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## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY, ENERGY AND SUSTAINABILITY**

#### **BUREAU OF RELEASE PREVENTION**

##### **Notice of Readoption**

##### **Toxic Catastrophe Prevention Act Program**

##### **Readoption: N.J.A.C. 7:31**

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq.

Authorized By: Shawn LaTourette, Commissioner, Department of Environmental Protection.

Effective Date: September 24, 2022.

New Expiration Date: September 24, 2029.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the Toxic Catastrophe Prevention Act Program rules at N.J.A.C. 7:31 are readopted and shall continue in effect for a seven-year period. The rules were scheduled to expire on January 8, 2023. The Department of Environmental Protection (Department) has reviewed these rules and has determined that the rules should be readopted because they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

The Toxic Catastrophe Prevention Act rules (TCPA rules) implement the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq. (the Act), which became effective in 1986. The goal of the Act is to protect the public from catastrophic accidental releases of extraordinarily hazardous substances (EHSs) into the environment. The Act requires owners or operators of facilities having EHSs at certain threshold quantities to anticipate the circumstances

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that could result in accidental EHS releases and to take precautionary or preemptive actions to prevent such releases. The impetus for the Act was the December 1984 accidental release of methyl isocyanate at a plant in Bhopal, India, that resulted in the deaths of 2,500 people. The TCPA rules incorporate by reference, with some amendments, the provisions of the Accidental Release Prevention (ARP) rules (40 CFR Part 68). Incorporating the Federal ARP rules enabled the Department to obtain, in 2001, Federal authorization to implement the TCPA program in New Jersey in lieu of the Federal ARP program. The TCPA rules automatically incorporate future amendments to the Federal ARP rules into the State TCPA rules unless the Federal rules conflict with, and are less stringent than, the State rules.

The TCPA rules provide a list of EHSs, and specify the key elements of a risk management program that a regulated facility must implement in order to minimize the threat of an accidental EHS release. By requiring owners and operators to consider the conditions that may contribute to accidental EHS releases and to manage the potential risk to the environment and the public by taking precautionary actions, the rules have reduced the risk of accidental EHS releases that could cause a catastrophic accident.

The TCPA rules provide a mechanism by which a facility can assert a claim of confidentiality to withhold privileged trade secrets or security information. They also provide for civil administrative penalties for violations of the rules, and requests for adjudicatory hearings. The rules require each regulated facility to pay an annual fee to the Department. The Department calculates the fees annually in accordance with a formula prescribed in the rules, and publishes a fee report prior to issuing invoices to the regulated facilities.