

N.J.A.C. 7:1E
DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES RULES

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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) This subchapter prescribes the provisions that are generally applicable. The following shall govern how certain terms are defined for use in this chapter, which persons are subject to this chapter, and the Department's rights of access for determining compliance with this chapter and the Act.

7:1E-1.2 Construction

- (a) These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed so as to permit the Department to discharge its statutory functions under the Act.
- (b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

7:1E-1.3 Severability

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

7:1E-1.4 Relationship to Federal and State Law

These rules are not intended to and do not relieve any person of the duty to comply with all other applicable laws, ordinances, rules, regulations or orders of governmental authorities governing activities regulated hereunder, including rules or regulations of the New Jersey Department of Environmental Protection, New Jersey Department of the Treasury, and other appropriate State, Federal and local agencies.

7:1E-1.5 State non-liability

- (a) New Jersey State government is not liable for any damages arising from its actions or omissions relating to any plan, registration or map required pursuant to this chapter. No approval by the Department of any plan or of any cleanup and removal activities shall be a defense against liability for the discharge, nor shall it shift liability for the discharge to the Department.
- (b) In the event of a discharge, any person responsible for the discharge shall be held liable to the extent determined by the Act.

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.

"Aboveground storage tank" means any storage tank not defined as an underground storage tank.

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as amended.

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality or local board of health, including, but not limited to, a member of the police, fire, or public works department, public health officer, township engineer, zoning officer, director of emergency management, or environmental compliance officer.

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

"API 510" means API's Standard 510, entitled "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration," as amended or supplemented.

"API 570" means API's Piping Inspection Code 570, entitled "Inspection, Repair, Alteration and Rerating of In-service Piping Systems," as amended or supplemented.

"API 653" means the API's Standard 653, entitled "Tank Inspection, Repair, Alteration and Reconstruction," as amended or supplemented.

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

"ASME Section V" means ASME Boiler and Pressure Vessel Code Section V, entitled "Nondestructive Examination," as amended or supplemented.

"ASME Section VIII" means ASME Boiler and Pressure Vessel Code Section VIII, entitled "Pressure Vessels," as amended or supplemented.

"ASME Section X" means ASME Boiler and Pressure Vessel Code Section X, entitled "Fiberglass-Reinforced Plastic Pressure Vessels," as amended or supplemented.

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

"ASTM" means the American Society of Testing and Materials, 100 Barr Harbor Drive, 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 E1067-01, entitled "Standard Practice for Acoustic Emission Examination of Fiberglass Reinforced Plastic Resin (FRP) Tanks/Vessels," as amended and supplemented.

"Broker" means any person who arranges for the transportation, treatment, storage or disposal of hazardous substances on behalf of another person.

"CFR" means the Code of Federal Regulations.

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

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:1E-8.9, for a class of information.

"Cleanup and removal activities" means actions to clean up or remove or attempt to clean up or remove a discharge of a hazardous substance or the source thereof, or to chemically neutralize the discharge, or measures to prevent or mitigate any damages to the public health, safety or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources.

"Cleanup and removal costs" means all costs associated with cleanup and removal activities incurred by the State, its political subdivisions or their agents or any person with written approval of the Department.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person designated to act on his or her behalf pursuant to an administrative order.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information for which the claimant has asserted a confidentiality claim, in compliance with the procedures required by N.J.A.C. 7:1E-7, and such confidentiality claim has not expired by its terms, been waived or withdrawn, and for which the Department has made a confidentiality determination in compliance with N.J.A.C. 7:1E-8.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Containment" or "containment activities" means actions to limit or prevent the spread of a leak or discharge.

"Contractor" means a person, other than an employee of the owner or operator or the Department, who has entered into an agreement with the owner or operator or the Department to perform services or to provide goods.

"Controlling interest" means the direct ownership of at least 50 percent of the voting stock or other equity interest in a person.

"DCR plan" means the discharge cleanup and removal plan required under N.J.A.C. 7:1E-4.

"Department" means the New Jersey Department of Environmental Protection.

"Diligent inquiry" means:

1. Conducting a diligent search of all documents which are reasonably likely to contain information related to a possible discharge, which documents are in such person's possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has legal right to obtain such documents; and
2. Making reasonable inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, and any other current and former employees or agents who may have knowledge or documents relevant to a discharge.

"Discharge" means any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective Federal or State permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State. This term does not include "leak".

"Discharge cleanup organization" means an organization or association that has equipment and personnel to be utilized in clean up and removal activities.

"Discharge monitoring device" means any equipment or instrumentation that is used to detect discharges at the facility.

"Double-walled piping" means piping which consists of one pipe fixed inside another, with an annular space between.

"DPCC plan" means the discharge prevention, containment and countermeasure plan required under N.J.A.C. 7:1E-4.

"Environmentally sensitive areas" means, for the purposes of planning for discharge control and mitigation, geographic areas which contain one or more significant natural or ecological resources as set forth in N.J.A.C. 7:1E-1.8.

"EPA" means the U.S. Environmental Protection Agency.

"Equivalent measure" means:

1. The total volume, in gallons, of the drum, tote or other container holding the hazardous substance; or
2. For hazardous substances not stored or transported in containers, the calculated volume, in gallons, of the space the hazardous substance occupies.

"Facility" means any place or equipment that is used to refine, produce, store, hold, handle, transfer, process or transport hazardous substances.

"Facility inventory" means an actual accounting of on-hand hazardous substance quantities, performed on a minimum of an annual basis.

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

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"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 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. Possesses a controlling interest in the owner or operator;
2. Possesses a controlling interest in a person who possesses a controlling interest in the owner or operator;
3. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
4. Is engaged in a substantial business relationship with the owner or operator and issues the guarantee as an act incident to that business relationship.

"Hazardous substances" means all substances set forth in N.J.A.C. 7:1E-1.7.

"Impermeable" means utilizing a layer of natural or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for the hazardous substance being contained of 10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure.

"Incompatible materials" means those substances which, if mixed, will create hazards greater than those posed by the individual substances alone, such as fire, explosion, or generation of toxic fumes.

"Integrity testing" means a method of testing structures as established in N.J.A.C. 7:1E-2.16.

"Internal inspection" means an examination of the interior of an aboveground storage tank appropriate to the type and size of the tank and in accordance with N.J.A.C. 7:1E-2.16.

"Leak" or "leakage" means any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use into a secondary containment or diversion system or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State.

"Liquid" means having a viscosity between 0.2 centipoise and 3000 centipoise inclusive at one atmosphere (760.0 millimeters of mercury) pressure and temperatures between 32 and 120 degrees Fahrenheit (0 and 49 degrees centigrade).

"Major facility" means all facilities, located on one or more contiguous or adjacent properties owned and/or operated by the same person, having total aggregate, combined storage capacity of:

1. 20,000 gallons or more for hazardous substances other than petroleum or petroleum products;
2. 200,000 gallons or more for hazardous substances of all kinds; or
3. An equivalent measure as defined in this section, for hazardous substances which are not commonly measured by volume.
4. A vessel, except a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research and other activities directly related to discharge response, shall be considered a major facility only when hazardous substances are transferred between vessels.

A "transmission pipeline" is not a major facility.

"Major leak" means an accident required to be reported pursuant to 49 CFR 195.50.

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust, or otherwise controlled by the State.

"NJPDES permit" means a permit or permit-by-rule issued by the Department pursuant to N.J.A.C. 7:14A.

"Nonmiscible lighter-than-water" means having a density less than water and not mixing with water to an appreciable degree.

"NPDES permit" means a permit or permit-by-rule issued by EPA pursuant to 40 CFR 122.

"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 signs have

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

"Owner or operator" means any person who, with respect to:

1. A vessel, owns, operates or charters by demise such vessel;
2. Any facility, owns such facility, or operates it by lease, contract or other form of agreement; and
3. Abandoned or derelict facilities, owned or operated such facility immediately prior to such abandonment, or the owner at the time of the discharge.

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, as well as individuals, and when used to designate the owner of property which may be subject to this chapter, includes this State, the United States, any other state of the United States, and any foreign country or government, and any political subdivisions or agents, lawfully owning or possessing property in this State.

"Person in charge" means an individual designated as being in charge of marine transfer operations pursuant to U.S. Coast Guard regulations at 33 CFR 154.710 or 33 CFR 155.700.

"Person responsible for a discharge" means:

1. Any person whose act or omission results or has resulted in a discharge;
2. Each owner or operator of any facility, vehicle or vessel from which a discharge has occurred;
3. Any person who owns or controls any hazardous substance which is discharged;
4. Any person who has directly or indirectly caused a discharge;
5. Any person who has allowed a discharge to occur; or
6. Any person who brokers, generates or transports the hazardous substance discharged.

"Petroleum" or "petroleum products" means any 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.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Process area" or "production facility" means an area employed in production in which an action, operation or treatment embracing chemical, industrial, manufacturing or processing factors, methods, or forms is carried out utilizing hazardous substances. These factors, methods, or forms include, but are not limited to, batch or continuous chemical reactions, distillation, blending and mixing operations, refining and re-refining processes, and separation processes.

"Radionuclide" means any substance listed in 40 CFR 302.4, Appendix B.

"Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which the information can be retrieved or copied.

"Regional Administrator" means the Regional Administrator of EPA for the Federal region which includes the State of New Jersey.

"Regulated portion" means the area, portion, or equipment in a major facility or transmission pipeline in which hazardous substances are routinely refined, produced, stored, held, handled, used, processed, or transferred.

"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.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Reservoir" means a receptacle or chamber which can be used for storing a fluid.

"Response coordinator" means the individual at the major facility or transmission pipeline who shall possess sufficient corporate authority and technical background to 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).

"Secondary containment or diversion system" means any structures, devices or combinations thereof supplementary to the ordinary containers employed in the normal course of storage, transfer, processing or use, designed and operated to prevent leaks of hazardous substances from becoming discharges.

"Sewage" means domestic sewage, including the contents and effluents of septic tanks, public sewer systems and public sewage treatment plants.

"Sewage sludge" means the dried or semi-liquid residue of a sewage treatment process.

"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.

"Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and employs fewer than 100 full time employees.

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

"SP001" means STI's Standard SP001, "Standard for the Inspection of Aboveground Storage Tanks," as amended or supplemented.

"Standard operating procedure" or "SOP" means a document setting forth the operating procedures,

in accordance with N.J.A.C. 7:1E-2.14, for an operation involving a hazardous substance at the facility.

"State of the art technology" means up-to-date technology reflected in equipment or procedures that, when applied at a major facility, will result in a significant reduction in the probability of a discharge. The technology represents an advancement in reduction of leaks or discharges and shall have been demonstrated at a similar facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved, or otherwise available at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved. Technologies verified by the New Jersey Corporation for Advanced Technology (NJCAT) as innovative environmental technologies are deemed to meet this definition. Information on verified technologies shall be available from the Department through the Office of Innovative Technology and Market Development within the Division of Science and Research.

"Static head testing" means testing which involves the filling of a tank with water or other liquid, 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;
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 (5) gallons or less in size.

"Storage tank" means any tank or reservoir which is a container for hazardous substances and which is primarily used for bulk storage.

"Substantial business relationship" means the extent of a business relationship necessary under applicable State law to insure that a guarantee contract issued incident to that relationship is valid and enforceable.

"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.

"Substantial modification" means any change in facility design, construction, operation or maintenance that will materially affect the facility's potential for discharges of hazardous substances. This term may include, but is not limited to, change in service of a storage tank, discontinuation of or start-up of a production facility, change in use of transfer areas or substances transferred, and change in hours of operation.

"Substantial reconstruction" means any restoration, refurbishment, renovation or relocation of existing equipment which incurs costs equal to 50 percent or more of the replacement value of the equipment, or which impairs the physical integrity of the equipment or its monitoring systems.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1E-8.3.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility except for fueling or refueling operations, and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility.

"Transfer capacity" means the maximum quantity of hazardous substances which can be transferred into or out of a facility in a 24-hour period.

"Transmission pipeline" means new and existing pipe and any equipment, facility, rights-of-way, or building used or intended for use in the transportation of a hazardous substance by a pipeline and having a throughput capacity of 140 gallons per minute (530 liters per minute) or greater. This term does not include the transportation of a hazardous substance through onshore production or flow lines, refining, or manufacturing facilities, or storage terminals or inplant piping systems associated with those facilities. Any pipe used or intended to be used in the transportation of a hazardous substance which is not a transmission pipeline will be considered an in-facility pipe.

"Underground storage tank" means any tank defined as such in N.J.A.C. 7:14B.

"Vessel" means every description of watercraft or other contrivance that is practicably capable of being used as a means of commercial transportation of hazardous substances upon the waters, whether or not self propelled.

"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State.

7:1E-1.7 Hazardous substances

- (a) Petroleum and petroleum products and all substances listed in Appendix A to this chapter, incorporated herein by reference, shall be considered hazardous substances, except that sewage and sewage sludge shall not be considered as hazardous substances.
- (b) For the purposes of this chapter, the following shall not be considered hazardous substances:
 - 1. Metals, in either their pure elemental form or alloyed, in solid pieces with at least one dimensional measurement equal to or exceeding 100 micrometers (0.004 inches) or chemically bonded to an inert substrate; and

2. Any flammable substance or inert gas listed in Appendix A and which is designated by an asterisk.

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. Surface waters, including, without limitation the following: large rivers, medium rivers, streams, creeks, ponds, lakes and reservoirs as defined in N.J.A.C. 7:7-12.1(b); canals as defined in N.J.A.C. 7:7-9.8(a); estuaries, as defined in 33 U.S.C. 1330(k); and bays, including without limitation open bays, semi-enclosed bays and back bays, as defined in N.J.A.C. 7:7-12.1(b);
 2. Any water resource, as defined at N.J.A.C. 7:19-1.3, which is utilized by a public water system, nonpublic water system, or water system, as defined at N.J.A.C. 7:10-1.3;
 3. Bay islands, as defined at N.J.A.C. 7:7-9.21(a), and barrier island corridors, as defined at N.J.A.C. 7:7-9.20(a);
 4. Beaches, as defined in N.J.A.C. 7:7-9.22(a);
 5. Dunes, as defined in N.J.A.C. 7:7-9.16(a);
 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. 7:7-9.27(a); and wetland buffers and transition areas, as defined in N.J.A.C. 7:7-9.28(a);
 7. Critical wildlife habitat, as defined in N.J.A.C. 7:7-9.37(a);
 8. Prime fishing areas, as defined in N.J.A.C. 7:7-9.4(a);
 9. Finfish migratory pathways, as defined in N.J.A.C. 7:7-9.5(a);
 10. Submerged vegetation habitat, as defined in N.J.A.C. 7:7-9.6(a);
 11. Shellfish waters as defined in N.J.A.C. 7:9B-1.4;
 12. Forest areas, including prime forestland and unique forestland;
 13. Habitat for Federal and State endangered or threatened plant and animal species, as defined in N.J.A.C. 7:7-9.36(a);
 14. Federal and State wilderness areas, including areas included within the Natural Areas System, as designated in N.J.A.C. 7:5A-1.13, or the State Register of Natural Areas pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq. and 15.4 et seq., and N.J.A.C. 7:5A-1.4, and preserved land held by the New Jersey Natural Lands

Trust pursuant to the New Jersey Natural Lands Trust Act, N.J.S.A. 13:1B-15.119 et seq.; and

15. Wild and scenic river corridors, as defined in N.J.A.C. 7:7-9.44(a).

7:1E-1.9 Access

- (a) During normal business hours and at any time during an actual or suspected discharge or violation the Department and its representatives shall have the right to enter and inspect any facility, vessel, building, or equipment, or any portion thereof, in order to ascertain compliance with the Act, this chapter, or any order, or consent agreement issued or entered into pursuant thereto. At any time, the Department and its representatives shall have the right to enter and inspect those portions of any facility, vessel, building or equipment actively engaged in the transfer or processing of hazardous substances in order to ascertain compliance with the Act or this chapter, or any order, consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch, photograph or videotape any portion of the facility, vessel, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance; and to interview any employees or representatives of the owner or operator or their contractors. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.
- (b) The Department may inspect major facilities prior to approving DPCC or DCR plans.
- (c) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection.

7:1E-1.10 Waiver

The Department, when it determines that the application of these rules would impair expeditious containment or cleanup and removal of discharges, or endanger life, health, safety or the environment, may waive any provision of these rules.

7:1E-1.11 Applicability

- (a) No person shall cause, suffer, allow or permit a discharge of a hazardous substance.
- (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 and 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) A non-major facility which adds storage capacity so as to become a major facility shall be considered a major facility.
- (d) The Department may require of any major facility which has been granted a period to upgrade, the installation of alternative prevention and/or detection devices such as alarms, so as to minimize the chances of a discharge, and may, in addition, require the owner or operator of such a major facility to demonstrate an enhanced ability to prevent, expeditiously contain and/or clean up and remove a discharge from the portion of the facility to which a time period to upgrade has been granted. If the Department requires the installation of alternative prevention and/or detection devices, the owner or operator shall propose the devices to be used, subject to the Department's approval.
- (e) The Department recognizes that the designs of major facilities differ, and, therefore, appropriate methods of discharge prevention are necessarily site-specific. Wherever in these rules a particular method of discharge prevention is mandated, the owner or operator of a major facility may substitute an alternate method if he or she can demonstrate to the satisfaction of the Department that such alternate method will provide protection against discharges at least equivalent to the method it is intended to replace.

Subchapter 2

Prevention and Control of Discharges at Major Facilities

7:1E-2.1 Scope

This subchapter prescribes the rules of the Department applicable to the owners or operators of major facilities storing, transferring, processing or using hazardous substances. The following shall govern the standards for equipment and procedures utilized at major facilities.

7:1E-2.2 Storage

- (a) Aboveground storage tanks shall meet the following standards:
 1. Aboveground storage tank installations shall be provided with 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 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 shall undergo integrity testing in accordance with N.J.A.C. 7:1E-2.16.
- (b) Underground storage tanks shall meet the requirements of N.J.A.C. 7:14B.
 - (c) If a storage tank is served by internal heating coils, such coils, the pipes leading to and from them, and the appurtenances to which they connect, must be designed so that any leakage passing from the tank into the heating coil system will be captured and contained in a secondary containment or wastewater treatment system.
 - (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 personnel directly responsible for the filling operation of high liquid level conditions, and one of the following:
 1. A high high liquid level pump cutoff device, with a level detector separate from the high liquid level detector, designed to stop flow at a predetermined level;
 2. Direct communication between tank gauger and pumping station, such as direct line of sight, or telephone or radio communication; or
 3. Fast response systems for determining liquid levels, which result in rapid shutdown of pumping.
 - (e) Owners or operators of aboveground storage tanks of 2,000 gallons or less may meet the requirement of (d) above by having such tanks attended at all times during the filling procedure.
 - (f) Storage tank overfill lines, or vent lines on storage tanks without overfill lines, where they exist, shall be protected by secondary containment, or directed into other tanks, or other appropriate holding areas.
 - (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 are subject to the requirements of N.J.A.C. 7:1E-2.9.
 - (h) Tote, drum, bag, and other small container storage areas shall be equipped with 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 equipped with 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.
- (c) Prior to the filling of any tank car or tank truck, the lowermost drain and all outlets of such vehicle shall be examined to insure they are closed.
- (d) 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, 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.
- (e) A system to prevent tank car or tank truck departure before complete disconnect of loading or unloading lines shall be utilized in loading or unloading areas.
- (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.
- (g) Tank trucks in the process of being loaded or unloaded shall be attended at all times during the procedure.
- (h) A tank car or tank truck is attended when an employee of the facility or of an entity designated by the facility 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) Each in-facility pipe at a major facility containing a hazardous substance shall be sufficiently marked by lettering, color banding or color coding to 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, where such devices are state-of-the-art, and shall be double walled or have 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 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, inspected, repaired and maintained in accordance with API 570, incorporated herein by reference, or some other industry standard acceptable to the Department.
- (d) If a section of buried pipe is exposed for any reason, the owner or operator shall ensure that it is carefully examined for deterioration, and if found to be deteriorated, shall be repaired or replaced. Existing pipes which require substantial reconstruction or replacement shall be upgraded to the standards applicable to new buried piping.

- (e) Out-of-service pipes shall be capped or blank-flanged and marked as to origin, or physically removed.
- (f) Pipe supports shall be designed so as to minimize abrasion and corrosion and allow for expansion and contraction.
- (g) If in-facility pipes are elevated across roadways, gate check-in procedures, warning signs or other means shall be used to minimize the chance of a vehicular collision with the pipes.

7:1E-2.5 Process areas for hazardous substances

- (a) 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.
- (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.

7:1E-2.6 Facility drainage and secondary containment

- (a) All portions or areas of a major facility in which hazardous substances are routinely refined, produced, stored, held, handled, processed, or transferred shall be designed so that any leak will be prevented from becoming a discharge.
- (b) Secondary containment or diversion structures to prevent leaked hazardous substances from becoming discharges include:
 - 1. Dikes, berms or retaining walls;
 - 2. Curbing;
 - 3. Gutters, culverts and drainage systems;
 - 4. Diversion ponds, lagoons, retention basins, holding tanks, sumps, slop tanks and other collecting systems;
 - 5. Drip pans; or
 - 6. Other equivalent means approved by the Department.
- (c) Secondary containment or diversion systems, structures or equipment shall meet the following standards:
 - 1. The 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 container within the area;
 - ii. For tank car or tank truck loading/unloading areas, the volume of the largest compartment in any tank car or tank truck utilizing the area;
 - iii. For buried pipes, the maximum volumetric flow rate multiplied by the maximum amount of time between the detection of a leak and the shutdown of the pipe; or
 - 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. Allows the visual detection of leaks; and
 - iii. Is inspected daily in accordance with N.J.A.C. 7:1E-2.10;
4. No process area, loading or unloading area, diked storage area or other storage area, or secondary containment or diversion system appurtenant thereto shall drain into a watercourse, or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a watercourse or public sewage treatment plant, unless provision is made to:
- i. Retain, by valves or other positive means, any accumulated precipitation until it can be ascertained to the satisfaction of the Department that no hazardous substances will be discharged to the environment; or
 - ii. Intercept any leaked hazardous substances in a permitted industrial wastewater treatment or pretreatment facility or other facility operated in accordance with a valid and effective NJPDES or NPDES permit;
5. Diversion systems must be designed to handle the reasonably expected flow rate from a leak into them;

6. Incompatible materials shall not be stored within the same containment area if there is a substantial likelihood of them mixing in the event of leakage. This restriction does not apply to process areas where the substances are brought into proximity as part of a production process; and
7. Secondary containment systems shall not be used as backup storage systems nor for any other purpose that would impair their capacity to contain leaks.

7:1E-2.7 Marine transfer facilities

- (a) All rules and regulations of the U.S. Coast Guard which apply to oil transfer facilities, in particular 33 CFR 154 and 156, are herein expressly adopted by reference, and are further made applicable as well to all marine transfer facilities which transfer in the liquid state any hazardous substances other than oil.
- (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 hazardous substances between vessels, the containment device shall be capable of encircling both vessels.
- (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 ASTM D93, 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.
- (d) When conditions prohibit the immediate deployment of a containment device, such containment device shall be maintained on a standby basis during the transfer for rapid deployment in the event of a discharge.
- (e) When transferring hazardous substances to or from a vessel that is moored to a dock, the containment device 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.
- (f) If a containment device is required by the Department to be in place during a transfer of a hazardous substance, the device shall be deployed not less than 15 feet from the vessel prior to commencement of the transfer operation, except in the case where a dock may act as part of the containment, and shall be maintained in a manner that minimizes the potential for any discharged hazardous substance from leaving the contained area.
- (g) Transfer operations shall not commence, or if commenced shall be discontinued immediately, upon detection of any of the following:
 1. National Weather Service forecasts predict for the vicinity of the facility gale force winds, heavy 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. Fire occurs in the vicinity of the transfer operation or a nearby portion of the transfer facility unless such a transfer is necessary to prevent further endangerment of personnel, the vessel or facility;
 3. At any time the transfer system is functioning contrary to the standard operating procedures of the facility;
 4. A break occurs in the transfer system;
 5. There is an apparent discrepancy between the quantity of hazardous substance transferred and received;
 6. The communication system is not operative;
 7. Hazardous substances are observed in the water near any transfer component, unless it can be ascertained that the hazardous substances are not being discharged from the vessel or the marine transfer facility involved in the transfer operation; or
 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 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.
- (h) Prior to the removal of a deployed containment device, all discharged hazardous substances contained by the device shall be properly cleaned up and removed.
- (i) Any containment device deployed shall be retrieved and properly 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-2.8 Illumination

- (a) Major facilities which transfer hazardous substances to or from vessels between the hours of sunset and sunrise shall perform all such transfers using fixed lighting that shall adequately illuminate:
1. Each transfer connection point in use at the facility;
 2. Each transfer connection point in use on the vessel;

3. Each hazardous substances transfer work area at the facility; and
 4. Each hazardous substances transfer work area on the vessel.
- (b) Major facilities which transfer hazardous substances to or from vessels between the hours of sunset and sunrise shall perform all such transfers using fixed or portable lighting that shall adequately illuminate surface area of the water surrounding the vessel sufficient to determine that no discharge is occurring.
- (c) Adequate lighting shall mean any lighting which complies with U.S. Coast Guard rules or regulations applicable to oil transfers facilities, particularly 33 CFR 154.570.

7:1E-2.9 Flood hazard areas

- (a) Hazardous substances stored within the 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 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 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. Prior to each marine transfer for adequacy, deterioration, leaks or discharges, all transfer area lighting and all aboveground transfer valves, pumps, flanges, flexible hoses and connections, unless they are not readily accessible, that are to be used in the transfer;
 2. Once daily for integrity and leaks, all secondary containment systems and diversion systems for aboveground storage tanks which are not impermeable;
 3. Once daily or prior to each use, whichever is less frequent, for integrity, deterioration and leaks, loading or unloading areas, including flexible hoses;
 4. Once weekly for integrity and leaks, process areas;
 5. Once monthly for integrity and leaks, all other storage areas and secondary containment or diversion systems, and all aboveground pipes; and
 6. Once quarterly:

- i. For integrity and leaks, all other aboveground valves, pumps, flanges, connections and equipment;
 - 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 the date, person performing the inspection, any problems found, including if no problems were found, and the subsequent correction of such problems.

7:1E-2.11 Housekeeping and maintenance

- (a) Hazardous substances shall be kept in containers suitable for their storage or processing at all times except when being transferred between containers. Containers shall be compatible with the substances stored therein and resistant to chemical attack by the substances. Hazardous substances shall be kept protected from the elements and the possibility of leakage.
- (b) Tanks, pipes, valves, glands, drums or other equipment leaking hazardous substances shall be promptly repaired, replaced or taken out of use following detection of a leak, unless provision is made to capture and contain leaking hazardous substances in a drip pan or other appropriate containment device. If such provision is made, the leaking item shall be repaired, replaced or taken out of use within 15 days after the leak is detected unless the shutdown of a process unit is necessary. A leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first.
- (c) Cleanup of all leaks or discharges of hazardous substances shall begin promptly upon detection. Loose quantities of hazardous substances shall not be allowed to persist on grounds, floors, walls or equipment, or any other places within the facility.
- (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 those small leaks or 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.
- (e) The facility shall maintain an adequate supply of protective safety equipment, such as chemically resistant coveralls, boots, or 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 accumulated debris, and free of cracks through which hazardous substances could be discharged.

7:1E-2.12 Employee training

- (a) Owners or operators of major facilities shall implement an appropriate program for training

their employees involved in the handling of hazardous substances and shall maintain a written description of the program.

- (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 training necessary to qualify for the position;
 - 2. Specified time periods of in-house training for each position covering orientation, specific hazardous substances training and on-the-job training, and periodic refresher training; 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. General orientation and initial training of new employees before assignment to hazardous substance operations, which shall include instruction on the general site rules and practices, and safety procedures;
 - 2. 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. Training on updated or new standard operating procedures; and
 - 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) The training program shall specify the qualification required for the personnel responsible for training employees working with hazardous substances.
- (e) Documentation of all training, including final qualifying activities, shall be kept in accordance

with N.J.A.C. 7:1E-2.15 for each employee and shall include identification of all personnel trained, subjects covered and training dates.

- (f) Owners or operators shall have procedures to insure that all employees utilized by outside contractors have received site-specific information covering emergency and safety procedures.

7:1E-2.13 Security

- (a) Major facilities shall be adequately illuminated so that personnel on the premises can detect intruders, leaks or discharges.

- (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 of all portions or areas within which hazardous substances are stored, processed, transferred or used, 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. For aboveground storage tanks, all of the following:
 - i. Valves which will permit escape of a tank's or other container's contents to the surface securely locked in the closed position when not in use;
 - ii. Starter controls on all pumps locked in the "off" position when the pumps are not in use unless the controls are located at a site accessible only to authorized personnel, which site is itself attended or locked; and
 - iii. The open ends of all pipes securely capped or blank-flanged when not in use for an extended time.

7:1E-2.14 Standard operating procedures

- (a) The owner or operator shall have written standard operating procedures for all operations involving hazardous substances. They shall be in English in a manner understandable by employees of the major facility and shall also be written in the language of fluency of employees utilizing those SOPs not fluent in English.

- (b) A copy of the standard operating procedures shall be readily available to employees.

- (c) A copy of material safety data sheets or fact sheets for each hazardous substance used or stored at the facility shall be readily available to employees.

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

1. A description of the operation, including all applicable requirements from this subchapter;
2. Procedures for visual inspection of equipment;

3. Procedures and conditions for normal operation;
 4. A description of leak monitoring equipment and alarms; and
 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.
- (e) 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. Simplified process flow sheets, showing flows, temperatures and pressures;
 2. A description of the most frequent abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions;
 3. Pre-startup procedures;
 4. Startup procedures including conditions to be maintained during startup;
 5. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of equipment to be maintained after shutdown;
 6. Procedures to perform and inspect maintenance work; and
 7. Log sheets and checklists.
- (f) A generic SOP may be written when more than one piece of equipment designed to perform the same function is located at the facility. Such a generic SOP must cover all hazardous substances utilized with all the equipment and must delineate any special conditions associated with a specific piece of equipment or hazardous substance.
- (g) Modifications to the standard operating procedures shall be incorporated into the standard operating procedures prior to their implementation.
- (h) A current index of the standard operating procedures, including title(s), identification number(s) and latest date(s) of issue shall be maintained and readily available.

7:1E-2.15 Recordkeeping

- (a) The owner or operator of a major facility shall maintain records of employee training, drills for discharge prevention, inspections of cleanup and removal equipment, and 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. 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 equipment, and detection or monitoring, prevention or safety devices related to discharge prevention and response; and
 2. All structures other than aboveground storage tanks.
- (d) For aboveground storage tanks, the owner or operator of a major facility shall maintain records of integrity testing, inspection, and repair for the lifetime of the tank.
- (e) All records shall be available for inspection upon the request of the Department or appropriate local agencies.
- (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.
 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 are 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 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 are 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 (5) 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 (5) 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 (5) 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 corrosion, erosion or other wall or bottom thinning to less than a predetermined minimum thickness to ensure sufficient structural strength;
 - 2. Visual inspection of the exterior of the tank, checking for cracks and leaks; and
 - 3. 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 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-3.1 Scope

This subchapter prescribes the rules of the Department for information to be submitted concerning transmission pipelines. The following rules shall govern the preparation and submission of registrations.

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. The business name(s), address and telephone number of the owner or operator of the facility;
 2. The name or designation of the transmission pipeline, and the name, title and telephone number of a contact person for the transmission pipeline;
 3. The name and business address of the owner or operator's registered agent;
 4. The storage capacity and location, including street address and municipality, of any facility;
 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;
 7. The transfer capacity and the average daily throughput, on an annual basis, of the transmission pipeline for each hazardous substance;
 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, and the location at which the pipeline enters or leaves the State;
 9. An inventory of all types of pipe used for the transmission of hazardous substances, including a history of major repairs, major maintenance and major leaks from all pipes; and
 10. Any certifications required pursuant to N.J.A.C. 7:1E-4.11(b).

- (b) Any change in the information supplied pursuant to (a) above or N.J.A.C. 7:1E-3.4(a) shall be reported to the Department within 60 days.
- (c) The information required by (a) or (b) above shall be sent to:

Bureau of Release Prevention
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420
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. A summary of the action plan used in responding to, and minimizing health and environmental dangers from, fires, explosions or discharges, including the deployment of personnel and equipment, the chain of command for an emergency response action, and notification procedures pursuant to N.J.A.C. 7:1E-5;
 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. The name, title and 24-hour business telephone number of facility's response coordinator or other person authorized to hire contractors and release funds for discharge response, containment, cleanup and removal. A response coordinator or alternate shall be available at all times; and
 5. Procedures for determining the recycling or disposal options for hazardous substances or contaminated soil, debris, and so forth gathered during cleanup and removal 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 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 such plans.

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

- (a) The owner or operator of a major facility shall:
1. Prepare a DPCC plan demonstrating compliance with the standards in N.J.A.C. 7:1E-2; and
 2. Appoint a facility contact who shall be responsible for insuring compliance with the DPCC plan and this chapter. The 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. The name, telephone number and location of the facility including street and mailing address, county, municipality, and tax lot and block number;
 2. The name(s), telephone number(s) and business address(es) of the owner or operator of the facility;
 3. The name, title, telephone number, and business address of the facility contact;
 4. The name and business address of the owner's or operator's registered agent, if applicable;
 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;
 7. A general site plan, in the format prescribed in N.J.A.C. 7:1E-4.10;
 8. A drainage and land use map, in the format prescribed in N.J.A.C. 7:1E-4.10;
 9. Topographical maps, in the format prescribed in N.J.A.C. 7:1E-4.10;
 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) The DPCC plan shall include, at a minimum, the following technical information, in the following order or indexed to this order:
1. A description of all aboveground storage 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;
 - iv. Overfill protection measures; and
 - v. The schedule for integrity testing, 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;
 2. A description of underground storage tanks, 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; and
 - ii. Tank size and contents;
 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;
 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, including, but not limited to:
 - i. Location and identification, such as name or number;

- ii. The size of the largest compartment in any tank car or tank truck utilizing the area; and
 - iii. The hazardous substances loaded or unloaded;
5. A description 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. 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 for minimizing the chance of a vehicular collision with overhead pipes;
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
 - ii. The largest vessel or maximum volumetric flow rate of hazardous substances in the area;
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. This description can be included with the information required pursuant to (c)1, 2, 3, 4, 5 and 6 above, as appropriate;
8. A description of marine transfer areas, including materials transferred, booming operations pursuant to N.J.A.C. 7:1E-2.7, and the fixed and portable lighting in use in marine transfer areas, pursuant to N.J.A.C. 7:1E-2.8;
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;
10. A description of all visual inspection and monitoring procedures, pursuant to N.J.A.C. 7:1E-2.10;
11. An outline of the housekeeping and maintenance program, pursuant to N.J.A.C. 7:1E-2.11;
12. 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;
13. A description of the physical security measures, including lighting, at the facility, pursuant to N.J.A.C. 7:1E-2.13;
 14. A current index of all standard operating procedures that have been written pursuant to N.J.A.C. 7:1E-2.14; and
 15. A description of the recordkeeping system employed by the facility, pursuant to N.J.A.C. 7:1E-2.15.
- (d) The DPCC plan 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 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 and 2.16. All equipment and those portions of the facility installed after the approval of a DPCC plan must meet all applicable standards in these rules.

7:1E-4.3 Discharge cleanup and removal plan

- (a) The owner or operator of a major facility shall appoint a response coordinator.
- (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. The name, title and 24-hour business telephone number of the facility's response coordinator or other person authorized to hire contractors and release funds for discharge response, containment, cleanup and removal. A response coordinator or alternate shall be available at all times;
 2. The chain of command for an emergency response action;
 3. Notification procedures, pursuant to N.J.A.C. 7:1E-5;
 4. Provisions for an annual simulated emergency response drill 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 each employee so assigned;
 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:
 - 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)8 and 9 may serve as the identification;
 - ii. Provisions for an environmental assessment of the impact of any discharge; and
 - 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;
 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 activities;
 10. A copy of a current agreement with the local emergency planning committee or committees that coordinates the emergency responses of the parties to the agreement; and
 11. 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.

7:1E-4.4 Financial responsibility

- (a) The owner or operator of a major facility shall demonstrate financial responsibility for cleanup and removal activities.
- (b) The owner or operator of a major facility shall demonstrate financial responsibility in the minimum amount of \$1 million per occurrence and \$2 million annual aggregate; provided, however, that if the owner or operator establishes to the satisfaction of the Department that a lesser amount will be sufficient to protect the environment and public health, safety and

welfare, the Department may accept evidence of financial responsibility in such lesser amount. In determining the sufficiency of the amount of financial responsibility, the Department may consider factors including, without limitation, the nature and quantity of the hazardous substances which may be present at the facility, and the proximity and nature of environmentally sensitive areas located near the facility.

- (c) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.
- (d) Financial responsibility may be established by any one, or by any combination, of the following mechanisms:
 - 1. Financial test of self-insurance;
 - 2. Guarantee;
 - 3. Insurance or risk retention group coverage;
 - 4. Surety bond; or
 - 5. Letter of credit.
- (e) The owner or operator of any major facility which demonstrates financial responsibility pursuant to the requirements of the Federal Oil Pollution Act of 1990, P.L. 101-380, shall be deemed to have demonstrated financial responsibility in accordance with this chapter and the Act.
- (f) An owner or operator may use self-insurance in combination with a guarantee only if, for the purposes of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
- (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 financial reporting year. 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 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 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, the Rural 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 as issued by Standard and Poor's, or Aaa, Aa, A or Baa 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. A tangible net worth of at least six times the applicable aggregate amount in (b) above;
 - 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 Rural Utilities Services, or the Board of Public Utilities, or 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;
 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 specified in Appendix B, incorporated herein by reference. The local government shall also:
 - i. If a general purpose local government, have a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations. Bonds that are backed by credit enhancement other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding; and
 - 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. Total revenues, consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales, restricted and unrestricted intergovernmental revenues, and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt;
 - ii. Total expenditures, consisting of the sum of fund operating and non-operating expenditures, including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under direct control of the local government using the financial test (interfund transfers);
 - iii. Local revenues, consisting of total revenues as outlined in i above minus the sum of all transfers from other governmental entities, including all monies received from Federal, State or local government sources;
 - iv. Debt service, consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations, including interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants, but excluding payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments;
 - v. Total funds, consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes Federal securities, Federal

agency securities, State and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets; and

- vi. Population, consisting of the number of people in the area served by the local government.
- (h) If an owner or operator or guarantor using the financial test 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) The Department may require reports of financial condition at any time from the owner or operator, or guarantor. If the Department finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of (g) above, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.
- (j) If the owner or operator fails to obtain alternate coverage within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.
- (k) To demonstrate financial responsibility through a guarantee:
 - 1. Within 120 days of the close of each financial reporting year, the guarantor must demonstrate that it meets the financial test criteria set forth in (g) above by completing the letter from the chief financial officer as specified in Appendix B and must deliver the letter to the owner or operator and the Department. If the guarantor fails to meet the requirements of (g) above, within 120 days of the end of the financial reporting year the guarantor will send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator and the Department. If the Department notifies the guarantor that he or she no longer meets the requirements of (g) above, the guarantor must notify the owner or operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification or 120 days after the date the Department receives the notification, whichever is later, as evidenced by the return receipt. The owner or operator must obtain alternate coverage within 30 days; and
 - 2. The guarantee must be worded as specified in Appendix B, and a copy of the guarantee maintained at the facility at all times.
- (l) To demonstrate financial responsibility through liability insurance:
 - 1. Such insurance must be obtained from a qualified insurer or risk retention group. It may be in the form of a separate insurance policy or an endorsement to an existing policy;

2. An existing insurance policy must be amended by an endorsement worded as specified in Appendix B and a separate insurance policy must be evidenced by a certificate of insurance worded as specified in Appendix B. A copy of this endorsement or certificate must be maintained at the facility at all times;
 3. Cancellation or any other termination of the liability insurance by the 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; and
 4. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.
- (m) To demonstrate financial responsibility through a surety bond:
1. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the latest Circular 570 of the U.S. Department of the Treasury;
 2. The surety bond must be worded as specified in Appendix B, and a copy of the surety bond maintained at the facility at all times;
 3. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate sums;
 4. The owner or operator who uses a surety bond to meet the requirements of (a) above must establish a standby trust fund when the surety bond is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department;
 5. The surety(ies) may cancel the bond by sending written notice of cancellation by certified mail to the principal and the Department, provided, however, that the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal or the date of receipt of the notice of cancellation by the Department, whichever is later, as evidenced by the return receipt; and
 6. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.
- (n) To demonstrate financial responsibility through a letter of credit:
1. The issuing agency must be an entity that has the authority to issue letters of credit in the

- State and whose letter-of-credit operations are regulated and examined by a State agency;
2. The letter of credit must be worded as specified in Appendix B, and a copy of the letter of credit maintained at the facility at all times;
 3. The owner or operator who uses a letter of credit to meet the requirements of (a) above must establish a standby trust fund when the letter of credit is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department;
 4. The letter of credit must be irrevocable with a term specified by the issuing institution, and must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator and the Department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice or on the date when the Department receives the notice, whichever is later, as evidenced by the return receipt; and
 5. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.
- (o) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code:
1. Naming an owner or operator as debtor, the owner or operator shall notify the Department by certified mail of such commencement; or
 2. Naming the provider of financial assurance as debtor, the provider shall notify the owner or operator by certified mail of such commencement, and the owner or operator shall then notify the Department.
- (p) An owner or operator will be deemed to be without the required demonstration of financial responsibility in the event of commencement of bankruptcy or other incapacity of his or her provider of financial assurance. Within 30 days after receiving notice of such an event, the owner or operator shall submit to the Department an alternate demonstration of financial responsibility.

7:1E-4.5 Preparation and submission of plans

- (a) The owner or operator of a major facility shall prepare a DPCC plan and a DCR plan in accordance with N.J.A.C. 7:1E-4.2 and 4.3. The DPCC and DCR plans shall be prepared and submitted as a single document.
- (b) The owner or operator of an existing 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. Such plans shall be submitted no later than the following dates:

1. By February 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least 300,000 gallons, but less than one million gallons;
 2. By August 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least one million gallons, but less than four million gallons;
 3. By February 1, 1993, all facilities with a storage capacity for hazardous substances of all kinds of four million gallons or greater;
 4. By August 1, 1993, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 80,000 gallons, but less than 200,000 gallons, or for hazardous substance of all kinds of at least 200,000 gallons, but less than 300,000 gallons;
 5. By February 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 40,000 gallons, but less than 80,000 gallons; and
 6. By August 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum and petroleum products of at least 20,000 gallons, but less than 40,000 gallons.
- (c) If a facility becomes a major facility because of the addition of a substance to the list of hazardous substances in Appendix A, the owner or operator shall submit a DPCC and DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at the address in (g) below, no more than 180 days from the effective date of the addition to Appendix A.
- (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 (g) below at least 180 days prior to the anticipated operational date of the facility as a major facility. The owner or operator shall receive approval and implement the approved plans prior to operating the facility as a major facility.
- (e) Within 60 calendar days of receipt of a DPCC and a DCR plan, the Department shall notify the owner or operator in writing as to whether all information required by (a) above to begin technical review of the plans has been submitted. A list of additional information required will be included if the plans are deemed incomplete.
- (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.
- (g) One copy of a DPCC 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 and DCR plan shall be submitted to the Department. Copies shall be sent to:

Bureau of Release Prevention
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420
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 and DCR plan, pursuant to N.J.A.C. 7:1E-4.5, within 180 days of receipt.
- (b) The Department may conditionally approve a plan if the map 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)8 or 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. The plan otherwise satisfies all of the requirements of this subchapter; and
 - 2. The owner or operator is making a good faith effort to provide complete, acceptable maps.
- (c) The conditional approval under (b) above shall set forth a date on which the conditional approval will expire unless the owner or operator has provided maps which satisfy the requirements of N.J.A.C. 7:1E-4.10.
- (d) The owner or operator shall demonstrate financial responsibility pursuant to N.J.A.C. 7:1E-4.4 by the time the Department acts to deny or approve a DPCC or DCR plan pursuant to (a) above. If the owner or operator demonstrates to the satisfaction of the Department that none of the methods of financial responsibility set forth in N.J.A.C. 7:1E-4.4 is practicable to him or her, and that a good faith effort has been made to secure financial responsibility in the full aggregate amount, the Department shall:
 - 1. Conditionally approve the plan; or
 - 2. Establish an alternate minimum amount of financial responsibility pursuant to N.J.A.C. 7:1E-4.4(b).
- (e) A conditional approval under (d) above shall set forth a date on which the conditional approval shall expire unless the owner or operator has demonstrated financial responsibility in compliance with the requirements of N.J.A.C. 7:1E-4.4.
- (f) Implementation of the DPCC and DCR plans shall begin immediately upon receipt of the Department's approval.

- (g) The major facility shall keep a copy of the approved or conditionally approved plan onsite at all times.

7:1E-4.7 Denial or revocation of approval of plans

- (a) The Department shall state in writing its reasons for denying or revoking approval of any DPCC and DCR plans.
- (b) The Department may revoke its approval of a DPCC and DCR plan if the owner or operator fails to comply with an approved schedule for bringing the facility into compliance with the requirements of these rules, or submits to the Department false or willfully misleading information.
- (c) If the Department denies or revokes approval of a plan, the owner or operator shall have 30 days within which to submit an acceptable plan.
- (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 and DCR plan 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

- (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(g) 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 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 and DCR plan shall amend the DPCC 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 amendment within 60 days of receipt of an administratively complete submission.
- (d) Within 30 days of receipt of approval, a second copy of the approved amendment shall be submitted to the Department.
- (e) Changes to the following information shall be reported to the Department at the address in N.J.A.C. 7:1E-4.5(g) within 30 days, but shall not be considered plan amendments subject to the certification and approval requirements of this section:

1. Name and mailing address of the facility, if the change is not the result of a change of ownership;
2. Facility and personnel telephone numbers;
3. Name and business address of the owner's or operator's registered agent;
4. Employee names that are included in the DPCC or DCR plan; and
5. New or revised financial responsibility documents.

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(g) at least 180 days prior to the expiration date of the DPCC and DCR plans.
- (b) 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.
- (d) Any change in an approved DPCC plan or DCR plan necessitated by amendments to this chapter shall be incorporated into the plan when the plan is renewed.
- (e) All renewals shall be certified pursuant to N.J.A.C. 7:1E-4.11.
- (f) Any DPCC or DCR plan which is not 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)7, shall:
 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;
 2. 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

3. Be certified by a licensed land surveyor in accordance with N.J.S.A. 45:8-27, *et seq.*, and the regulations at N.J.A.C. 13:40.
- (b) Drainage and land use maps, required pursuant to N.J.A.C. 7:1E-4.2(b)8, shall include the land area within 1,000 feet of the facility's boundary and shall:
1. Employ current basemaps at a scale equal to or larger than one inch equals 600 feet, and appropriate for the size of the facility;
 2. Show the facility boundary;
 3. Delineate and label the following categories of land use:
 - i. Residential;
 - ii. Educational institutions;
 - iii. Health institutions;
 - iv. Commercial and services;
 - v. Industrial;
 - vi. Transportation, communication and utilities;
 - vii. Industrial and commercial complexes;
 - viii. Other urban lands not specified in (b)3i through vii above;
 - ix. Recreational land and parks;
 - x. Streams and canals;
 - xi. Lakes and reservoirs;
 - xii. Bays, estuaries and other tidal waters;
 - xiii. Coastal wetlands;
 - xiv. Interior wetlands;
 - xv. Agricultural land;
 - xvi. Beaches;
 - xvii. Extractive mining;
 - xviii. Other barren or altered lands;
 - xix. Deciduous forest;
 - xx. Coniferous forest;
 - xxi. Mixed forest; and
 - xxii. Brushland and shrubland; and
 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.
- (c) 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. The standards contained in N.J.A.C. 7:1D, Appendix A; or
 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 include AutoCAD, Arc View, and Arc GIS;

- ii. 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, 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)9, shall:
1. Employ current basemaps at a scale equal to or larger than one inch equals 1,000 feet;
 2. Clearly show the location of the facility;
 3. Not be so crowded as to obscure the clarity of the mapped information;
 4. Accurately transfer mapped data from other sources to the basemaps;
 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, the sources of the data used, and the date of preparation;
 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)7 below;
 7. Extend to the maximum area of potential impact, taking into account the sizes of the tanks, containers, or vessel compartments utilized by the facility, the loss of secondary containment, consideration of containment measures in addition to secondary containment, the dispersiveness of the hazardous substance, temperature extremes, average rainfall and stream flows, tidal cycles, prevailing winds, and potential threat to the environment. This area shall be the lesser of the following:
 - i. The distance and path an uncontrolled discharge would travel in 48 hours, including all floodprone areas around any surface water or wetlands features;
 - ii. The distance downstream from the facility at which the concentration of the hazardous substance would fall below EPA's Quality Criteria for Water issued by EPA's Office of Water Regulations and Standards, including all floodprone areas around any surface water or wetlands features; or
 - iii. Fifteen miles from the facility boundary, downgradient along the path a discharge would follow, including all floodprone areas around any surface water or wetland features; and
 8. Delineate and label the environmentally sensitive areas identified in N.J.A.C. 7:1E-1.8;

- (e) All maps required by N.J.A.C. 7:1E-4.2(b)7 and 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)9 shall be submitted in paper form. One paper copy shall accompany the initial plan submission for approval.
- (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. The application shall be in writing and shall contain the following:
 - i. A copy of a written estimate of the cost of preparing the required maps in accordance with the criteria set forth in this section; and
 - ii. An affidavit, signed and sworn to by the person required to provide certifications pursuant to N.J.A.C. 7:1E-4.11(c), stating that the owner or operator is a small business and that incurring the cost of obtaining maps in compliance with this section would substantially impair the owner or operator's ability to continue as a going concern.
 - 2. The owner or operator shall submit such certified financial statements as the Department requests.
 - 3. The Department shall grant the exemption if it determines that the cost of obtaining maps in compliance with this section would be greater than 25 percent of the owner or operator's gross proceeds or retained earnings, as demonstrated by the financial statements submitted pursuant to (g)2 above.
 - 4. The grant of the exemption shall set forth other mapping criteria for general site plans and may set forth other mapping criteria for drainage and land use maps, which the Department determines will satisfactorily serve the purposes of this subchapter. One such set of criteria for general site plans includes the scanning of the existing general site plan to produce a digital image for submission to the Department along with the facility's coordinate centroid in New Jersey State Plane feet (North American Datum 1983).

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.

- (c) The additional certification in (b) above shall be signed by the ranking official at a level of authority to commit the necessary resources to fully implement the plan, plan amendment, plan renewal or transmission pipeline registration.
- (d) Notwithstanding the provisions of (b) above, the certification contained in (a) above shall be the only certification required if the individual required in (a) above to sign the certification is the same individual required in (c) above to sign the additional certification.
- (e) Any person who submits a DPCC plan 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) Any person submitting a DCR plan containing a deployment plan, or submitting an amendment or renewal to the deployment plan, shall include, as an integral part of the plan, plan amendment or plan renewal, a certification, signed by a marine biologist or aquatic biologist or ecologist or freshwater equivalent and an ornithologist stating that the deployment plan identifies those environmentally sensitive areas that could be affected by a discharge from this facility and the seasonal sensitivity of those areas, provides for protection from, and mitigation of, any potentially adverse impact on the identified areas, and for an environmental assessment in the event of a discharge.

Subchapter 5

Discharge Notification, Response and Reporting

7:1E-5.1 Scope

This subchapter prescribes the rules of the Department for notification and reporting of discharges

of hazardous substances, the reporting of malfunctions of discharge detection systems, and response to discharges of hazardous substances. The following shall govern the procedures for notification of the Department, response to a discharge of a hazardous substance, and follow-up reporting.

7:1E-5.2 Notification of historical discharges

- (a) All persons responsible for a discharge who know or suspect that a discharge has occurred prior to January 23, 1980, or who know or suspect that a discharge has occurred between January 23, 1980 and September 12, 1991, that was not required to be reported at that time, and who have not previously reported that discharge shall conduct a diligent inquiry and shall promptly upon completion of the diligent inquiry and discovery of a discharge notify the Department in writing of such discharge at the address given at N.J.A.C. 7:1E-5.8(f).
- (b) All persons responsible for a discharge pursuant to (a) above who previously reported a discharge which occurred prior to January 23, 1980, or who know or suspect that a discharge has occurred between January 23, 1980 and September 12, 1991, that was not required to be reported at that time, shall promptly correct or supplement the prior notice to the Department if any of the information in the prior notice is determined to be false, misleading or inaccurate, or if additional relevant information is discovered which has not been previously reported to the Department.
- (c) All persons responsible for a discharge who are required to make a notification pursuant to (a) or (b) above and who are subject to an investigation or cleanup action under any State or Federal law, may notify the Department of the discovery of a historical discharge as part of the periodic progress reports required during the investigation or cleanup if the discovery of the historical discharge is coincident with such investigation or cleanup.

7:1E-5.3 Discharge notification

- (a) Except as delineated in (e) below, immediately after a discharge commences, any person or persons responsible for a discharge who knows or reasonably should know of the discharge, shall immediately notify the Department at (877) WARN DEP (927-6337). In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.
- (b) Notification received by the Department pursuant to (a) above within 15 minutes of the time that the person responsible for a discharge knew, or reasonably should have known, of the discharge shall be considered immediate. It shall be presumed that notification received by the Department more than 15 minutes after the person responsible for a discharge knew, or reasonably should have known, of the discharge is not immediate. The person responsible for the discharge may rebut this presumption by satisfying the requirement of N.J.A.C. 7:1E-5.6.
- (c) Any notification performed by any person responsible for a discharge pursuant to (a) and (b) above shall include, but not be limited to, the following information:
 - 1. The name, title, affiliation, address and telephone number of the person reporting the discharge;
 - 2. The location of the discharge, with as much specificity as the Department requests, and

in any event with sufficient specificity to enable the Department to direct its agents and employees and any other person to the discharge site, including:

- i. For discharges from sites located on land, the name of the site, the street address, the municipality, and the county;
 - ii. For discharges on, under or into water, the name of the water body, location of the discharge with reference to a fixed point or points, and a description of the area which the discharge may reach;
3. The common name of the hazardous substance(s) discharged;
 4. An estimate of the quantity of each hazardous substance discharged, including best estimates if the quantities are unknown;
 5. The date and time at which the discharge began, and whether the discharge is continuing, intermittent or terminated;
 6. The actions such person proposes to take to contain, clean up and remove the hazardous substance(s) discharged; and
 7. The name and address of any person responsible for the discharge.
- (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.
- (e) 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. 7:26G-8.1 or a Facility Response Plan pursuant to 40 CFR 112 has been approved; and
 - i. Has not entered any waters of the State or migrated off-site;
 - ii. Within 24 hours of when any person responsible for the discharge knows or reasonably should have known of the commencement of the discharge, is;
 - (1) Stopped and contained in conformance with the approved plan in (e)1 above; and
 - (2) Cleaned up and removed, including any contaminated soil, in accordance with the applicable State or federal regulations for cleanup and remediation, including the storage and disposal of cleanup related materials; and

- iii. The owner or operator of the facility documents his or her actions in accordance with N.J.A.C. 7:26E, and maintains records in accordance with N.J.A.C. 7:1E-2.15.
 2. If the owner or operator determines that all requirements of (e)1i and ii above cannot be met, the owner or operator shall notify the Department immediately upon making such a determination, but in any case, within 24 hours of when any person responsible for the discharge knows or reasonably should have known of the discharge.
 3. The discharge of transformer fluid from a transformer which does not contain polychlorinated biphenyls in concentrations of 50 parts per million or greater which either occurs during a state of emergency declared by the federal, State or local government, provided such discharges are reported to the Department within 24 hours of the termination of the state of emergency, or:
 - i. The discharge is less than 25 gallons;
 - ii. The discharge has not entered any waters of the State, or any storm drain leading to any waters of the State;
 - iii. Within 24 hours of when any person responsible for the discharge knows or reasonably should have known of the discharge, is cleaned up and removed in accordance with the applicable State or federal regulations for cleanup and remediation, including the storage and disposal of cleanup related materials; and
 - iv. The person responsible for the discharge 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.
- (f) The following conditions shall be met in order for any release of a hazardous substance consequent to a motor vehicle accident to be considered a leak not requiring notification pursuant to (a) above:
1. The hazardous substance has not entered any waters of the State, or any storm drain leading to any waters of the State;
 2. The hazardous substance is contained on a paved roadway; and
 3. Prior to its escape to lands or water of the State, the hazardous substance is cleaned up and removed in accordance with the applicable State or federal regulations for cleanup and remediation, including storage and disposal of cleanup related materials.

7:1E-5.4 Notification of aircraft discharges

- (a) In the case of a discharge of a hazardous substance used as fuel from an aircraft into the airspace over the lands or waters of New Jersey, any person responsible for a discharge shall notify the Department at (877) WARN DEP (927-6337). In the event that this number is

inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

- (b) Any person responsible for a discharge who notifies the Department pursuant to (a) above shall report:
1. The person causing the discharge;
 2. The amount of hazardous substance discharged;
 3. Time the discharge occurred;
 4. The location in the aircraft flight path of the discharge;
 5. Wind speed and direction; and
 6. The area likely to be affected by the discharge.

7:1E-5.5 Notification of malfunctions in discharge detection systems

- (a) The owner or operator of a major facility shall immediately notify the Department at (877) WARN DEP (927-6337) of any malfunction of a discharge detection or other discharge monitoring, prevention or safety system or device. In the event that this number is inoperable, any owner or operator of a major facility shall immediately notify the State Police at (609) 882-2000.
- (b) Notification received by the Department pursuant to (a) within 15 minutes of the time that the owner or operator knew, or reasonably should have known, of the occurrence of a malfunction shall be considered immediate. It shall be presumed that notification received by the Department more than 15 minutes after the owner or operator knew, or reasonably should have known, of the malfunction is not immediate. The owner or operator may rebut this presumption by satisfying the requirements of N.J.A.C. 7:1E-5.6.
- (c) Within two hours of the initial notification, the owner or operator of a major facility shall notify the Department that one of the following situations exists:
1. The malfunction has been repaired;
 2. An alternate discharge detection system has been activated for the equipment utilizing the malfunctioning system; or
 3. The equipment protected by the discharge detection system has been taken out of service.

7:1E-5.6 Justification of delay

- (a) The Department, at its discretion, may determine that a period of longer than 15 minutes for initiating the notification of the Department of a discharge is immediate if the person responsible for the discharge can show, by clear and convincing evidence, that the notification

of the Department was initiated as soon as possible or reasonable and that notification within 15 minutes was impossible or unreasonable because of:

1. Essential immediate response activities;
 2. The circumstances under which the discharge occurred;
 3. The circumstances under which the discharge was first discovered; or
 4. Some other valid cause or reason.
- (b) A person who does not initiate the notification of the Department of a discharge within 15 minutes and who desires to establish that the notification was as immediate as reasonably possible under the circumstances in which the discharge occurred, shall submit a sworn affidavit so attesting with the written confirmation report required by N.J.A.C. 7:1E-5.8. This affidavit shall set forth the circumstances of the discharge to establish that the notification of the Department was as immediate as reasonably possible under the circumstances in which the discharge occurred. The affidavit shall be signed by the person or persons required to sign any certifications pursuant to N.J.A.C. 7:1E-4.11, and shall include, but not be limited to, the following information:
1. The address of the facility at which the discharge occurred;
 2. The date and time at which the discharge began and the date and time at which it ceased;
 3. The name, job title, affiliation, business telephone number and business address of the individual who first discovered the discharge;
 4. The date, the time, and the circumstances under which the discharge was first discovered;
 5. The reason(s), if any, why the discharge was not immediately discovered;
 6. The date and time which the discharge was first reported to the Department;
 7. The name, business telephone number, and business address of the individual who first notified the Department of the discharge;
 8. Any reason why initiation of notification of the Department within 15 minutes of the onset of the discharge was impossible or unreasonable; and
 9. A demonstration that initiation of notification was carried out as soon as possible or reasonable.

7:1E-5.7 Discharge response

- (a) Any person responsible for a discharge shall:
1. Take immediate action to stop the discharge;

2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by:
 - i. Following the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; or
 - ii. Remediating the discharge pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and
 3. Coordinate such actions with the Department.
- (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) Upon learning that a discharge of a hazardous substance has occurred, the Department may:
1. Act to contain, mitigate clean up and remove the discharge; or
 2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:
 - i. Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and
 - ii. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E.
- (d) The Department, at its discretion, may observe, supervise or participate in, any aspect of containment or cleanup and removal activities. In the exercise of its supervisory power, the Department may order any person to cease cleanup and removal activities and other discharge-related operations if it determines that the person is not capable of properly containing, cleaning up or removing a discharge, or if the Department determines that person is failing to conduct cleanup operations in a proper and expeditious manner.

7:1E-5.8 Confirmation report

- (a) Any owner or operator of a transmission pipeline or of a major facility who has notified the Department of a discharge from a regulated portion of the transmission pipeline or from a regulated portion of the major facility pursuant to N.J.A.C. 7:1E-5.3 shall send to the Department a written confirmation report within 30 days of said notification.

(b) (Reserved)

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

1. The name, address and telephone number of the individual that reported the discharge pursuant to N.J.A.C. 7:1E-5.3 above;
2. The name, address and telephone number of the individual submitting the confirmation report if different from the individual identified in (c)1 above, and the relationship between said persons, such as employer-employee or contractor-client;
3. The name, address and telephone number of each owner and operator of the facility at which the discharge occurred, or the vessel or vehicle from which the discharge occurred;
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);
5. The source of the discharge, if known;
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 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 a map identifying the source of the discharge; and
 - iii. For all discharges that affect areas not under the control of the owner or operator, a map of the area affected by the discharge;
7. A list of the common name and Chemical Abstract Service number of each of the hazardous substances discharged;
8. A list of the quantities of each hazardous substance discharged, including best estimates if the quantities are unknown;
9. The following chronology:
 - i. The date and time at which the discharge began;
 - ii. The date and time at which the discharge was discovered;
 - iii. The date and time at which the discharge ended; and
 - iv. The date and time at which the Department was notified pursuant to N.J.A.C. 7:1E-5.3;

10. A description of the measures taken to contain, clean up and remove the discharge, and a summary of costs incurred;
 11. Corrective or preventative measures taken or proposed to minimize the possibility of recurrence;
 12. The name, addresses and telephone numbers of all entities involved in containment, clean up or removal of the discharge;
 13. Information supplementing any information previously provided to the Department if additional relevant information is discovered, or if it is determined that the information previously provided was false, inaccurate or misleading;
 14. Any other information concerning the discharge which the Department may request; and
 15. A fully executed certification pursuant to N.J.A.C. 7:1E-4.11.
- (d) Any person required to submit a confirmation report pursuant to (a) above shall promptly notify the Department in writing of any additional or corrected information which becomes available after the submission of a confirmation report, within 10 days of the availability of that information. Such information shall reference the date, title and author of the confirmation report which is being supplemented.
- (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 Release Prevention
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420
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 and Waste Management
Emergency Planning and Response Element
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 028
Trenton, New Jersey 08625-0028
Attention: Discharge Confirmation Report

7:1E-5.9 Reporting responsibilities of the Department

- (a) Upon obtaining any information which leads it to suspect that a discharge has occurred in a municipality's jurisdiction, the Department shall immediately notify orally the contact persons for the governing body of the municipality and the local board of health as specified in (b)

below, unless these entities have been notified previously.

- (b) The governing body of the municipality and the local board of health shall provide the Department with the name, address and telephone number of a 24 hour contact point and an alternate 24 hour contact point. The governing body of the municipality and the local board of health may change the contact point and alternate contact point upon written notice to the Department. If a contact point and an alternate contact point are not specified, the local police department or local fire department shall be the points designated by the Department to receive notification pursuant to (a) above.
- (c) Within 10 days of the initial oral notification required by (a) above, the Department shall issue a letter confirming, and if appropriate, expanding upon that initial oral notification.
- (d) The Department shall take appropriate action to verify that a discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate Department official to investigate the site of the suspected discharge. Such investigation shall include conducting visual assessment of the site of the discharge and contacting any persons potentially responsible for the discharge.
- (e) The agent(s) or officer(s) of the municipality shall report all findings to the Department.

7:1E-5.10 Discharge reporting requirements of local officials

- (a) When any governing body of a municipality or local board of health obtains information which leads it to suspect that a discharge has occurred, the governing body or local board of health shall immediately notify, as specified in (b) below, the Department, unless the Department has already been notified of the discharge.
- (b) The governing body or local board of health shall provide the Department with information regarding any discharge pursuant to (a) above in the format specified at N.J.A.C. 7:1E-5.3(a).
- (c) The local governing body and the local board of health shall coordinate all responses to the discharge with the Department.

7:1E-5.11 Amendment of plans following a discharge

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.

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 provisions of the Act, including 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 this chapter.

7:1E-6.2 Applicability

- (a) The Department may assess a civil administrative penalty of not more than \$50,000 for any discharge less than 100,000 gallons, not more than \$10,000,000 for any discharge of 100,000 gallons or more, and not more than \$50,000 for each violation of the Act or of any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Act.
- (b) Each violation of any provision of the Act, or any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant thereto shall constitute a separate and distinct offense.
- (c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.
- (d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.
- (e) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provisions provided for by the Act, or any other statute, in connection with the violation for which the assessment is levied.

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

- (a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Act, the Department shall, by means of an administrative order or notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order or notice of civil administrative penalty assessment or in multiple administrative orders or notices of civil administrative penalty assessment. This Administrative Order or Notice of Civil Administrative Penalty Assessment shall:
 - 1. Identify the section of the Act, rule, plan, request, order or directive violated;
 - 2. Concisely state the facts which constitute the violation;

3. Order such violation to cease;
 4. Specify the amount of the civil administrative penalty to be imposed; and
 5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:1E-6.4.
- (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. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:1E-6.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st calendar day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
 2. If the Department denies the hearing request pursuant to N.J.A.C. 7:1E-6.4(a), a Notice of Civil Administrative Penalty becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Assessment by the violator;
 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. If the Department grants the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.
- (c) If a civil administrative penalty is not paid within 30 calendar days of the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:1E-6.4, or any payment pursuant to a payment schedule entered into with the Department is not made, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing.
- (d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:1E-6.4, and the amount of the penalty is upheld, in whole or in part, a rate of interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing under the administrative order.
- (e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.
- (f) The Department may assess and recover, by civil administrative order, the costs of any investigation, cleanup or removal, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, and shall be in addition to the penalty assessment.

- (g) Any person who violates a provision of the Act or a Court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000 per offense. Any penalty so incurred may be recovered with costs in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq. in the Superior Court or a municipal court.
- (h) Any conveyance used or intended for use in the willful discharge of a hazardous substance is subject to forfeiture to the State.
- (i) The Department may, in its discretion, settle, any Civil Administrative Penalty assessed pursuant to N.J.A.C. 7:1E-6.5, 6.6, 6.7 or 6.8 according to the following factors:
 - 1. Mitigating or extenuating circumstances not previously considered in the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:1E-6.8;
 - 2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:1E-6.5 or 6.8;
 - 3. The full payment by the violator of a specified part of the Civil Administrative Penalty assessed if made within the time period established by the Department in an administrative order and provided the violator waives the right to request an adjudicatory hearing on the Civil Administrative Penalty; or
 - 4. Any other terms or conditions acceptable to the Department not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:1E-6.5, 6.6, 6.7 or 6.8.

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

- (a) If the Department does not receive a hearing request within 20 calendar days after receipt by the violator of an administrative order or notice of civil administrative penalty assessment, conditions of approval for any plan, or amendment to a plan, or denial or revocation of approval of a plan or amendment being challenged, the Department shall deny the hearing request.
- (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 at the addresses in (e) below:
 - 1. The name, address, and telephone number of the person requesting the hearing and his or her authorized representative;
 - 2. 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. An admission or denial of each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment, or denial or revocation of approval of a plan or amendment to a plan. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
 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;
 5. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
 6. An estimate of the time required for the hearing (in days and/or hours);
 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) If the violator fails to include all the information required by (b) above, the Department may deny the hearing request.
- (d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (e) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
P.O. Box 402, Mail Code 401-04L
Trenton, New Jersey 08625-0402
Attention: Adjudicatory Hearing Request

With a copy sent to:

Bureau of Release Prevention
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor

P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420
Attention: Adjudicatory Hearing Request

7:1E-6.5 Civil administrative penalty determination - general

- (a) For violations other than those set forth in N.J.A.C. 7:1E-6.6 through 6.8, the Department may assess a civil administrative penalty for offenses described in this subchapter within the following ranges:
 - 1. Up to \$20,000 for the first offense;
 - 2. Up to \$35,000 for the second offense; and
 - 3. Up to \$50,000 for the third and each subsequent offense.
- (b) The Department may, in its discretion, set the amount determined pursuant to (a) above to assess a civil administrative penalty on the basis of the following factors:
 - 1. The compliance history of the violator;
 - 2. The number, frequency and severity of the offense(s);
 - 3. The measures taken by the violator to mitigate the effects of the current offense and to prevent future offenses;
 - 4. The deterrent effect of the penalty; or
 - 5. Other specific circumstances of the violator or offense.

7:1E-6.6 Civil administrative penalty for submitting inaccurate or false information

- (a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any DPCC plan, DCR plan, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, regulation, plan, order or directive pursuant thereto.
- (b) Each time the violator submits inaccurate or false information to the Department shall be an additional, separate, and distinct offense.
- (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.
- (d) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, for each act or omission, is up to \$20,000 for the first offense, up to \$40,000 for the second offense, and up to \$50,000 for the third and each subsequent offense; and
 2. For all other conduct, the civil administrative penalty, for each act or omission, is up to \$1,000 for the first offense, up to \$2,000 for the second offense, and up to \$5,000 for the third and each subsequent offense.
- (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) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, vessel or place, except private residences, by an authorized Department representative.
- (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) The amount of the civil administrative penalty for offenses described in this section is up to \$10,000 for the first offense, up to \$20,000 for the second offense, and up to \$50,000 for the third and each subsequent offense.
- (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 below shall not be assessed until the time allotted under the applicable schedule for upgrading approved by the Department has expired.
- (b) Civil administrative penalties for offenses described in (c)2 and 4 below shall apply to major facilities only. All other civil administrative penalties shall apply to all persons.
- (c) The Department shall determine the amount of the civil administrative penalty for 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.

Citation

N.J.A.C. 7:1E-1.11(a)

Base Penalty for each Violation

<u>Gallons</u>	<u>Penalty</u>	<u>Minor</u> ³	<u>Minor Days</u> ⁴
>0-9	\$ 500	NM	
10-55	\$ 1,000		
56-499	\$ 2,000		
500-999	\$ 3,000		
1,000-4,999	\$ 5,000		
5,000-9,999	\$ 7,500		
10,000-19,999	\$10,000		
20,000-29,999	\$15,000		
30,000-39,999	\$20,000		
40,000-49,999	\$25,000		
50,000-59,999	\$30,000		
60,000-69,999	\$35,000		
70,000-79,999	\$40,000		
80,000-89,999	\$45,000		
90,000-99,999	\$50,000		
100,000-149,999	\$75,000		
150,000-199,999	\$ 100,000		
200,000-299,999	\$ 200,000		
300,000-399,999	\$ 400,000		
400,000-499,999	\$ 800,000		
500,000-599,999	\$1,000,000		
600,000-699,999	\$2,000,000		
700,000-799,999	\$3,000,000		
800,000-899,999	\$4,000,000		
900,000-999,999	\$5,000,000		
1,000,000-1,999,999	\$6,000,000		
2,000,000-2,999,999	\$7,000,000		
3,000,000-3,999,999	\$8,000,000		
4,000,000-4,999,999	\$9,000,000		
5 million or greater	\$10,000,000		

The base penalty shall be reduced or increased by applying the following factors¹:

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 and not into waters of the State - 30% reduction from base

Discharge History (Number of discharges not contained on the facility within the previous 12 months):

Five or more discharges	- 100% increase from base
1-4 discharges	- 50% increase from base
Zero discharges	- No change from base

¹The penalty for each violations is calculated by summing the base penalty and the resultant percentage of the base penalty for each of the applicable factors.

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> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
No secondary containment for an above-ground storage tank	2.2(a)1	\$10,000	\$20,000	\$50,000	NM	
Failure to surface the base underlying a storage tank with impermeable material	2.2(a)2	\$ 5,000	\$10,000	\$15,000	NM	
Failure to equip a pipe with remotely activated or readily accessible valves	2.2(a)3	\$ 2,000	\$ 4,000	\$10,000	M	90
Improper design of heating coil system	2.2(c)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to equip storage tanks with devices capable of detecting overfills and initiating shutdown mechanisms	2.2(d)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to equip storage tanks with a high liquid level cutoff device	2.2(d)1	\$ 5,000	\$10,000	\$25,000	M	30
Failure to equip storage tanks with direct direct communication	2.2(d)2	\$ 5,000	\$10,000	\$25,000	M	30
Failure to equip storage tanks with fast response systems	2.2(d)3	\$ 5,000	\$10,000	\$25,000	M	30
Failure to attend storage tanks of 2,000 gallons or less during filling	2.2(e)	\$ 2,000	\$ 4,000	\$10,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to direct overflow or vent lines into appropriate holding areas	2.2(f)	\$10,000	\$20,000	\$50,000	NM	
Failure to locate mobile or portable storage tanks in areas protected by secondary containment	2.2(g)	\$ 5,000	\$10,000	\$25,000	NM	
Location of mobile or portable storage tanks in areas subject to flooding or washout	2.2(g)	\$10,000	\$20,000	\$50,000	NM	
Failure to equip tote, drum, bag or other storage areas with 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(c)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to examine for leakage and secure valves on all manifolds of a tank car or tank truck prior to departure	2.3(d)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to utilize a system to prevent premature departure	2.3(e)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to attend a tank car	2.3(f)	\$ 5,000	\$10,000	\$25,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to attend a tank truck	2.3(g)	\$ 2,500	\$ 5,000	\$12,500	NM	
Failure to properly mark in-facility pipes	2.4(a)	\$ 5,000	\$10,000	\$25,000	M	60
Failure to double wall or have 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	2.4(c)1	\$ 5,000	\$10,000	\$25,000	NM	
Failure to implement a maintenance and repair program for existing in-facility buried pipes	2.4(c)2	\$ 5,000	\$10,000	\$25,000	NM	
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 out-of-service in-facility pipe	2.4(e)	\$10,000	\$20,000	\$50,000	NM	
Improper design of pipe supports	2.4(f)	\$ 2,000	\$ 4,000	\$10,000	M	90
Failure to minimize the chance of vehicular collision with in-facility pipe	2.4(g)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to provide secondary containment for process areas	2.5(a)	\$10,000	\$20,000	\$50,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to provide for a hazardous substances which drained into process wastewater lines	2.5(b)	\$ 2,000	\$ 4,000	\$10,000	NM	
Leaks are not prevented from becoming discharges	2.6(a)	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment does not block all probable discharge routes	2.6(c)1	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment does not allow for six inches of rainwater	2.6(c)2	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment for storage area has insufficient capacity	2.6(c)2i	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment for loading/unloading area has insufficient capacity	2.6(c)2ii	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment for buried pipes has insufficient capacity	2.6(c)2iii	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment for process area has insufficient capacity	2.6(c)2iv	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment is not impermeable	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	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Diversion system cannot handle flow rate	2.6(c)5	\$ 5,000	\$10,000	\$25,000	NM	
Incompatible materials stored in the same secondary containment	2.6(c)6	\$ 5,000	\$10,000	\$25,000	NM	
Secondary containment impaired	2.6(c)7	\$ 5,000	\$10,000	\$25,000	NM	
Failure to maintain adequate length of containment devices	2.7(b)	\$10,000	\$20,000	\$50,000	NM	
Failure to deploy a containment device when required	2.7(c)	\$10,000	\$20,000	\$50,000	NM	
Failure to maintain a containment device on standby when required	2.7(d)	\$10,000	\$20,000	\$50,000	NM	
Failure to properly deploy a containment device	2.7(e)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to properly deploy a containment device	2.7(f)	\$ 5,000	\$10,000	\$25,000	NM	
Commencement or continuation of transfer operations during storm	2.7(g)1	\$15,000	\$30,000	\$50,000	NM	
Commencement or continuation of transfer operations during fires	2.7(g)2	\$15,000	\$30,000	\$50,000	NM	
Commencement or continuation of transfer operations during transfer system malfunction	2.7(g)3	\$15,000	\$30,000	\$50,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Commencement or continuation of transfer operations during transfer system break	2.7(g)4	\$15,000	\$30,000	\$50,000	NM	
Commencement or continuation of transfer operations when there is an apparent discrepancy	2.7(g)5	\$15,000	\$30,000	\$50,000	NM	
Commencement or continuation of transfer operations during communications breakdown	2.7(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(g)7	\$15,000	\$30,000	\$50,000	NM	
Commencement or continuation of transfer operations during a discharge	2.7(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(h)	\$20,000	\$40,000	\$50,000	NM	
Failure to secure or retrieve a containment device	2.7(i)	\$ 5,000	\$10,000	\$25,000	M	30
Failure to clean or dispose of a containment device that is contaminated	2.7(i)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to prominently display notification requirements	2.7(j)	\$ 250	\$ 500	\$ 1,250	M	30

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Improper or inadequate illumination of facility transfer connection points	2.8(a)1	\$ 5,000	\$10,000	\$25,000	NM	
Improper or inadequate illumination of vessel transfer connection points	2.8(a)2	\$ 5,000	\$10,000	\$25,000	NM	
Improper or inadequate illumination of facility work areas	2.8(a)3	\$ 5,000	\$10,000	\$25,000	NM	
Improper or inadequate illumination of vessel work areas	2.8(a)4	\$ 5,000	\$10,000	\$25,000	NM	
Improper or inadequate illumination of water surface areas	2.8(b)	\$ 5,000	\$10,000	\$25,000	NM	
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	
Failure to conduct visual inspections of marine transfer areas	2.10(a)1	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of secondary containment that is not impermeable	2.10(a)2	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of loading or unloading areas	2.10(a)3	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of process areas	2.10(a)4	\$ 2,000	\$ 4,000	\$10,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to conduct visual inspections of storage areas and pipes	2.10(a)5	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of equipment	2.10(a)6i	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of fences and locks	2.10(a)6ii	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to conduct visual inspections of cleanup and removal equipment	2.10(a)6iii	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to keep documentation of visual inspections	2.10(b)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to keep hazardous substances in suitable containers or protect them from the elements and the possibility of leakage	2.11(a)	\$10,000	\$20,000	\$50,000	NM	
Failure to repair, replace or take out of service any leaking equipment	2.11(b)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to clean up a leak of a hazardous substance	2.11(c)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to have adequate quantities of cleanup materials on hand	2.11(d)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to maintain a supply of safety equipment	2.11(e)	\$ 2,000	\$ 4,000	\$10,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to maintain secondary containment or diversion systems in good repair	2.11(f)	\$10,000	\$20,000	\$50,000	NM	
Failure to maintain secondary containment or diversion system free of debris	2.11(f)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to implement a training program	2.12(a)	\$10,000	\$20,000	\$50,000	NM	
Failure to provide written job descriptions	2.12(b)1	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide minimum training consisting of time periods for training	2.12(b)2	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide procedures to determine ability	2.12(b)3	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide training consisting of general orientation and initial training	2.12(c)1	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide job-specific training on SOPs	2.12(c)2i	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide training on cleanup and removal	2.12(c)2ii	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide training on fires, leaks and discharges	2.12(c)2iii	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide training on equipment familiarization	2.12(c)2iv	\$ 2,000	\$ 4,000	\$10,000	M	30

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to provide training on new or updated SOPs	2.12(c)3	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to provide refresher training	2.12(c)4	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to specify qualifications of trainers	2.12(d)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to have procedures to ensure training of employees of outside contractors	2.12(f)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to provide adequate lighting	2.13(a)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to provide adequate security or to follow security procedures	2.13(b)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to establish standard operating procedures (SOPs)	2.14(a)	\$ 250	\$ 500	\$ 1,250	NM	
		Penalty assessed per SOP				
Failure have SOPs in all appropriate languages	2.14(a)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to make copies of the SOPs readily available	2.14(b)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to make copies of the MSDS or fact sheets readily available	2.14(c)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include a description of the operation in an SOP	2.14(d)1	\$ 250	\$ 500	\$ 1,000	M	30
		Penalty assessed per SOP				

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to include procedures for visual inspections in an SOP	2.14(d)2	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include procedures and conditions for normal operation in an SOP	2.14(d)3	\$ 250	\$ 500	\$ 1,000	M	30
		Penalty assessed per SOP				
Failure to include a description of equipment or alarms in an SOP	2.14(d)4	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include a description of leak or discharge conditions in an SOP	2.14(d)5	\$ 250	\$ 500	\$ 1,000	M	30
		Penalty assessed per SOP				
Failure to include process flow sheets in an SOP	2.14(e)1	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include a descriptions of abnormal conditions in an SOP	2.14(e)2	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include pre-startup procedures in an SOP	2.14(e)3	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include startup procedures in an SOP	2.14(e)4	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include shutdown procedures in an SOP	2.14(e)5	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to include procedures on maintenance in an SOP	2.14(e)6	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to include logsheets and checklists in an SOP	2.14(e)7	\$ 250	\$ 500	\$ 1,250	M	30
		Penalty assessed per SOP				
Failure to incorporate modifications of procedures into the SOPs prior to implementation	2.14(g)	\$ 250	\$ 500	\$ 1,250	NM	
Failure to maintain and make available a current index of SOPs	2.14(h)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to maintain required records for three years	2.15(a)	\$ 250	\$ 500	\$ 1,250	NM	
Failure to maintain required records for ten years	2.15(b)	\$ 250	\$ 500	\$ 1,250	NM	
Failure to maintain required records for 10 years or the life of the equipment	2.15(c)	\$ 250	\$ 500	\$ 1,250	NM	
Failure to maintain required records for the life of the equipment	2.15(d)	\$ 250	\$ 500	\$ 1,250	NM	
Failure to make required records available for inspection	2.15(e)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to adequately back up records	2.15(f)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to perform initial integrity testing or static head testing	2.16(a)	Penalty assessed on a per tank basis			NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
SIZE OF TANK (gallons)						
2,001-10,000		\$ 750	\$ 1,500	\$ 3,750		
10,001-20,000		\$ 1,500	\$ 3,000	\$ 7,500		
20,001-50,000		\$ 3,750	\$ 7,500	\$18,750		
50,001-100,000		\$ 7,500	\$15,000	\$37,500		
100,001-200,000		\$15,000	\$30,000	\$45,000		
200,001-300,000		\$22,500	\$40,000	\$50,000		
300,001 and greater		\$30,000	\$40,000	\$50,000		
Failure to perform initial integrity testing on a new tank	2.16(b)	Penalty assessed on a per tank basis				NM
SIZE OF TANK (gallons)						
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 follow API 653	2.16(d)1	\$ 2,000	\$ 4,000	\$10,000		NM
		Penalty assessed on a per tank basis				
Failure to follow API 510	2.16(d)2	\$ 2,000	\$ 4,000	\$10,000		NM
		Penalty assessed on a per tank basis				
Failure to follow API 653 or SP001	2.16(e)	\$ 1,000	\$ 2,000	\$ 5,000		NM
		Penalty assessed on a per tank basis				

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to follow established protocol	2.16(f)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
		Penalty assessed on a per tank basis				
Failure to follow established protocol	2.16(g)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
		Penalty assessed on a per tank basis				
Failure to follow established protocol	2.16(h)	\$ 2,000	\$ 4,000	\$10,000	NM	
		Penalty assessed on a per tank basis				
Failure to follow approved alternative protocol	2.16(i)	\$ 2,000	\$ 4,000	\$10,000	NM	
		Penalty assessed on a per tank basis				
Failure to take tank out of service following a failed integrity test or inspection	2.16(j)	\$10,000	\$20,000	\$50,000	NM	

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>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to register	3.2(a)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to include owner/operator information in a registration	3.2(a)1	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include name and contact information in a registration	3.2(a)2	\$ 250	\$ 500	\$ 1,250	M	30

<u>CATEGORY OF OFFENSE</u> ²	<u>FIRST CITATION</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>		<u>MINOR MINOR</u> ³	<u>DAYS</u> ⁴
Failure to include registered agent information in a registration	3.2(a)3	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include storage capacity and location in a registration	3.2(a)4	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include a description of hazardous substances in a registration	3.2(a)5	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include facilities served by the pipeline in a registration	3.2(a)6	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include transfer capacity and average daily throughput in a registration	3.2(a)7	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include maps in a registration	3.2(a)8	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include a pipe inventory in a registration	3.2(a)9	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include a certification in a registration	3.2(a)10	\$ 250	\$ 500	\$ 1,250	M	30
Failure to report a change in information	3.2(b)	\$ 100	\$ 200	\$ 500	M	30
Failure to conform to 49 CFR 195	3.3	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to submit the required information	3.4(a)	\$ 1,000	\$ 2,000	\$ 5,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>FIRST CITATION</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>		<u>MINOR MINOR</u> ³	<u>DAYS</u> ⁴
Failure to submit a summary of the action plan	3.4(a)1	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit a list of containment and removal equipment	3.4(a)2	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit a list of trained personnel	3.4(a)3	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit information about the response coordinator	3.4(a)4	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit procedures for determining recycling or disposal options	3.4(a)5	\$ 250	\$ 500	\$ 1,250	M	30

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:

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to appoint a facility contact	4.2(a)2	\$ 500	\$ 1,000	\$ 2,500	M	30
Failure to appoint a response coordinator	4.3(a)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to perform an annual emergency response drill and critique it in writing	4.3(b)4	\$ 1,000	\$ 2,000	\$ 5,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>THIRD OR SECOND OFFENSE</u>	<u>SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to have adequate cleanup equipment and personnel available	4.3(b)5,6	\$ 5,000	\$10,000	\$25,000	NM	
Failure to demonstrate financial responsibility	4.4(a)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to demonstrate financial responsibility in the full amount	4.4(b)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to word the letter as specified	4.4(g)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to word the guarantee as specified	4.4(k)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to word the liability insurance as specified	4.4(l)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to word the surety bond as specified	4.4(m)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to word the letter of credit as specified	4.4(n)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to notify of bankruptcy commencement	4.4(o)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit a DPCC and DCR plan	4.5(b)					NM
DPCC/DCR Plan due by:						
August 1, 1994	4.5(b)6	\$ 2,000	\$ 4,000	\$10,000		
February 1, 1994	4.5(b)5	\$ 4,000	\$ 8,000	\$20,000		
August 1, 1993	4.5(b)4	\$ 6,000	\$12,000	\$30,000		
February 1, 1992	4.5(b)1	\$ 8,000	\$16,000	\$40,000		

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
August 1, 1992	4.5(b)2	\$10,000	\$20,000	\$50,000		
February 1, 1993	4.5(b)3	\$12,000	\$24,000	\$50,000		
Failure to submit a DPCC and DCR plan for a newly designated major facility	4.5(c)	\$ 6,000	\$12,000	\$30,000	NM	
Failure to submit a DPCC and DCR plan for a new major facility	4.5(d)	\$ 6,000	\$12,000	\$30,000	NM	
Failure to submit information when requested by the Department	4.5(f)	\$ 1,000	\$ 2,000	\$ 5,000	M	30
Failure to submit copy of approved plan	4.5(g)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to implement an approved DPCC or DCR plan	4.6(f)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to maintain copy of the plan on-site	4.6(g)	\$ 1,000	\$ 2,000	\$ 5,000	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	\$ 2,000	\$ 5,000	NM	
Failure to submit an amendment	4.8(b)	\$ 2,000	\$ 4,000	\$10,000	M	30
Failure to submit copy of an amendment	4.8(d)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to submit information changes	4.8(e)	\$ 500	\$ 1,000	\$ 2,000	M	30

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to renew DPCC/DCR plans	4.9(a)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to submit copy of an approved plan	4.9(c)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the required certification	4.11(a)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to provide the required certification	4.11(b)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to provide the required certification	4.11(e)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to provide the required certification	4.11(f)	\$ 2,000	\$ 4,000	\$10,000	NM	

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:

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to promptly notify the Department of a discharge	5.2(a)	\$ 5,000	\$10,000	\$25,000	NM	
Failure to provide all required information upon notification	5.2(b)	\$ 250	\$ 500	\$ 1,250	M	30
Failure to notify the Department of a discharge	5.3(a)	\$ 5,000	\$10,000	\$25,000	NM	
Notification not immediate	5.3(b)	\$ 1,000	\$ 2,000	\$ 5,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to provide information on the person reporting the discharge	5.3(c)1	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the location of the discharge	5.3(c)2	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the name of the hazardous substance discharged	5.3(c)3	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide an estimated quantity of each hazardous substance discharged	5.3(c)4	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide time and date information	5.3(c)5	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide information on actions taken	5.3(c)6	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide information on person(s) responsible	5.3(c)7	\$ 250	\$ 500	\$ 1,250	M	30
Failure to prominently display notification notification requirements	5.3(d)	\$ 500	\$ 1,000	\$ 2,500	M	30
Failure to maintain documentation	5.3(e)1	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to notify the Department within 24 hours	5.3(e)2	\$ 5,000	\$10,000	\$25,000	NM	
Failure to maintain documentation	5.3(e)3	\$ 2,000	\$ 4,000	\$10,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to notify the Department of a discharge of aircraft fuel	5.4(a)	\$ 3,000	\$ 6,000	\$15,000	NM	
Failure to provide the person causing the discharge	5.4(b)1	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the amount of hazardous substance discharged	5.4(b)2	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the time the discharge occurred	5.4(b)3	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the location of the discharge	5.4(b)4	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide wind speed and direction	5.4(b)5	\$ 250	\$ 500	\$ 1,250	M	30
Failure to provide the area likely to be affected by the discharge	5.4(b)6	\$ 250	\$ 500	\$ 1,250	M	30
Failure to notify the Department of a malfunction in a discharge detection system	5.5(a)	\$ 2,000	\$ 4,000	\$10,000	NM	
Notification not immediate	5.5(b)	\$ 1,000	\$ 2,000	\$ 5,000	NM	
Failure to notify the Department of the status of a malfunctioning discharge detection system	5.5(c)	\$ 1,000	\$ 2,000	\$ 5,000	NM	

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to take immediate action to stop a discharge	5.7(a)1	\$20,000	\$40,000	\$50,000	NM	
Failure to follow the DCR plan	5.7(a)2i	\$20,000	\$40,000	\$50,000	NM	
Failure to coordinate any remedial action with the Department	5.7(a)3	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to submit a confirmation report	5.8(a)	\$ 2,000	\$ 4,000	\$10,000	NM	
Failure to include information on the individual that reported the discharge	5.8(c)1	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include information on the individual submitting the report	5.8(c)2	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include information on the owner(s) or operator(s) of where the discharge occurred	5.8(c)3	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include the Communications Center number	5.8(c)4	\$ 250	\$ 500	\$ 1,250	M	30
Failure to include the source of the discharge	5.8(c)5	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include the location of the discharge	5.8(c)6	\$ 250	\$ 500	\$ 1,000	M	30

<u>CATEGORY OF OFFENSE</u> ²	<u>CITATION</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OR SUBSEQUENT OFFENSE</u>	<u>MINOR</u> ³	<u>MINOR DAYS</u> ⁴
Failure to include the name(s) and CAS number(s) of hazardous substance(s) discharged	5.8(c)7	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include quantities of hazardous substances discharged	5.8(c)8	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include date and time information individual that reported the discharge	5.8(c)9	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include a description of the measures taken and costs	5.8(c)10	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include measures taken or proposed	5.8(c)11	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include information on the entities involved in the cleanup	5.8(c)12	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include supplemental information	5.8(c)13	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include requested information	5.8(c)14	\$ 250	\$ 500	\$ 1,000	M	30
Failure to include certification	5.8(c)15	\$ 250	\$ 500	\$ 1,000	M	30
Failure to provide additional information	5.8(d)	\$ 250	\$ 500	\$ 1,000	M	30
Failure to file a requested amendment following a discharge	5.11	\$ 2,000	\$ 4,000	\$10,000	NM	

²The column headed "Category of Offense" is descriptive in nature and to be used for easy reference only. The rule language cited in the column headed "Citation" shall determine the specific violation.

³The column headed "Minor" contains the designation of whether a violation is considered minor or non-minor pursuant to the Compliance Grace Period Law (P.L.1995, c.296; N.J.S.A. 13:1D-125 to 133) and will be considered for a grace period in accordance with N.J.A.C. 7:1E-6.9, below. The designation "M" is for a minor violation, and "NM" is for a non-minor violation.

⁴The column headed "Minor Days" establishes, for those violations designated as minor, the number of calendar days the violator will be given to correct the violation and achieve compliance, in accordance with N.J.A.C. 7:1E-6.9, below.

- (d) The Department may modify the amount of a civil administrative penalty under (c) above, based upon any or all of the following:
1. Mitigating or extenuating circumstances;
 2. The implementation of prevention measures in addition to those minimally required by applicable statute or rule;
 3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order or notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
 4. Any other circumstances or conditions acceptable to the Department.

7:1E-6.9 Conditions of grace period

- (a) The Department will provide a grace period for any violation identified as minor in accordance with the tables at N.J.A.C. 7:1E-6.8, provided that:
1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
 2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department; and
 3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period.
- (b) Where the Department discovers a violation which is designated as minor in accordance with both the tables at N.J.A.C. 7:1E-6.8 and (a) above, it shall issue a notice of violation to the person responsible for the minor violation which:
1. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and
 2. Notifies the person responsible for the violation that a penalty may be imposed unless compliance has been achieved within the time period provided for the violation as set forth in the tables at N.J.A.C. 7:1E-6.8.
- (c) If a person responsible for a minor violation corrects that violation and demonstrates to the Department that compliance has been achieved within the period specified in the notice of violation issued pursuant to this section, the Department will not impose a penalty for the violation.
- (d) If the person responsible for the violation fails to demonstrate to the Department that

compliance has been achieved within the period of time specified in the notice of violation, the Department may, in accordance with the provisions of this chapter, impose a penalty which is retroactive to the date the enforcement document was first issued.

Subchapter 7

Confidentiality Claims

7:1E-7.1 Procedure for making a claim

- (a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.
- (b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:1E-7.3) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.
- (c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL". The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.
- (d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.
- (e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.
- (f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:1E-7.2.

7:1E-7.2 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:1E-7, 8, 9 and 10. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:1E-7.3(a), be directed to the designee.

7:1E-7.3 Correspondence, inquiries and notices

- (a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:1E-7.2, including without limitation the following:
1. Notices requesting substantiation of claims, under N.J.A.C. 7:1E-8.2(a)1ii;
 2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:1E-8.5(a)1;
 3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:1E-9.3(a);
 4. Notices of disclosure under N.J.A.C. 7:1E-9.4; and
 5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:1E-9.7.
- (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 Release Prevention
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 22-03D
Trenton, New Jersey 08625-0420

Subchapter 8

Confidentiality Determinations

7:1E-8.1 Time for making confidentiality determinations

- (a) The Department shall make a confidentiality determination:
1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:1E-10, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or
 2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:1E-10.
- (b) The Department may, in its discretion, make a confidentiality determination at any time.

7:1E-8.2 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

- (a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:
1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:
 - i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;
 - ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:1E-8.3;
 - iii. The address of the office to which the claimant's substantiation must be addressed;
 - iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:1E-8.4;
 - v. The method for requesting a time extension under N.J.A.C. 7:1E-8.4(b); and
 - vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1E-8.4 shall operate as a waiver of the claimant's claim.
 2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:
 - i. The information which is the subject of the request may be confidential information;
 - ii. The Department must undertake further inquiry before granting or denying the requester's request; and
 - iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.
- (b) The Department shall send the notice required by paragraphs (a)1 and 2 by certified mail, return receipt requested, or by other means providing a receipt for delivery.
- (c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

7:1E-8.3 Substantiation of confidentiality claims

- (a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:1E-8.2(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:1E-8.4:
1. Measures taken by the claimant to prevent disclosure of the information to others, including evidence that the information is not contained in materials which are routinely available to the general public, including without limitation initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;
 2. The extent to which the information has been disclosed to others and whether it was disclosed to other persons either by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding), and the precautions taken to prevent further disclosure;
 3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;
 4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position or national security, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;
 5. Evidence that no law, regulation (including, without limitation, N.J.A.C. 7:1E-8.10 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information;
 6. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and
 7. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.
- (b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this subsection. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:1E-8.4 Time for submission of substantiation

- (a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:1E-8.2(a)1.
- (b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time, provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.
- (c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:1E-8.5 Final confidentiality determination

- (a) If, after review of the all information submitted pursuant to N.J.A.C. 7:1E-8.2 and 8.3, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:
 - 1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.
 - 2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.
- (b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1E-8.3, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1E-10. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:1E-8.6 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:1E-8.7 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1E-8.5(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:1E-8.8 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:1E-8.9 Class confidentiality determinations

- (a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which characteristics would cause the Department to determine consistently that such information is or is not confidential information.
- (b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.
- (c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

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. The name, address and business telephone number of the owner or operator of a transmission pipeline, or of the registered agent of such owner or operator;
 - 2. The name, address and business telephone number of a facility and of its owner or operator and the registered agent of such owner or operator;
 - 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(c)14;
 9. Information concerning procedures for mobilizing equipment in the event of a discharge;
 10. Names and titles of response coordinators and other persons authorized to hire contractors and release funds for discharge response, containment, cleanup and removal;
 11. Information concerning proposed methods of disposal of material gathered during cleanups;
 12. Housekeeping and maintenance records required to be made available under N.J.A.C. 7:1E-4.2(f)6;
 13. The locations of environmentally sensitive areas;
 14. Certifications required under N.J.A.C. 7:1E-4.11, and the identity of any person signing such a certification;
 15. Information which the Department is required to report under N.J.A.C. 7:1E-5.9; and
 16. Information contained in an administrative order or notice of civil administrative penalty assessment under N.J.A.C. 7:1E-6.3.

Subchapter 9

Disclosure and Use of Confidential Information

7:1E-9.1 Disclosure of confidential information to other public agencies

- (a) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;
2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;
3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;
4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:1E-10.1 and 10.2, unless:
 - i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or
 - ii. The claimant has consented to disclosure of the information by the requesting agency; and
5. The requesting agency agrees not to disclose the information further unless:
 - i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
 - ii. The claimant has consented to disclosure of the information by the requesting agency.

7:1E-9.2 Disclosure of confidential information to contractors

- (a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:
 1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;
 2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is

no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.
- (b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:1E-9.3 Disclosure to alleviate an imminent and substantial danger

- (a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:
1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:1E-8.4, and notify the claimant of such reduction;
 2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:1E-8.5(a), and notify the claimant of such advance; or
 3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:1E-9.4 Notice to claimants of disclosure of confidential information

- (a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:1E-9.1, 9.2 or 9.3, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:
1. The date on which disclosure was made;
 2. The name of the agency or other person to which the Department disclosed the confidential information; and

3. A description of the confidential information disclosed.

7:1E-9.5 Disclosure by consent

- (a) The Department may disclose confidential information in accordance with the written consent of the claimant.
- (b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:1E-9.6 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the Department has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:1E-9.7 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

- (a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.
- (b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:
 1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1-14.1.
 2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:
 - i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;
 - ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

- iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and
- iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

7:1E-9.8 Hearing before disclosure of information for which a confidentiality claim has been made

- (a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:1E-6.4(b), and shall be delivered to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
Attention - Adjudicatory Hearing Requests - DPCC Confidentiality
401 East State Street, 7th Floor
P.O. Box 402, Mail Code 401-04L
Trenton, New Jersey 08625-0402

- (b) The Department may deny a request for an adjudicatory hearing under (a) above if:
 1. The claimant fails to provide all information required under N.J.A.C. 7:1E-6.4(b);
 2. The Department receives the request after disclosure of the assertedly confidential information occurs;
 3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
 4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:1E-9.3.
- (c) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

- (d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:1E.
- (e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:
 - 1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
 - 2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

Subchapter 10

Treatment of Confidential Information

7:1E-10.1 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:1E-9.

7:1E-10.2 Safeguarding of confidential information

- (a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.
- (b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL".
- (c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.
- (d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.
- (e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:1E-10.3 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:1E-10.4 Wrongful access or disclosure; penalties

- (a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.
- (b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.
- (c) If the Department finds that any person has violated the provisions of this subchapter, it may:
 - 1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or
 - 2. Pursue any other remedy available at law or equity.
- (d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.
- (e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.