2.16(h) and (i) can be used by any size tank, the penalty amounts are proposed at the higher value. Finally, the penalties for proposed N.J.A.C. 7:1E-2.16(j) are proposed to be the same as the current ones for N.J.A.C. 7:1E-2.2(a)7, as this proposed new paragraph is essentially a recodification of the existing N.J.A.C. 7:1E-2.2(a)7. All of these violations are proposed as non-minor. Failure to perform integrity testing poses more than a minimal risk to the environment and the public.

The addition of items to the list of data to be included in a transmission pipeline registration has entailed proposed revisions to the penalty provisions for Subchapter 3. The new items are proposed for addition to the matrix with the penalty levels proposed at the same level as the other items already required. Citations are proposed for amendment to reflect the recodifications in this subchapter.

A few amendments are proposed to the penalties associated with Subchapter 4. The first amendment deletes the Category of Offense for existing N.J.A.C. 7:1E-4.2(a). This provision as proposed does not require the appointment of a response coordinator; that is proposed to be part of N.J.A.C. 7:1E-4.3(a), and this Category of Offense and associated penalties are proposed for that citation. A proposed new provision in N.J.A.C. 7:1E-4.2(b) requires the appointment of a facility contact. Penalties associated with failure to do so are proposed to be half of the amount for failure to appoint a response coordinator. While it is important to have a facility contact, the Department usually has the time to locate such a person at a given facility. The response coordinator may be needed under emergency conditions and therefore the Department needs to know who he or she is immediately. Failure to appoint a facility contact is proposed to be minor violation. Failure to appoint a response coordinator is proposed to be a non-minor violation. An owner or operator will have the time to appoint a facility contact and not having one may result in inconvenience, but no serious consequences. However, in an emergency situation, failure to appoint a response coordinator can result in delayed response to a discharge with the consequences of a larger area of impact and more to clean up.

N.J.A.C. 7:1E-4.2(f) is proposed for deletion; thus all penalties associated with that

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paragraph are also proposed for deletion. Some citations for N.J.A.C. 7:1E-4.3 and 4.5 are proposed for updating to reflect proposed recodifications in Subchapter 4. New Categories of Offense are proposed for the various types of financial responsibility. Currently, if a document used to demonstrate financial responsibility is not worded as required in the rules, the owner or operator is considered to be without financial responsibility and therefore subject to a substantial penalty. Incorporating these proposed additional offenses allows the Department to designate them as minor. This will give an owner or operator who has a financial responsibility document that contains minor errors time to correct the document without substantial penalty. All penalties for violations involving wording are proposed as \$1,000 for the first offense, \$2,000 for the second, and \$5,000 for the third and subsequent offense.

The penalties associated with recodified N.J.A.C. 7:1E-4.6(g) are proposed for revision. The maintenance of a copy of the plan at the facility is an important aspect of discharge prevention planning and response. It is not a paper work violation. Thus, the penalties are proposed to increase to \$1,000 for the first offense, \$2,000 for the second, and \$5,000 for the third and subsequent offenses. Also, the penalty listed for a second offense of N.J.A.C. 7:1E-4.8(a) is incorrect. It is proposed for correction from \$4,000 to \$2,000.

The existing Category of Offense and associated penalties for N.J.A.C. 7:1E-4.8(d) are proposed to be deleted, and a new one for proposed N.J.A.C. 7:1E-4.8(d) is proposed to be added. The proposed new provision is for the submittal of a second copy of a plan amendment. Failure to submit a second copy is proposed as a minor paperwork violation and penalties have been proposed accordingly. The penalties currently listed for N.J.A.C. 7:1E-4.8(e) are much larger than those established for similar types of violations under this chapter. It is therefore proposed to reduce the first offense penalty from \$2,000 to \$500, the second offense from \$4,000 to \$1,000, and third offense from \$10,000 to \$3000.

Finally, proposed amendments to N.J.A.C. 7:1E-4.9 necessitate the proposal of a new penalty category. The existing Citation listed is proposed to be amended to N.J.A.C. 7:1E-4.9(a) and a new listing is proposed for N.J.A.C. 7:1E-4.9(c). This proposed new category is for the submission of a second copy of a plan renewal, a minor paperwork violation with penalties proposed accordingly.

Only the amendments proposed in N.J.A.C. 7:1E-5.7 and 5.8 entail proposed amendments to N.J.A.C. 7:1E-6.8(c)5. The order of possible actions in N.J.A.C. 7:1E-5.7(a) is proposed for revision. Based on that revision, and the fact that penalties for failure to remediate a discharge in accordance with N.J.A.C. 7:26E are assessed under that rule not under N.J.A.C. 7:1E, there are two proposed Categories of Offense for N.J.A.C. 7:1E-5.7(a). The first is for N.J.A.C. 7:1E-5.7(a)1 and is for failure to take immediate action to stop a discharge. The proposed second amendment is for failure to follow an approved DCR plan, in accordance with N.J.A.C. 7:1E-5.7(a)2i. Both are proposed as non-minor and to carry high penalties. The possibility of damage to the environment and adverse effects on people and property is greatly increased by violations of these provisions.

Most of the changes entailed by proposed amendments in N.J.A.C. 7:1E-5.8 are proposed revisions to the Citation column to make it consistent with the recodified paragraphs of this

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section. One proposed new provision, N.J.A.C. 7:1E-5.8(c)4, has newly proposed penalties, and two provisions are proposed to be deleted, existing N.J.A.C. 7:1E-5.8(c)12 and 13. The proposed new Category of Offense, for failure to include the Communications Center number, is proposed as a minor paperwork violation with penalties consistent with the others for citations under N.J.A.C. 7:1E-5.8(c).

#### Subchapter 7. Confidentiality Claims

Subchapter 7 establishes the procedures by which any person who is required to submit information to the Department pursuant to the DPHS rules may assert a confidentiality claim. One amendment is proposed for this subchapter. The Department proposes to correct the name of the bureau in N.J.A.C. 7:1E-7.3(b) from the Bureau of Discharge Prevention to the Bureau of Release Prevention.

#### Subchapter 8. Confidentiality Determinations

Subchapter 8 sets for the procedure by which the Department will determine whether information submitted to it under the DPHS rules is confidential. Amendments are proposed for one section of this subchapter, N.J.A.C. 7:1E-8.10, Classes of information which are not confidential information. Due to security concerns, the Department is proposing to reduce the categories of information that cannot be declared confidential. It is proposed that information that could be used to breach facility security no longer be given a blanket exemption from being asserted confidential. Any information that an owner or operator wishes to assert as confidential is still required to undergo review to determine if it is confidential or not.

#### Subchapter 9. Disclosure and use of confidential information

Subchapter 9 contains the rules according to which the Department may disclose confidential information. The Department proposes to readopt this subchapter without amendment.

#### Subchapter 10. Treatment of Confidential Information

Subchapter 10 regulates the management by the Department of information that is deemed confidential pursuant to these rules. The Department proposes to readopt this subchapter without amendment.

#### Appendix A. List of Hazardous Substances

The majority of the amendments in Appendix A arise from amendments in the lists established in the Spill Act as those to be used in defining a hazardous substance (N.J.S.A. 58:10-23.11b). The existing list of substances in Appendix A was compared to the current (as of July 1, 2005, for Federal regulations, and as of March 1, 2006, for the State Community Right to Know rules) version of each of the component lists. These lists can be found at 40 CFR 401.15, 116.4, and 302.4, and in the current Community Right to Know (CRTK) survey booklet,

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<http://www.nj.gov/dep/opppc/figdoc.htm#community>.

The comparison of Appendix A to these lists resulted in the proposal of the addition of 19 substances or chemical categories to Appendix A. Eight of them, bis(tributyltin) oxide, diesel fuel or #2 heating oil, gasoline, kerosene, motor oil, petroleum/motor oil, picric acid, and used petroleum oil, come from the CRTK list. One, 4,6-dinitro-o-cresol, and salts, is on both the CRTK list and that found in 40 C.F.R. 302.4. An additional nine hazardous waste codes, F039, K149, K150, K151, K174, K175, K176, K177, and K178, are proposed for addition because they now appear on the list at 40 C.F.R. 302.4. The final addition, polychlorinated diphenyl ethers, is because of substances on the list at 40 C.F.R. 401.15. Also, the position of one substance in the alphabetical listing is proposed to be revised. Fenbutatin oxide is not currently in the correct location alphabetically.

The Department is also proposing to add perchlorate ion and four substances containing the perchlorate ion to the list of hazardous substances in Appendix A. The perchlorate ion is very mobile in water and is persistent in ground and surface water. It is an inorganic ion which has been detected in drinking water supplies. It is used as an oxidizer in explosives, is found in fertilizer from Chile, and may also occur naturally. The solid propellant for rockets, missiles, and fireworks is often a perchlorate compound. The adverse effects of the perchlorate ion arise from inhibition of iodine uptake into the thyroid gland, which may lead to disturbance of thyroid function at sufficient doses. Pregnant women and infants are considered to be sensitive sub-populations for these effects, as hypothyroidism can have serious consequences on neurodevelopment. Additional information about the effects of the perchlorate ion can be found in a report by the Drinking Water Quality Institute, titled "Maximum Contaminant Level Recommendation for Perchlorate, October 7, 2005" and available on the Department's web site at <http://www.nj.gov/dep/watersupply/perchlorate>.

Once listed as a hazardous substance, the discharge of the perchlorate ion or one of the four specifically listed perchlorate compounds will be a violation of the Spill Act. The Department will have the authority to remediate or cause to be remediated any perchlorate contamination in accordance with the Spill Act, the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), and the Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.), and their implementing rules. Additionally, damages caused by a discharge of perchlorate may be compensated under N.J.A.C. 7:1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act.

Three substances are proposed for deletion from Appendix A. One, phosmet (concentrations above 20 percent), was formerly on the CRTK list, but is not currently on that list. Diethylcarbamazine citrate should have been deleted at the last readoption, when the other explosives formerly on the CRTK list were deleted from Appendix A. Finally, it appears that 2,3-dichloropropanol should never have been included in Appendix A, as it does not appear to have been included on any of the list in the Spill Act.

Finally, all the descriptions of the hazardous wastes were checked against the Federal regulations. Any discrepancies between current Appendix A and the official Federal listing are being cleared up by proposing amendments to the language in Appendix A.

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All amendments being made to the alphabetical list are reflected in amendments proposed for the CAS Number list as well. The same substances and categories are proposed for addition, deletion or revision.

### Appendix B. Financial Forms

Amendments are proposed for the financial forms required by N.J.A.C. 7:1E-4.4. As with changes to that section, those proposed for Appendix B are based on a comparison with the Federal Underground Storage Tank rules at 40 CFR 280, Subpart H. The wording in the Federal rules was used to develop the forms in Appendix B. The proposed amendments make these standards consistent with the Federal requirements.

The most prevalent amendment proposed in Appendix B is to add the word “insert” at all places where the person preparing the document is required to incorporate information specific to him or her. This is included in the instructions for the documents, but is often overlooked. The Department believes the use of “insert” will provide additional reminders to the person preparing the document. In addition, in some locations “insert if applicable” is being proposed to indicate that the information is not always required.

Amendments specific to B.1, Letter from chief financial officer, are being proposed. The initial phrase of the directions, “To support a financial test of self-insurance or a guarantee” is proposed to be changed to “To demonstrate that it meets the financial test under N.J.A.C. 7:1E-4.4(g)1 or 2.” This document does not merely support the financial test, it is the demonstration of the financial test. Where applicable rules and regulations and the amount of coverage demonstrated for each are required to be inserted, the phrase “if none so state” is proposed to be added to the end. The Department wants assurances that the owner or operator has considered all applicable rules and regulations and has made a definitive determination that a financial test is not being used for any.

Because the Rural Electrification Administration no longer exists and has been replaced by the Rural Utilities Services, the language in Alternative I item 11 and Alternative II item 19 is proposed for are being revision. “Rural Utilities Services” is proposed to replace “Rural Electrification Administration”. Also, the Board of Public Utilities is proposed to be added to these two items. It is proposed for addition in N.J.A.C. 7:1E-4.4(g) and that amendment must be reflected in the required language of the financial test document.

In the letter used by a local government using a financial test, one amendment is proposed. In the last line of the second paragraph, “or” is proposed to be “and.” The standard being established by this language requires that, if rated by two different rating firms, certain ratings must have been assigned by both. The proper conjunction in this case is “and.”

In B.2, Guarantee, rather than proposing to incorporate just the word “insert” in some places, it is proposed that “insert: name of” be used. The Department requires the actual name of the owner or operator of a given facility to be included in the document, not just the generic term “owner or operator.” Using “insert: name of” makes this clear.

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Several other amendments are proposed in the language of the guarantee. In the opening paragraph, the Department proposes to add the phrase “of the owner or operator.” This makes it clear that it is the address of the owner or operator and not that of the guarantor which is required here. Next, between the first opening paragraph and paragraph (1), the heading “Recitals” is proposed to be added. This makes the document consistent with others of this type.

In paragraph (2), a new first sentence is proposed. This proposed new sentence establishes that multiple facilities can be covered by one financial document. Other amendments are proposed to this paragraph to accommodate its use for multiple facilities. Also, the Department proposes to add the phrase “of N.J.A.C. 7:1E-4.4” after “requirements.” Other rules require owners or operators to establish financial responsibility through similar documents. The proposed addition of this phrase clarifies that this document is only for use under N.J.A.C. 7:1E.

The next two proposed amendments are in paragraph (3). The Department proposes to delete the phrase “substantial business relationship with.” This circumstance is covered by “Incident to our business relationship with” which follows this phrase as a second choice for insertion at this point. The second proposed amendment is to replace “the” with “an” in the last sentence. This document can be used to demonstrate financial responsibility for multiple facilities. Therefore, there may not be a single facility, as implied by the use of “the.”

The final additional amendment proposed for the guarantee is in paragraph (7). The Department proposes to add the phrase “or 120 days from the date of receipt of the notice by the Department, whichever is later” just before the final phrase “as evidenced by the return receipt.” This requirement is proposed for N.J.A.C. 7:1E-4.4(k)1 and must be incorporated into the language of the guarantee.

Two additional amendments are proposed in the language for an endorsement under B.3, Insurance or risk retention group. The first proposal adds the word “the” after the comma in paragraph (c), in order to make the sentence read more smoothly. The Department also proposes to replace the phrase “covered occurrence” with “cleanup and removal activities” in paragraph (e). It is cleanup and removal activities that must be covered by the financial responsibility and which is defined in the rule. This same amendment is proposed for the certificate of insurance language in paragraph (e).

Several minor amendments are proposed for the language of the performance bond under B.4, Surety Bond. They mostly involve the proposed addition of “(s)” of some type to the end of certain words. This will enable an owner or operator to utilize this document for multiple facilities. Also, to facilitate multiple facilities on one document, the Department proposes adding the phrase “[insert: “per facility”, if appropriate]” to the lines showing the penal sums of the bond.

In B.5, Letter of credit, rather than incorporating just the word “insert,” it is proposed that “insert: name of” be used in some cases. The Department requires the actual name of the owner or operator of a given facility to be included in the document, not just the generic term “owner or operator.” Proposing the use of “insert: name of” makes this clear. Also, as for the performance

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bond language, the proposed addition of “(s)” of some type to the end of certain words will make it possible for multiple facilities to be included on one document. Finally, the Department proposes adding the phrase “insert the appropriate phrase” to the final sentence. Many preparers of this document include both phrases in the final document, when only one actually applies and is needed.

### **Social Impact**

Nearly 44 million gallons of petroleum products pass through the New York Harbor area every day in a network of tankers, barges, refineries and storage terminals, and hundreds of miles of surface and submerged pipeline. The Delaware Bay area also contains a large number of marine facilities, refineries and storage terminals. Other hazardous substances are stored and used throughout the State in varying quantities, sometimes in close proximity to residential neighborhoods. Discharges from these various sources can result in a wide variety of emergency situations. Discharges of oil in New Jersey waterways have disrupted shipping of all types. Roadways have been closed and neighborhoods evacuated. Environmentally and economically important areas have been adversely affected by discharges.

The discharge prevention program as proposed for readoption will continue to have a positive social effect across the State. Implementation of the discharge prevention program is designed to prevent discharges of hazardous substances and reduce the number and severity of emergency incidents associated with discharges. This program significantly reduces the potential for adverse impacts on the environment and citizens of New Jersey. The amendments being proposed will enhance the effectiveness and efficiency of the program, and thus do not adversely affect the anticipated social impact.

New Jersey is the most densely populated state in the nation and the second leading producer of chemicals in the country. Many of the State's residential communities border industrial zones and are frequently intermingled with industrial facilities. The major transportation routes of the State pass in close proximity to many major facilities. Major facilities which are subject to these rules are widespread over the State's 21 counties at urban, suburban and rural sites. There are approximately 350 facilities presently defined as major.

The rules proposed for readoption with amendments will reduce the probability and consequence of risks from the storage and use of hazardous substances. The DPCC and DCR plans implemented pursuant to these rules create an inherently safer environment. The risk reduction can take the form of better design, properly trained employees, safer equipment or the reduction in use of hazardous substances. The undertaking of risk reduction measures, including improved operating and maintenance procedures and improved training of the facility's operators, are designed to reduce the potential for and the severity of a discharge and its impact on the surrounding area. The creation and implementation of a DCR plan will enable the owner or operator of a facility and the local emergency planning committee of the community in which it resides to respond to and quickly mitigate the effects of a discharge should one occur. This program results in management practices dedicated to the prevention of discharges. The proposed amendments will make compliance less difficult to achieve while maintaining these

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important social benefits.

The positive social effect is expected to be greatest among those whose place of work or residence is located near a major facility and those who utilize bodies of surface water which are close to major facilities. This group is expected to experience fewer discharges and the discharges that do occur are expected to be smaller and more quickly contained and cleaned up. There will be an increased awareness of hazards in the community and improvements in how these hazards are managed.

Traditionally, petrochemical facilities have been sited based on factors such as power and fuel supply, water supply, access to transportation routes, taxes, regulatory constraints, site characteristics, community factors, and flood and fire control. Many times, facilities sited on the basis of these factors have been constructed in close proximity to ESAs and residential areas. These rules provide an increased awareness of the need for protection of the environment and the citizens of New Jersey from the risks associated with hazardous substances. By raising the standard of care expected of owners or operators of major facilities, the possibilities for, and the attendant fear of, discharges are reduced.

The proposed amendments will make it easier for the regulated community to comply with the rules without reducing any of the positive social impacts. Increasing understanding of the rules will enable faster and more complete compliance, both of which will enhance the positive social impacts of these rules.

### **Economic Impact**

The discharge prevention program increases some of the costs of doing business for major facilities while reducing others. The increased costs include preparing DPCC and DCR plans and plan renewals, facility upgrading to meet the requirements of the rules, mapping of ESA, and securing financial responsibility. Reduced costs result from reductions in materials losses, corrective action costs, and legal claims costs. The overall economic effect on an owner or operator depends directly on the existing level of discharge prevention measures in effect at a given facility.

The majority of the amendments to the discharge prevention rules will have either no effect on the costs of doing business for major facilities, or will reduce them slightly. The addition of substances to Appendix A will result in previously unregulated facilities being subject to these rules. The proposed integrity testing standards may increase costs for a small number of facilities, while reducing them for others. Other than for integrity testing, these proposed amendments do not increase standards that must be met by the owners or operators of major facilities. Many changes simply clarify the existing requirements, making them easier to understand. Some of the standards are being revised to make compliance less difficult and less expensive, without compromising the environmental benefit that they provide.

The requirement that owners or operators of major facilities where the secondary containment for aboveground storage tanks is not impermeable have evidence that they can protect the groundwater will result in an additional cost for some facilities. Several facilities

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have already obtained information concerning the permeability of their secondary containment and the depth to groundwater. Others are in the process of doing so. Depending upon the size of the area that needs to be studied, the existence of useful data, and the need to hire outside expertise to perform the study, the cost can vary widely. The Department estimates the costs could run from \$50,000 for a small containment area up to \$500,000 for a large facility. However, the cost of cleaning up contaminated soil and groundwater can run to millions of dollars.

The inclusion of the STI standard, SP001, in new N.J.A.C. 7:1E-2.16 will reduce the cost of integrity testing for many facilities that have shop-built tanks. Most of SP001's requirements can be fulfilled by the owner or operator of the tank, reducing the need to hire tank testing professionals. Costs for the inspection and recordkeeping requirements would not change, as they are already incurred under the current rules.

For owners or operators of steel tanks using the current five-year testing protocol contained in existing N.J.A.C. 7:1E-2.2(a)4, costs will increase. Currently, a visual inspection of the interior of the tank is sufficient. Under the proposed standard, some type of bottom thickness testing will be required. This will most likely require the use of tank testing or non-destructive testing professionals, which may cost up to \$50,000, not including the cost of cleaning the tank and disposing of any hazardous waste, which would be required under the existing and proposed rules. However, the cost of cleaning up a discharge from a bottom leak in a storage tank can run to millions of dollars. Also, in the majority of cases, no change will occur for the cost of integrity testing because owners and operators are already using the industrial standards incorporated into the rules.

Additional information will be required in DPCC plans. In most cases, the cost of incorporating this information will be minimal. Some plans already contain this additional information. These requirements will not apply to a DPCC plan until it is being renewed. This will give owners and operators time to consider what revisions need to be accomplished. For those that use facility personnel to prepare the plan, there will be a small additional time requirement for said personnel to incorporate the additional information. For those that use consultants, it is expected to increase the cost of the plan by no more than \$200.00.

The proposed amendments for digital general site plans and DLU maps will reduce the cost of these maps compared to the current standards. They will result in the need for fewer revisions and quicker approval. This means that owners or operators will need to request and pay for fewer revisions to the maps.

It is estimated the inclusion of the perchlorate ion and some of its compounds will result in five to ten additional facilities being classified as major. Another five to 10 facilities may be added because of the other substances being incorporated into Appendix A. In order to comply with these rules, facilities newly defined as major will be required to prepare and submit DPCC and DCR plans within 180 days of the promulgation of the amendments. It is estimated that a small facility using existing personnel to prepare these plans will incur costs of approximately \$5,000, including maps, for the preparation of these plans. For a larger facility, the cost could be up to \$30,000. Additionally, there will be costs for initial integrity testing of any aboveground

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storage tanks and for any upgrades that the facility will require in order to show compliance with these rules. As these factors are very site-specific, it is difficult to estimate their cost.

The addition of various substances to the list of hazardous substances at Appendix A implicates the so-called "Spill Act tax," N.J.S.A. 58:10-23.11h. Funds collected under the Spill Act tax are deposited in the Spill Compensation Fund and, part of which is dedicated for use in State-funded site remediation.

The Spill Act tax is measured by the number of barrels or the fair market value of hazardous substances transferred to a major facility. However, a barrel of hazardous substance may be taxed only once, and any products derived from that hazardous substance are not subject to additional taxes. The Spill Act tax is also levied "when a hazardous substance other than petroleum which has not been previously taxed is transferred from a major in-State facility to a facility which is not a major facility." The tax is \$0.0230 per barrel transferred or 1.53 percent of the fair market value of the hazardous substance, with certain exceptions based on type and quantity of the hazardous substance delivered to the major facility. Thus, the amount of tax to be paid depends upon the amount of previously untaxed hazardous substance delivered to the major facility. Accordingly, since the amount of tax to be paid is substance and facility specific, it is difficult to anticipate the economic impact of the addition of hazardous substances to the list in Appendix A of these rules.

Through the development of DPCC and DCR plans, facilities have reduced their potential for discharges and provided for immediate response to and containment of discharges that do occur. Potential savings to the owner or operator may result from the reduced number and severity of discharges. Fewer and shorter periods of unexpected equipment breakdowns that result from improved preventative maintenance and operating programs provide savings, possibly in excess of the cost of these programs. All of these potential savings help to offset the costs of implementing a discharge prevention and response program. Furthermore, the potential savings in cleanup costs alone from preventing just one major discharge could dwarf the actual implementation costs of the preventative measure.

### **Environmental Impact**

The rules proposed for re-adoption with amendments and new rules have a positive environmental effect in New Jersey. The risk of environmental damage is reduced because existing facilities are operated, and new facilities are designed, under management practices dedicated to reducing the probability, rate and quantity of discharges. Each owner or operator identifies, maps and plans how to best protect ESA which could be affected by discharges from his or her facility. The prevention of even small discharges will benefit the environment. The potential of injury and death to plants and animals will be significantly reduced.

Plant, animal and marine life directly benefit from the prevention of discharges of hazardous substances. The hazardous substances list for these rules contains solids, liquids and gases, all of which have the potential to cause acute or chronic harm to the people and environment of New Jersey. In addition to the effects of a particular hazardous substance, the reaction products of that substance from contact with water, heat or oxygen can also be harmful.

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With currently available cleanup technology, it is often not possible to recover all, or even most, of the hazardous substance released during a discharge. Therefore, prevention of discharges is a primary goal of these rules. In those cases where a discharge does occur, discharge response and cleanup must be swift and effective, particularly where ESAs are involved. If the substance that is discharged is not contained or recovered, that substance can remain in the environment, causing damage over the long and the short term.

The prevention of discharges of hazardous substances reduces the potential for environmental damage. Plants and animals could be exposed and may be killed by ingestion, inhalation or absorption of hazardous substance. Most substances that are toxic in humans are also toxic to vegetation, wildlife and livestock. The concentrations at which these substances are toxic to vegetation and animals are, in many cases, lower than those for humans. Oil destroys the insulating properties of feathers so that when birds become coated with oil, they lose their ability to regulate body temperature. When they try to clean their feathers, they swallow the oil. This can cause intestinal and liver damage and neurological problems. Some of the chemicals in oil and other hazardous substances are very toxic, killing animals immediately. They also can do long term damage to animals' organs and inhibit reproductive capability, growth and the ability to survive. When larger animals eat smaller animals which have been contaminated, they ingest hazardous substances and endanger themselves. The addition of substances to the list of hazardous substances in Appendix A will provide protection from the harmful environmental effects of these newly listed substances.

Salt marsh grasses are very susceptible to petroleum and other hazardous substance discharges. These grasses provide habitat for animals and filter toxics from the water. Discharges of various hazardous substances have killed turtles, crabs, snails, worms, fish and shellfish of all varieties, as well as wetland vegetation that serves as food and habitat for many species. Oil persists in wetlands for many years causing continuing problems for the inhabitants which rely on those wetlands for subsistence.

When oil coats mudflats, tiny organisms are prevented from settling in the mud, thereby disrupting the food chain. Fiddler crabs and other organisms which are a source of food for a number of birds are adversely affected. Crustaceans appear to be highly sensitive to petroleum.

A discharged hazardous substance can seep into the soil and may enter surface and ground water directly. Once ground water is contaminated, it is extremely difficult to clean it up. In a ground water system, a few gallons of gasoline can render a potable water well unfit for drinking. Heavy metals, such as mercury and cadmium, are highly toxic to birds and animals. These metals enter the soil and from there enter into area wildlife causing serious health effects. The remediation of areas damaged by a discharge of a hazardous substance often requires tremendous time and effort.

Hazardous substances which are released can be ingested directly by organisms and enter the food chain. Substances which enter surface and ground water can contaminate drinking water supplies and cause toxic effects through ingestion of the water. Contamination of the water may also result in fish kills, closure of the water body to fishing or shellfish harvesting, loss of the recreational uses of the water body, and disruption of the water's flora and fauna. Oil

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contamination can reduce fish populations by cutting off the oxygen supply. Contamination of soil can lead to loss of usefulness for agricultural purposes, or loss of acceptability for commercial or residential uses.

The amendments and new rules that have been proposed, while in many cases reducing the cost and complexity of compliance for those subject to these rules, will not reduce the environmental protection aspects of the rules. The amendments have been designed to provide continued environmental benefit in a less difficult and less costly manner.

Prevention of discharges is a primary goal of these rules. In those cases where a discharge does occur, discharge response and cleanup must be swift and effective, particularly where ESAs are involved. If the substance that is discharged is not contained or recovered, that substance can remain in the environment, causing damage over the long and the short term. The prevention of discharges of hazardous substances will have the benefit of reducing the potential for environmental damage.

### **Federal Standards Analysis**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.#65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. N.J.A.C. 7:1E is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. However, there are Federal standards or requirements to which a meaningful comparison can be made, and the Department has performed such comparison of N.J.A.C. 7:1E with analogous Federal regulations. The majority of these Federal regulations, including the Oil Pollution Prevention rules (40 CFR 112) and various U.S. Coast Guard rules (33 CFR 126, 150 through 156), have been promulgated pursuant to the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Their purpose is to prevent pollution of surface waters by petroleum and petroleum products. Rules concerning the reporting of discharges of hazardous substances other than petroleum and petroleum products to the environment (40 CFR 304) have been promulgated under the Comprehensive Environmental Response, Compensation and Liability Act. This analysis has shown that these amendments as proposed exceed standards established by the Federal regulations in the following areas: covered substances; general site plans, and drainage and land use and ESA mapping; reportable quantities; and confirmation reports.

The list of substances in Appendix A contains five substances that are not currently contained in any list promulgated under a comparable Federal law. These are perchlorate ion, ammonium perchlorate, lithium perchlorate, sodium perchlorate, and potassium perchlorate. Perchlorate ion has been detected in water supplies in the State. The Department has determined that these substances pose an acute environmental threat to the citizens of New Jersey and is taking steps to regulate them accordingly. Information about the health effects of the perchlorate ion can be found in a report by the Drinking Water Quality Institute, titled "Maximum Contaminant Level Recommendation for Perchlorate, October 7, 2005" and available on the Department's web site at <http://www.nj.gov/dep/watersupply/perchlorate>. Facilities that store

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sufficient quantities of any of these substances to be major will be required to prepare and submit DPCC and DCR plans at an estimated cost of approximately \$5,000, including maps, for a small facility, up to \$30,000 for a larger one. Additionally, there will be costs for initial integrity testing of any aboveground storage tanks and for any upgrades that the facility will require in order to show compliance with these rules. As these factors are very site-specific, it is difficult to estimate their cost. In addition, discharges of these substances will be required to be reported to the Department and cleaned up. A follow up report will also be required. The cost of notifying the Department and submitting the follow up report is estimated as less than \$500, while clean up is site specific and difficult to determine. However, the improved handling of hazardous substances and response to discharges engendered in the plans and the avoidance of long term costs to clean up a site after it is contaminated should offset some of the cost of preparing plans and providing reports.

Neither 40 CFR 112, which applies to land based facilities, nor 33 C.F.R. 150 through 155, which apply to vessels and marine facilities, require mapping of drainage and land use (DLU) or ESA. They do require an analysis of ESA in the path of a possible discharge. The Spill Act establishes DLU and ESA mapping as components of DPCC plans (see N.J.S.A. 58:10 23.11d2). The cost of preparing such maps is in the range of \$2,000 to \$65,000, depending upon the size of the area to be mapped and the cooperation among facilities in the same geographic area. These maps are important planning tools for use by the owner or operator of a major facility. They can be used before a discharge occurs to determine the best means of protecting valuable and fragile environmental resources and human populations. Proper planning results in efficient and effective response to discharges, reducing their size and impact. Reducing the impact of a discharge in turn reduces the costs associated with cleanup and removal of the discharged substances and any contaminated material. The improved response and cost avoidance encouraged by the use of mapping in the response planning process at major facilities should offset some of the cost of preparing the maps.

Under 40 CFR 302, reportable quantities (RQs) are established at the federal level for the reporting of discharges to the environment. N.J.A.C. 7:1E does not have RQs. It would be very difficult, if not impossible, for the Department to establish an RQ for every substance contained in Appendix A. The circumstances of the discharge, such as the concentration of hazardous substance involved and whether it is to land or water, affect the impact that a discharge will have. The USEPA acknowledged this in its proposal of RQs. In the summary accompanying proposed 40 CFR 302 in 1983, USEPA stated:

“The different RQ levels do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release, and extensive scientific data and analysis would be necessary to determine the hazard presented by each substance in a number of plausible circumstances. Instead, the RQs reflect the Agency's judgment that the federal government should be notified of releases to which a response may be necessary. The reportable quantities, in themselves, do not represent any determination that releases of a particular size are actually harmful to public health or welfare or the environment.”

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Because of the limitations on response capabilities of the Federal government, the State must be more diligent, in order to protect the health of New Jersey's citizens and environment. Even if RQs were to be established, those established at a national level would most likely not be appropriate at the State level.

The Department has established the policy that it needs information concerning all discharges so that it can ensure that the proper actions are being taken to protect the public health and welfare and the environment. However, the Department has reduced the burden of reporting on major facilities by allowing owners or operators to keep records of on site response actions in lieu of immediate notification in certain circumstances. This is different than the establishment of RQs, but has a similar effect. Discharges to which the owner or operator is competent to respond do not have to be reported immediately by telephone. The records that are required to be kept will still enable the Department to ensure that the proper action was taken in response to the discharge. The cumulative effect on the environment of discharges across the State, past and present, can be better assessed when information on all discharges is available.

The establishment of a procedure-based de minimus reporting requirement, which eliminates the need to immediately report certain discharges based on the circumstances of the discharge and a swift response, aligns the State reporting requirements more closely with those at the Federal level. Thus, the reporting of those discharges required to be reported under N.J.A.C. 7:1E 5.3 does not result in increased costs for the regulated community. An owner or operator must have a reporting mechanism in place to report discharges at or above the applicable RQs of hazardous substances. This mechanism can be used to report all discharges requiring notification under N.J.A.C. 7:1E 5.3. This notification in many instances replaces a determination as to whether or not the volume of the hazardous substance discharged meets the RQ.

The reporting requirements exceed comparable federal regulations, such as 40 CFR 302, with respect to N.J.A.C. 7:1E 5.8, which requires the submission by owners or operators of major facilities and transmission pipelines of a confirmation report within 30 days of reporting a discharge under N.J.A.C. 7:1E 5.3. This is required by the Spill Act, which establishes the requirement for follow up reporting (see N.J.S.A. 58:10-23.11d10a). There is no follow up reporting required under similar Federal regulations. However, the number of discharges that must have a confirmation report has been reduced both by limiting it to discharges on the regulated portion of a major facility or transmission pipeline, and by reducing the number of discharges that must be immediately reported pursuant to N.J.A.C. 7:1E 5.3(e), thus lessening the burden on the regulated community. Preparing the confirmation report enables the owner or operator to analyze the cause of the discharge and the response that was made. Owners or operators can determine if the response was appropriate and make adjustments if the response is found to be lacking. This contributes to better planning and faster response by owners or operators, resulting in reduced cost for cleanup and removal of discharges. In addition, a series of confirmation reports may indicate some underlying problem at the facility, such as poor maintenance or lack of proper training for employees. Correcting these deficiencies contributes to a reduced number of discharges and cost savings at the facility. Therefore, the cost of preparing a confirmation report, estimated at less than \$500.00, is reasonably incurred to help avoid more costly future cleanups.

### **Jobs Impact**

The existing rules have little impact on employment and jobs in New Jersey because the tasks required to be performed under these rules are generally done by existing personnel or consultants in the environmental field. The proposed amendments and new rules are not expected to have any significant impact on employment and jobs, primarily because the amendments do not add or eliminate any substantial requirements to those that must be met by the owners or operators of major facilities. There may be a slight increase in employment in the field of tank integrity testing consultants who test aboveground storage tanks for the regulated community.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the rules proposed for readoption with amendments and new rule and determined that they will have little or no impact upon the agriculture industry. Farmers storing 20,000 gallons or more of pesticides or other hazardous substances as set forth in N.J.A.C. 7:1E-1.7 will be subject to these rules just as any other facility qualifying as a "major facility" pursuant to N.J.A.C. 7:1E-1.6. To the best of the Department's knowledge, there are currently no farming facilities that would fall into this category.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full-time employees. The DPHS rules apply to all facilities which have a total combined storage capacity of hazardous substances at or above the quantities established in N.J.A.C. 7:1E-1.6 and in the definition of "major facility" in the Spill Act. It is estimated that, of the approximately 350 facilities affected by these rules, 28 percent (about 100) are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In addition, the discharge notification requirements are applicable to numerous non-major facilities, many of which are small businesses.

In order to comply with the requirements of the rules, small businesses have to prepare and submit to the Department for review, copies of their DPCC and DCR plans or plan renewals. These plans or plan renewals must meet the standards for the safe handling, use and storage of hazardous substances in order to prevent discharges into the waters or onto the lands of the State. These plans or plan renewals must also meet the requirements for appropriate response in the event of a discharge. In addition, the plans or plan renewals must include a map of environmentally sensitive areas surrounding the facility which could be affected by a discharge from the facility. Small businesses will have to keep records of employee training, drills, integrity testing, inspections, maintenance and repairs. In complying with these rules, it is likely that small businesses will need to hire professional safety and environmental consultants and to implement changes in their facilities' operations or design to prevent or mitigate the consequences of a discharge.

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The rules proposed for re-adoption have reduced requirements for many of these small businesses. Non-major facilities are not required to submit discharge confirmation reports to the Department, but rather will be required to retain the information on site. In addition, some businesses, of all sizes, which store designated types of metals and gases are not be required to prepare DPCC and DCR plans.

Additionally, since a major component of the costs of preparing plans is mapping, the cost to small businesses are mitigated by a provision for a reduction in or elimination of mapping requirements under N.J.A.C. 7:1E-4.10(g).

Any facility that qualifies as a small business may request to be exempt from the digital general site plan and drainage and land use map, and ESA mapping requirements. A specific, low cost alternative to a digital submission is specified in the rules. In addition, there is a mechanism established in the rules at recodified N.J.A.C. 7:1E-4.6(d), for reducing or waiving the financial responsibility requirements. While not specific to small businesses, it can be used by small business to reduce or eliminate the cost of financial responsibility.

In developing these rules and the proposed amendments and new rule, the Department has balanced the need to protect the environment against the economic and social impacts and has determined that any further adjustments of the requirements would endanger the environment, public health, and public safety, and therefore, no additional exemption from coverage is provided.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act to describe the impact of a proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan), N.J.S.A. 52:18A-196 *et seq.* The Department has evaluated the re-adoption of these rules with amendments to determine the nature and extent of their effect on smart growth and implementation of the State Plan. The rules proposed for re-adoption with amendments, while requiring the owners or operators of major facilities to plan, design and build facilities in such a way that discharges will be minimized and their impact mitigated, do not prohibit location in pristine areas nor encourage location in existing industrial areas. They do not involve land use policies or infrastructure development and therefore do not impact the achievement of smart growth or implementation of the State Plan.

Since the rules proposed for re-adoption with amendments and new rule will encourage protection of the environment, the rules support the conservation and environmental protection goals and policies underlying the State Plan.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1E.

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Full text of the proposed amendments and new rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus], except in N.J.A.C. 7:1E Appendix B, in which deletions are indicated in cursive brackets {thus}):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 7:1E-1.1 Scope

(a) This chapter covers the discharge of hazardous substances as defined in this chapter. These rules set forth guidelines and procedures to be followed by all persons in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design, operational, and maintenance requirements for owners and operators of major facilities and transmission pipelines which handle hazardous substances.

(b) (No change.)

### 7:1E-1.6 Definitions

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

...

["Affiliate" means, with respect to any person, another person:

1. Who has a controlling interest in such person;
2. In whom such person has a controlling interest; or
3. Who is under common control with such person.]

...

"API" means the American Petroleum Institute, 1220 L Street., NW, Washington, DC, 20005-4070, <http://www.api.org/>.

...

[ "API 574" means the API's Recommended Practice 574, entitled "Inspection of Piping, Tubing, Valves and Fittings," as amended or supplemented.]

...

"ASME" means the American Society of Mechanical Engineers, 3 Park Avenue, New York, NY, 10016-5990, <http://www.asme.org/>.

...

"ASTM" means the American Society of Testing and Materials, 100 Barr Harbor Drive,

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West Conshohocken, PA, 19428-2951, <http://www.astm.org/>.

“ASTM D5856” means ASTM’s Standard D5856, entitled “Standard Test Method for Measurement of Hydraulic Conductivity of Porous Material Using a Rigid-Wall, Compaction-Mold Permeameter,” as amended and supplemented.

“ASTM D93” means ASTM’s Standard D93, entitled “Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester,” as amended and supplemented.

“ASTM E1067” means ASTM's Standard E1067-[96]01, entitled “Standard Practice for Acoustic Emission Examination of Fiberglass Reinforced Plastic Resin (FRP) Tanks/Vessels,” as amended and supplemented.

...

[“Bulk storage” means the holding of large quantities of substances.]

...

“Controlling interest” means [any of the following:

1. The] the direct [or indirect beneficial] ownership[, by the person asserted to have a controlling interest and any of such person's affiliates,] of at least 50 percent of the voting stock or other equity interest in a person[;
2. The holding of any direct or indirect beneficial interest, by the person asserted to have a controlling interest in any of such person's affiliates, in at least 50 percent of the income or profits of a person; or
3. The existence of any other relationship between the person asserted to have a controlling interest and the person controlled, which relationship in fact constitutes control over the affairs of the person controlled].

...

“Discharge cleanup organization” means an organization or association that has equipment and personnel to be utilized in [the recovering, containing, cleaning up or removing of discharges] cleanup and removal activities.

...

“Field-erected storage tank” means a steel storage tank erected on-site where it will be used.

...

“Financial reporting year” means the latest consecutive 12-month period for which any of the following reports used to support a financial test in accordance with N.J.A.C. 7:1E-4.4(g) is prepared: a 10-K report submitted to the Security and Exchange Commission; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy

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Information Administration, Rural Utilities Services or the Board of Public Utilities. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

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

"Guarantor" means a person who:

1. - 2. (No change .)
3. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
4. (No change .)

["Handling" means treating, dealing with, or managing.]

"Hazardous substances" means [petroleum, petroleum products, pesticides, solvents and other] all substances [as] set forth in N.J.A.C. 7:1E-1.7.

...

"Integrity testing" means a method of testing structures [where either hydrostatic testing using water or other liquid or pneumatic testing is done in combination with a system of nondestructive testing which includes shell thickness testing. The nondestructive testing procedures shall be adequate to detect cracks, leaks, and corrosion, erosion or other wall thinning to less than a predetermined minimum thickness to ensure sufficient structural strength. Nondestructive integrity test techniques include magnetic particle tests, acoustic emission tests, electromagnetic particle or eddy current tests, radiography and radiation tests, liquid penetrant tests, or ultrasonic tests] as established in N.J.A.C. 7:1E-2.16.

"Internal [visual] inspection" means an [optical] examination of the interior of an aboveground storage tank [sufficient to detect corrosion or leaking of the tank bottom and to identify and evaluate any tank bottom settlement] appropriate to the type and size of the tank and in accordance with N.J.A.C. 7:1E-2.16.

...

["Major maintenance" means maintenance required to correct any condition which is of such a nature that it presents an immediate hazard to persons or property.

"Major repair" means repairs necessary because of a major leak or major maintenance.]

...

"Out-of-service" means any container, pipe, or equipment from which all liquid and sludge has been removed, all connecting lines and piping have been disconnected and blanked off, all valves (except for ventilation valves) have been closed and locked, and on which conspicuous

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signs have been posted that state that it is out of service and note the date of removal from service.

...

[“Paved or surfaced” means to cover with concrete, tile, stones or the like, to create a level, stable, impermeable surface.]

...

“Petroleum” or “petroleum products” means any [bituminous] liquid that is essentially a complex mixture, whether natural or synthetic, of hydrocarbons of different types with small amounts of other substances, such as compounds of oxygen, sulfur or nitrogen, or metallic compounds, or any of the useful liquid products obtained from such a liquid by various refining processes, such as fractional distillation, cracking, catalytic reforming, alkylation and polymerization. This term shall include, but not be limited to, gasoline, kerosene, fuel oil, synthetic oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and hazardous substances listed in Appendix A which are to be used in the refining or blending of crude petroleum or petroleum stock in this State.

...

“Repair” means any work necessary to maintain or restore a storage tank or other equipment to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to keep up the functional integrity of the storage tank or other equipment.

...

“Response coordinator” means the individual at the major facility or transmission pipeline [who is responsible for the management of the DPCC and DCR plans at the facility and] who shall possess sufficient corporate authority and technical background to [resolve issues relating to the execution of the DPCC and DCR plans based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives] hire contractors and obligate funds to implement cleanup and removal activities and to act as a liaison with Federal, State and/or local on-scene coordinator(s).

...

“Shop-built storage tank” means a storage tank fabricated in a manufacturing facility and shipped to the site where it will be installed and used.

...

“Soil permeability testing” means a quantitative measurement of the ease with which a liquid moves through soil, such as ASTM D5856.

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“SP001” means STI’s Standard SP001, “Standard for the Inspection of Aboveground Storage Tanks,” as amended or supplemented.

[“SPCC plan” means a Federal Spill Prevention Control and Countermeasure plan developed and approved pursuant to 40 CFR 112.]

“Standard operating procedure” or “SOP” means [the] a document setting forth the operating procedures [covering all details of any], in accordance with N.J.A.C. 7:1E-2.14, for an operation involving a hazardous substance [which is stored, processed, transferred or used] at the facility.

...

“Static head [product] testing” means testing which involves the filling of a tank with water or other liquid, [not] or placing the tank under pressure, to determine if there are any leaks over a definite period of time.

“STI” means the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL, 60047, <http://www.steeltank.com/>.

“Storage capacity” means that capacity which is dedicated to, used for, or intended to be used for storage of hazardous substances of all kinds. This term shall include, but not be limited to, above and underground storage tanks, drums, reservoirs, containers, bins, and the intended or actual use of open land or unenclosed space. For a storage tank, the total volumetric design capacity of the tank shall be the storage capacity. This term shall not include the capacity of:

1. A heating oil tank servicing only the individual private residence at which it is located; [or]
2. Any underground storage tank at the facility used solely to store heating oil for on-site consumption;
3. Any tank or container that is out-of-service; or
4. Any container five gallons or less in size.

“Storage tank” means any tank or reservoir which is a container for [hazardous substance(s)] solids, liquids or gases and which is primarily used for bulk storage.

...

#### 7:1E-1.8 Environmentally sensitive areas

(a) For the purposes of designing and implementing a DPCC and a DCR plan, pursuant to N.J.A.C. 7:1E-4, the following shall be considered environmentally sensitive areas:

1. - 5. (No change.)
6. Wetlands and wetland transition areas, including without limitation the following: freshwater wetlands and transition areas, as defined at N.J.A.C. 7:7A-1.4; wetlands, as defined in N.J.A.C. 7:7E-3.27(a); and wetland buffers and transition areas, as defined in N.J.A.C. 7:7E-

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3.28(a);

[7. Breeding areas for forest area nesting species, colonial water birds, or aquatic furbearers;

8. Migratory stopover areas for migrant shorebirds, raptors or passerines;

9. Wintering areas, including coastal tidal marshes and water areas, waterfowl concentration areas, and Atlantic white cedar stands;]

7. Critical wildlife habitats, as defined in N.J.A.C. 7:7E-3.39;

Recodify existing 10. - 16. as 8. - 14. (No change in text.)

[17.]15. Wild[,] and scenic[, recreational, or developed recreational] river[s] corridors, as defined in N.J.A.C. 7:7E-3.46(a).

7:1E-1.9 Access

(a) (No change.)

(b) [(Reserved)] The Department may inspect major facilities prior to approving DPCC or DCR plans.

[(c) (Reserved)]

[(d)](c) (No change in text.)

7:1E-1.11 Applicability

(a) (No change.)

(b) Major facilities, as defined in N.J.A.C. 7:1E-1.6, are required to meet the standards of this chapter. The Department shall grant the owner or operator of a major facility a reasonable period of time, in light of all circumstances including economic feasibility, to upgrade existing equipment and procedures to meet the standards of N.J.A.C. 7:1E-2, excluding the requirements of N.J.A.C. 7:1E-2.2(a)4[, 5, 6,] and [7] 2.16, if the major facility proves to the satisfaction of the Department that such a time period is needed. The rate of such upgrading shall be proposed by the owner or operator as part of the DPCC and DCR plans submitted pursuant to N.J.A.C. 7:1E-4. New equipment and procedures shall meet the standards of N.J.A.C. 7:1E-2 prior to being placed into service.

(c) - (e) (No change.)

SUBCHAPTER 2. PREVENTION AND CONTROL OF DISCHARGES AT MAJOR

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## FACILITIES

### 7:1E-2.2 Storage

(a) Aboveground storage tanks shall meet the following standards:

1. Aboveground storage tank installations shall be provided with [an adequate means of] secondary containment or a diversion system, designed and built pursuant to N.J.A.C. 7:1E-2.6.

2. The base underlying the storage tank shall be made of or surfaced with a material impermeable to passage or chemical attack by the stored substance under the conditions of storage prevailing within the tank. Existing storage tanks shall be exempt from this requirement until such time as they may require substantial reconstruction or replacement, or the bottom is being replaced, unless the Department orders a storage tank removed from service because of the likelihood of a discharge. Before such a tank is returned to service, it must meet this requirement.

3. Pipes leading to and from aboveground storage tanks which enter the tank below the liquid level shall be equipped with valves that can be remotely activated or are readily accessible in the event of a leak or discharge, and which are sufficiently close to the tank that they can prevent the contents of the tank from escaping outside the secondary containment area in the event of a pipe [rupture] failure outside the containment area. Such pipes shall not penetrate or pass through any walls, dikes or berms used as secondary containment, unless the impermeability or integrity of the secondary containment is not impaired.

[4. Aboveground storage tanks installed prior to July 22, 1990 with a capacity greater than 2,000 gallons and all appurtenant piping to the first valve shall be subject to initial integrity testing or static head product testing on a schedule which takes into account the age of the tank, proximity to surface water supplies, the leak record of the tank for the preceding five years, and the date of the tank's last integrity test, as delineated in Table 1, and according to the schedule in Table 2. Thereafter, each aboveground storage tank with a capacity greater than 2,000 gallons and its appurtenant piping to the first valve shall undergo a combination of integrity testing, as defined in N.J.A.C. 7:1E-1.6, and internal visual inspection, as defined in N.J.A.C. 7:1E-1.6, at intervals based on the construction material of the tank, substances stored, soil conditions, corrosion allowance remaining, corrosion rate, leak history of the tank, degree of risk and the results of visual inspections, as described in the DPCC plan pursuant to N.J.A.C. 7:1E-4.2(d). In no case shall the period of time between the combination of integrity tests and internal inspections exceed five years, unless the tank has an inspection and maintenance program that is in compliance with API 653, incorporated herein by reference. Integrity testing should be performed in compliance with accepted industry standards, which include, but are not limited to, API 510, API 574, API 653, ASME Section V, ASME Section VIII, ASME Section X, and ASTM E1067, incorporated herein be reference.

Table 1  
Testing Schedule Factors

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| Factor                                     | Points |
|--|--------|
| Age of tank (years)                        |        |
| > 50                                       | 10     |
| 26 - 50                                    | 6      |
| 10 - 25                                    | 3      |
| < 10                                       | 1      |
| Proximity to surface water supplies (feet) |        |
| < 500                                      | 5      |
| > 500                                      | 1      |
| Number of leaks in past five years         |        |
| ≥ 2  | 25     |
| 1  | 5      |
| 0  | 1      |
| Years since last structural integrity test |        |
| ≥ 5  | 15     |
| > 1 but < 5                                | 5      |
| ≤ 1  | 1      |

Table 2  
Initial Testing Schedule

| Total points from Table 1 | Deadline for testing |
|---------------------------|----------------------|
| > 30                      | February 1, 1992     |
| 21 - 30                   | August 1, 1992       |
| 11 - 20                   | February 1, 1993     |
| < 10                      | August 1, 1993       |

5. A report on the initial integrity testing or static head product testing required by (a)4 above shall be submitted to the Department within 30 days of the completion of the test. This report shall include identification of the facility and the equipment tested, the age of the equipment, the test method(s) used, date of the test(s), name and affiliation of the person performing the test, the summary test results, any repairs performed or scheduled to be

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performed after the tests, and the expected service life of the equipment. The report shall be certified pursuant to N.J.A.C. 7:1E-4.11, and shall be sent to:

Bureau of Discharge Prevention  
New Jersey Department of Environmental Protection  
P.O. Box 424  
Trenton, New Jersey 08625-0424

6. Aboveground storage tanks installed or placed into service on or after July 22, 1990 with a storage capacity greater than 2,000 gallons and all appurtenant piping to the first valve shall be subject to integrity testing, as defined in N.J.A.C. 7:1E-1.6, prior to being placed into service. For shop fabricated tanks, testing done by the manufacturer at the site of manufacture is acceptable. Subsequent testing shall be performed in accordance with (a)4 above.

7. If a tank has been tested or inspected as required by (a)4 or 6 above and fails to meet the applicable standards as to structural integrity or where a condition has been determined to exist for which there is no standard as set forth in (a)4 or 6 above, but which, in the opinion of the person performing the tests or inspection as set forth in the report, constitutes a condition which will threaten structural integrity, the tank shall be emptied and remain empty until it is repaired or replaced. Conditions threatening structural integrity may include, but are not limited to, wall thinning, leaks, or extensive corrosion, pitting, or cracking.]

4. Aboveground storage tanks shall undergo integrity testing in accordance with N.J.A.C. 7:1E-2.16.

(b) - (c) (No change.)

(d) Every aboveground storage tank, except as provided in (e) below, shall have a high liquid level audible or visual alarm set to activate at a predetermined level and designed to alert plant personnel directly responsible for the filling operation of [overfills] high liquid level conditions, and one of the following:

1. A high high liquid level pump cutoff device, on a circuit separate from the high liquid level alarm, designed to stop flow at a predetermined level;

2. - 3. (No change.)

(e) - (f) (No change.)

(g) Mobile or portable storage tanks shall be positioned or located so as to be protected by secondary containment or diversion structures designed and built pursuant to N.J.A.C. 7:1E-2.6. Such storage tanks [shall not be located in areas subject to periodic flooding or washout, unless adequately protected so as to prevent hazardous substances stored therein from being carried off or discharged at times of flooding or washout] are subject to the requirements of N.J.A.C. 7:1E-2.9.

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(h) [Drum and other] Tote, drum, bag, and other small container storage areas shall be equipped with [adequate] secondary containment or diversion systems designed and built pursuant to N.J.A.C. 7:1E-2.6.

#### 7:1E-2.3 Tank car or tank truck loading or unloading areas

(a) All tank car or tank truck loading or unloading areas employed in the loading or unloading of hazardous substances shall be [paved or surfaced with impermeable materials, and] equipped with [an adequate means of] secondary containment or a diversion system, designed and built pursuant to N.J.A.C. 7:1E-2.6.

(b) All tank car or tank truck loading and unloading operations shall be conducted in accordance with an SOP prepared and maintained in accordance with N.J.A.C. 7:1E-2.14.

[(b)](c) Prior to the filling of any tank car or tank truck, the lowermost drain and all outlets of such vehicle shall be examined [in accordance with the applicable SOP] to insure they are closed.

[(c)](d) [During filling and prior] Prior to departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles shall be closely examined for leakage, [in accordance with the appropriate SOP,] and, if necessary, tightened, adjusted, repaired or replaced so as to prevent liquid leakage in transit. All manifolds on tank cars or tank trucks shall be flanged or capped, and valves secured, prior to leaving loading or unloading areas.

[(d)](e) A system to prevent tank car or tank truck departure before complete disconnect of loading or unloading lines[, such as a physical barrier (that is, wheel chocks) or brake interlock system,] shall be utilized in loading or unloading areas.

[(e)](f) Tank cars in the process of being loaded or unloaded shall be attended at reasonable intervals during the procedure, and shall be attended during topping off[, in accordance with the appropriate SOP].

(g) Tank trucks in the process of being loaded or unloaded shall be attended at all times during the procedure[, in accordance with the appropriate SOP].

(h) A tank car or tank truck is attended when an employee is within 100 feet of the tank car or tank truck and has an unobstructed view of the tank car or tank truck.

#### 7:1E-2.4 In-facility pipes for hazardous substances

(a) [Where practicable, each] Each in-facility pipe at a major facility containing a hazardous substance shall be sufficiently marked by lettering, color banding or color coding to [indicate the substance transferred through it] enable facility personnel to identify any substance being leaked or discharged from an in-facility pipe.

(b) New buried piping installations shall have a product-sensitive leak detection device,

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where such devices are state-of-the-art, and shall be either double walled or have [adequate] secondary containment or diversion systems designed and built pursuant to N.J.A.C. 7:1E-2.6.

(c) Existing buried pipes shall be either:

1. [equipped] Equipped with product-sensitive leak detection devices, where such devices are state-of-the-art technology[.]; or

2. Where state-of-the-art technology does not exist, [the owner or operator shall institute a maintenance and repair program for buried pipes following] inspected, repaired and maintained in accordance with API 570, incorporated herein by reference, or some other industry standard acceptable to the Department.

(d) (No change.)

(e) [Pipes removed from service]Out-of-service pipes shall be capped or blank-flanged and marked as to origin, or physically removed.

(f) Pipe supports [should] shall be designed so as to minimize abrasion and corrosion and allow for expansion and contraction.

(g) (No change.)

7:1E-2.5 Process areas [at major facilities] for hazardous substances

(a) [Drainage from production facilities, including buildings, and other process] Process areas shall be [designed and built so as to provide] provided with a means of secondary containment or diversion [for leaked hazardous substances] designed and built pursuant to N.J.A.C. 7:1E-2.6.

(b) Process wastewater and cooling water pipes, plant drains and similar installations which drain into sewers, storm drains, public wastewater treatment plants, watercourses or other routes which drain to the waters of the State shall be engineered so that leaks of hazardous substances will not escape through them to waters of the State. [If hazardous substances captured in secondary containment systems will drain into process wastewater lines, provision must be made to ensure compliance with the applicable NPDES or NJPDES permit before the water is discharged.]

7:1E-2.6 Facility drainage and secondary containment

(a) (No change.)

(b) [Impermeable secondary] Secondary containment or diversion structures to prevent leaked hazardous substances from becoming discharges include:

1. - 6. (No change.)

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(c) Secondary containment or diversion systems, structures or equipment shall meet the following standards:

1. The [second] secondary containment or diversion system must block all probable routes by which leaked hazardous substances could reasonably be expected to become discharges;

2. The capacity of the secondary containment or diversion system shall include an additional capacity to accommodate six inches of rainwater, if the secondary containment or diversion structure is located such that rainwater could accumulate in it, and shall be:

i. For storage areas, the volume of the largest tank or [drum utilizing the system] container within the area;

ii. - iii. (No change.)

iv. For process areas, the volume of the largest piece of equipment in the area, or the maximum volumetric flow rate through the area multiplied by the maximum amount of time between the detection of a leak and the shutdown of the system, whichever is greater;

3. All components of the secondary containment or diversion system shall be made of or lined with impermeable materials, which must be maintained in an impermeable condition. Existing systems for existing aboveground storage tanks are exempt from this requirement if the existing system:

i. Can protect ground water for the period of time needed to clean up and remove a leak, up to the entire volume of the largest tank utilizing the system. The Department may require evidence of the ability of the secondary containment or diversion system to protect ground water, including, but not limited to, soil permeability testing, measurements of the depth to ground water beneath the secondary containment or diversion system, and response times for cleaning up a leak of the entire contents of the largest tank utilizing the system;

ii. (No change.)

iii. Is inspected daily in accordance with N.J.A.C. 7:1E-2.10;

4. (No change.)

5. [Catchment basins, lagoons, and so forth, shall not be located in a manner that would subject them to flooding] Diversion systems must be designed to handle the reasonably expected flow rate from a leak into them;

6. (No change.)

7. [Provision shall be made for promptly removing leaked hazardous substances

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from a secondary containment or diversion system.] Secondary containment systems shall not be used as backup storage systems nor for any other purpose that would impair their capacity to contain leaks.

[(d) A major facility handling nonmiscible lighter-than-water hazardous substances, which is adjacent to, or sufficiently near a body of surface water such that a leak from the facility would be reasonably expected to become a discharge, shall maintain on site flotation boom and/or filter fences and/or sorbent materials sufficient to contain and prevent the further spread of discharges.]

#### 7:1E-2.7 Marine transfer facilities

(a) (No change.)

(b) If oil or other non-miscible lighter-than-water hazardous substances are transferred at the facility, there shall be kept available a length of flotation boom or other containment device sufficient to totally enclose a vessel while engaged in the transfer of hazardous substances from a vessel to the facility or from the facility to a vessel. When transferring between vessels, the containment device shall be capable of encircling both vessels.

[(c)When transferring hazardous substances between vessels, the containment device shall be capable of encircling both vessels.]

[(d)](c) A containment device shall be deployed prior to commencing the transfer of any non-miscible lighter-than-water hazardous substance with a flash point in excess of 100 degrees Fahrenheit (38 degrees centigrade) as measured by [the Penske-Martens closed cup flash test (ASTM D-93, incorporated herein by reference)], when current and wind conditions permit the effective use of such devices and the device can be safely deployed without endangering any personnel, any vessel, or obstructing any shipping channel. This provision does not apply to the transfer of any hazardous substance to be used as a fuel or a lubricant by the vessel.

[(e)](d) (No change in text.)

[(f)](e) When transferring [or receiving] hazardous substances [where the] to or from a vessel that is [docked parallel] moored to [the] a dock, the containment device is to [originate at some point before the bow and terminate at some point behind the stern of the vessel so that the dock itself constitutes one side of the contained area, if the dock is capable of acting as an effective barrier.

(g) In the case of an "open pier" or a "finger dock" where the vessel is docked perpendicular to the dock, the boom is to] encircle the entire vessel except for the area of the dock the vessel sits adjacent to, if the dock is capable of acting as an effective barrier.

[(h)](f) (No change in text.)

[(i)](g) Transfer operations shall not commence, or if commenced shall be discontinued

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immediately, upon detection of any of the following:

1. National Weather Service forecasts predict for the vicinity of the facility gale force winds, heavy [rain, sleet, snow] precipitation or other storm conditions, and the person in charge determines that a transfer cannot be accomplished without increased risk of discharge, or if such weather conditions occur after transfer operations have been commenced;

2. - 7. (No change.)

8. A discharge occurs during transfer. Transfer shall not be resumed until after the discharge has been reported to the Department, and the Department or Federal on-scene coordinator under the National Oil and Hazardous Substances Pollution Contingency Plan pursuant to 40 CFR [1510] 300 is satisfied that adequate steps have been taken to contain the discharge and to prevent further discharges. Under certain circumstances, it may be necessary to continue transfer operations even though a discharge has occurred, for example, in order to off-load the contents of a vessel which is leaking.

~~[(j)](h)~~ [When a containment device is deployed, prior to its] Prior to the removal of a deployed containment device, all discharged hazardous substances contained by the device shall be properly cleaned up and removed.

~~[(k)](i)~~ Any containment device deployed shall be retrieved and properly [cleaned or disposed of] secured by the owner or operator upon completion of the transfer, or at such time as it is no longer needed to prevent the spread of or to divert a discharge. If the containment device is contaminated, it shall be properly cleaned or disposed of.

(j) A copy of the requirements of N.J.A.C. 7:1E-5.3(c), printed in a conspicuous format, shall be displayed by the owner or operator at any transfer areas and the operations center.

7:1E-2.9 Flood hazard areas

(a) Hazardous substances stored within the [100-year flood hazard area] tidal floodplain as delineated by the Federal Emergency Management Agency or the floodway of any watercourse as delineated by the Department in N.J.A.C. 7:13-7.1 [or stored within an area known by the owner or operator of the major facility to be subject to a high probability of flooding] shall be adequately protected so as to prevent such hazardous substances from being carried off by or being discharged into flood waters.

(b) Hazardous substances stored within an area known by the owner or operator of the major facility to be subject to a high probability of flooding or washout shall be adequately protected so as to prevent such hazardous substances from being carried off by flood waters or being discharged.

7:1E-2.10 Visual inspections and monitoring

(a) All equipment and portions of the major facility in service using hazardous substances, as

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well as all cleanup and removal equipment and supplies, shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14. Visual inspections shall be performed at a minimum according to the following schedule:

1. - 5. (No change.)

6. Once quarterly:

i. For [for] integrity and leaks, all other aboveground valves, pumps, flanges, connections and equipment[, and];

ii. For integrity, all security fences and locks; and

iii. For adequacy and location, all cleanup and removal equipment and supplies.

(b) Records shall be kept for all visual inspections, in accordance with N.J.A.C. 7:1E-2.15. These records shall document [that inspections were performed,] the date, time, person performing the inspection, any problems found, including if no problems were found, and the subsequent correction of such problems.

[(c)Unless a leak or discharge is likely to be detected by personnel, product gauging, an automatic leak detection system, or other means acceptable to the Department, the owner or operator of a major facility shall implement a ground water monitoring program approved by the Department and satisfying the requirements of N.J.A.C. 7:14A-6.]

7:1E-2.11 Housekeeping and maintenance

(a) - (c) (No change.)

(d)The facility shall keep on hand, in convenient locations, adequate quantities of sorbent materials, chemical neutralizing agents or other materials as needed, sufficient to contain and clean up [such small] those leaks or discharges [as may be expected to occur in the ordinary operations of the facility] that facility personnel will respond to, as described in the DCR plan in accordance with N.J.A.C. 7:1E-4.3(b)7.

(e) The facility shall maintain an adequate supply of protective safety equipment, such as chemically resistant coveralls, boots, or [gas masks] respiratory protection, in convenient locations for use by any personnel who are required to clean up leaked or discharged hazardous substances. Where protective safety equipment is required by any regulation of the Federal Occupational Safety and Health Administration, compliance with such regulation shall be deemed to fulfill this requirement.

(f) Secondary containment or diversion systems shall be maintained in good repair, free of debris, and free of cracks through which hazardous substances could be discharged.

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7:1E-2.12 Employee training

(a) (No change.)

(b) The training program shall include, at the minimum, the following:

1. A written job description which includes the duties and responsibilities relating to hazardous substances for each position, [and the education, experience] and training necessary to qualify for the position;

[2. Procedures to determine whether an employee has demonstrated the ability to carry out the duties and responsibilities of a specific position; and]

[3.]2. Specified minimum time periods of in-house training for each position covering orientation, specific hazardous substances training and on-the-job training, [trainee evaluation, final qualification,] and periodic refresher training[. A procedure shall be established for tracking the progress of each employee at regular intervals and shall be included in the written description required by (a) above. In addition, the maximum period of time of each training program shall be established within which the employee must achieve qualified status.]; and

3. Procedures to determine whether an employee has demonstrated the ability to carry out the duties and responsibilities of a specific position.

(c) The training which all employees involved in the handling of hazardous substances will receive shall include:

1. (No change.)

2. [Classroom]Job-specific training for new or newly assigned employees involved with hazardous substances, consisting of classroom and/or on-the-job training, as appropriate, which covers:

i. Standard operating procedures, including a detailed review of the hazardous substance material safety data sheets, the safe handling practices for the hazardous substance, the hazards of the operation involving the hazardous substance, and the application of standard operating procedures to actual conditions;

ii. Safety, equipment, and procedures used in the cleanup and removal of a specific hazardous substance;

iii. Procedures regarding fires, leaks and discharges; and

iv. Equipment familiarization;

3. [On-the-job training for newly assigned employees]Training on updated or new standard operating procedures; and

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4. Refresher training at least once a year which shall present an overview and updated information, and which can be combined with such training required under any other State or Federal requirement.

[(d)] Employees with duties and responsibilities including emergency response, chemical operations or hazardous substance processing, shall receive additional training in the following areas:

1. Safety, equipment and procedures used in the cleanup and removal of a specific hazardous substance;
2. Standard operating procedures, including a detailed review of the hazardous substance material safety data sheets, the safe handling practices for the hazardous substance, the hazards of the operation involving the hazardous substance, and the application of standard operating procedures to actual conditions;
3. Emergency procedures regarding fires, leaks and discharges;
4. Equipment familiarization;
5. Operating data collection and entry;
6. Equipment startup and shutdown; and
7. Control and adjustment of operating conditions.]

[(e)](d) (No change in text.)

[(f)](e) Documentation of all training, [evaluation and] including final qualifying activities, shall be kept in accordance with N.J.A.C. 7:1E-2.15 for each employee [shall be kept at the facility] and shall include identification of all personnel trained, [their job titles,] subjects covered and training dates.

[(g)](f) (No change in text.)

#### 7:1E-2.13 Security

(a) Major facilities shall be adequately illuminated so that personnel on the premises can detect intruders, leaks or discharges[ during hours of darkness].

(b) Major facilities shall have security sufficient to prevent unauthorized persons from gaining access to hazardous substances. This security may consist, for example, of:

1. Fencing adequate to prevent unauthorized entry [(full fencing on land)] of all portions or areas within which hazardous substances are stored, processed, transferred or used,

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with entrance gates locked and/or guarded when the facility is unattended, and either locked, guarded or under observation by personnel at all other times; or

2. (No change.)

7:1E-2.14 Standard operating procedures

(a) - (c) (No change.)

(d) The standard operating procedures shall include, at a minimum, the following:

1. A [process] description of the operation, including all applicable requirements from this subchapter;

2. Procedures for visual inspection of equipment;

[2.]3. (No change in text.)

4. A description of leak monitoring equipment and alarms; and

[3.]5. A description of leak or discharge conditions which could occur from the operation, including the control and mitigation procedures to be followed to reduce the impact of the leak or discharge conditions[;].

[4. A description of the type, location and purpose of containment systems and devices, leak monitoring equipment and alarms; and

5. Procedures for visual inspection of equipment.]

(e) [In addition to the items in (d) above, the standard operating procedures shall include, as] As appropriate for the operation being described, the following items, in addition to those in (d) above, shall be included in the standard operating procedure:

1. - 5. (No change.)

6. Procedures to [prepare equipment for] perform and inspect maintenance [and inspection of maintenance] work [upon completion and prior to placement of equipment in service]; and

7. Log sheets and checklists [where appropriate to the operation].

(f) - (g) (No change.)

(h) A current index of the standard operating procedures, including title(s), identification number(s) and [with corresponding] latest [dates] date(s) of issue shall be maintained and readily available.

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#### 7:1E-2.15 Recordkeeping

(a) The owner or operator of a major facility shall maintain records of employee training, [and] drills for discharge prevention, inspections of cleanup and removal equipment, and [hazardous substance] facility inventories for a period of three years.

(b) The owner or operator of a major facility shall maintain the following records for 10 years:

1. Documentation of discharges pursuant to N.J.A.C. 7:1E-5.3(e); and
2. [records of confirmation] Confirmation reports on discharges pursuant to N.J.A.C. 7:1E-5.8(c)[,].

(c) The owner or operator of a major facility shall maintain records of inspection and repair for ten 10 years or the lifetime of the equipment, device, or structure, whichever is shorter, for:

1. All [inspection, major maintenance, and major repair of all structures other than aboveground storage tanks,] equipment, and detection or monitoring, prevention or safety devices related to discharge prevention and response [for 10 years or the lifetime of the structure, equipment or device, whichever is shorter]; and

2. All structures other than aboveground storage tanks.

[(c)](d) For aboveground storage tanks, the owner or operator of a major facility shall maintain records of integrity testing, inspection, [major maintenance,] and [major] repair for the lifetime of the tank.

[(d)](e) (No change in text.)

[(e)](f) Records may be retained on microfilm or microfiche, or may be kept in an electronic or computerized form if they are adequately backed up.

#### 7:1E-2.16 Integrity testing

(a) Aboveground storage tanks installed and in use as of July 22, 1990, with a capacity greater than 2,000 gallons, and all appurtenant piping to the first valve must have undergone integrity testing or static head testing by August 1, 1993.

(b) Aboveground storage tanks with a storage capacity greater than 2,000 gallons installed or placed into service on or after July 22, 1990 and all appurtenant piping to the first valve shall be subject to integrity testing prior to being placed into service, in accordance with the following:

1. New field-erected storage tanks shall be tested in accordance with the standard used for their construction.

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2. Existing storage tanks being returned to service shall be tested in accordance with the applicable protocol in (d) through (i) below.

3. Shop-built storage tanks shall be tested after installation on site to ensure the integrity of the tank and all connections to it, using a test such as a static head test.

(c) Records of all integrity testing shall be kept in accordance with N.J.A.C. 7:1E-2.15.

(d) Field-erected steel aboveground storage tanks with a storage capacity greater than 2,000 gallons shall undergo integrity testing in accordance with the following:

1. Tanks operated at atmospheric pressure shall follow API 653 and the schedule and series of tests and inspections established in that standard, except that similar service and risk based inspection scheduling contained in API 653 is not permitted.

2. Tanks operated under pressure shall follow API 510 or ASME Section VIII and the schedule and series of tests and inspections established in the applicable standard.

(e) Shop-built steel aboveground storage tanks with a storage capacity greater than 2,000 gallons shall undergo integrity testing in accordance with either API 653 or SP001, incorporated herein by reference, and the schedule and series of tests and inspections established in the applicable standard, except that similar service and risk based inspection scheduling contained in API 653 is not permitted.

(f) Fiberglass reinforced plastic (FRP) aboveground storage tanks with a storage capacity greater than 2,000 gallons shall undergo integrity testing every five years consisting of acoustic emission testing, in accordance with ASTM E1067, in combination with internal and external inspections of the tank and all appurtenant structures by an experienced, qualified inspector.

(g) Homogenous plastic tanks with a storage capacity greater than 2,000 gallons shall undergo integrity testing every five years consisting of internal and external visual inspections of the tank and all appurtenant structures by an experienced, qualified inspector.

(h) For aboveground storage tanks with a storage capacity greater than 2,000 gallons that do not fall into one of the categories outlined above, or as an alternative to any integrity testing protocol established above, the owner or operator may perform integrity testing every five years in accordance with the following, as appropriate:

1. A shell thickness test and a bottom thickness test, performed to a standard such as ASME Section V, and capable of detecting cracks, leaks, and corrosion, erosion or other wall or bottom thinning to less than a predetermined minimum thickness to ensure sufficient structural strength; and

2. Visual inspection of the foundation and ancillary equipment, such as inlet and outlet pipes and valves, checking for settlement, cracks, leaks, corrosion and other indications of

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structural problems.

(i) If none of the protocols for integrity testing outlined in this section are practicable for a given aboveground storage tank with a storage capacity greater than 2,000 gallons, the owner or operator may propose a protocol to the Department, in accordance with N.J.A.C. 7:1E-1.11(e).

(j) If a tank has been tested or inspected as required by (a) through (i) above and fails to meet the applicable standards as to structural integrity or where a condition has been determined to exist for which there is no standard as set forth in (a) through (i) above, but which, in the opinion of the person performing the tests or inspection as set forth in the report, constitutes a condition which will threaten structural integrity, the tank shall be emptied and remain empty until it is repaired or replaced. Conditions threatening structural integrity may include, but are not limited to, wall thinning, leaks, or extensive corrosion, pitting, or cracking.

### SUBCHAPTER 3: TRANSMISSION PIPELINES

#### 7:1E-3.2 Registration of transmission pipelines

(a) By February 1, 1992, and by each February 1 at five year intervals thereafter, the owner or operator of a transmission pipeline shall submit the following information to the Department, on forms provided by the Department:

1. (No change.)

2. The name or designation of the transmission pipeline, and the name, title and telephone number of a contact person for the transmission pipeline;

[2.]3. (No change in text.)

[3.]4. The storage capacity and location, including street address and municipality, of any facility;

[4.]5. A description of the hazardous substances, including maximum quantities of each substance stored at any one time, which are stored, held, handled, transferred or transported by the facility;

6. The name and address, including street address and municipality, of all facilities served by the transmission pipeline;

[5.]7. (No change in text.)

[6.]8. An accurate map or maps, in the format prescribed in N.J.A.C. 7:1E-4.10(c), showing the location of each of the owner or operator's pipeline facilities, storage areas, transfer areas, or other structures in or on which hazardous substances are stored or handled, [the geographical features of the surrounding area] and the location at which the pipeline [facility]

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enters or leaves the State. [Those maps which are currently maintained pursuant to regulations of the U.S. Department of Transportation are sufficiently accurate];

Recodify existing 7. - 8. as 9. - 10. (No change in text.)

(b) (No change.)

(c) The information required by (a) or (b) above shall be sent to:

Bureau of [Discharge] Release Prevention  
New Jersey Department of Environmental Protection  
P.O. Box 424  
Trenton, New Jersey 08625-0424  
Attention: Pipeline Registration

7:1E-3.3 Standards

All transmission pipelines shall conform to 49 CFR 195, "Transportation of Hazardous Liquids by Pipeline," and any future supplements and amendments thereto.

7:1E-3.4 Discharge cleanup information

(a) By February 1, 1992, and by each February 1 at five year intervals thereafter, the owner or operator of a transmission pipeline shall submit the following information to the Department at the address specified in N.J.A.C. 7:1E-3.2(c):

1. (No change.)

2. A list of containment and removal equipment and materials to which the transmission pipeline has access through ownership, contract or others means, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communications devices. A copy of all current contracts or agreements between the owner or operator and a discharge cleanup organization for emergency response service shall be included;

3. A list of the trained personnel who are available to operate such equipment and a brief description of their qualifications, and whether personnel are employed by the owner or operator or by a discharge cleanup organization. In lieu of supplying a list of names, the owner or operator may supply a list of job titles of employees who will be assigned to operate containment and removal equipment, and a statement of the minimum qualifications that will be required of each employee so assigned;

4. (No change.)

5. Procedures for determining the recycling or disposal options for hazardous substances or contaminated soil, debris, and so forth gathered during cleanup and removal [operations] activities.

## SUBCHAPTER 4. PLANS

### 7:1E-4.1 Scope

This subchapter establishes the requirements for discharge cleanup and removal activities at major facilities. It prescribes the rules of the Department for information to be submitted [concerning] in discharge prevention, containment and countermeasure plans, and discharge cleanup and removal plans for major facilities. The following rules shall govern the preparation and submission of [discharge prevention, containment and countermeasure plans, and discharge cleanup and removal] such plans.

### 7:1E-4.2 Discharge prevention, containment and countermeasure plans

(a) The owner or operator of a major facility shall:

1. [prepare] Prepare a DPCC plan demonstrating compliance with the standards in N.J.A.C. 7:1E-2[,]; and

2. [shall appoint] Appoint a [response coordinator for each site] facility contact who shall be responsible for insuring compliance with the DPCC plan[, the Act,] and this chapter. The [response coordinator] facility contact shall be responsible for submission of all plans and reports required by this chapter to the Department.

(b) The DPCC plan shall contain the following general information:

1. - 2. (No change.)

3. The name, title, telephone number, and business address of the facility contact;

[3.]4. (No change in text.)

5. If the facility is served by or operates a transmission pipeline or pipelines, the name of the transmission pipeline(s), and the mailing address(es) and the telephone number(s) of its owner or operator;

6. A brief description of the facility, including the types of operations that occur at the facility;

[4.]7. A general site plan[, which accurately reflects the current facility], in the format prescribed in N.J.A.C. 7:1E-4.10[, showing the location of storage tanks, drum storage areas, process buildings, loading or unloading areas, marine transfer areas, and any other structures in or on which hazardous substances are stored or handled, or which are used for the prevention of discharges, and all facility fencing and gates];

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[5.]8. A drainage and land use map, in the format prescribed in N.J.A.C. 7:1E-4.10[, which accurately reflects the current facility and the surrounding area, including the direction of surface water runoff from the site, the location of all major sewers, storm sewers and all watercourses into which the surface water runoff from the facility drains and the location of all supply or monitoring wells];

[6.]9. Topographical maps, in the format prescribed in N.J.A.C. 7:1E-4.10[, covering all surrounding area which could be affected by a discharge from the facility, including environmentally sensitive areas];[ and]

[7.]10. The anticipated date on which the facility will become operational, if the facility is a new one[.]; and

11. A list of discharges that have occurred at the facility in the 36 months preceding the date of the plan submission, including those discharges that were not immediately reported to the Department pursuant to N.J.A.C. 7:1E-5.3(e). The list shall include the substance(s) discharged, the quantity(ies) discharged, the location(s) of the discharge(s), the case number(s) assigned by the Department for those discharges that were reported pursuant to N.J.A.C. 7:1E-5.3(a), and corrective actions taken.

[(c)If the facility has experienced two or more discharge events within the previous 12 months, the DPCC plan shall include a description of each such event, corrective action taken, and plans for preventing recurrences.]

[(d)](c) The DPCC plan shall include, at a minimum, the following technical information, [keyed to the following paragraphs,] in [sequential] the following order or indexed to this order:

1. A description of all aboveground storage [areas] tanks, addressing all standards under N.J.A.C. 7:1E-2.2, including, but not limited to[,];

i. Tank identification, such as name or number, and location;

ii. Material of construction and tank orientation, whether horizontal or vertical;

iii. Tank size and contents, and whether or not the contents are hazardous;

iv. [overflow] Overflow protection measures[,]; and

v. [the] The schedule for integrity testing [and internal visual inspections], pursuant to N.J.A.C. 7:1E-2.16, including at a minimum the date(s) of the last test(s) and inspection(s) and the date(s) of the next test(s) and inspection(s), and the schedule or criteria for scheduling maintenance or reconstruction[. This description must also include the size and contents of storage tanks, drum storage areas, and all other storage areas];

2. A description of underground storage tanks, addressing all standards under

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N.J.A.C. 7:1E-2.2, including, but not limited to:

- i. Location and identification, such as name or number; and
- ii. Tank size and contents, and whether or not the contents are hazardous;

3. A description of all other storage, not covered by (c)1 or 2 above, addressing all standards under N.J.A.C. 7:1E-2.2, including, but not limited to:

- i. Location and identification, such as name or number;
- ii. The type and size of containers; and
- iii. The substances stored and whether or not they are hazardous;

[2]4. A description of any tank car or tank truck loading/unloading area, addressing all standards under N.J.A.C. 7:1E-2.3, [and] including, but limited to:

- i. Location and identification, such as name or number;
- ii. [the] The size of the largest compartment in any tank car or tank truck utilizing the area; and
- iii. [the hazardous]The substances loaded or unloaded;

[3]5. A description of [the marking of] in-facility pipes, addressing all standards under N.J.A.C. 7:1E-2.4, including, but not limited to:

- i. Location and identification, such as name or number;
- ii. The marking system used;
- iii. Any product-sensitive leak detection devices in use on buried piping;
- iv. [a description of any] Any maintenance and repair program for buried pipes, with the testing schedule, including the date(s) of the last test(s) and inspection(s) and the date(s) of the next scheduled test(s) and inspection(s); and
- v. [procedures] Procedures for minimizing the chance of a vehicular collision with overhead pipes[, pursuant to N.J.A.C. 7:1E-2.4];

6. A description of process areas, addressing all standards under N.J.A.C. 7:1E-2.5, including, but not limited to:

- i. Location and identification; and

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ii. The largest vessel or maximum volumetric flow rate of hazardous substances in the area;

[4]7. A description of all secondary containment or diversion systems, addressing all standards under N.J.A.C. 7:1E-2.6, including, but not limited to, their capacity and materials of construction [and including those utilized for process areas, pursuant to N.J.A.C. 7:1E-2.6]. This description can be included with the information required pursuant to (d)1, [and] 2, 3, 4, 5 and 6 above, as appropriate;

[5.]8. (No change in text.)

[6.]9. A description of any flood hazard areas within the facility's boundaries, and any measures implemented to protect hazardous substances from flood waters and washout, pursuant to N.J.A.C. 7:1E-2.9;

[7.]10. A description of all [leak detection or] visual inspection and monitoring procedures, pursuant to N.J.A.C. 7:1E-2.10;

[8.]11. (No change in text.)

[9.]12. [An outline] A description of the personnel training program, including types of training given, time periods required for various phases of training, and training procedures, and procedures for instructing of contractors, pursuant to N.J.A.C. 7:1E-2.12;

[10.]13. A description of the physical security measures, including lighting, at the facility, pursuant to N.J.A.C. 7:1E-2.13;

[11.]14. A [catalog list] current index of all standard operating procedures that have been written pursuant to N.J.A.C. 7:1E-2.14; and

[12.]15. (No change in text.)

(e) The DPCC plan [shall] may include a schedule, to be approved by the Department, for upgrading any equipment or those portions of the facility that existed prior to the submission of the owner or operator's first DPCC plan to the Department, to meet the requirements of N.J.A.C. 7:1E-2, excluding N.J.A.C. 7:1E-2.2(a)4[, 5, 6] and [7]2.16. All equipment and those portions of the facility installed after the first approval of a DPCC plan must meet all applicable standards in these rules.

[(f) The owner or operator shall maintain and make available for Department review, at either the facility or the Department's offices at the discretion of the Department, the following updated documentation including a catalog list of all such documents showing title, identification number and date of issue:

1. Facility inventory of hazardous substances, as defined in N.J.A.C. 7:1E-1.6;

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2. Updated process flow and piping and instrumentation diagrams;
3. Standard operating procedures;
4. Facility emergency response plan;
5. Job classifications and job descriptions; and
6. Housekeeping and maintenance program procedures and records.]

7:1E-4.3 Discharge cleanup and removal plan

(a) The owner or operator of a major facility shall appoint a response coordinator.

[(a)](b) The owner or operator of a major facility shall prepare and implement a DCR plan containing, at a minimum, the following information, in the following order or indexed to this order:

1. - 3. (No change.)
4. Provisions for an annual simulated emergency response drill[s] to determine the currency and adequacy of, and personnel familiarity with, the emergency response action plan and this DCR plan. This drill shall be critiqued in writing and that critique retained pursuant to the recordkeeping requirements at N.J.A.C. 7:1E-2.15. The drill shall be based on different scenarios from year to year in order to address all anticipated emergency response scenarios at the facility and cannot be of the same type, such as a table top drill, in consecutive years. When possible, this annual drill can be combined with other required emergency response drills;
5. A list of types and minimum quantities of containment and removal equipment and materials to which the facility has access through ownership, contract or others means, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communications devices, and indicating if access is through ownership, contract or other means. Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization, adequate equipment to clean up any discharge that may occur at the facility. A copy of all current contracts or agreements between the owner or operator and a discharge cleanup organization for emergency response service shall be maintained at the facility or with the facility's registered agent, as appropriate, and shall be available to the Department for review upon request;
6. A list of the trained personnel who are available to operate such equipment and a brief description of their qualifications, and whether personnel are employed at the facility or by a discharge cleanup organization. Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization, adequate personnel to clean up any discharge that may occur at the facility. In lieu of supplying a list of names, the owner or operator may supply a list of job titles of employees who will be assigned to operate containment and removal equipment, and a statement of the minimum qualifications that will be required of

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each employee so assigned;

[7. A deployment plan for personnel and equipment that includes:]

[i.]7. On-site response measures, including response to leaks, and the types and sizes of discharges that facility personnel will respond to;

8. Off-site response measures, including:

[ii.]i. Identification of and protection and mitigation measures for off-site residential, environmentally sensitive, or other areas prioritized based on use, seasonal sensitivity, or other relevant factors. The mapping required by N.J.A.C. 7:1E-4.2(b)[5]8 and [6]9 may serve as the identification;

[iii.]ii. (No change in text.)

[iv.]iii. A certification pursuant to N.J.A.C. 7:1E-4.11(f), by a marine biologist or aquatic biologist or ecologist or freshwater equivalent and ornithologist acceptable to the Department;

[8.]9. Procedures for determining the recycling or disposal options for hazardous substances or contaminated soil, debris, and so forth, gathered during housekeeping or cleanup and removal [operations] activities;

[9.]10. (No change in text.)

[10.]11. [A copy of all] All financial responsibility documents required pursuant to N.J.A.C. 7:1E-4.4 in accordance with N.J.A.C. 7:1E-4.4(e) or Appendix B.

[(b) Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization, adequate equipment and personnel to clean up any discharge that occurs at the facility.]

7:1E-4.4 Financial responsibility

(a) The owner or operator of a major facility shall demonstrate financial responsibility for cleanup and removal activities[, and for the removal of any abandoned structure owned or operated, as the case may be, by the owner or operator].

(b) - (f) (No change.)

(g) To pass the financial test of self-insurance, the owner or operator or guarantor must meet the criteria of (g)1, 2, 3 or 4 below based on the year-end financial statements of the latest completed [fiscal] financial reporting year. [and] The owner or operator must maintain onsite a letter signed by the chief financial officer worded as specified in Appendix B, incorporated herein by reference. This letter shall be updated within 120 days of the close of each financial

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reporting year.

1. The owner or operator or guarantor must have a tangible net worth of at least \$10 million, and the owner or operator or guarantor must:

i. Have a tangible net worth of at least 10 times the required aggregate amount in (b) above plus any other liability coverage for which the owner or operator is using [the] a financial test to demonstrate financial responsibility to the State or EPA;

ii. Either file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, [or] the Rural [Electrification Administration] Utilities Services, or the Board of Public Utilities; or report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A; and

iii. Have year-end financial statements which, if independently audited, do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification;

2. The owner or operator or guarantor must have a bond rating of AAA, AA, A or BBB [from] as issued by Standard and Poor's, or Aaa, Aa, A or Baa [from] as issued by Moody's, or net working capital of at least six times the required aggregate amount in (b) above plus any other liability coverage being provided by a financial test, and the owner or operator, or the guarantor, must have:

i. (No change.)

ii. U.S. assets that are at least 90 percent of total assets or at least six times the required aggregate amount in (b) above plus any other liability coverage being provided by a financial test; and

iii. Fiscal year-end financial statements filed with U.S. Securities and Exchange Commission, Energy Information Administration, [or] the Rural [Electrification Administration] Utilities Services, or the Board of Public Utilities, or [examined] a special report by an independent certified public accountant [accompanied by the accountant's report of the examination] stating that the data specified in the letter from the chief financial officer have been compared to the data in the latest financial statements and that no matters have come to his or her attention which cause him or her to believe that the data should be adjusted;

3. If the owner or operator is a local government and wishes to use a bond rating as the basis of the financial test, said government must have a bond rating of AAA, AA, A or BBB from Standard and Poor's, or Aaa, Aa, A or Baa from Moody's on outstanding issues. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Standard and Poor's and Moody's, the lowest rating must be used to determine eligibility, and a copy of the bond rating published within the last 12 months shall be maintained. The owner or operator must maintain onsite a letter signed by the chief financial officer worded as

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specified in Appendix B, incorporated herein by reference. The local government shall also:

i. (No change.)

ii. If other than a general purpose local government, have a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues. Bonds that are backed by credit enhancement other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding; or

4. If the owner or operator is a local government, said government must have the ability and authority to assess and levy taxes or to freely establish fees and charges. The local government's year-end financial statements, if independently audited, shall not include an adverse auditor's opinion or a disclaimer of opinion. The local government shall not have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade. The owner or operator must maintain onsite a letter signed by the chief financial officer worded as specified in Appendix B, incorporated herein by reference. The following information shall be available, as shown in the year-end financial statements for the latest completed fiscal year:

i. - vi. (No change.)

(h) If an owner or operator or guarantor using the financial test [of self-insurance] to provide financial responsibility finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(i) - (p) (No change.)

7:1E-4.5 Preparation and submission of plans

(a) - (c) (No change.)

(d) The owner or operator of a new major facility or of an existing facility that plans to increase its storage capacity to such an extent that it meets the definition of a major facility shall submit a DPCC plan and a DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at the address in (h) below at least 180 days prior to the anticipated operational date of the facility as a major facility[, and shall]. The owner or operator shall receive approval and implement the approved plans prior to operating the facility as a major facility.

[(e) If plans call for facilities, procedures, methods or equipment not yet fully operational, these items shall be listed separately and a schedule for installation and operational status shall be provided.]

[(f)](e) (No change in text.)

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[(g)](f) Unless time is extended by the Department for good cause shown, such additional information as outlined in this subchapter as the Department may require shall be submitted within 30 days of receipt of the Department's request. If additional information requested by the Department is not submitted within the 30-day period, the Department may deny approval of the plan without prejudice to resubmission.

[(h)](g) One copy of a DPCC [or] and DCR plan, which must include an original certification pursuant to N.J.A.C. 7:1E-4.11, shall be submitted to the Department for approval. Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved DPCC [or] and DCR plan shall be submitted to the Department. Copies shall be sent to:

Bureau of [Discharge] Release Prevention  
New Jersey Department of Environmental Protection  
P.O. Box 424  
Trenton, New Jersey 08625-0424  
Attention: Plan Submittal

#### 7:1E-4.6 Approval and conditional approval of plans

(a) The Department shall act to approve or deny approval of a complete submission of a DPCC [or] and DCR plan, pursuant to N.J.A.C. 7:1E-4.5, within 180 days of receipt[, or no later than the date on which the new major facility is issued treatment works approvals pursuant to N.J.A.C. 7:14A-22 which are required as conditions precedent to lawful operation of the facility, whichever is longer].

[(b)] If the Department finds a plan to be incomplete, the owner or operator shall have 30 days within which to submit information to make the plan complete, unless the Department extends the time for good cause shown.]

[(c)](b) The Department may conditionally approve a plan if the map[s] required pursuant to N.J.A.C. 7:1E-4.2(b)7 is not in the format prescribed by N.J.A.C. 7:1E-4.10(c) or if the maps required pursuant to N.J.A.C. 7:1E-4.2(b)[5]8 or [6]9 are incomplete or are not in the format prescribed by N.J.A.C. 7:1E-4.10. The Department shall grant such conditional approval if the Department determines that:

1. - 2. (No change.)

Recodify existing (d) - (g) as (c) - (f) (No change in text.)

[(h)] The Department may inspect major facilities prior to approving DPCC or DCR plans and at reasonable intervals thereafter in order to ascertain compliance with the plans.]

[(i)](g) (No change in text.)

#### 7:1E-4.7 Denial or revocation of approval of [DPCC or DCR] plans [or amendments]

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(a) The Department shall state in writing its reasons for denying or revoking approval of any DPCC [or] and DCR plans [or amendments thereto].

(b) The Department may revoke its approval of a DPCC [or] and DCR plan if the owner or operator fails to comply with an approved schedule for bringing the [facility's plan] facility into compliance with the requirements of these rules, or submits to the Department false or willfully misleading information.

(c) (No change.)

(d) The owner or operator of a major facility who is aggrieved by any decision of the Department to deny or revoke approval of a DPCC [or] and DCR plan [or amendment thereto] has the right to a hearing before the Department, pursuant to the procedure outlined in N.J.A.C. 7:1E-6.

#### 7:1E-4.8 Amendment of plans [by owners or operators]

(a) Written notice of proposed new construction or installation, substantial modification or replacement of any aboveground storage tank, other aboveground enclosed storage space, any appurtenant structures, or leak detection or other monitoring, prevention, or safety systems or devices shall be provided to the Department at the address in N.J.A.C. 7:1E-4.5(h) at least 60 days prior to the commencement of construction, installation or modification. The notice shall contain information on what new construction, installation, substantial modification or replacement is being proposed along with a preliminary schedule for the proposed work. This provision does not apply to construction, installation or modification contained in a schedule for upgrading in an approved DPCC plan.

(b) Within 30 days of any [change] modification that necessitates a change in a plan, except those delineated in (e) below, the owner or operator of a major facility having an approved DPCC [or] and DCR plan shall [report to the Department at the address in N.J.A.C. 7:1E-4.5(h) any change in facility design, construction, operation or maintenance which will materially affect the facility's potential for discharges of hazardous substances or the substance of existing plans. The owner or operator shall] amend the DPCC [or] and DCR plan to reflect such changes, and shall certify the amendments pursuant to N.J.A.C. 7:1E-4.11, prior to submission to the Department for approval. The amendment shall consist of only those pages of the DPCC and DCR plan requiring changes.

(c) The Department shall act to approve or deny approval of an [administratively complete proposed] amendment[s] within 60 days of receipt of an administratively complete submission.

(d) [Amendments to DPCC or DCR plans shall be implemented promptly upon approval by the Department.] Within 30 days of receipt of approval, a second copy of the approved amendment shall be submitted to the Department.

(e) (No change.)

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#### 7:1E-4.9 Plan renewals

(a) At least once every three years following approval or conditional approval of the DPCC and DCR plans, the owner or operator shall renew the DPCC and DCR plans. One copy of the renewal shall be submitted to the Department at the address in N.J.A.C. 7:1E-4.5(h) at least 180 days prior to the expiration date of the DPCC and DCR plans.

(b) [One copy of the renewal shall be submitted to the Department at the address in N.J.A.C. 7:1E-4.5(h) at least 180 days prior to the expiration date of the DPCC and DCR plans. It] The plan renewal shall consist of revised plans or a certification that the existing plans on file with the Department are current, including all exemptions pursuant to N.J.A.C. 7:1E-4.10(g) and alternative measures pursuant to N.J.A.C. 7:1E-1.11(e). A revised plan may be required at the time of renewal so as to incorporate into the plan all amendments adopted since the approval, conditional approval, or last renewal.

(c) Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved renewal shall be submitted to the Department.

[(c)](d) (No change in text.)

(d) General site plans and drainage and land use maps shall be revised to meet the digital standards contained in N.J.A.C. 7:1E-4.10 in accordance with the schedule set forth below:

1. Effective with renewal submittals required after November 15, 2000, all general site plans shall meet the standards in N.J.A.C. 7:1E-4.10.

2. Effective with renewal submittals required after January 1, 2003, all drainage and land use maps shall meet the standards contained in N.J.A.C. 7:1E-4.10.

(e) Renewals shall be accompanied by a list of discharges that have occurred at the facility since the plan approval, conditional approval, or renewal, whether those discharges were immediately reported to the Department pursuant to N.J.A.C. 7:1E-5.3 or not, consisting of the substance(s) discharged, the quantity(ies) discharged, the location(s) of the discharge(s) and the case number(s) for those discharges that were reported.]

[(f)](e) (No change in text.)

[(g)](f) Any DPCC or DCR plan which is not [renewed] submitted for renewal in accordance with (a) above within three years of the date of approval, conditional approval, or last renewal, shall be considered expired.

#### 7:1E-4.10 Mapping criteria

(a) General site plans, required pursuant to N.J.A.C. 7:1E-4.2(b)[4]Z, shall [be]:

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1. Accurately reflect the current facility, including the property boundary, delineating and identifying, by labeling or other means, storage tanks, small container storage areas, process buildings, loading or unloading areas, marine transfer areas, any other structures, and all facility fencing and gates;

[1.]2. [Drawn]Be drawn to a scale in the range of one inch equals 30 to one inch equals 200 feet, such that it is sufficient to delineate all items to be mapped and is appropriate for the size of the facility. If labels or other items on the general site plan are illegible, the scale should be changed or inserts should be used; and

[2.]3. [Certified]Be certified by a licensed land surveyor in accordance with N.J.S.A. 45:8-27 et seq., and N.J.A.C. 13:40.

(b) Drainage and land use maps, required pursuant to N.J.A.C. 7:1E-4.2(b)[5]8, shall include the land area within 1,000 feet of the facility's boundary and shall:

1. Employ current [commercially available mylar orthophoto basemaps (quarterquads) or other comparable current] basemaps at a scale equal to or larger than [1:12,000, such as 1:9,600] one inch equals 600 feet, and appropriate for the size of the facility;

2. Show the facility boundary;

[2.]3. [Include the land area within 1,000 feet from the major facility's boundary. This boundary includes all lands owned or used by the owner or operator at a given location. The] Delineate and label the following categories of land use [shall be included]:

- i. (No change.)
- ii. [Transportation/communication/utilities]Educational institutions;
- iii. Health institutions;
- iv. Commercial and services;
- v. Industrial;
- vi. Transportation, communication and utilities;
- ~~iii.]vii.~~ (No change text.)
- ~~iv.~~ Industrial;]
- viii. Other urban lands not specified in (b)3i through vii above;
- ~~v.]ix.~~ (No change in text.)
- ~~vi.~~ Schools;
- vii. Hospitals and nursing care facilities;
- viii. Other urban lands not specified in (b)1i through vii above;
- ix. River channels;]
- [x. Lakes and ponds;]
- x. Streams and canals;
- xi. [Reservoirs]Lakes and reservoirs;
- xii. Bays, [and] estuaries and other tidal waters;
- ~~xiii.~~ Cranberry bogs;]

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Recodify existing xiv. - xxxii. as xiii. - xxi. (No change in text.)  
[xxiii.]xxii. Brushland and shrubland; and

[3.]4. Locate and label all arterial and collector sewers, storm sewers, catchment or containment systems or basins, diversion systems, and watercourses into which surface water run-off from the facility drains[; and].

[4. Locate and label all water supply wells and wellhead protection areas which have been delineated by the Department within 1,000 feet from the major facility's boundary, and monitoring wells owned or operated by the owner or operator at the facility.]

(c) [In addition to (a) and (b) above, general] General site plans[,] and drainage and land use maps, in addition to (a) and (b) above, and transmission pipeline maps required pursuant to N.J.A.C. 7:1E-3.2(a)8 shall meet:

1. (No change.)

2. All of the following:

i. Be prepared in a digital environment that is compatible with the Department's Geographic Information System. Compatible digital formats [are delineated in N.J.A.C. 7:1D, Appendix A] include AutoCAD, Arc View, and Arc GIS;

ii. [Contain at least four widely spaced reference points (tics) for which the geographic coordinates are known] Be projected in New Jersey State Plane feet (North American Datum 1983); and

iii. Contain a legend block stating the name and affiliation of the preparer of the map, the name and location of the facility, the scale or scales employed, [and] the sources of the data used, and the date of preparation of the map.

(d) Topographical maps showing environmentally sensitive areas, required pursuant to N.J.A.C. 7:1E-4.2(b)[6]9, shall:

1. Employ current [commercially available mylar orthophoto basemaps (quarterquads) or other comparable current] basemaps at a scale equal to or larger than [1:12,000, such as 1:9,6000] one inch equals 1,000 feet;

2. [Make all delineations on stable base mylar overlays registered to the basemaps, if required for clarity]Clearly show the location of the facility;

3. (No change.)

[4. Have delineations made with a standard drafting or technical pen producing a line width of 0.01 inches, provided, however, that a greater line width of up to 0.05 inches may be used when necessary for emphasis. In all cases, the drafted lines and points shall bisect the

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feature as seen on the basemap and shall be accurate to within 50 feet of its location on the ground;]

[5.]4. (No change in text.)

[6.]5. Contain a legend block stating the name and affiliation of the preparer of the map, the name of the facility, the scale or scales employed, [and] the sources of the data used, and the date of preparation;

[7.]6. Cover that area in which the major facility is located which is downgradient or topographically lower than the highest land point within the major facility and which could be affected by a discharge as delineated in (d)[8]7 below;

[8.]7. (No change in text.)

[9.]8. [Include, at a minimum,] Delineate and label the [following types of] environmentally sensitive areas identified in N.J.A.C. 7:1E-1.8[:];

i. Environmentally sensitive areas for which information concerning the existence and location of the area, sufficient to allow for the location of the area on the topographical map, is available from any of the following:

(1) The Department;

(2) Other government agencies and published sources listed by the Department, which lists are available from the Department upon request; or

(3) A review and interpretation of the photo basemap;

ii. Without limiting the generality of the foregoing, the Department has determined that information from the sources listed in (d)9i(1), (2) and (3) above is available for wetlands and wetland transition areas; bay island and barrier island corridors; dunes; and areas designated as wild, scenic, recreational or developed recreational rivers; and

iii. The environmentally sensitive areas listed in (d)9iii(1) through (4) below:

(1) Of the surface waters listed in N.J.A.C. 7:1E-1.8(a)1, large rivers, medium rivers, streams, creeks, ponds, lakes and canals;

(2) Of the sources of water supply listed in N.J.A.C. 7:1E-1.8(a)2, intakes and wells;

(3) Beaches, as listed in N.J.A.C. 7:1E-1.8(a)4;

(4) Of the breeding areas and migratory stopover areas listed in N.J.A.C. 7:1E-1.8(a)7 and 8, those which are known to the ornithologist who certifies the DCR

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plan under N.J.A.C. 7:1E-4.11(f).]

(e) All maps required by N.J.A.C. 7:1E-4.2(b)[4]7 and [5]8 shall be submitted in digital and paper copy form. The digital and one paper copy shall accompany the initial plan submission for approval.

(f) All maps required by N.J.A.C. 7:1E-4.2(b)[6]9 shall be submitted in paper [or mylar] form. One paper [or mylar] copy shall accompany the initial plan submission for approval. [The paper or mylar copy may be accompanied by the submission of the mapped information in digital form, at the option of the person required to submit the map.]

(g) An owner or operator may apply for an exemption, valid until the plan must be renewed, from compliance with the mapping criteria set forth above.

1. - 4. (No change.)

#### 7:1E-4.11 Certifications

(a) Any person who submits summary test results, a plan, plan amendment, plan renewal, or confirmation report to the Department shall include, as an integral part of the summary test results, plan, plan amendment, plan renewal, or confirmation report, the following certification, signed by the highest ranking individual with overall responsibility for the information contained in the certified documents:

"I certify under penalty of law that the information provided in this document is, to the best of my knowledge, true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

The certification must contain a signature block consisting of a signature, the signatory's typed name, title, company name, and the date of the signature.

(b) In addition to the certification in (a) above, any person who submits a plan, plan amendment, plan renewal or transmission pipeline registration to the Department shall include, as an integral part of the plan, plan amendment, plan renewal or transmission pipeline registration, the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this plan 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."

The certification must contain a signature block consisting of a signature, the signatory's typed name, title, company name, and the date of the signature.

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(c) The additional certification in (b) above shall be signed by the ranking official[, as follows:

1. For a corporation, a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
3. For a municipality, the mayor or other official authorized by the local governing body to bind the municipality;
4. For a county, the county executive or other official authorized by the board of chosen freeholders to bind the county;
5. For the State, the agency head or person designated by the agency head; or
6. For any other public agency, a principal executive officer or other official authorized by the public agency's governing body to bind the public agency.] at a level of authority to commit the necessary resources to fully implement the plan, plan amendment, plan renewal or transmission pipeline registration.

(d) (No change.)

(e) Any person who submits a DPCC plan[, plan amendment] or plan renewal, or a plan amendment for a change requiring the application of sound engineering practice, shall include a certification from a professional engineer licensed pursuant to N.J.S.A. 45:8-27 *et seq.* that attests that he or she has reviewed the plan and that it complies with all applicable Departmental requirements and has been prepared in accordance with sound engineering practices.

(f) (No change.)

## SUBCHAPTER 5: DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

### 7:1E-5.3 Discharge notification

(a) - (b) (No change.)

(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. - 4. (No change.)
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]

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and whether the discharge is continuing, intermittent or terminated;

6. - 7. (No change.)

(d) A copy of the requirements of (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 of any onshore facility at any transfer areas and the operations center of any such facility].

(e) [For the purposes of this section, a] A discharge which is not required to be reported under any other State or federal statute, rule or regulation is not required to be reported to the Department pursuant to (a) above provided the discharge meets the conditions described in (e)1 or 3 below:

1. The discharge occurs at a facility for which a DPCC and DCR plan pursuant to N.J.A.C. 7:1E-4.6, or a Risk Management Plan pursuant to N.J.A.C. 7:31, or an Emergency Contingency Plan pursuant to N.J.A.C. 7:26-12 or a Facility Response Plan pursuant to 40 CFR 112 has been approved; and

i. - ii. (No change.)

iii. The owner or operator of the facility documents his or her actions in accordance with N.J.A.C. 7:26E, and [maintains and makes available for Department review at either the facility or the Department's offices at the discretion of the Department, such records for three years from the date of the discharge] maintains records in accordance with N.J.A.C. 7:1E-2.15.

2. - 3. (No change.)

(f) (No change.)

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall:

1. (No change.)

2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by either:

[i. Remediating the discharge pursuant to the Technical Rules for Site Remediation, N.J.A.C. 7:26E; or]

[ii.]i. Following [the action plan in] the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; [and] or

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ii. Remediating the discharge pursuant to the Technical Rules for Site Remediation, N.J.A.C. 7:26E; and

3. (No change.)

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

(c) - (d) (No change.)

7:1E-5.8 Confirmation report

(a) - (b) (No change.)

(c) Any person required to submit a confirmation report pursuant to (a) above shall include the following in the confirmation report:

1. - 3. (No change.)

4. The Communications Center number, assigned by the Department when the discharge was reported pursuant to N.J.A.C. 7:1E-5.3(a);

[4.]5. (No change in text.)

[5.]6. The location of the discharge, as follows:

i. For discharge from sites located on land, the name of the site, the street address, the tax lot and block, the municipality, the county, and [comma-delimited State Plane coordinates of the point of discharge] a site map identifying the point at which the discharge occurred and the surrounding area;

ii. For discharges on, under or into water, the name of the water body, and [comma-delimited State Plane coordinates of the place the discharge originated] a map identifying the source of the discharge; and

iii. (No change.)

Recodify existing 6. - 7. as 7. - 8. (No change in text.)

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[8.]9. The following chronology:

- i. The date and time at which the discharge began[.];
- ii. [the] The date and time at which the discharge was discovered[.];
- iii. [the] The date and time at which the discharge ended[.]; and
- iv. [the] The date and time at which the Department was notified pursuant to N.J.A.C. 7:1E-5.3;

Recodify existing 9. - 11. as 10. - 12. (No change in text.)

[12. A description of samples taken at or around the site of the discharge, whether before, during or after any containment, clean up or removal. The samples shall be taken and analyzed in accordance with N.J.A.C. 7:26E-2. Records of the results shall be kept on-site and made available for Department review, at either the facility or the Department's offices at the discretion of the Department;

13. A certification stating that financial responsibility demonstrated pursuant to N.J.A.C. 7:1E-4.4 and submitted to the Department pursuant to N.J.A.C. 7:1E-4.3(a)10 is in full force and effect;]

Recodify existing 14. - 16. as 13. - 15. (No change in text.)

(d) (No change.)

(e) 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] Release Prevention  
New Jersey Department of Environmental Protection  
P.O. Box 424  
Trenton, New Jersey 08625-0424  
Attention: Discharge Confirmation Report

(f) Any person required to submit a written report pursuant to N.J.A.C. 7:1E-5.2 shall submit the report to:

Site Remediation [Program]and Waste Management  
[Discharge]Emergency Planning and Response Element  
New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 028  
Trenton, New Jersey 08625-0028

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Attention: Discharge Confirmation Report

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, in accordance with N.J.A.C. 7:1E-4.8, 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.]

SUBCHAPTER 6: CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.1 Scope

This subchapter shall govern the Department's assessment of civil administrative penalties for violation of [any] provisions of the Act, including [any] rules, regulations, plans, information requests, access requests, orders or directives promulgated or issued pursuant to the Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment, an administrative order, conditions of approval for any plan or amendment to a plan, or a denial or revocation of approval of a plan or amendment to a plan required under [the Act] this chapter.

7:1E-6.3 Procedures for issuance of administrative orders and assessment, settlement and payment of civil administrative penalties

(a) (No change.)

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty becomes a Final Order, as follows:

1. - 2. (No change.)

3. If the Department denies the hearing request pursuant to N.J.A.C. 7:1E-6.4(c), a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or

4. (No change.)

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(c) - (i) (No change.)

#### 7:1E-6.4 Procedures for requesting and conducting adjudicatory hearings

(a) (No change.)

(b) To request an adjudicatory hearing to contest an administrative order or notice of civil administrative penalty assessment issued pursuant to the Act, or conditions of approval for any plan, or amendment to a plan, or the denial or revocation of approval of any plan or amendment to a plan required pursuant to the Act, the violator shall submit the following information in writing, on forms provided by the Department, to the Department [of] at the addresses in (e) below:

1. The name, address, and telephone number of the [violator] person requesting the hearing and [its] his or her authorized representative;

2. [The violator's defenses to each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment stated in short and plain terms] A copy of the administrative order or notice of civil administrative penalty assessment, or the approval or the denial or revocation of approval of any plan or amendment and a list of all issues being appealed;

3. (No change.)

4. The violator's defenses to each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment, or reasons for denial or revocation of approval, stated in short and plain terms;

[4.]5. (No change in text.)

[5.]6. An estimate of the time required for the hearing (in days and/or hours); [and]

[6.]7. A request, if necessary, for a barrier-free hearing location for physically disabled persons[.]; and

8. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of the hearing request to the Office of Administrative Law.

(c) - (d) (No change.)

(e) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, 4th Floor

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P.O. Box 402  
Trenton, New Jersey 08625-0402  
Attention: Adjudicatory Hearing Request

With a copy sent to:

Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
22 South Clinton Avenue, 3rd floor  
P.O. Box 424  
Trenton, New Jersey 08625-0424  
Attention: Adjudicatory Hearing Request

7:1E-6.6 Civil administrative penalty for submitting inaccurate or false information

(a) - (b) (No change.)

(c) Each day from the day that the violator knew or had reason to know that he or she had submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

[(c)](d) (No change in text.)

(e) A violation under this section is non-minor and therefore not subject to a grace period.

7:1E-6.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) (No change.)

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, vessel, or place, except private residences, by an authorized Department representative, shall be an additional, separate and distinct offense.

(c) (No change.)

(d) A violation under this section is non-minor and therefore not subject to a grace period.

7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) Civil administrative penalties for offenses described in (c)2 [and 4] below shall not be assessed until the time allotted under the applicable schedule for upgrading approved by the Department has expired.

(b) (No change.)

(c) The Department shall determine the amount of the civil administrative penalty for

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offenses described in this section on the basis of the provision violated and the frequency of the violation. Violations identified as minor or non-minor in accordance with N.J.S.A. 13:1D-125 *et seq.* are set forth in this section. The Department will provide a grace period for any violation identified as minor, in accordance with N.J.A.C. 7:1E-6.9. The number of each of the following paragraphs corresponds to the number of the corresponding subchapter in N.J.A.C. 7:1E.

1. The violations of N.J.A.C. 7:1E-1, General Provisions, and the civil administrative penalties for each violation are as set forth in the following table, unless modified by (d) below. In no case shall the assessed penalty be less than zero or more than the statutory limit.

...

The base penalty shall be reduced or increased by applying the following factors<sup>1</sup>:

[Cause of Discharge

|                                 |                            |
|---------------------------------|----------------------------|
| Intentional or Gross Negligence | -- 50% increase from base  |
| Accidental                      | -- 50% reduction from base |
| Homeowner                       | -- 75% reduction from base |

Initiate Response to Discharge (from the time the discharge was detected or should have been detected):

|                   |                             |
|-------------------|-----------------------------|
| Over 2 hours      | -- 20% increase from base   |
| Within 2 hours    | -- No change from base      |
| Within 1 hour     | -- 20% reduction from base  |
| Within 15 minutes | -- 40% reduction from base] |

Area of Impact:

|   |                            |
|---|----------------------------|
| Into waters of the State  | -- 30% increase from base  |
| Off the facility but not into waters of the State                       | -- No change from base     |
| Contained on the facility [but] <u>and</u> not into waters of the State | -- 30% reduction from base |

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2. The violations of N.J.A.C. 7:1E-2, Prevention and Control of Discharges at Major Facilities, and the civil administrative penalty amounts for each violation are as set forth in the following table, unless revised pursuant to (d) below:

| <u>Category Of Offense</u> <sup>2</sup>  | <u>Citation</u> | <u>First Offense</u>                 | <u>Second Offense</u> | <u>Third Or Subsequent Offense</u> | <u>Minor</u> <sup>3</sup> | <u>Minor Days</u> <sup>4</sup> |
|--|-----------------|--------------------------------------|-----------------------|------------------------------------|---------------------------|--------------------------------|
| ...  |                 |                                      |                       |                                    |                           |                                |
| [Failure to perform initial integrity testing or static head product testing<br>SIZE OF TANK (gallons) | 2.2(a)4         | Penalty assessed on a per tank basis |                       |                                    |                           | NM                             |
| 2,001-10,000   |                 | \$ 250                               | \$ 500                | \$ 1,250                           |                           |                                |
| 10,001-20,000  |                 | \$ 500                               | \$ 1,000              | \$ 2,500                           |                           |                                |
| 20,001-50,000  |                 | \$ 1,250                             | \$ 2,500              | \$ 6,250                           |                           |                                |
| 50,001-100,000   |                 | \$ 2,500                             | \$ 5,000              | \$12,500                           |                           |                                |
| 100,001-200,000  |                 | \$ 5,000                             | \$10,000              | \$25,000                           |                           |                                |
| 200,001-300,000  |                 | \$ 7,500                             | \$15,000              | \$37,500                           |                           |                                |
| 300,001 and greater  |                 | \$10,000                             | \$20,000              | \$50,000                           |                           |                                |
| Failure to perform subsequent integrity testing  | 2.2(a)4         | \$ 2,000                             | \$ 4,000              | \$10,000                           |                           | NM                             |
|  |                 | Penalty assessed on a per tank basis |                       |                                    |                           |                                |
| Failure to perform internal inspections  | 2.2(a)4         | \$ 2,000                             | \$ 4,000              | \$10,000                           |                           | NM                             |
|  |                 | Penalty assessed on a per tank basis |                       |                                    |                           |                                |
| Failure to submit summary test results   | 2.2(a)5         | \$ 1,000                             | \$ 2,000              | \$ 5,000                           | M                         | 30                             |
| Failure to perform initial integrity testing on a new tank<br>SIZE OF TANK (gallons)                   | 2.2(a)6         | Penalty assessed on a per tank basis |                       |                                    |                           | NM                             |
| 2,001-10,000   |                 | \$ 250                               | \$ 500                | \$ 1,250                           |                           |                                |
| 10,001-20,000  |                 | \$ 500                               | \$ 1,000              | \$ 2,500                           |                           |                                |
| 20,001-50,000  |                 | \$ 1,250                             | \$ 2,500              | \$ 6,250                           |                           |                                |

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|---|---------------|-----------------|-----------------|-----------------|--|-----------|
| 50,001-100,000  |               | \$ 2,500        | \$ 5,000        | \$12,500        |  |           |
| 100,001-200,000   |               | \$ 5,000        | \$10,000        | \$25,000        |  |           |
| 200,001-300,000   |               | \$ 7,500        | \$15,000        | \$37,500        |  |           |
| 300,001 and greater   |               | \$10,000        | \$20,000        | \$50,000        |  |           |
| Failure to take tank out of service following a failed integrity test or inspection   | 2.2(a)7       | \$10,000        | \$20,000        | \$50,000        |  | NM]       |
| ...   |               |                 |                 |                 |  |           |
| Failure to equip <u>tote, drum, bag or other</u> storage areas with [adequate] secondary containment                              | 2.2(h)        | \$10,000        | \$20,000        | \$50,000        |  | NM        |
| Failure to equip a tank car or tank truck loading/unloading area with secondary containment                                       | 2.3(a)        | \$10,000        | \$20,000        | \$50,000        |  | NM        |
| Failure to inspect the lowermost drain and all outlets of a tank car or tank truck prior to filling                               | 2.3[(b)](c)   | \$ 1,000        | \$ 2,000        | \$ 5,000        |  | NM        |
| Failure to examine for leakage [during filling] and secure valves on all manifolds of a tank car or tank truck prior to departure | 2.3[(c)](d)   | \$ 1,000        | \$ 2,000        | \$ 5,000        |  | NM        |
| Failure to [provide a physical barrier, brake interlock or similar] <u>utilize a system to prevent premature departure</u>        | 2.3[(d)](e)   | \$ 5,000        | \$10,000        | \$25,000        |  | NM        |
| Failure to attend a tank car [or tank truck]  | 2.3[(e)](f)   | \$ 5,000        | \$10,000        | \$25,000        |  | NM        |
| <u>Failure to attend a tank truck</u>   | <u>2.3(g)</u> | <u>\$ 2,500</u> | <u>\$ 5,000</u> | <u>\$12,500</u> |  | <u>NM</u> |
| Failure to properly mark in-facility pipes  | 2.4(a)        | \$ 5,000        | \$10,000        | \$25,000        |  | M 60      |

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| Failure to double wall or have [adequate] secondary containment and a leak detention device for new buried in-facility pipes        | 2.4(b)         | \$ 5,000        | \$10,000        | \$25,000        | NM        |
| Failure to equip existing in-facility buried pipe with leak detection devices [or implement a maintenance and repair program]       | 2.4(c)1        | \$ 5,000        | \$10,000        | \$25,000        | NM        |
| <u>Failure to implement a maintenance and repair program for existing in-facility buried pipe</u>                                   | <u>2.4(c)2</u> | <u>\$ 5,000</u> | <u>\$10,000</u> | <u>\$25,000</u> | <u>NM</u> |
| Failure to make necessary repairs, upgrades or replacements to exposed in-facility pipe   | 2.4(d)         | \$10,000        | \$20,000        | \$50,000        | NM        |
| Failure to cap, blank-flange or physically remove <u>out-of-service</u> in-facility pipe [removed from service]                     | 2.4(e)         | \$10,000        | \$20,000        | \$50,000        | NM        |
| ...   |                |                 |                 |                 |           |
| Secondary containment is not impermeable [or inspected]   | 2.6(c)3        | \$ 5,000        | \$10,000        | \$25,000        | NM        |
| Hazardous substances can escape to the environment  | 2.6(c)4        | \$ 5,000        | \$10,000        | \$25,000        | NM        |
| [Failure to locate catchment basins, etc. so that they are not subject to flooding] <u>Diversion system cannot handle flow rate</u> | 2.6(c)5        | \$ 5,000        | \$10,000        | \$25,000        | NM        |
| ...   |                |                 |                 |                 |           |
| [Failure to maintain adequate   | 2.6(d)         | \$10,000        | \$20,000        | \$50,000        | NM]       |

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containment devices

...

|  |               |          |          |          |     |
|--|---------------|----------|----------|----------|-----|
| Failure to maintain adequate <u>length of</u> containment devices                      | 2.7(b)        | \$10,000 | \$20,000 | \$50,000 | NM  |
| [Failure to maintain adequate containment devices                                      | 2.7(c)        | \$10,000 | \$20,000 | \$50,000 | NM] |
| Failure to deploy a containment device when required                                   | 2.7[(d)](c)   | \$10,000 | \$20,000 | \$50,000 | NM  |
| Failure to maintain a containment device on standby when required                      | 2.7[(e)](d)   | \$10,000 | \$20,000 | \$50,000 | NM  |
| Failure to properly deploy a containment device  | 2.7[(f)](e)   | \$ 5,000 | \$10,000 | \$25,000 | NM  |
| [Failure to properly deploy a containment device                                       | 2.7(g)        | \$ 5,000 | \$10,000 | \$25,000 | NM] |
| Failure to properly deploy a containment device  | 2.7[(h)](f)   | \$ 5,000 | \$10,000 | \$25,000 | NM  |
| Commencement or continuation of transfer operations during storm                       | 2.7[(i)1](g)1 | \$15,000 | \$30,000 | \$50,000 | NM  |
| Commencement or continuation of transfer operations during fires                       | 2.7[(i)2](g)2 | \$15,000 | \$30,000 | \$50,000 | NM  |
| Commencement or continuation of transfer operations during transfer system malfunction | 2.7[(i)3](g)3 | \$15,000 | \$30,000 | \$50,000 | NM  |
| Commencement or continuation of transfer   | 2.7[(i)4](g)4 | \$15,000 | \$30,000 | \$50,000 | NM  |

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operations during transfer system break

|   |               |                 |                 |                 |           |           |
|---|---------------|-----------------|-----------------|-----------------|-----------|-----------|
| Commencement or continuation of transfer operations when there is an apparent discrepancy               | 2.7[(i)5](g)5 | \$15,000        | \$30,000        | \$50,000        | NM        |           |
| Commencement or continuation of transfer operations during communications breakdown                     | 2.7[(i)6](g)6 | \$15,000        | \$30,000        | \$50,000        | NM        |           |
| Commencement or continuation of transfer operations when hazardous substances are observed in the water | 2.7[(i)7](g)7 | \$15,000        | \$30,000        | \$50,000        | NM        |           |
| Commencement or continuation of transfer operations during a discharge                                  | 2.7[(i)8](g)8 | \$15,000        | \$30,000        | \$50,000        | NM        |           |
| Failure to properly clean up or remove a discharge prior to removing a containment device               | 2.7[(j)](h)   | \$20,000        | \$40,000        | \$50,000        | NM        |           |
| Failure to <u>secure</u> or retrieve a containment device   | 2.7[(k)](i)   | \$ 5,000        | \$10,000        | \$25,000        | M         | 30        |
| <u>Failure to clean or dispose of a containment device that is contaminated</u>                         | 2.7(i)        | <u>\$ 5,000</u> | <u>\$10,000</u> | <u>\$25,000</u> | <u>NM</u> |           |
| <u>Failure to prominently display notification requirements</u>   | 2.7(j)        | <u>\$ 250</u>   | <u>\$ 500</u>   | <u>\$ 1,250</u> | <u>M</u>  | <u>30</u> |
| ...   |               |                 |                 |                 |           |           |
| Failure to protect a hazardous substance from being carried off or discharged into flood waters         | 2.9(a),(b)    | \$10,000        | \$20,000        | \$50,000        | NM        |           |
| ...   |               |                 |                 |                 |           |           |

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|  |                    |                 |                 |                 |           |     |
|--|--------------------|-----------------|-----------------|-----------------|-----------|-----|
| Failure to conduct visual inspections of equipment [and security]                                | 2.10(a)6i          | \$ 2,000        | \$ 4,000        | \$10,000        | NM        |     |
| <u>Failure to conduct visual inspections of fences and locks</u>                                 | <u>2.10(a)6ii</u>  | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |     |
| <u>Failure to conduct visual inspections of cleanup and removal equipment</u>                    | <u>2.10(a)6iii</u> | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |     |
| Failure to keep documentation of visual inspections  | 2.10(b)            | \$ 250          | \$ 500          | \$ 1,000        | M         | 30  |
| [Failure to implement a groundwater monitoring program]  | 2.10(c)            | \$10,000        | \$20,000        | \$50,000        | NM        |     |
| ...  |                    |                 |                 |                 |           |     |
| Failure to maintain secondary containment or diversion systems in good repair                    | 2.11(f)            | \$10,000        | \$20,000        | \$50,000        | NM        |     |
| <u>Failure to maintain secondary containment or diversion system free of debris</u>              | <u>2.11(f)</u>     | <u>\$ 5,000</u> | <u>\$10,000</u> | <u>\$25,000</u> | <u>NM</u> |     |
| Failure to implement a training program  | 2.12(a)            | \$10,000        | \$20,000        | \$50,000        | NM        |     |
| Failure to provide [minimum training consisting of] written job descriptions                     | 2.12(b)1           | \$ 2,000        | \$ 4,000        | \$10,000        | M         | 30  |
| [Failure to provide minimum training consisting of procedures to determine ability               | 2.12(b)2           | \$ 2,000        | \$ 4,000        | \$10,000        | M         | 30] |
| Failure to provide minimum training consisting of time periods [of in-house] <u>for training</u> | 2.12(b)[3]2        | \$ 2,000        | \$ 4,000        | \$10,000        | M         | 30  |

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|   |                    |                 |                 |                 |          |           |
|---|--------------------|-----------------|-----------------|-----------------|----------|-----------|
| <u>Failure to provide procedures to determine ability</u>   | <u>2.12(b)3</u>    | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>M</u> | <u>30</u> |
| Failure to provide training [in the handling of hazardous substances] consisting of general orientation and initial training          | 2.12(c)1           | \$ 2,000        | \$ 4,000        | \$10,000        | M        | 30        |
| [Failure to provide training in the handling of hazardous substances consisting of classroom training                                 | 2.12(c)2           | \$ 2,000        | \$ 4,000        | \$10,000        | M        | 30]       |
| <u>Failure to provide job-specific training on SOPs</u>   | <u>2.12(c)2i</u>   | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to provide training on clean up and removal</u>  | <u>2.12(c)2ii</u>  | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to provide training on fires, leaks and discharges</u>   | <u>2.12(c)2iii</u> | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to provide training on equipment familiarization</u>   | <u>2.12(c)2iv</u>  | <u>\$ 2,000</u> | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>M</u> | <u>30</u> |
| Failure to provide training [in the handling of hazardous substances consisting of on-the-job training] <u>on new or updated SOPs</u> | 2.12(c)3           | \$ 2,000        | \$ 4,000        | \$10,000        | M        | 30        |
| Failure to provide [training in the handling of hazardous substances consisting of ] refresher training                               | 2.12(c)4           | \$ 2,000        | \$ 4,000        | \$10,000        | M        | 30        |
| [Failure to provide additional training on cleanup and removal  | 2.12(d)1           | \$ 2,000        | \$ 4,000        | \$10,000        | M        | 30        |

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|   |                 |                                 |               |                 |          |           |
|---|-----------------|---------------------------------|---------------|-----------------|----------|-----------|
| Failure to provide additional training on SOPs                                    | 2.12(d)2        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30        |
| Failure to provide additional training on emergency procedures                    | 2.12(d)3        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30        |
| Failure to provide additional training on equipment familiarization               | 2.12(d)4        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30        |
| Failure to provide additional training on operating data                          | 2.12(d)5        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30        |
| Failure to provide additional training on equipment startup and shutdown          | 2.12(d)6        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30        |
| Failure to provide additional training on operating conditions                    | 2.12(d)7        | \$ 2,000                        | \$ 4,000      | \$10,000        | M        | 30]       |
| Failure to specify qualifications of trainers                                     | 2.12[(e)](d)    | \$ 1,000                        | \$ 2,000      | \$ 5,000        | M        | 30        |
| [Failure to keep documentation of all training                                    | 2.12(f)         | \$ 250                          | \$ 500        | \$ 1,000        | M        | 30]       |
| Failure to have procedures to ensure training of employees of outside contractors | 2.12[(g)](f)    | \$ 1,000                        | \$ 2,000      | \$ 5,000        | M        | 30        |
| ...   |                 |                                 |               |                 |          |           |
| Failure to include a [process] description of <u>the operation</u> in an SOP      | 2.14(d)1        | \$ 250                          | \$ 500        | \$ 1,000        | M        | 30        |
|   |                 | Penalty assessed per SOP        |               |                 |          |           |
| <u>Failure to include procedures for visual inspections in an SOP</u>             | <u>2.14(d)2</u> | <u>\$ 250</u>                   | <u>\$ 500</u> | <u>\$ 1,250</u> | <u>M</u> | <u>30</u> |
|   |                 | <u>Penalty assessed per SOP</u> |               |                 |          |           |
| Failure to include procedures and conditions for normal operation in an SOP       | 2.14(d)[2]3     | \$ 250                          | \$ 500        | \$ 1,000        | M        | 30        |
|   |                 | Penalty assessed per SOP        |               |                 |          |           |

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| <u>Failure to include a description of equipment</u><br><u>30</u><br><u>or alarms in an SOP</u>             | <u>2.14(d)4</u> | <u>\$ 250</u>                               | <u>\$ 500</u> | <u>\$ 1,250</u> | <u>M</u> |     |
|---|-----------------|---|---------------|-----------------|----------|-----|
|   |                 | <u>Penalty assessed per SOP</u>             |               |                 |          |     |
| Failure to include a description of leak or discharge conditions in an SOP                                  | 2.14(d)[3]5     | \$ 250                                      | \$ 500        | \$ 1,000        | M        | 30  |
| [Failure to include a description of containment systems and leak monitoring in an SOP                      | 2.14(d)4        | \$ 250                                      | \$ 500        | \$ 1,000        | M        | 30  |
|   |                 | <u>Penalty assessed per SOP</u>             |               |                 |          |     |
| Failure to include a procedure for visual inspections in an SOP   | 2.14(d)5        | \$ 250                                      | \$ 500        | \$ 1,000        | M        | 30] |
|   |                 | <u>Penalty assessed per SOP</u>             |               |                 |          |     |
| ...   |                 |   |               |                 |          |     |
| <u>Failure to maintain required records for ten years or the life of the equipment</u>                      | 2.15(c)         | \$ 250                                      | \$ 500        | \$ 1,000        | NM       |     |
| <u>Failure to maintain required records for the life of the equipment</u>                                   | 2.15(d)         | \$ 250                                      | \$ 500        | \$ 1,250        | NM       |     |
| Failure to make required records available for inspection   | 2.15[(d)](e)    | \$ 250                                      | \$ 500        | \$ 1,000        | M        | 30  |
| <u>Failure to adequately back up records</u>  | 2.15(f)         | \$ 1,000                                    | \$ 2,000      | \$ 5,000        | NM       |     |
| <u>Failure to perform initial integrity testing or static head testing</u><br><u>SIZE OF TANK (gallons)</u> | 2.16(a)         | <u>Penalty assessed on a per tank basis</u> |               |                 | NM       |     |
| <u>2,001-10,000</u>   |                 | \$ 750                                      | \$ 1,500      | \$ 3,750        |          |     |
| <u>10,001-20,000</u>  |                 | \$ 1,500                                    | \$ 3,000      | \$ 7,500        |          |     |
| <u>20,001-50,000</u>  |                 | \$ 3,750                                    | \$ 7,500      | \$18,750        |          |     |
| <u>50,001-100,000</u>   |                 | \$ 7,500                                    | \$15,000      | \$37,500        |          |     |
| <u>100,001-200,000</u>  |                 | \$15,000                                    | \$30,000      | \$45,000        |          |     |
| <u>200,001-300,000</u>  |                 | \$22,500                                    | \$40,000      | \$50,000        |          |     |

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| <u>300,001 and greater</u>  |                 | <u>\$30,000</u>                             | <u>\$40,000</u> | <u>\$50,000</u> |           |
|---|-----------------|---|-----------------|-----------------|-----------|
| <u>Failure to perform initial integrity testing on a new tank</u> | <u>2.16(b)</u>  | <u>Penalty assessed on a per tank basis</u> |                 |                 | <u>NM</u> |
| <u>SIZE OF TANK (gallons)</u>                                     |                 |   |                 |                 |           |
| <u>2,001-10,000</u>   |                 | <u>\$ 250</u>                               | <u>\$ 500</u>   | <u>\$ 1,250</u> |           |
| <u>10,001-20,000</u>  |                 | <u>\$ 500</u>                               | <u>\$ 1,000</u> | <u>\$ 2,500</u> |           |
| <u>20,001-50,000</u>  |                 | <u>\$ 1,250</u>                             | <u>\$ 2,500</u> | <u>\$ 6,250</u> |           |
| <u>50,001-100,000</u>   |                 | <u>\$ 2,500</u>                             | <u>\$ 5,000</u> | <u>\$12,500</u> |           |
| <u>100,001-200,000</u>  |                 | <u>\$ 5,000</u>                             | <u>\$10,000</u> | <u>\$25,000</u> |           |
| <u>200,001-300,000</u>  |                 | <u>\$ 7,500</u>                             | <u>\$15,000</u> | <u>\$37,500</u> |           |
| <u>300,001 and greater</u>  |                 | <u>\$10,000</u>                             | <u>\$20,000</u> | <u>\$50,000</u> |           |
| <u>Failure to follow API 653</u>                                  | <u>2.16(d)1</u> | <u>\$ 2,000</u>                             | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow API 510</u>                                  | <u>2.16(d)1</u> | <u>\$ 2,000</u>                             | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow API 653 or SP001</u>                         | <u>2.16(e)</u>  | <u>\$ 1,000</u>                             | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow established protocol</u>                     | <u>2.16(f)</u>  | <u>\$ 1,000</u>                             | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow established protocol</u>                     | <u>2.16(g)</u>  | <u>\$ 1,000</u>                             | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow established protocol</u>                     | <u>2.16(h)</u>  | <u>\$ 2,000</u>                             | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to follow approved alternative protocol</u>            | <u>2.16(i)</u>  | <u>\$ 2,000</u>                             | <u>\$ 4,000</u> | <u>\$10,000</u> | <u>NM</u> |
|   |                 | <u>Penalty assessed on a per tank basis</u> |                 |                 |           |
| <u>Failure to take tank out of service following</u>              | <u>2.16(j)</u>  | <u>\$10,000</u>                             | <u>\$20,000</u> | <u>\$50,000</u> | <u>NM</u> |

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a failed integrity test or inspection

3. The violations of N.J.A.C 7:1E-3, Transmission Pipelines, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

...

|   |                |               |               |                |          |           |
|---|----------------|---------------|---------------|----------------|----------|-----------|
| <u>Failure to include name and contact information in a registration</u>            | <u>3.2(a)2</u> | <u>\$ 250</u> | <u>\$ 500</u> | <u>\$1,250</u> | <u>M</u> | <u>30</u> |
| Failure to include registered agent information in a registration                   | 3.2(a)[2]3     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| Failure to include storage capacity <u>and location</u> in a registration           | 3.2(a)[3]4     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| Failure to include a description of hazardous substances in a registration          | 3.2(a)[4]5     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| <u>Failure to include facilities served by the pipeline in a registration</u>       | <u>3.2(a)6</u> | <u>\$ 250</u> | <u>\$ 500</u> | <u>\$1,250</u> | <u>M</u> | <u>30</u> |
| Failure to include transfer capacity and average daily throughput in a registration | 3.2(a)[5]7     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| Failure to include maps in a registration   | 3.2(a)[6]8     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| Failure to include a pipe inventory in a registration                               | 3.2(a)[7]9     | \$ 250        | \$ 500        | \$1,250        | M        | 30        |
| Failure to include a certification in a registration                                | 3.2(a)[8]10    | \$ 250        | \$ 500        | \$1,250        | M        | 30        |

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4. The violations of N.J.A.C. 7:1E-4, Plans, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

|   |                 |                 |                 |                 |           |    |
|---|-----------------|-----------------|-----------------|-----------------|-----------|----|
| [Failure to appoint a response coordinator  | 4.2(a)          | \$ 1,000        | \$ 2,000        | \$ 5,000        | NM]       |    |
| <u>Failure to appoint a facility contact</u>  | <u>4.2(a)2</u>  | <u>\$ 500</u>   | <u>\$ 1,000</u> | <u>\$ 2,500</u> | <u>M</u>  | 30 |
| [Failure to maintain on-site and make available a facility inventory                                | 4.2(f)1         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| Failure to maintain on-site and make available updated diagrams                                     | 4.2(f)2         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| Failure to maintain on-site and make available SOPs   | 4.2(f)3         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| Failure to maintain on-site and make available an emergency response plan                           | 4.2(f)4         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| Failure to maintain on-site and make available job classifications and descriptions                 | 4.2(f)5         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| Failure to maintain on-site and make available housekeeping and maintenance procedures and records] | 4.2(f)6         | \$ 1,000        | \$ 2,000        | \$ 5,000        | M         | 30 |
| <u>Failure to appoint a response coordinator</u>  | <u>4.3(a)</u>   | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>NM</u> |    |
| Failure to perform an annual emergency response drill and critique it in writing                    | 4.3[(a)4](b)4   | \$ 1,000        | \$ 2,000        | \$ 5,000        | NM        |    |
| Failure to have adequate cleanup equipment and personnel available                                  | 4.3[(b)](c)5, 6 | \$ 5,000        | \$10,000        | \$25,000        | NM        |    |

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|   |               |                 |                 |                 |          |           |
|---|---------------|-----------------|-----------------|-----------------|----------|-----------|
| <u>Failure to word the letter as specified</u>              | <u>4.4(g)</u> | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to word the guarantee as specified</u>           | <u>4.4(k)</u> | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to word the liability insurance as specified</u> | <u>4.4(l)</u> | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to word the surety bond as specified</u>         | <u>4.4(m)</u> | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>M</u> | <u>30</u> |
| <u>Failure to word the letter of credit as specified</u>    | <u>4.4(n)</u> | <u>\$ 1,000</u> | <u>\$ 2,000</u> | <u>\$ 5,000</u> | <u>M</u> | <u>30</u> |

...

|   |               |                        |                          |                           |          |           |
|---|---------------|------------------------|--------------------------|---------------------------|----------|-----------|
| Failure to submit information when requested by the Department              | 4.5[(g)](f)   | \$ 1,000               | \$ 2,000                 | \$ 5,000                  | M        | 30        |
| Failure to submit copy of approved plan                                     | 4.5[(h)](g)   | \$ 250                 | \$ 500                   | \$ 1,250                  | M        | 30        |
| Failure to implement an approved DPCC or DCR plan                           | 4.6[(g)](f)   | \$ 2,000               | \$ 4,000                 | \$10,000                  | NM       |           |
| Failure to maintain copy of the plan on-site                                | 4.6[(i)](g)   | [\$250] <u>\$1,000</u> | [\$500] <u>\$2,000</u>   | [\$1,250] <u>\$ 5,000</u> | NM       |           |
| Failure to resubmit an acceptable plan                                      | 4.7(c)        | \$ 5,000               | \$10,000                 | \$25,000                  | NM       |           |
| Failure to provide notice of new construction, installation or modification | 4.8(a)        | \$ 1,000               | [\$4,000] <u>\$2,000</u> | \$ 5,000                  | NM       |           |
| Failure to submit an amendment  | 4.8(b)        | \$ 2,000               | \$ 4,000                 | \$10,000                  | M        | 30        |
| [Failure to implement an approved amendment                                 | 4.8(d)        | \$ 2,000               | \$ 4,000                 | \$10,000                  | NM]      |           |
| <u>Failure to submit copy of an amendment</u>                               | <u>4.8(d)</u> | <u>\$ 250</u>          | <u>\$ 500</u>            | <u>\$ 1,250</u>           | <u>M</u> | <u>30</u> |

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|   |               |                        |                          |                            |          |           |
|---|---------------|------------------------|--------------------------|----------------------------|----------|-----------|
| Failure to submit information changes             | 4.8(e)        | [\$2,000] <u>\$500</u> | [\$4,000] <u>\$1,000</u> | [\$10,000] <u>\$ 3,000</u> | M        | 30        |
| Failure to renew DPCC/DCR plans                   | 4.9(a)        | \$ 1,000               | \$ 2,000                 | \$ 5,000                   | NM       |           |
| <u>Failure to submit copy of an approved plan</u> | <u>4.9(c)</u> | <u>\$ 250</u>          | <u>\$ 500</u>            | <u>\$ 1,250</u>            | <u>M</u> | <u>30</u> |

...

5. The violations of N.J.A.C. 7:1E-5, Notification, Response and Reporting, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

...

|  |                    |                 |                 |                 |           |           |
|--|--------------------|-----------------|-----------------|-----------------|-----------|-----------|
| [Failure to attempt to stop and contain a discharge or to follow the DCR action plan | 5.7(a)             | \$20,000        | \$40,000        | \$50,000        | NM]       |           |
| <u>Failure to take immediate action to stop a discharge</u>                          | <u>5.7(a)1</u>     | <u>\$20,000</u> | <u>\$40,000</u> | <u>\$50,000</u> | <u>NM</u> |           |
| <u>Failure to follow the DCR plan</u>  | <u>5.7(a)2i</u>    | <u>\$20,000</u> | <u>\$40,000</u> | <u>\$50,000</u> | <u>NM</u> |           |
| ...  |                    |                 |                 |                 |           |           |
| <u>Failure to include the Communications Center number</u>                           | <u>5.8(c)4</u>     | <u>\$ 250</u>   | <u>\$ 500</u>   | <u>\$ 1,250</u> | <u>M</u>  | <u>30</u> |
| Failure to include the source of the discharge<br>30                                 | 5.8(c)[4] <u>5</u> | \$ 250          | \$ 500          | \$ 1,000        | M         |           |
| Failure to include the location of the discharge                                     | 5.8(c)[5] <u>6</u> | \$ 250          | \$ 500          | \$ 1,000        | M         | 30        |
| Failure to include the name(s) and CAS number(s) of hazardous substance(s)           | 5.8(c)[6] <u>7</u> | \$ 250          | \$ 500          | \$ 1,000        | M         | 30        |

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discharged

|   |                      |        |        |          |   |    |
|---|----------------------|--------|--------|----------|---|----|
| Failure to include quantities of hazardous substances discharged          | 5.8(c)[7] <u>8</u>   | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include date and time information                              | 5.8(c)[8] <u>9</u>   | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include a description of the<br>30<br>measures taken and costs | 5.8(c)[9] <u>10</u>  | \$ 250 | \$ 500 | \$ 1,000 |   | M  |
| Failure to include measures taken or proposed                             | 5.8(c)[10] <u>11</u> | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include information on the entities involved in the cleanup    | 5.8(c)[11] <u>12</u> | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| [Failure to include a description of samples taken                        | 5.8(c)12             | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include a certification of financial responsibility]           | 5.8(c)13             | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include supplemental information                               | 5.8(c)[14] <u>13</u> | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include requested information                                  | 5.8(c)[15] <u>14</u> | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |
| Failure to include certification  | 5.8(c)[16] <u>15</u> | \$ 250 | \$ 500 | \$ 1,000 | M | 30 |

...

<sup>2-4</sup> (No change.)

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(d) (No change.)

## SUBCHAPTER 7: CONFIDENTIALITY CLAIMS

### 7:1E-7.3 Correspondence, inquiries and notices

(a) (No change.)

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Bureau of [Discharge] Release Prevention  
New Jersey Department of Environmental Protection  
P.O. Box 424  
Trenton, New Jersey 08625-0424

## SUBCHAPTER 8: CONFIDENTIALITY DETERMINATIONS

### 7:1E-8.10 Classes of information which are not confidential information

(a) Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, the following types of information are not confidential information:

1. - 2. (No change.)

[3. Schedules of integrity testing for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)4, and information concerning the methods of testing;

4. Test reports for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)5;

5. Information contained in documentation of employee training, evaluation and qualifying activities required to be maintained under N.J.A.C. 7:1E-2.12(d);

6. The storage capacity of a facility, the transfer capacity of a facility, and the types of hazardous substances present at a facility;

7. Discharge cleanup information required to be submitted under N.J.A.C. 7:1E-3.4;

8. Lists of standard operating procedures required to be submitted under N.J.A.C. 7:1E-4.2(d)10;

9. Information concerning procedures for mobilizing equipment in the event of a discharge;]

Recodify existing 10. - 11. as 3. - 4. (No change in text.)

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[12. Housekeeping and maintenance records required to be made available under N.J.A.C. 7:1E-4.2(f)6;]

Recodify existing 13. - 16. as 5. - 8. (No change in text.)

## APPENDIX A

### LIST OF HAZARDOUS SUBSTANCES (Alphabetical Order)

| <u>Name</u>                               | <u>CAS Number</u> |
|---|-------------------|
| ...                                       |                   |
| Ammonium oxalate, unspecified hydrate     | 5972-73-6         |
| <u>Ammonium perchlorate</u>               | <u>7790-98-9</u>  |
| Ammonium picrate                          | 131-74-8          |
| ...                                       |                   |
| Bisphenol A                               | 80-05-7           |
| <u>Bis(tributyltin) oxide</u>             | <u>56-35-9</u>    |
| Bitoscanate                               | 4044-65-9         |
| ...                                       |                   |
| Dichloropropane-Dichloropropene (mixture) | 8003-19-8         |
| [2,3-Dichloropropanol                     | 616-23-9]         |
| Dichloropropene(s) (mixtures)             | 26952-23-8        |
| ...                                       |                   |
| Diepoxybutane                             | 1464-53-5         |
| <u>Diesel/Fuel or #2 heating oil</u>      | <u>68476-34-6</u> |
| Diethanolamine                            | 111-42-2          |
| ...                                       |                   |
| Diethylarsine                             | 692-42-2          |
| [Diethylcarbamazine citrate               | 1642-54-2]        |
| Diethyl chlorophosphate                   | 814-49-3          |
| ...                                       |                   |
| p-Dinitrobenzene                          | 100-25-4          |
| <u>4,6-Dinitro-o-cresol, and salts</u>    | <u>534-52-1</u>   |
| Dinitrophenol (mixed isomers)             | 25550-58-7        |
| ...                                       |                   |

F001: The following spent halogenated solvents used in degreasing;  
all spent solvent mixtures/blends used in degreasing containing,  
before use, a total of ten percent or more (by volume) of one or  
more of the [above] halogenated solvents listed below or those  
solvents listed in F002, F004, and F005; and still bottoms from the  
recovery of these spent solvents and spent solvent mixtures:  
(a) tetrachloroethylene; (b) trichloroethylene; (c) methylene chloride;  
(d) 1,1,1-trichloroethane; (e) carbon tetrachloride; (f) chlorinated  
fluorocarbons

\*\*\*\*\*

F002: The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the [above] halogenated solvents listed below or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures: (a) tetrachloroethylene; (b) methylene chloride; (c) trichloroethylene; (d) 1,1,1-trichloroethane; (e) chlorobenzene; (f) 1,1,2-trichloro-1,2,2-trifluoroethane; (g) o-dichlorobenzene; (h) trichlorofluoromethane; (i) 1,1,2-trichloroethane

\*\*\*\*\*

...

F024: [Wastes] Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of certain chlorinated aliphatic hydrocarbons[, having carbon content from one to five, utilizing] by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include [light ends, spent filters and filter aids, spent dessicants(sic),] wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32.)

\*\*\*\*\*

...

F034: Wastewaters (except those that have not come into contact with [the] process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

\*\*\*\*\*

...

F037: Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from

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other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does not include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under 40 CFR 261.4(a)(12)(i), if those residuals are to be disposed of. \*\*\*\*\*

F038: Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in dissolved air floatation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. \*\*\*\*\*

F039: Leachate (liquids that have percolated through land disposed waste) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of 40 CFR part 261. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.) \*\*\*\*\*

|                         |                   |
|-------------------------|-------------------|
| Famphur                 | 52-85-7           |
| [Fenbutatin oxide       | 13356-08-6]       |
| Fenamiphos              | 22224-92-6        |
| Fenarimol               | 60168-88-9        |
| <u>Fenbutatin oxide</u> | <u>13356-08-6</u> |
| Fenoxaprop ethyl        | 66441-23-4        |
| ...                     |                   |
| Gallium trichloride     | 13450-90-3        |
| <u>Gasoline</u>         | <u>8006-61-9</u>  |
| Glycidylaldehyde        | 765-34-4          |
| ...                     |                   |

K064: Acid plant blowdown slurry/sludge resulting from the thickening

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of blowdown slurry from primary copper production. \*\*\*\*\*

...

K083: Distillation bottoms from aniline [extraction] production. \*\*\*\*\*

...

K118: Spent [absorbent] adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. \*\*\*\*\*

...

K132: Spent absorbent and wastewater separator solids from the production of methyl bromide. \*\*\*\*\*

K136: Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. \*\*\*\*\*

K141: Process residues from the recovery of coal tar, including but not limited to, [tar] collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations.) \*\*\*\*\*

...

K144: Wastewater [treatment sludges] sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal. \*\*\*\*\*

...

K148: Residues from coal tar distillation, including, but not limited to, still bottoms. \*\*\*\*\*

K149: Distillation bottoms from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.) \*\*\*\*\*

K150: Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and

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compounds with mixtures of these functional groups. \*\*\*\*\*

K151: Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of waste-waters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. \*\*\*\*\*

K156: Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) \*\*\*\*\*

...

K171: Spent hydrotreating catalyst from petroleum refining operations. (This listing does not include inert support media.) \*\*\*\*\*

K172: Spent hydrorefining catalyst from petroleum refining operations. (This listing does not include inert support media.) \*\*\*\*\*

K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on- site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. \*\*\*\*\*

K175 Wastewater treatment (T) sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. \*\*\*\*\*

K176: Baghouse filters from the production of antimony oxide, including

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|  |                   |
|--|-------------------|
| <u>filters from the production of intermediates (e.g. antimony metal or crude antimony oxide).</u>   | *****             |
| <br>   |                   |
| <u>K177: Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g. antimony metal or crude antimony oxide.</u> | *****             |
| <br>   |                   |
| <u>K178: Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride ilmenite process.</u>              | *****             |
| <br>   |                   |
| Kepone   | 143-50-0          |
| <u>Kerosene</u>  | <u>8008-20-6</u>  |
| Lactofen   | 77501-63-4        |
| ...  |                   |
| Lithium hydride  | 7580-67-8         |
| <u>Lithium perchlorate</u>   | <u>7791-03-9</u>  |
| Malathion  | 121-75-5          |
| ...  |                   |
| Monuron  | 150-68-5          |
| <u>Motor oil</u>   | *****             |
| Muscimol   | 2763-96-4         |
| ...  |                   |
| Pentobarbital sodium   | 57-33-0           |
| <u>Perchlorate ion</u>   | <u>14797-73-0</u> |
| Perchloromethyl mercaptan  | 594-72-3          |
| ...  |                   |
| Peroxyacetic acid  | 79-21-0           |
| <u>Petroleum oil/motor oil</u>   | *****             |
| Phenacetin   | 62-44-2           |
| ...  |                   |
| Phosgene   | 75-44-5           |
| [Phosmet (concentrations above 20%)]   | 732-11-6]         |
| Phosphamidon   | 13171-21-6        |
| ...  |                   |
| Picloram   | 1918-02-1         |
| <u>Picric acid, dry or wetted with less than 30% water by mass</u>   | <u>88-89-1</u>    |
| 2-Picoline   | 109-06-8          |
| ...  |                   |
| Polychlorinated biphenyls (PCBs)   | 1336-36-3         |
| <u>Polychlorinated diphenyl ethers</u>   | *****             |
| Polycyclical Organic Matter with more than one benzene ring and a boiling point greater than or equal to 100°C   | *****             |
| ...  |                   |
| Potassium N-methyldithiocarbamate  | 137-41-7          |
| <u>Potassium perchlorate</u>   | <u>7778-74-7</u>  |
| Potassium permanganate   | 7722-64-7         |

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|                           |  |                  |
|---------------------------|--|------------------|
| ...                       |  |                  |
| Sodium pentachlorophenate |  | 132-27-4         |
| <u>Sodium perchlorate</u> |  | <u>7601-89-0</u> |
| Sodium o-phenylphenoxide  |  | 7558-79-4        |
| ...                       |  |                  |
| Urethane                  |  | 51-79-6          |
| <u>Used Petroleum oil</u> |  | <u>*****</u>     |
| Valinomycin               |  | 2001-95-8        |
| ...                       |  |                  |

LIST OF HAZARDOUS SUBSTANCES  
(Listed by CAS Number)

CAS Number

Name

...

\*\*\*\*\* F001: The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the [above] halogenated solvents listed below or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures: (a) tetrachloro-ethylene; (b) trichloroethylene; (c) methylene chloride; (d) 1,1,1-trichloroethane; (e) carbon tetrachloride; (f) chlorinated fluorocarbons

CAS  
Number

Name

-----

-----

\*\*\*\*\* F002: The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the [above] halogenated solvents listed below or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures: (a) tetrachloroethylene; (b) methylene chloride; (c) trichloroethylene; (d) 1,1,1-trichloroethane; (e) chlorobenzene; (f) 1,1,2-trichloro-1,2,2-trifluoroethane; (g) o-dichlorobenzene; (h) trichlorofluoromethane; (i) 1,1,2-trichloroethane

...

\*\*\*\*\* F024: [Wastes] Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of certain chlorinated aliphatic hydrocarbons[, having carbon content from one to five, utilizing] by free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.32.)

...

\*\*\*\*\* F037: Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does not include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under 40 CFR 261.4(a)(12)(i), if those residuals are to be disposed of.

\*\*\*\*\* F038: Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in dissolved air flotation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, CAS sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.

\*\*\*\*\* F039: Leachate (liquids that have percolated through land disposed waste) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of 40 CFR part 261. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)

\*\*\*\*\* Fine mineral fibers of average diameter 1 micrometer or less

...

\*\*\*\*\* K064: Acid plant blowdown slurry/sludge resulting from thickening of the blowdown slurry from primary copper production.

...

\*\*\*\*\* K083: Distillation bottoms from aniline [extraction] production.

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...

\*\*\*\*\* K118: Spent [absorbent] adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.

...

\*\*\*\*\* K132: Spent absorbent and wastewater separator solids from the production of methyl bromide.

\*\*\*\*\* K136: Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.

\*\*\*\*\* K141: Process residues from the recovery of coal tar, including, but not limited to, [tar] collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations.)

...

\*\*\*\*\* K144: Wastewater [treatment sludges] sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

...

\*\*\*\*\* K148: Residues from coal tar distillation, including, but not limited to, still bottoms.

\*\*\*\*\* K149: Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)

\*\*\*\*\* K150: Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

\*\*\*\*\* K151: Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of waste-waters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

\*\*\*\*\* K156: Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and

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carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)

...

\*\*\*\*\*  
K171: Spent hydrotreating catalyst from petroleum refining operations. (This listing does not include inert support media.)

\*\*\*\*\*  
K172: Spent hydrorefining catalyst from petroleum refining operations. (This listing does not include inert support media.)

\*\*\*\*\*  
K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non- hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on- site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.

\*\*\*\*\*  
K175 Wastewater treatment (T) sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene- based process.

\*\*\*\*\*  
K176: Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g. antimony metal or crude antimony oxide).

\*\*\*\*\*  
K177: Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g. antimony metal or crude antimony oxide).

\*\*\*\*\*  
K178: Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride ilmenite process.

\*\*\*\*\*  
Lead compounds

\*\*\*\*\*  
Manganese compounds

\*\*\*\*\*  
Mercury compounds

\*\*\*\*\*  
Motor oil

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- \*\*\*\*\* Nickel compounds
- ...
- \*\*\*\*\* Organorhodium Complex (PMN-82-147)
- \*\*\*\*\* Petroleum oil/motor oil
- \*\*\*\*\* Phthalate esters
- \*\*\*\*\* Polybrominated biphenyls
- \*\*\*\*\* Polychlorinated alkanes (C10 to C13)
- \*\*\*\*\* Polychlorinated diphenyl ethers
- \*\*\*\*\* Polycyclic Organic Matter with more than one benzene ring and a boiling point greater than or equal to 100°C
- ...
- \*\*\*\*\* Thallium compounds
- \*\*\*\*\* Used Petroleum oil
- \*\*\*\*\* Vanadium compounds
- ...
- 56-25-7 Cantharidin
- 56-35-9 Bis(tributyltin) oxide
- 56-38-2 Parathion
- ...
- 88-85-7 Dinoseb
- 88-89-1 Picric acid, dry or wetted with less than 30% water by mass
- 90-04-0 o-Anisidine
- ...
- 534-07-6 Bis(chloromethyl) ketone
- 534-52-1 4,6-Dinitro-o-cresol, and salts
- 535-89-7 Crimidine
- ...
- 615-53-2 N-Nitroso-N-methylurethane
- [616-23-9 2,3-Dichloropropanol]
- 621-64-7 N-Nitrosodi-n-propylamine
- ...
- 709-98-8 Propanil
- [732-11-6 Phosmet (concentrations above 20%)]
- 757-58-4 Hexaethyl tetraphosphate
- ...
- 7601-54-9 Trisodium phosphate
- 7601-89-0 Sodium perchlorate
- 7631-89-2 Sodium arsenate
- ...
- 7778-54-3 Calcium hypochlorite
- 7778-74-7 Potassium perchlorate
- 7779-86-4 Zinc hydrosulfite
- ...
- 7790-94-5 Chlorosulfonic acid
- 7790-98-9 Ammonium perchlorate
- 7791-03-9 Lithium perchlorate

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7791-12-0   Thallous chloride  
...  
8003-34-7   Pyrethrum  
8006-61-9   Gasoline  
8008-20-6   Kerosene  
8014-95-7   Sulfuric acid  
...  
14644-61-2   Zirconium sulfate  
14797-73-0   Perchlorate ion  
15271-41-7   3-Chloro-6-cyano-2-norbornanone-o-(methycarbamoyl) oxime  
...  
68359-37-5   Cyfluthrin  
68476-34-6   Diesel/Fuel or #2 heating oil  
69409-94-5   Fluvalinate  
...

## APPENDIX B FINANCIAL FORMS

### B.1   Letter from chief financial officer:

To {support a } demonstrate that it meets the financial test {of self-insurance or a guarantee} under N.J.A.C. 7:1E-2.2(f)1 or 2, the chief financial officer of the major facility or guarantor shall prepare and sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

#### (1) Non-government entities

### **LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" and/or "guarantee"] to demonstrate financial responsibility for cleanup and removal activities arising from operating [insert: name(s) and address(es) of facility(ies)] in the amount of at least [insert: dollar amount] per occurrence [insert: "per facility" if multiple facilities are covered by this one document] and [insert: dollar amount] annual aggregate [insert: "per facility" if multiple facilities are covered by this one document].

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following EPA or State rules or regulations (i.e. RCRA, ECRA, UST, etc.):

[insert: applicable rules or regulations and amounts, if none so state]

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or

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her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of N.J.A.C. 7:1E-4.4(g)1 based on tangible net worth are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria based on bond rating or net working capital of N.J.A.C. 7:1E-4.4(g)2 are being used to demonstrate compliance with the financial test requirements.]

**ALTERNATIVE I**

1. - 10. (No change.)

11. Have financial statements for the latest fiscal year been filed with the Rural {Electrification Administration} Utilities Services or the Board of Public Utilities? \_\_\_\_\_

12. (No change.)

**ALTERNATIVE II**

1. - 18. (No change.)

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, {or} the Rural {Electrification Administration} Utilities Services or the Board of Public Utilities? \_\_\_\_\_

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]  
[Name]  
[Title]  
[Date]

(2) Local government - bond rating test

**LETTER FROM CHIEF FINANCIAL OFFICER**

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I am the chief financial officer of [insert: name and address of local government owner or operator]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for cleanup and removal activities arising from operating [insert: name(s) and address(es) of facility(ies)] in the amount of at least [insert: dollar amount] per occurrence [insert: "per facility" if multiple facilities are covered by this one document] and [insert: dollar amount] annual aggregate [insert: "per facility" if multiple facilities are covered by this one document].[ insert if {If} applicable "This local government is not organized to provide general governmental services and does not have the legal authority under State law or constitutional provisions to issue general obligation debt."]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding [insert if applicable: "revenue"] bond issues that are being used by [insert: name of local government owner or operator] to demonstrate financial responsibility are as follows: [complete table]

| Issue Date | Maturity Date | Outstanding amount | Bond Rating | Rating Agency                          |
|------------|---------------|--------------------|-------------|--|
|            |               |                    |             | [insert: Standard & Poor's or Moody's] |

The total outstanding obligation of [insert: amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding [insert: "general obligation" or "revenue"] bonds issued by this government that have been rated by Standard and Poor's or Moody's are rated at least investment grade (Standard and Poor's BBB or Moody's Baa) based on the most recent ratings published within the last 12 months. [insert if applicable: "The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company."] Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]  
 [Name]  
 [Title]  
 [Date]

(3) Local government - financial test

LETTER FROM CHIEF FINANCIAL OFFICER

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I am the chief financial officer of [insert: name and address of local government owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for cleanup and removal activities arising from operating [insert: name(s) and address(es) of facility(ies)] in the amount of at least [insert: dollar amount] per occurrence [insert: "per facility" if multiple facilities are covered by this one document] and [insert: dollar amount] annual aggregate [insert: "per facility" if multiple facilities are covered by this one document].

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Standard and Poor's rating of AAA, AA, A or BBB or a Moody's rating of Aaa, Aa, A or Baa; if rated by both firms, the bonds have a Standard and Poor's rating of AAA, AA, A or BBB {or} and a Moody's rating of Aaa, Aa, A or Baa.

#### Worksheet for Municipal Financial Test

##### Part 1: Basic Information

1. - 6. (No change.)\_

##### Part II: Application of Test

7. - 16. (No change.)\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

##### B.2 Guarantee:

The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [insert: date] by [insert: name of guaranteeing entity], a business entity organized under the laws of the State of [insert: name of state], herein referred to as guarantor, to the Department and to any and all third parties, and obligees, on behalf of [insert: name of owner or operator] of [insert: business address of owner or operator].

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Recitals.

(1) (No change.)

(2) [Insert: name of owner or operator] owns or operates the following major facility(ies) covered by this guarantee: [Insert: name(s) and address(es) of the facility(ies)] This guarantee satisfies the requirements of N.J.A.C. 7:1E-4.4 for assuring funding in the amount of [insert: dollar amount] per occurrence [insert: "per facility", if more than one is covered] and [insert: dollar amount] annual aggregate [insert: "per facility", if more than one is covered] for cleanup and removal activities arising from operating the above identified major facility(ies).

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or {substantial business relationship with owner or} operator); "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [insert: name of owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [insert: name of owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a discharge has occurred at a facility covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified in N.J.A.C. 7:1E-4.4(b).

In the event that the Department determines that [insert: name of owner or operator] has failed to perform cleanup and removal activities arising out of the operation of {the} an above-identified facility, the guarantor, upon written instructions from the Department, shall fund a standby trust in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of N.J.A.C. 7:1E-4.4(g), guarantor shall send within 120 days of such failure, by certified mail, notice to [insert: name of owner or operator] and the Department. The guarantee will terminate 120 days from the date of receipt of the notice by [insert: name of owner or operator] or 120 days from the date of receipt of the notice by the Department, whichever is later, as evidenced by the return receipt.

(5) Guarantor agrees to notify [insert: name of owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alternation of any obligation of [insert: name of owner or operator] pursuant to N.J.A.C. 7:1E.

(7) Guarantor agrees to remain bound under this guarantee for so long as [insert:

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name of owner or operator] must comply with the applicable financial responsibility requirements of N.J.A.C. 7:1E-4.4 for the above-identified facility, except that guarantor may cancel this guarantee by sending notice by certified mail to [insert: name of owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [insert: name of owner or operator] or 120 days from the date of receipt of the notice by the Department, whichever is later, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert: name of owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: name of owner or operator] arising from, and in the course of, employment by [insert: name of owner or operator];

(c) (No change.)

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: name of owner or operator] that is not the direct result of a discharge from the facility;

(e) Bodily damage or property damage for which [insert: name of owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.4.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [insert: name of owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]  
[Authorized signature for guarantor]  
[Name of person signing]  
[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

B.3 Insurance or risk retention group:

Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2),

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except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

NAME: [name of each covered location]

ADDRESS: [address of each covered location]  
\_\_\_\_\_  
\_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

PERIOD OF COVERAGE [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:  
\_\_\_\_\_  
\_\_\_\_\_

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:  
\_\_\_\_\_  
\_\_\_\_\_

NAME OF INSURED: \_\_\_\_\_

ADDRESS OF INSURED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance, subject to public policy considerations, covering the following facility(ies): [insert: location name(s) and address(es) of each covered facility] for cleanup and removal activities.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the Insurer's or Group's liability for each facility covered], exclusive of legal defense costs. This coverage is provided under [insert: policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the [insert:

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"Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The [insert: "Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of cleanup and removal activities, with a right of reimbursement by the insured for any such payment made by the [insert: "Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. Whenever requested by the Department, the [insert: "Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [insert: "Insurer" or "Group"], except for nonpayment of premium or material misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [insert: "Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy, except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and that arise out of any { covered occurrence } cleanup and removal activities that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the [insert: "Insurer" or "Group"] is [Insert appropriate phrase: "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in New Jersey".]

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

NAME: [name of each covered location]

ADDRESS: [address of each covered location]

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\_\_\_\_\_  
\_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

ENDORSEMENT (if applicable): \_\_\_\_\_

PERIOD OF COVERAGE \_\_\_\_\_ [current policy period] \_\_\_\_\_

NAME OF [INSURER OR RISK RETENTION GROUP]:  
\_\_\_\_\_  
\_\_\_\_\_

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:  
\_\_\_\_\_  
\_\_\_\_\_

NAME OF INSURED: \_\_\_\_\_

ADDRESS OF INSURED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Certification:

1. [insert: Name of Insurer or Risk Retention Group], {[ ]the [insert: "Insurer" or "Group"]}, as identified above, hereby certifies that it has issued liability insurance, subject to public policy considerations, covering the following facility(ies): [List the name(s) and address(es) of each covered facility] for cleanup and removal activities arising from operating the facility(ies) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability for each covered facility], exclusive of legal defense costs. This coverage is provided under [insert: policy number]. The effective date of said policy is [insert: date].

2. The [insert: "Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [insert: "Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The [insert: "Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of cleanup and removal activities, with a right of reimbursement by the insured for any such payment made by the [insert: "Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

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c. Whenever requested by the Department, the [insert: "Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [insert: "Insurer" or "Group"], except for nonpayment of premium or material misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [insert: "Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy, except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and that arise out of any {covered occurrence} cleanup and removal activities that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the [insert: "Insurer" or "Group"] is [Insert appropriate phrase: "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in the State"].

[Signature of authorized representative of Insurer or Risk Retention Group]  
[Type name]  
[Title], Authorized Representative of [name Insurer or Risk Retention Group]  
[Address of Representative]

#### B.4 Surety Bond:

The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

#### PERFORMANCE BOND

DATE BOND EXECUTED: \_\_\_\_\_

PERIOD OF COVERAGE: \_\_\_\_\_

PRINCIPAL: [legal name and business address of owner or operator]

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TYPE OF ORGANIZATION: [ insert "individual," "joint venture," "partnership," or "corporation" ]

STATE OF INCORPORATION (If Applicable): \_\_\_\_\_

SURETY(IES): [names(s) and business address(es)]

SCOPE OF COVERAGE: [List the name(s) and address(es) of the facility(ies). List the coverage guaranteed by the bond: cleanup and removal activities.]

PENAL SUMS OF BOND: Per occurrence \$ \_\_\_\_\_ [insert: "per facility, if appropriate]  
Annual aggregate \$ \_\_\_\_\_ [insert: "per facility, if appropriate]

SURETY'S BOND NUMBER: \_\_\_\_\_

Know all Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under N.J.S.A. 58:10-23.11 to provide financial assurance for cleanup and removal activities arising from operating the facility(ies) identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully perform cleanup and removal activities arising from operating the facility(ies) identified above, or if the Principal shall provide alternate financial assurance within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) - (e) (No change.)

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Upon notification by the Department that the Principal has failed to perform cleanup and removal activities in accordance with the Department's instructions, as guaranteed by this bond, the Surety(ies) shall either perform cleanup and removal activities in accordance with the Department's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department.

...

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the date this bond was executed.

#### PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

#### CORPORATE SURETY(IES)

[Name and address]  
State of Incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

#### B.5 Letter of Credit:

The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of the Department]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_

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\_ in your favor, at the request and for the account of [insert: name of owner or operator name] of [insert: address] up to the aggregate amount of [in words] U.S. dollars (\$ [dollar amount]), available upon presentation of:

(1) (No change.)

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to rules issued under authority of the Spill Compensation and Control Act, and that this letter of credit is not being drawn on to cover any of the following:

(a) Any obligation of [insert: name of owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: name of owner or operator] arising from, and in the course of, employment by [insert: name of owner or operator];

(c) (No change.)

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: name of owner or operator] that is not the direct result of a discharge from the facility;

(e) Bodily injury or property damage for which [insert: name of owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.4.

This letter of credit may be drawn on to cover cleanup and removal activities arising from operating the facility(ies) identified below in the amount of [in words] \$ [dollar amount] per occurrence and [in words] \$ [dollar amount] annual aggregate.

[Name(s) and address(es) of facility(ies)]

This letter of credit is effective as of [insert: date] and shall expire on [insert: date], but such expiration date shall be automatically extended for a period of [insert: at least the length of the original term] on [insert: expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [insert: name of owner or operator] and the Department by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [insert: name of owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [insert: name of owner or operator] or for 120 days after the date of receipt by the Department, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [insert: name of owner or operator] in accordance with your instructions.

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We certify that the wording of this letter of credit is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert the appropriate phrase: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].