

EFFECTIVE DATE, AUGUST 1, 1991

N.J.S.A. **13:1D-35. Short title**

Sections 1 through 16 of this act<sup>1</sup> shall be known, and may be cited, as the "Pollution Prevention Act."

L.1991, c. 235, § 1.

<sup>1</sup> Sections 13:1D-35 to 13:1D-50.

**Assembly Appropriations Committee Statement**

**Senate, No. 2220—L.1991, c. 235**

The Assembly Appropriations Committee reports favorably Senate Bill No. 2220 (SCS) (SCS) with committee amendments.

Senate Bill No. 2220 (SCS) (SCS), as amended, the "Pollution Prevention Act," establishes a regulatory program in the Department of Environmental Protection (DEP)<sup>1</sup> designed to prevent pollution by reducing the use and discharge of hazardous substances at certain industrial facilities. The bill sets a Statewide goal of a 50 percent reduction over five years in the use, discharge and generation of hazardous substances. Owners and operators of certain industrial facilities at which hazardous substances are used or manufactured will be required to prepare pollution prevention plans and pollution prevention plan summaries, which will be maintained at the facility for inspection by the department.

The bill establishes an Office of Pollution Prevention (OPP) in the DEP to administer this program; such an office currently exists in the department but does not perform some of the functions detailed in the bill. The bill also creates a 13-member Pollution Prevention Advisory Board composed of representatives of industry, labor, environmental groups, and appropriate scientific disciplines.

The bill increases by \$2.00 the per-employee fee charged to employers pursuant to the Worker and Community Right to Know Act (P.L.1983, c. 315). The revenues from the fee increase and certain fine monies will be deposited in a "Pollution Prevention Fund," and shall be used to administer the provisions of the bill, including funding the OPP and making a separate \$200,000 appropriation to the Hazardous Substance Management Research Center at the New Jersey Institute of Technology for the implementation of a technical assistance program for pollution prevention.

Senate Bill No. 2220 (SCS) (SCS), as amended, is identical to the Assembly committee substitute for Assembly Bill No. 988 ACS.

### FISCAL IMPACT

This bill, as amended appropriates monies in the Pollution Prevention Fund for the purposes of the bill, including the operation of the OPP and a \$200,000 appropriation to the New Jersey Institute of Technology. The Senate Revenue, Finance and Appropriations Committee estimated that the increase in the Worker and Community Right to Know fee as provided in this bill for deposit in the fund will generate approximately \$2,500,000 at current collection rates, and noted that DEP has estimated this is the amount necessary to administer the provisions of the bill. DEP presented the Senate Environmental Quality Committee with a proposed budget for the OPP based on this \$2,500,000 funding level. As noted above, this unit was created by DEP in August, 1989, and operated in a limited capacity during FY 1990 by utilizing existing positions and resources; in FY 1991, the annual appropriations act (P.L.1990, c. 43) allocated \$250,000 in interest earnings from the N.J. Spill Compensation Fund to expand the OPP's activities. Notwithstanding this existing unit, the department's proposed OPP budget totalled \$2,429,424, as follows: salary, fringe benefits, and indirect costs for 31 employees, \$1,896,574; operating costs, \$532,850 (including \$250,000 for research and \$125,000 for consultant services).

### COMMITTEE AMENDMENTS

The committee amendments include the following provisions:

1. Require the DEP to establish criteria for the expansion of the list of hazardous substances for which information is required in pollution prevention plans, plan summaries, and progress reports.
2. Reconfigure the reporting requirements to clarify that covered facilities would be required to prepare three documents: a pollution prevention plan (which is maintained at the facility and revised every five years), a plan summary (which is submitted to DEP at the time of the initial completion of a pollution prevention plan or revision), and a plan progress report which is submitted annually to the DEP, indicating the annual progress made in complying with the goals of the plan.
3. Require that pollution prevention plans, summaries, and progress reports focus on targeted industrial processes and sources.

## Historical and Statutory Notes

## Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

## Title of Act:

An Act concerning pollution prevention, amending P.L.1983, c. 315, and supplementing Title 13 of the Revised Statutes. L.1991, c. 235.

**13:1D-36. Legislative findings and declarations**

The Legislature finds and declares that thousands of tons of a multitude of hazardous substances, the environmental and health effects of which are largely unknown, are discharged into the environment of the State each year; that most of these hazardous substances are legally discharged under the terms of air pollution, water pollution, and hazardous waste management permits that allow discharges of up to certain stipulated amounts; and that the discharge of these hazardous substances into air and water, onto the land, and into the workplaces and neighborhoods of the State constitutes an unnecessary risk to the environment and to occupational and public health.

The Legislature further finds and declares that for the past two decades the State's major environmental regulatory efforts, to wit, the air pollution, water pollution, and hazardous waste management programs administered by the Department of Environmental Protection<sup>1</sup> as directed and mandated under federal and State law, have focused on controlling or managing discharges of hazardous substances through permit systems and the installation of pollution control technologies; that the traditional system of separately regulating air pollution, water pollution, and hazardous waste management constitutes a fragmented approach to environmental protection and potentially allows pollution to be shifted from one environmental medium to another; and that while the traditional system has produced palpable improvements in the State's environmental quality, it does not adequately address the impact of the use of hazardous substances upon occupational health in pollution-generating industrial processes.

The Legislature further finds and declares that the inherent limitations of the traditional system of pollution control should be addressed by a new emphasis on pollution prevention, including the reduction of the use of hazardous substances in industrial and manufacturing processes; that a rigorous accounting of the use of hazardous substances, the generation of hazardous substances as nonproduct output, and the multimedia environmental release of hazardous substances at each step of an industrial process will identify the points at which, and the procedures by which, pollution can be prevented; that pollution prevention can be achieved

4. Give the Pollution Prevention Advisory Board complete discretion in its operation, and authorize the board to monitor the expenditure of monies in the "Pollution Prevention Fund."

5. Require DEP to adopt strict criteria under which it could be authorized to require industrial facilities other than priority industrial facilities (those covered under the federal Right To Know Act and which are required to comply with the provisions of the bill) to comply with the pollution prevention provisions of the bill.

6. Require DEP to submit to the Legislature a list of any new industrial facilities to be designated priority industrial facilities (and thus subject to the provisions of the bill) at least one year prior to the date on which such facilities would be subject to the provisions of the bill.

7. Provide that trade secret information be maintained by DEP under secure conditions.

8. Provide that DEP may not issue more than 15 facility wide permits (the number authorized in the bill) unless authorized by additional legislation.

9. Provide that the State Right To Know reporting list of hazardous substances be identical to the federal Right To Know List (SARA 313 list).

10. Provide that industries would not be required to comply with the provisions of the bill until DEP has adopted the rules and regulations necessary for the implementation of the bill.

11. Clarify that only a portion of a pollution prevention plan must be updated annually, and that other components of a plan must be updated only when a significant change occurs at the facility.

12. Exempt pilot facilities from the provisions of the bill.

13. Prohibit the department from requesting certain formula information.

14. Require that production processes which use similar ingredients to produce similar products be treated by the department as a single production process.

15. Require a pollution prevention plan to include information on the use of each hazardous substance in each production process, reported in the following ranges: 0 to 5,000 pounds, 5,000 to 10,000, and greater than 10,000 pounds.

16. Appropriate \$200,000 from the Pollution Prevention Fund to the Hazardous Substance Management Research Center at the New Jersey Institute of Technology for the implementation of a technical assistance program for pollution prevention.

The amendments also clarify the authority granted to DEP under various provisions of the bill, and make other technical and clarifying changes.

<sup>1</sup> Now Department of Environmental Protection and Energy; see Reorganization Plan No. 002-1991, set out under § 13:1D-1.



through a more efficient and rational use of hazardous substances, or through the use of less hazardous substitute substances or processes less prone to produce pollution; and that a soundly planned pollution prevention program can be implemented without adversely affecting the State's economic health or the livelihood of those employed by industries that use and discharge hazardous substances.

The Legislature therefore determines that it is in the interest of the environment and public and occupational health, and in the general public interest of all residents of the State, to transform the current system of pollution control to a system of pollution prevention; that it is in the public interest to propose as a State public policy goal a significant reduction over five years after the preparation of the pollution prevention plans required by this act, calculated on the basis of 1987 amounts, in the use of hazardous substances at industrial facilities, and a 50% reduction over five years after the preparation of the pollution prevention plans required by this act, calculated on the basis of 1987 amounts, in the generation of hazardous substances as nonproduct output; that an Office of Pollution Prevention should be established in the Department of Environmental Protection, charged with implementing a comprehensive pollution prevention program and integrating the air pollution, water pollution, and hazardous waste management programs into the pollution prevention program; and that certain industries or facilities should be required to prepare and implement pollution prevention plans, pollution prevention plan summaries, and pollution prevention progress reports for the purpose of making pollution prevention a primary technique in the control of hazardous substances and their environmental and health effects.

L.1991, c. 235, § 2.

<sup>1</sup> Now Department of Environmental Protection and Energy; see Reorganization Plan No. 002-1991, set out under § 13:1D-1.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

#### 13:1D-37. Definitions

As used in this act:

"Board" means the Pollution Prevention Advisory Board established pursuant to section 5 of this act.<sup>1</sup>

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Consume" means to change or alter the molecular structure of a hazardous substance within a production process.

"Department" means the Department of Environmental Protection.

"Facility" means all buildings, equipment, structures, and other property that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person.

"Facility-wide permit" means a single permit issued by the department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant department approvals previously issued to the owner or operator of the priority industrial facility pursuant to P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C.58:10A-1 et seq.), or P.L.1954, c. 212 (C.26:2C-1 et seq.), and the appropriate provisions of the pollution prevention plan prepared by the owner or operator of the priority industrial facility pursuant to section 7 and section 8 of this act.<sup>2</sup>

"Hazardous substance" means any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. § 11023, and any other substance which the department, pursuant to the provisions of subsection i. of section 8 of this act, defines as a hazardous substance for the purposes of this act.

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

"Industrial facility" means any facility having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the federal Office of Management and Budget, within the Major Group Numbers, Group Numbers, or Industry Numbers listed in subsection h. of section 3 of P.L.1983, c. 315 (C.34:5A-3) and which is subject to the regulatory requirements of P.L.1970, c. 39 (C.13:1E-1 et seq.), P.L.1977, c. 74 (C.58:10A-1 et seq.), or P.L.1954, c. 212 (C.26:2C-1 et seq.).

"Manufacture" means to produce, prepare, import, or compound a hazardous substance.

"Multimedia release" means the release of a hazardous substance to any environmental medium, or any combination of media, including the air, water or land, and shall include any release into workplaces.

"Nonproduct output" means all hazardous substances or hazardous wastes that are generated prior to storage, recycling, treatment, control, or disposal and that are not intended for use as a product.

"Office" means the Office of Pollution Prevention established in the department pursuant to section 4 of this act.<sup>3</sup>

"Operator" means any person in control of, or exercising responsibility for, the daily operation of an industrial facility or a priority industrial facility.

"Owner" means any person who owns an industrial facility or a priority industrial facility.

"Person" means any individual, partnership, company, corporation, society, firm, consortium, joint venture, or any commercial or other legal entity.

"Pilot facility" means a facility or designated area of a facility used for pilot-scale development of products or processes.

"Pollution prevention" means: changes in production technologies, raw materials or products, that result in the reduction of the demand for hazardous substances per unit of product manufactured and the creation of hazardous products or nonproduct outputs; or changes in the use of raw materials, products, or production technologies that result in the reduction of the input use of hazardous substances and the creation of hazardous by-products or destructive results; or on-site facility changes in production processes, products, or the use of substitute raw materials that result in the reduction of the amount of hazardous waste generated and disposed of on the land or hazardous substances discharged into the air or water per unit of product manufactured prior to treatment, and that reduce or eliminate, without shifting, the risks that the use of hazardous substances at an industrial facility pose to employees, consumers, and the environment and human health. "Pollution prevention" shall include, but need not be limited to, raw material substitution, product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance of production process equipment. "Pollution prevention" shall not include any action or change entailing a substitution of one hazardous substance, product or nonproduct output for another that results in the creation of substantial new risk, and shall not include treatment, increased pollution control, out-of-process recycling, or incineration, except as otherwise provided pursuant to subsection f. of section 7 of this act.

"Pollution prevention plan" means a plan required to be prepared by an industrial facility pursuant to the provisions of section 7 of this act.

"Pollution prevention plan progress report" means a report required to be submitted annually to the department by the owner or

operator of an industrial facility pursuant to the provisions of section 7 of this act.

"Pollution prevention plan summary" means a summary of a pollution prevention plan required to be prepared by an industrial facility and submitted to the department pursuant to the provisions of section 7 of this act.

"Priority industrial facility" means any industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023, or any other facility designated a priority industrial facility pursuant to rules and regulations adopted by the department pursuant to the provisions of subsection h. of section 8 of this act.

"Process" means the preparation of a hazardous substance, after its manufacture, for sale or use in the same form or physical state, or in a different form or physical state, as that in which it was received at the industrial facility where it is processed, or as part of an article or product containing the hazardous substance.

"Product" means a desired result of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques used to produce a product or reach a planned result.

"Research and development laboratory" means a facility or a specially designated area of a facility used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances are used by, or under, the direct supervision of a technically qualified person.

"Source" means a point or location in a production process at which a nonproduct output is generated or released, provided, however, that similar, related, or identical kinds of sources may be considered a single source for the purposes of this act.

"Targeted production process" means any production process which significantly contributes to the use or release of hazardous substances or the generation of hazardous waste or nonproduct output, as determined by the owner or operator of an industrial facility pursuant to criteria established by the department.

"Targeted source" means any source which significantly contributes to the generation of nonproduct output, as determined by the owner or operator of an industrial facility pursuant to criteria established by the department.

"Use" means to process or otherwise use a hazardous substance.

"Violation of this act" means a violation of any provision of this act, or any rule or regulation, administrative order, or facility-wide permit adopted or issued pursuant thereto.

L.1991, c. 235, § 3.

<sup>1</sup> Section 13:1D-39.

<sup>2</sup> Sections 13:1D-41, 13:1D-42.

<sup>3</sup> Section 13:1D-38.

*The Department of Environmental Protection, and the Commissioner thereof, were redesignated the Department of Environmental Protection and Energy, and the Commissioner thereof, by Reorganization Plan No. 002-1991, set out under § 13:1D-1.*

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

#### Statement. Committee statement

Senate, No. 2220 SCS—L.1991, c. 23 see § 13:1D-35.

### 13:1D-38. Office of Pollution Prevention

a. There is established in the Department of Environmental Protection<sup>1</sup> the Office of Pollution Prevention. The office shall be under the immediate supervision of an administrator appointed by the commissioner who shall report directly to the commissioner. The administrator and all managerial employees necessary to implement the provisions of this act as determined by the commissioner may be members of the unclassified service of the State. The office shall be responsible for the implementation of the provisions of this act, for the coordination of all pollution prevention policies within the department, for conducting an ongoing review of all appropriate regulatory and enforcement policies to ensure that these policies require or encourage pollution prevention to the maximum extent practicable and feasible, and for performing any other function that the commissioner may deem appropriate.

b. The department may establish an educational and outreach program designed to explain and make available to the general public all pollution prevention plan summaries and pollution prevention plan progress reports submitted to the department pursuant to this act, in accordance with rules and regulations adopted by the department to protect trade secret information.

c. Upon a written request by a member of the public for a copy of a pollution prevention plan summary or pollution prevention plan progress report submitted to the department pursuant to this act, the department shall provide that person with a copy of any

pollution prevention plan summary or pollution prevention plan progress report submitted to the department pursuant to this act within 30 days of receipt of the request therefor for a cost not to exceed the cost of printing and postage.

L.1991, c. 235, § 4.

<sup>1</sup> Now Department of Environmental Protection and Energy; see Reorganization Plan No. 002-1991, set out under § 13:1D-1.

### **Historical and Statutory Notes**

#### **Effective Dates**

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

#### **Statement.** Committee statement to

Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### **13:1D-39. Pollution prevention advisory board; members; terms; quorum; duties**

a. There is established in the Department of Environmental Protection<sup>1</sup> the Pollution Prevention Advisory Board. The board shall consist of the Administrator of the Office of Pollution Prevention, the Executive Director of the Hazardous Waste Facilities Siting Commission, and the Director of the State Technical Assistance Program at the New Jersey Institute of Technology, who shall serve ex officio, and 12 public members appointed by the Governor with the advice and consent of the Senate. Of the public members of the board, one shall have experience or training in the field of environmental compliance at a large industrial facility, one shall have experience or training in the field of environmental compliance at a medium-sized industrial facility, one shall have experience or training in the field of environmental compliance at a small industrial facility, three shall be members of recognized Statewide environmental organizations, one shall be a person with academic training in the field of industrial processes, one shall be a person with academic training in the field of environmental economics, two shall be representatives of organized labor and have training or experience in the field of occupational diseases and health, one shall have experience in local government, and one shall be a representative of the general public. Each of the public members shall be appointed for a term of three years, except that of the public members first appointed by the Governor, four shall serve for terms of three years, four shall serve for terms of two years, and four shall serve for terms of one year.

b. A majority of the membership of the board shall constitute a quorum for the transaction of board business. Action may be taken and motions adopted by the board at any meeting thereof by the



affirmative vote of a majority of the members of the board present and voting.

c. The Governor shall appoint a chairman and other officers as may be necessary from among the members of the board. Members of the board shall serve without compensation but the board may, within the limits of funds appropriated or otherwise made available to it for such purposes, reimburse its members for reasonable and necessary expenses incurred in the discharge of their official duties.

d. The board may:

(1) Review any matters submitted to it by the department or the office concerning any aspect of the provisions or implementation of this act, and report its recommendations to the department or office;

(2) Conduct an ongoing review of the implementation of this act and submit any recommendations for administrative or legislative changes it deems necessary to the department or the office;

(3) Investigate techniques to develop standardized classifications of production processes employed by industrial facilities, and investigate the feasibility of utilizing such techniques in the development and implementation of pollution prevention plans;

(4) Advise the office on the interpretation of information submitted in pollution prevention plan summaries and pollution prevention plan progress reports and on the content of pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports;

(5) Review the scientific literature concerning the occupational, public health, and environmental risks presented by exposures to specific hazardous substances, evaluate scientific interpretations of these risks, and assess the risks of the discharge of these hazardous substances into different environmental media;

(6) Review and evaluate the impact of reductions in the use or discharge of specific hazardous substances on employment levels;

(7) Conduct periodic reviews of the criteria adopted by the department for the preparation of pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports and, if deemed necessary, make recommendations to the department for administrative or legislative changes;

(8) Study and evaluate the practicability and feasibility of achieving hazardous substance pollution prevention without reductions in employment levels through the use of substitute substances, alternative procedures or processes, or other means;

(9) Conduct research or hold public hearings concerning the continued use, production, manufacture, discharge, or disposal of any hazardous substance in the State and the threat that this use, production, manufacture, discharge, or disposal poses to human health or the environment, and, if warranted, make a written recommendation to the Governor and the Legislature concerning the prohibition of, or restrictions on, the continued use, production, manufacture, discharge, or disposal of the hazardous substance in the State, except that the board shall not conduct research or hold public hearings concerning the siting of hazardous waste facilities; and

(10) Review the expenditure by the department of monies deposited in the "Pollution Prevention Fund" established pursuant to section 16 of this act.<sup>2</sup>

L.1991, c. 235, § 5.

<sup>1</sup> Now Department of Environmental Protection and Energy; see Reorganization Plan No. 002-1991, set out under § 13:1D-1.

<sup>2</sup> Section 13:1D-50.

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

**Statement.** Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### 13:1D-40. Rules and regulations

a. Within 18 months of the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this act.

b. Within 18 months of the effective date of this act the department shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations that outline the substantive requirements of pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports, and shall make a document setting forth these requirements available to owners and operators of priority industrial facilities. The rules and regulations adopted pursuant to this subsection shall, to the maximum extent practicable and feasible, require that information required for the preparation of a pollution prevention plan, pollution prevention plan summary, and a pollution prevention plan progress report be based on information developed by the owner or operator of an industrial facility for the purposes of compliance with 42 U.S.C. § 11023 and P.L.1983, c. 315 (C.34:5A-1 et al.). These rules and

regulations shall specify which information required in a pollution prevention plan summary and pollution prevention plan progress report may be reported to the department in an environmental survey submitted pursuant to P.L.1983, c. 315 instead of in a pollution prevention plan summary or a pollution prevention plan progress report. These regulations may require owners or operators of industrial facilities to submit pollution prevention plan summaries or pollution prevention plan progress reports in a form that is compatible with the department's electronic information storage and retrieval system.

c. Within 18 months of the effective date of this act the department shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing criteria pursuant to which the department shall be authorized to issue a directive requiring an industrial facility which is not a priority industrial facility to prepare a pollution prevention plan, pollution prevention plan summary, and a pollution prevention plan progress report. These criteria shall include the toxicity and volume of the hazardous substances or hazardous waste used, generated or released at the industrial facility, and the history of unpermitted releases at the industrial facility. These criteria shall also include a requirement that the department, prior to issuing a directive pursuant to this subsection, make a written finding that, based on the past performance of the industrial facility and the compliance of the industrial facility with the terms of any permit, certificate, registration, or any other relevant department approval issued to the owner or operator of the industrial facility pursuant to P.L.1970, c. 33 (C.13:1D-1 et seq.), P.L.1970, c. 39 (C.13:1E-1 et seq.), P.L.1977, c. 74 (C.58:10A-1 et seq.), or P.L.1954, c. 212 (C.26:2C-1 et seq.), and the extent to which the industrial facility contributes to the total amount of hazardous substances used, generated, or released in the State or a region of the State, the preparation of a pollution prevention plan, pollution prevention plan summary, and pollution prevention plan progress report for the industrial facility could result in a reduction in the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility and a reduction in the threat posed to the environment or public health by the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility.

d. The department, pursuant to rules and regulations adopted pursuant to the "Administrative Procedure Act," may establish for any hazardous substance used or manufactured at an industrial facility a facility-wide threshold quantity of up to 10,000 pounds below which the hazardous substance need not be included in the pollution prevention plan, pollution prevention plan summary or

pollution prevention plan progress report, or a 10-employee threshold below which an industrial facility would not be required to prepare a pollution prevention plan or submit a pollution prevention plan summary and a pollution prevention plan progress report.

e. An owner or operator of an industrial facility may include in a pollution prevention plan, pollution prevention plan summary, and pollution prevention plan progress report an input-use exemption list of any hazardous substances used in a specific production process at the industrial facility, the input-use of which he has determined through pollution prevention planning cannot be reduced below the current level. For each hazardous substance included on the input-use exemption list, the owner or operator shall be required to demonstrate, in writing, that there is no reasonably available and economically viable alternative to the current level of input-use of the hazardous substances in the specified production process. An owner or operator shall not be required to include in a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report a reduction in use for any hazardous substance included on an input-use exemption list, but shall be required to provide all other information concerning such a hazardous substance required in a pollution prevention plan, pollution prevention plan summary, and pollution prevention plan progress report. Notwithstanding the inclusion of a hazardous substance on an input-use exemption list, the owner or operator of an industrial facility shall be required to consider pollution prevention techniques other than use reduction with regard to each hazardous substance on the input-use exemption list.

f. An owner or operator of an industrial facility shall not be required to include in a pollution prevention plan, pollution prevention plan summary or pollution prevention plan progress report information pertaining to improvements in pollution prevention for a production process established after January 1, 1992 until the first five-year revision of the pollution prevention plan and pollution prevention plan summary prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever occurs later. Within 18 months of the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing criteria for the identification of production processes subject to the provisions of this subsection.

## Historical and Statutory Notes

## Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

## Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

**13:1D-41. Pollution prevention plan, summary, and progress report; contents**

a. The information required by the department in a pollution prevention plan shall cover the previous calendar year and be reported in two parts.

b. Part I of a pollution prevention plan shall consist of a comprehensive inventory and analysis of the use and release of hazardous substances, and the generation of hazardous waste and nonproduct output at an industrial facility. The information required by the department in Part I of a pollution prevention plan, except as otherwise provided by the department in rules and regulations adopted pursuant to section 6 of this act,<sup>1</sup> shall include the following information:

(1) A certification by the highest ranking corporate official with direct operating responsibility at the industrial facility that he has read the pollution prevention plan and that the pollution prevention plan is true, accurate, and complete to the best of his knowledge, and a certification by the highest ranking corporate official at the industrial facility that he is familiar with the pollution prevention plan and that it is the corporate policy of that industrial facility to achieve the goals of the pollution prevention plan;

(2) The name and business telephone number of the owner or operator of the industrial facility, and of the highest ranking corporate official at the industrial facility, and the name and business telephone number of a non-management employee representative at the industrial facility;

(3) An identification of each production process using or producing hazardous substances at the industrial facility, the product produced in the production process, and the total units of production produced in each production process during the year;

(4) The chemical identity and Chemical Abstract Service (CAS) number of each hazardous substance manufactured, stored or used at the industrial facility;

(5) The amounts of each hazardous substance in pure form or contained in a mixture in storage at the industrial facility on the first and last days of the year, stored on an annual average at the industrial facility, manufactured as a product at the industrial



facility, brought into the industrial facility, generated as nonproduct output at the industrial facility, used at the industrial facility, consumed at the industrial facility, and contained in the product or products produced at the industrial facility;

(6) For each production process, the amounts of each hazardous substance, either in pure form or contained in a mixture, manufactured, used, consumed, contained in the product or products produced, and generated as nonproduct output;

(7) The amounts of each hazardous waste generated, and hazardous substance released at each production process at the industrial facility and the amount of nonproduct output generated at each source at the industrial facility;

(8) The address of each off-site treatment, disposal, or storage facility to which hazardous waste generated at the industrial facility is transported, and the type of treatment or disposal method utilized at each off-site facility;

(9) For the industrial facility as a whole, the amounts of each hazardous waste generated, recycled in-process, treated, stored, disposed of or recycled outside of any production process on-site, recycled outside of any production process off-site, and treated, stored, or disposed of off-site;

(10) The amount of each hazardous substance in nonproduct output recycled within each production process at the industrial facility, recycled outside of any production process on-site and recycled outside of any production process off-site;

(11) The amounts of all hazardous substances that are released into the air or discharged into the water or any other waste stream following recycling, treatment, or any combination thereof;

(12) A comprehensive financial analysis of the costs associated with the use, generation, release, or discharge of hazardous substances which occur as a result of current production processes at the industrial facility, including the costs of generation of non product output, the savings realized by investments in pollution prevention and the more efficient use of raw materials, the cost of the treatment and disposal of hazardous waste, and the cost of liability insurance;

(13) A calculation of the reduction or increase in the use of each hazardous substance per comparable unit of production in each targeted production process, or any other production process, as determined by the department, in comparison to the use of each hazardous substance per unit of production in each production process reported in the pollution prevention plan for the previous year, including an indication if the calculation is an estimate;



(14) A calculation of the reduction or increase in the amount of each hazardous substance generated as nonproduct output from each targeted source and targeted production process or any other production process or source, as determined by the department, per comparable unit of product, and in the amount of each hazardous waste generated at each targeted source and targeted production process, or any other production process or source, as determined by the department, per unit of product, in comparison to the amounts reported in the pollution prevention plan for the previous year;

(15) A calculation of the reduction or increase in the use of each hazardous substance by the entire industrial facility in comparison to the use of each hazardous substance by the entire industrial facility reported in the pollution prevention plan for the previous year, including an indication if the calculation is an estimate;

(16) A calculation of the reduction or increase in the amount of each hazardous substance generated as nonproduct output by the entire industrial facility and in the amount of each hazardous waste generated by the entire industrial facility, in comparison to the amounts reported in the pollution prevention plan for the previous year; and

(17) Indications of the methods, modifications, or procedures used to achieve each reduction reported pursuant to paragraphs (13), (14), (15), and (16) of this subsection, and the industrial facility's five-year goals for such reductions at each production process and on a facility-wide basis, except that the product of a production process need not be included in the reduction goal, and except that any hazardous substance listed on an input-use exemption list pursuant to subsection d. of section 6 of this act<sup>1</sup> need not be included in the use reduction goal.

The information identified in paragraphs (13), (14), (15), and (16) of this subsection shall not be required for the first year covered by a pollution prevention plan prepared pursuant to this subsection.

c. The information required by the department in Part II of a pollution prevention plan shall consist of information concerning targeted production processes and sources, and, except as otherwise provided by the department in rules and regulations adopted pursuant to section 6 of this act, shall include the following information:

(1) For the industrial facility, the industrial facility's five-year numeric goals for reducing the use of each hazardous substance and for reducing the generation as nonproduct output of each hazardous substance;

(2) For each targeted production process, the industrial facility's five-year numeric goals for reducing the use of each hazardous substance per unit of product in the targeted production process, and for reducing the generation as nonproduct output of each hazardous substance per unit of product in the targeted production process;

(3) A description of each targeted production process and targeted source;

(4) An identification, for each targeted production process and targeted source, of available reduction options, including procedures, technologies and equipment, that may substantially reduce the use and generation of hazardous substances;

(5) A feasibility analysis, for each targeted production process and targeted source, of reduction options identified pursuant to paragraph (4) of this subsection, which shall include, but need not be limited to, a full-cost accounting of the options, and any technological obstacles to adopting the options;

(6) A description, for each targeted production process, of options the owner or operator of the industrial facility intends to undertake during the next five years to achieve its reduction goals and a schedule for the implementation of the options. The options to be described shall include, but need not be limited to, employee training, management policies, inventory control, scheduling improvements, material handling improvements, and spill and leak prevention;

(7) A description of the valuation methods used by the owner or operator to determine not to install or utilize each option identified pursuant to paragraph (6) of this subsection that would have resulted in a greater percentage reduction in the use of hazardous substances or generation of nonproduct output than the option chosen;

(8) An assessment and schedule for implementing on-site out-of-process recycling with regard to industrial facilities authorized by the department to include out-of-process recycling in a pollution prevention plan; and

(9) A quantitative description of the impact that individual pollution prevention techniques have had on post-treatment multimedia environmental releases of hazardous substances, reported by medium.

d. Within 18 months of the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations establishing criteria pursuant to which owners and operators of industri-

al facilities may identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on these targeted production sources and targeted sources. The criteria for the identification of targeted production processes and targeted sources shall be based on a consideration of the toxicity of specific hazardous substances or hazardous wastes used, generated or released at the targeted production process or targeted source, and shall require that a targeted production process or targeted source be a production process or source which makes a significant contribution to the use and release of hazardous substances, the generation of hazardous waste, and the generation of nonproduct output, as appropriate, at the industrial facility.

e. The owner or operator of an industrial facility may include in a pollution prevention plan and pollution prevention plan summary a description of any pollution prevention strategies implemented at the industrial facility prior to 1987.

f. The department may authorize an owner or operator of an industrial facility to include out-of-process recycling in a pollution prevention plan and a pollution prevention plan summary if the department determines that pollution prevention strategies are not reasonably available to the owner or operator.

g. The information required by the department in a pollution prevention plan progress report, except as otherwise provided by the department in rules and regulations adopted pursuant to section 6 of this act, shall include the following:

(1) An identification of each production process and targeted production process, and calculations, for the industrial facility and for each targeted production process and any other production process required by the department, of the reduction or increase in the use of each hazardous substance per unit of production, in the generation of each nonproduct output per unit of production, and in multimedia releases, by medium, following recycling and treatment of each hazardous substance, in comparison to the previous year;

(2) An indication of the method used to achieve each reduction listed pursuant to paragraph (1) of this subsection;

(3) A numerical statement demonstrating the industrial facility's progress towards achieving each of its five-year goals, including the most recent information required pursuant to paragraphs (1) and (2) of subsection c. of this section;

(4) An explanation of why the industrial facility's annual progress may be less than that anticipated in the pollution prevention plan time schedule for implementation; and

(5) A description of pollution prevention techniques that the owner or operator of the industrial facility intends to undertake during the forthcoming year at a targeted production process level.

h. The information required by the department in a pollution prevention plan summary, except as otherwise provided by the department in rules and regulations adopted pursuant to section 6 of this act, shall contain the following:

(1) For the industrial facility, the industrial facility's five-year numeric goal for reducing the use of each hazardous substance, and for reducing the generation of each nonproduct output;

(2) For each targeted production process, the industrial facility's five year numeric goals for reducing the use of each hazardous substance per unit of production, and for reducing the generation of nonproduct output per unit of product in the targeted production process;

(3) A description of each targeted production process and targeted source;

(4) A description, for each targeted production process, of the techniques the owner or operator of the industrial facility intends to undertake during the next five years to achieve the industrial facility's reduction goals, and a schedule for the implementation of the techniques;

(5) An indication, for each hazardous substance used in a targeted production process, of whether the hazardous substance is used in an amount of 0 to 5,000 pounds, 5,000 pounds to 10,000 pounds, or greater than 10,000 pounds;

(6) A written certification that the owner or operator of the industrial facility has prepared a pollution prevention plan and that the plan is available on site for the department's inspection; and

(7) A list of all other permits, certificates, registrations, or other approvals, or documents issued by the department for the industrial facility.

i. The owner or operator of an industrial facility shall not be required to include in a pollution prevention plan or pollution prevention plan summary information concerning a research and development laboratory located at the industrial facility.

j. The owner or operator of an industrial facility shall not be required to prepare a pollution prevention plan, pollution prevention plan summary or pollution prevention plan progress report for a pilot facility.

k. The department shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing criteria under

which the department shall consider sources or production processes that use similar ingredients to produce one or more similar products as a single source or production process for the purposes of reporting information in a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report.

1. Nothing in this act shall be construed to authorize the department to request or require the owner or operator of an industrial facility to provide information concerning non-hazardous substances or product formulas for mixtures that include non-hazardous substances, or to require that such information be included in a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report.

L.1991, c. 235, § 7.

<sup>1</sup> Section 13:1D-40.

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, § 22, approved Aug. 1, 1991, provided:

"This act shall take effect immediately, provided, however, that the provisions of this act requiring industrial facilities to prepare pollution prevention plans and submit pollution prevention plan sum-

maries and pollution prevention plan progress reports to the department shall remain inoperative until the department has adopted the rules and regulations necessary to implement this act."

**Statement.** Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### Cross References

Environmental cleanup responsibility act, see § 13:1K-6 et seq.

### **13:1D-42. Time to prepare plan and submit summary and progress reports; updates; revisions**

a. The owner or operator of each priority industrial facility having a Standard Industrial Classification, as designated by the federal Office of Management and Budget, within Major Group Numbers 26, 28, 30, 33 and 34, shall prepare a pollution prevention plan and submit a pollution prevention plan summary to the department on or before July 1, 1994.

b. The owner or operator of each priority industrial facility, other than those priority industrial facilities enumerated in subsection a. of this section, shall prepare a pollution prevention plan and submit a pollution prevention plan summary to the department on or before July 1, 1996.

c. The owner or operator of a priority industrial facility shall maintain a copy of the pollution prevention plan for the facility at

the facility, where it shall be available for inspection by the department.

d. The owner or operator of a priority industrial facility shall annually update the information required to be reported pursuant to paragraphs (13) through (17) of subsection b. of section 7 of this act.<sup>1</sup> The owner or operator of a priority industrial facility shall update the information required to be reported in paragraphs (1) through (12) of subsection b. of section 7 of this act, and pursuant to subsection h. of section 7 of this act, if a significant change in the operation of the priority industrial facility occurs, including the cessation or major expansion of a production process, the installation or removal of primary components of a production process, or the use or release of a hazardous substance, or the generation of a hazardous waste, which was not used, released, or generated when the initial pollution prevention plan was completed.

e. The owner or operator of a priority industrial facility shall prepare a complete revision of a pollution prevention plan by July 1 of the fifth year after the year of the initial completion of the pollution prevention plan, and by July 1 of each fifth year thereafter.

f. The owner or operator of a priority industrial facility shall prepare and submit to the department a complete revision of a pollution prevention plan summary by July 1 of the fifth year after the year of the initial completion of the pollution prevention plan summary, and by July 1 of each fifth year thereafter.

g. The owner or operator of a priority industrial facility shall prepare and submit to the department, on July 1 of each year after the year of the initial completion of a pollution prevention plan or the year of a complete revision of the pollution prevention plan, a pollution prevention plan progress report that indicates the progress made in the previous year in complying with the pollution prevention goals set forth in the initial pollution prevention plan, or revised pollution prevention plan, as appropriate.

h. After January 1, 1995, the department, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), may adopt rules and regulations designating as priority industrial facilities industrial facilities other than those designated as priority industrial facilities pursuant to section 3 of this act.<sup>2</sup> At least one year prior to the final adoption of any rules and regulations designating proposed priority industrial facilities pursuant to this subsection, the department shall submit to the Legislature a list of the proposed priority industrial facilities.

i. The department may adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing criteria for the



inclusion of hazardous substances in pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports other than the hazardous substances on the list established pursuant to 42 U.S.C. § 11023, which criteria shall include a consideration of the toxicity of a substance, evidence of the production of the substance in commercial quantities, and prior regulation as a hazardous substance pursuant to P.L.1976, c. 141 (C. 58:10-23.11 et seq.), section 4 of P.L.1985, c. 403 (C. 13:1K-22), or 42 U.S.C. 9601.

L.1991, c. 235, § 8.

<sup>1</sup> Section 13:1D-41.

<sup>2</sup> Section 13:1D-37.

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

#### Statement. Committee statement to

Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### 13:1D-43. Authority of department

a. The department shall have the authority to require the owner or operator of a priority industrial facility to prepare and submit a pollution prevention plan and submit a pollution prevention plan summary and pollution prevention plan progress report to the department.

b. The department shall have the authority to approve a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report prepared pursuant to this act and require the owner or operator of a priority industrial facility to make any revisions or modifications of a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report necessary for compliance with the provisions of this act, as determined by the department pursuant to rules and regulations adopted pursuant to section 6 of this act. In reviewing a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report, the department shall have the authority to require an owner or operator of a priority industrial facility to provide such information as the department deems necessary to support the owner or operator's identification of a targeted production process or targeted source. If the department requires the owner or operator of a priority industrial facility to make revisions or modify a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report, the department shall consider the financial impact on the

owner or operator of the priority industrial facility of the changes or modifications.

c. At the time of an initial application for, or renewal of, any permit, certificate, registration, or any other relevant department approval issued to the owner or operator of a priority industrial facility pursuant to P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.), the department may require that the permit, certificate, registration or approval include the pollution prevention strategies set forth in the pollution prevention plan or pollution prevention plan summary prepared for the priority industrial facility pursuant to this act, or may require, as a condition of issuing a permit, certificate, registration, or any other relevant department approval to the owner or operator of a priority industrial facility pursuant to P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.), that the owner or operator of the priority industrial facility prepare a pollution prevention plan and submit a pollution prevention plan summary to the department.

d. The department may revoke, issue, reissue, or modify any permit, certificate, registration, or any other relevant approval issued to the owner or operator of a priority industrial facility by the department pursuant to P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.) for the purpose of issuing a facility-wide permit, or requiring more stringent emission or effluent levels based on pollution prevention strategies contained in the pollution prevention plan prepared by the owner or operator of the priority industrial facility. Any action taken by the department pursuant to this subsection to revoke, issue, reissue, or modify any permit, certificate, registration, or other departmental approval may be appealed pursuant to the provisions of P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.), as appropriate.

L.1991, c. 235, § 9.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

**13:1D-44. Facility not designated a priority industrial facility may be directed to prepare pollution prevention plan and submit summary and progress report**

a. The department, pursuant to the criteria established in rules and regulations adopted pursuant to subsection c. of section 6 of this act,<sup>1</sup> may direct the owner or operator of an industrial facility which is not designated a priority industrial facility pursuant to section 3<sup>2</sup> or subsection h. of section 8 of this act,<sup>3</sup> to prepare a pollution prevention plan for the industrial facility and to submit a pollution prevention plan summary and pollution prevention plan progress report to the department. An owner or operator of an industrial facility directed to prepare a pollution prevention plan, pollution prevention plan summary, and pollution prevention plan progress report pursuant to this subsection shall prepare the pollution prevention plan, submit the pollution prevention plan summary to the department within 18 months of receipt of the department's directive, and shall annually submit to the department a pollution prevention plan progress report.

b. The department shall have the authority to approve a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report prepared pursuant to this section, and to require the owner or operator of an industrial facility to make any revisions or modifications in a pollution prevention plan or pollution prevention plan summary necessary for compliance with the provisions of this act, as determined by the department pursuant to rules and regulations adopted pursuant to section 6 of this act. In reviewing a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report, the department shall have the authority to require an owner or operator of an industrial facility to provide such information as the department deems necessary to support the owner or operator's identification of a targeted production process or targeted source. If the department requires the owner or operator of an industrial facility to make revisions or modify a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report, the department shall consider the financial impact on the owner or operator of the industrial facility of the changes or modifications.

c. At the time of an initial application for, or an application for the renewal of, any permit, certificate, registration, or any other relevant approval issued by the department pursuant to P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.) to

the owner or operator of an industrial facility that has been directed by the department to prepare a pollution prevention plan and pollution prevention plan summary pursuant to subsection a. of this section, the department may require that the permit, certificate, registration, or approval include the pollution prevention strategies set forth in the pollution prevention plan or pollution prevention plan summary prepared for the industrial facility.

d. The department may revoke, issue, reissue, or modify any permit, certificate, registration, or any other relevant approval issued by the department pursuant to P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.) to the owner or operator of an industrial facility that has been directed by the department to prepare a pollution prevention plan and pollution prevention plan summary pursuant to subsection a. of this section for the purpose of including the pollution prevention strategies set forth in the pollution prevention plan or pollution prevention plan summary prepared for the industrial facility. Any action taken by the department pursuant to this subsection to revoke, issue, reissue, or modify any permit certificate, registration, or other department approval may be appealed pursuant to the provisions of P.L.1970, c. 33 (C. 13:1D-1 et seq.), P.L.1970, c. 39 (C. 13:1E-1 et seq.), P.L.1977, c. 74 (C. 58:10A-1 et seq.), or P.L.1954, c. 212 (C. 26:2C-1 et seq.), as appropriate.

L.1991, c. 235, § 10.

<sup>1</sup> Section 13:1D-40.

<sup>2</sup> Section 13:1D-37.

<sup>3</sup> Section 13:1D-42.

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

**Statement.** Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### **13:1D-45. Department to conduct research; pollution prevention profile reports**

The department shall conduct research on pollution prevention trends within each of the Standard Industrial Classification industry groups represented by priority industrial facilities. This research shall include an analysis of information contained in pollution prevention plan summaries prepared and submitted to the department by owners or operators of priority industrial facilities, and may include an analysis of pollution prevention plans. Within

five years of the effective date of this act, the department shall prepare and submit to the Governor and the Legislature, and shall make available to the public, a pollution prevention profile report for each of the Standard Industrial Classification industry groups represented by priority industrial facilities that summarizes the department's research on each industry group, and, if warranted by the research, that recommends any administrative or legislative action necessary to increase pollution prevention activities at priority industrial facilities.

L.1991, c. 235, § 11.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### **13:1D-46. Department authorized to enter facilities; confidential information**

The department may enter any industrial facility for the purpose of obtaining information concerning the industrial facility's pollution prevention practices, reviewing a pollution prevention plan, ascertaining the quality of any work performed in accordance with this act or rules or regulations adopted pursuant thereto, or ascertaining compliance with a facility-wide permit or the provisions of this act or any rule or regulation adopted pursuant thereto. Any information relating to a trade secret obtained in the course of implementing or enforcing the provisions of this act shall be kept confidential and shall be inadmissible as evidence in any court or in any other proceeding in such a manner so as to protect the confidentiality of the information.

L.1991, c. 235, § 12.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### **13:1D-47. Trade secret claim; information omitted from plan**

a. Any owner or operator of an industrial facility required to prepare a pollution prevention plan and submit to the department a pollution prevention plan summary may omit from the pollution prevention plan or pollution prevention plan summary the specific

chemical identity of a hazardous substance about which information is required, and include instead the generic class or category of the hazardous substance, or may omit any other information required to be disclosed, if the owner or operator files with the department a trade secret claim pursuant to this section.

b. Any owner or operator of an industrial facility omitting information from a pollution prevention plan or pollution prevention plan summary pursuant to this section shall submit to the department, accompanied by the pollution prevention plan summary, a trade secret claim in which the owner or operator of the industrial facility provides the commissioner with the information omitted, and a statement demonstrating that the information omitted meets the criteria for a valid trade secret established pursuant to subsection c. of this section. The trade secret claim shall include the information omitted from the pollution prevention plan or pollution prevention plan summary, and the commissioner shall maintain this information on a confidential basis. Any trade secret claim made pursuant to this section which the department determines is false or frivolous shall be considered a violation of this act.

c. No owner or operator of an industrial facility shall omit information from a pollution prevention plan or pollution prevention plan summary unless the owner or operator can demonstrate that:

- (1) The information has not been disclosed to any other person other than to a person bound by a confidentiality agreement;
- (2) The owner or operator has taken all reasonable measures necessary to protect the secrecy of the information;
- (3) The information is not required to be disclosed, or to be otherwise made available, to the public pursuant to any other federal or State law;
- (4) Disclosure of the information would be likely to cause the owner or operator substantial economic disadvantage or harm; and
- (5) The information is not readily discoverable through reverse engineering or other analytical techniques.

d. The department shall act to make a determination on the validity of a trade secret claim when a request is made by any person for the disclosure of the information for which the trade secret claim was made, or at any time that the department deems appropriate. Upon making a determination on the validity of a trade secret claim, the department shall inform the owner or operator of the affected industrial facility of the determination by certified mail. If the department determines that the owner or operator's trade secret claim is not valid, the owner or operator



shall have 45 days from the receipt of the department's determination to file with the department a written request for an administrative hearing on the determination. If the owner or operator does not file such a request within 45 days, the department shall take action to provide that the information for which the trade secret claim was made be disclosed pursuant to the provisions of this act. If an owner or operator requests an administrative hearing pursuant to the provisions of this subsection, the department shall refer the matter to the Office of Administrative Law for a hearing thereon. At the hearing, the owner or operator shall have the burden to show that the trade secret claim is valid. Within 45 days of receipt of the administrative law judge's recommendation, the department shall affirm, reject, or modify the recommendation. The department's action shall be considered the final agency action for the purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), and shall be subject only to judicial review as provided in the Rules of Court. The department shall inform the owner or operator of its decision on the administrative law judge's recommendation by certified mail. If the department determines that the trade secret claim is not valid, the owner or operator shall have 45 days to notify the department in writing that he has filed an appeal of the department's decision in the courts. If the owner or operator does not so notify the department, the department shall take action to provide that the information for which the trade secret claim was made be disclosed pursuant to the provisions of this act.

e. The department shall provide any information for which a trade secret claim is pending or has been approved pursuant to this section to a physician or osteopath when such information is needed for medical diagnosis or treatment. The department shall require the physician or osteopath to sign an agreement protecting the confidentiality of information disclosed pursuant to this subsection.

f. Any pollution prevention plan summary containing information for which a trade secret claim is pending or has been approved shall be made available to the public with that information omitted.

g. The subject of any trade secret claim pending or approved shall be treated as confidential information. Confidential information shall be kept in a locked file within a locked room at the department, and shall not be duplicated by any person, including any employee of the department. The department shall maintain a record of all persons obtaining access to the confidential information, including the date and time of, and the reasons for, the access. Except as provided in subsection e. of this section, the department

shall not disclose any confidential information to any person except an officer or employee of the State in connection with the official duties of the officer or employee under any law for the protection of public health, or to the contractors of the State and their employees if, in the opinion of the department, the disclosure is necessary for the completion of any work contracted for in connection with the implementation of this act. Any officer or employee of the State, contractor of the State, physician, or osteopath who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

h. The commissioner shall not approve any trade secret claim for any information which the Administrator of the United States Environmental Protection Agency has determined is not a trade secret pursuant to 42 U.S.C. § 11042 or 42 U.S.C. § 6921.

i. An owner or operator of an industrial facility may not claim the following information as a trade secret:

(1) The chemical name, identity, and amounts of any hazardous substance discharged into the air or the surface or ground waters of the State or into a wastewater treatment system, the chemical identity and amounts of hazardous waste generated, or the location of a discharge or generation; or

(2) Hazards to health or the environment posed by any hazardous substance at an industrial facility, and potential routes of human exposure to a hazardous substance.

j. The information for which a trade secret claim is made pursuant to this section may be used by the department in general compilations of information based on industry groups or classifications of hazardous substances, or for the conducting of research and preparation of the reports required pursuant to section 9 of this act if this use does not identify the specific industrial facility or priority industrial facility for which the information was reported.

L.1991, c. 235, § 13.

### **Historical and Statutory Notes**

#### **Effective Dates**

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

**Statement.** Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### **13:1D-48. Facility-wide permits**

a. Within 18 months of adoption of the rules and regulations required pursuant to section 6 of this act,<sup>1</sup> the department shall

designate no fewer than 10 but not more than 15 individual priority industrial facilities to each receive a facility-wide permit on the basis of criteria adopted by the department. These criteria shall include, but need not be limited to:

- (1) The potential for a priority industrial facility to serve as a State-wide model for multimedia pollution prevention programs;
- (2) The potential for a priority industrial facility that does not meet industry-wide pollution prevention goals to meet these goals through a facility-wide permit; and
- (3) The potential for a priority industrial facility that has not met the pollution prevention goals set forth in its pollution prevention plan to meet these goals through a facility-wide permit.

At the time of the designation of priority industrial facilities pursuant to this subsection, the department shall prepare and submit to the Legislature a report summarizing the designation process and progress made to date in establishing a facility-wide permitting program.

b. Within 30 months of the adoption of the rules and regulations required pursuant to section 6 of this act, the department shall issue facility-wide permits to the priority industrial facilities designated pursuant to subsection a. of this section.

c. Within 36 months of the adoption of the rules and regulations required pursuant to section 6 of this act, the department shall prepare and submit to the Governor and the Legislature a report analyzing the facility-wide permit program, evaluating the successes or shortcomings of the facility-wide permit program, evaluating the ability of the department to conduct and expand the facility-wide permit program, and proposing, if warranted, a schedule to expand the applicability of the facility-wide permit program. The department shall not expand the facility-wide permitting program beyond the number of priority industrial facilities designated pursuant to subsection a. of this section without authorization by law.

L.1991, c. 235, § 14.

<sup>1</sup> Section 13:1D-40.

### Historical and Statutory Notes

#### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

#### Statement. Committee statement to

Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

**13:1D-49. Violations; penalties; enforcement**

a. Whenever, on the basis of information available to the commissioner, the commissioner finds that a person is in violation of this act, the commissioner shall:

(1) Issue an order in accordance with subsection b. of this section requiring the person to comply;

(2) Bring a civil action in accordance with subsection c. of this section;

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of information available to the commissioner, the commissioner finds that a person is in violation of this act, the commissioner may issue an order (1) specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation; (2) citing the action that caused the violation; (3) requiring compliance with the provision of this act or the rule or regulation adopted pursuant thereto of which the person is in violation; and (4) giving notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief from a violation of this act. This relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey that led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection.

d. (1) The commissioner is authorized to impose a civil administrative penalty of not more than \$15,000 for each violation, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount imposed under this subsection shall be assessed pursuant to rules and regulations adopted by the commissioner for violations of similar type, seriousness, and duration. The commissioner shall have the authority to assess penalties prior to the establishment of rules and regulations governing penalties to the extent that such penalties are reasonable and based on other violations of a similar type, seriousness, and duration. No civil administrative penalty shall be im-

posed until after the person has been notified by certified mail or personal service. The notice shall include: a reference to the section of the act, rule, regulation, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil administrative penalties to be imposed; and a statement of the person's right to a hearing. The person shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon finding that a violation has occurred, the commissioner may issue a final order or civil administrative penalty after imposing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order or a final civil administrative penalty upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order or a final civil administrative penalty. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. A civil administrative penalty imposed under this subsection may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon terms and conditions the commissioner may establish by rule or regulation.

(2) In addition to the assessment of a civil administrative penalty, the commissioner may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation.

e. Any person who violates this act, an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty not to exceed \$15,000 for each day during which the violation continues. Any penalty imposed pursuant to this subsection may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce "the penalty enforcement law."

f. Any violation of a pollution prevention condition of a facility-wide permit issued pursuant to this act shall be considered a violation of P.L.1970, c. 33 (C.13:1D-1 et seq.), P.L.1970, c. 39

(C.13:1E-1 et seq.), P.L.1977, c. 74 (C.58:10A-1 et seq.), or P.L.1954, c. 212 (C.26:2C-1 et seq.), as the department deems appropriate. L.1991, c. 235, § 15.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.

### 13:1D-50. Pollution prevention fund

There is established in the department a nonlapsing fund to be known as the "Pollution Prevention Fund," hereinafter referred to as "the fund." The fund shall be credited with all fees imposed and collected by the Department of Labor pursuant to paragraph (2) of subsection b. of section 26 of P.L.1983, c. 315 (C.34:5A-26), and with all penalties collected for violations of this act, and with any other monies that may be made available, or appropriated, to the department for the implementation of this act. Monies in the fund shall be used by, and are hereby appropriated to, the department solely for the purpose of implementing the provisions of this act.

L.1991, c. 235, § 16.

#### Historical and Statutory Notes

##### Effective Dates

L.1991, c. 235, effective Aug. 1, 1991, but certain provisions to remain inoperative until rules and regulations adopted, see note under § 13:1D-41.

##### Statement.

Committee statement to Senate, No. 2220 SCS—L.1991, c. 235, see § 13:1D-35.