ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

BUREAU OF RELEASE PREVENTION

Discharges of Petroleum and Other Hazardous Substances

Adopted Amendments: N.J.A.C. 7:1E-1.6, 1.7, 2.2, 2.3, 2.4, 2.7, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.4, 3.5, 4.2 through 4.6, 4.8, 4.9, 4.10, 4.11, 5.2, 5.3, 5.5, 5.6, 5.7, 5.8, 5.9, 6.3, 6.5, 6.6, 6.7, 6.8, 6.9, and 7:1E Appendices A and B

Adopted New Rule: N.J.A.C. 7:1E-3.5

Adopted Repeals: N.J.A.C. 7:1E-8.9 and 8.10

Proposed: May 20, 2024, at 56 N.J.R. 833(a).

Adopted: May 19, 2025, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: May 19, 2025, as R.2025 d.077, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3), **and with proposed new N.J.A.C. 7:1E-1.12 and 4.12 not adopted**.

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

DEP Docket Number: 03-24-04.

Effective Date: June 16, 2025.

Expiration Dates: October 8, 2027.

The rules at Discharges of Petroleum and Other Hazardous Substances, N.J.A.C. 7:1E (the DPHS rules), implement the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et

seq. (the "Spill Act" or "Act"), which sets stringent standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances. This rulemaking implements a number of updates needed to ensure compliance. The adopted rules will update the list of substances that constitute "hazardous substances" at N.J.A.C. 7:1E Appendix A, amend the operational and notification responsibility requirements for major facilities, and modify the DPHS requirements as they pertain to transmission pipelines. The adopted rules also amend requirements for the submission, approval, renewal, and certification of discharge prevention, containment, and countermeasure (DPCC) plans, and discharge cleanup and removal (DCR) plans, including how frequently the facilities must submit the plans to the Department. Other adopted amendments will revise requirements regarding discharge notification and response and discharge confirmation reports, increase the penalties consistent with inflation, and address grace periods for penalties.

Summary of Hearing Officer's Recommendation and Agency's Response:

The Department of Environmental Protection (Department) held a virtual public hearing on this rulemaking on June 11, 2024, at 9:00 A.M., through the Department's video conferencing software, Microsoft Teams. Chris Lucien, Section Chief, served as hearing officer. One person provided oral comments at the public hearing. After reviewing the written and oral comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed rulemaking with non-substantial changes not requiring additional public notice and comment and with proposed amendments at N.J.A.C. 7:1E-1.7(a), (c), and (d), and 1.12, as well as corresponding cross-references at N.J.A.C. 7:1E-1.6, 4.1, 4.2(e), 4.3(c),

4.9(a), 4.10(h), 4.11(a) and (b), 6.8(c)2; and new N.J.A.C. 7:1E-4.12 not adopted. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

This notice of adoption document can also be viewed or downloaded from the Department's website at http://www.nj.gov/dep/rules/adoptions.html.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through July 19, 2024. The following individuals provided timely written and/or oral comments:

1. Raymond Cantor, New Jersey Business & Industry Association

2. Peter Downing and Rachelle Alexander, Environment and Safety Solutions, Inc.

3. Peggy Gallos, Association of Environmental Authorities

4. Michael Giaimo, American Petroleum Institute

5. Jennifer Gibson, Alliance for Chemical Distribution

6. Helen Gregory, PSEG Nuclear, and generally supports the comments submitted by the Chemistry Council of New Jersey (CCNJ) and Site Remediation Industry Network (SRIN)

7. Dennis Hart, CCNJ and SRIN, also supports any comments submitted by members of CCNJ and SRIN, as well as the Fuel Merchants Association of New Jersey. Additionally, he supports the comments of Environmental and Safety Solutions.

8. Rayna Laiosa, Chemours Company

9. John Napolitano, Bayshore Regional Sewerage Authority

10. Long Nguyen, Independent Chemical

11. Michelle Smith, NewFields

12. Leakhena Swett, International Liquid Terminals Association

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

Limited Support

1. COMMENT: The Department proposed to establish a new exception to its requirement to provide written notice at least 60 days prior to making certain changes to aboveground storage for emergency situations. The proposed new exception should be adopted since it will provide facilities with the authority to make immediate changes to their aboveground storage to prevent discharges in the event of an emergency. Additionally, the proposed amendments make technical edits to better describe drill requirements in the discharge clean up and removal (DCR) plan. One notable change is the express permission to combine DCR plan drills with other emergency response drills conducted by the facility. This proposed amendment will streamline requirements for facilities that are covered by multiple regulations that require drills. This will also incentivize facilities to perform combined drills with simultaneous responses that can better imitate real-world emergencies. (5)

RESPONSE: The Department acknowledges the commenter's support of these provisions of the adopted rules.

2. COMMENT: The Department should adopt the provision that excludes a substance from being treated as a hazardous substance when that substance is not normally hazardous to the health and safety of a person in their common chemical state, but which becomes unusually hazardous to firefighters and the surrounding community in the event of the substance being exposed to fire. The Department's proposed amendments to the training requirements at N.J.A.C. 7:1E-2.12 clarify what the Department has expected in the past. Additionally, the Department should adopt the proposed deletion at N.J.A.C. 7:1E-2.14. Finally, a review of the discharge prevention, containment and countermeasure program citations from 2019 through March 2024 indicates that many of the citations are paperwork violations, including integrity testing documentation, based on the hazards presented by failure of an aboveground storage tank. Thus, the Department should adopt the proposed amendment of this provision of the rules. (2)

RESPONSE: The Department acknowledges the commenter's support of these provisions of the adopted rules.

3. COMMENT: The Department should adopt the proposed amendments to extend the discharge prevention, containment and countermeasure (DPCC) plan renewal period from three to five years and amend the tank testing records retention period from the tank's life to either the tank's life or 10 years, whichever is shorter. These changes will cut administrative costs for the regulated community and the Department. (1 and 4)

RESPONSE: The Department acknowledges the commenters' support of these provisions of the adopted rules.

4. COMMENT: The Department's proposal to lengthen the DPCC and DCR plans renewal cycle to five years will ease the administrative burden on facilities, while allowing the Department to better utilize its resources. The Department should adopt this amendment. (5)

5. COMMENT: The Department should adopt the proposed amendment that would extend the renewal period at N.J.A.C. 7:1E-4.9(a) from three years to five years. However, the Department should correct the reference to a three-year renewal cycle at N.J.A.C. 7:1E-4.9(f) for consistency. (2)

6. COMMENT: N.J.A.C. 7:1E-4.9(f) erroneously refers to the current three-year renewal cycle and should be corrected to reference the five-year renewal cycle pursuant to proposed N.J.A.C. 7:1E-4.9(a). (7)

RESPONSE TO COMMENTS 4, 5, AND 6: The Department acknowledges the commenters' support of this provision of the adopted rules and appreciates the identification of the additional reference to the renewal period that the Department unintentionally neglected to update in the rulemaking. N.J.A.C. 7:1E-4.9(f) will be revised upon adoption to be consistent with the proposed five-year renewal cycle as originally intended. The Department will send a notice to each major facility advising of the revised renewal dates within six weeks of the effective date of the rulemaking.

General Opposition

7. COMMENT: Many of the proposed amendments to the rules at N.J.A.C. 7:1E, Discharges of Petroleum and Other Hazardous Substances (DPHS) rules, are described by the Department as clarifications. However, the amendments appear to be an attempt to put policies that have been implemented over the past couple of years into rules. There has been no change to the Spill Act, requiring these changes. Further, a thorough review of the publicly available DPCC-related violations between January 1, 2019 and March 19, 2024, as posted on the Department's DataMiner platform, indicates that the existing program works. The vast majority of the citations issued are paperwork related. There were only four discharges that were cited during this time, and two of those were associated with a terminal and pipeline operated by the same partnership organization. The other two discharges were 250 gallons or less of hazardous substances each. The Department should not codify policies that provide no environmental benefit. The number of major facilities in this State has greatly diminished since the inception of the program. These amendments will continue to force facilities out of New Jersey. While some may think that fewer facilities will make New Jersey safer, the transportation of hazardous substances can increase the risk to our communities, as more shipments must travel longer distances to reach their destinations. The Department should consider ways to make these rules less onerous for the regulated community. (2)

RESPONSE: The amendments to the DPHS rules will provide an environmental benefit by reducing the risk (consequence or likelihood) of a discharge of a hazardous substance, thus protecting the land and waters of the State. While it is true that the Spill Act has not been amended, the amendments do not attempt to expand the Department's authority, which would be a matter for the legislative branch. As explained in the notice of proposal Summary, the DPHS rules implement the Spill Act by establishing standards for emergency response in the event of a

discharge of a hazardous substance. See 56 N.J.R. 833(a), 833. Thus, the amended rules address "best practices" in implementation of those standards based upon the program's experience over several years. The Department is not aware of a drastic reduction in the number of major facilities over the years. To the extent that there may be fewer major facilities since the program's inception, the Department has no evidence that there is a causal link between the program and the reduction.

8. COMMENT: The Department should reconsider the proposed rules. The last stakeholder meeting for the proposed rules was held on February 11, 2019. The discussion encompassed N.J.A.C. 7:1E Appendix A, *de minimis*, Subchapter 6, recordkeeping, renewal cycle, and revised language. There was no discussion on some of the key 2024 proposed amendments. Therefore, workgroup meetings with interested parties need to be held to discuss these changes. The input developed during future meetings would better inform the Department's regulatory proposal. (7 and 8)

RESPONSE: The Department sought input from external and internal stakeholders during the development of the proposed amendments. As several commenters have noted, the Department held a stakeholder meeting in February 2019 at which time it sought input from external stakeholders for purposes of developing the major components of the rules. The external stakeholders in attendance included representatives from regulated major facilities, chemical and petroleum sector organizations, and environmental organizations. The Department also held meetings with internal stakeholders, which included representatives from other program areas within the Department, including groups from water and site remediation program areas. While all components of the rulemaking may not have been discussed with all parties, the Department

solicited and considered the views and opinions of interested parties prior to promulgating rules. This is consistent with the Administrative Procedure Act at N.J.S.A. 52:14B-4(e), which recognizes that agencies may use informal conferences, appoint committees, or otherwise consult with parties who may have an interest or expertise in the rulemaking being considered by the Department.

N.J.A.C. 7:1E Appendix A

Adding/Removing Compounds at N.J.A.C. 7:1E Appendix A

9. COMMENT: The hazardous substances subject to the existing DPHS rules are pulled from lists used in Federal regulations and New Jersey regulations in addition to substances added specifically to this program through formal rulemaking. Combined, these substances compose N.J.A.C. 7:1E Appendix A. While these Federal and State lists have undergone various updates, N.J.A.C. 7:1E Appendix A has not been updated as frequently, making it unaligned. In this revision, the Department intends to update N.J.A.C. 7:1E Appendix A to establish a new system where N.J.A.C. 7:1E Appendix A is automatically updated as other lists are revised to ensure it remains current. The Department's intent to ensure that N.J.A.C. 7:1E Appendix A is current and appropriately reflects changes made to other regulations is generally appreciated since this can reduce confusion while also confirming new findings related to the hazards of chemicals are appropriately incorporated into the rules. However, confusion among regulated entities may develop if the Department does not adequately prepare a comprehensive list of all N.J.A.C. 7:1E Appendix A chemicals and provide ample notice of additions.

In addition to the formal notices that the Department proposes to publish when there are changes to N.J.A.C. 7:1E Appendix A, the Department should also send individual alerts to

regulated entities to make certain they are aware of these changes. This is necessary since, historically, N.J.A.C. 7:1E Appendix A has not been regularly updated and facility owners/operators may not be accustomed to consistently scanning administrative notices for possible changes to the list of chemicals. (5)

10. COMMENT: Proposed N.J.A.C. 7:1E-1.7(a) would modify the definition of a hazardous substance to include all hazardous substances as defined at N.J.S.A. 58:10-23.11b, petroleum and petroleum products, and all substances listed at N.J.A.C. 7:1E Appendix A. However, N.J.S.A. 58:10-23.11b does not include a specific list. The statute references multiple lists. In addition, it states that one of those lists is the list established by the Department at section 4 at N.J.S.A. 34:5A-4, which must be approved after a public hearing. Proposed N.J.A.C. 7:1E-1.7(d) indicates that, in the event of an inconsistency in a source list, the more stringent list will prevail.

It is critical that a master list be generated to ensure that there is no confusion in determining what compounds are included on the hazardous substances list. The regulated community needs one comprehensive source document that can be relied upon to determine if a chemical is considered a hazardous substance as defined by the Discharge Prevention of Hazardous Substances regulations. Having to research multiple lists would be particularly onerous for any facility that may not be a major facility, but would become a major facility based on an addition to the hazardous substance list. Non-major facilities are unlikely to be on the Department's listserv or receive notices of administrative changes to the hazardous substances list.

Further, given that the Department keeps a list of all of the major facilities in the State, the Department should bear the onus of providing notification directly to the regulated community when changes are made to the list of hazardous substances. With all regulated

entities doing more with less, it is unreasonable to expect multiple source documents to be referenced when making a regulatory determination. (2)

11. COMMENT: The Department proposes to amend the definition of "hazardous substance" to include all hazardous substances as defined in the Spill Act, at N.J.S.A. 58:10- 23.11b, which includes those adopted by the United States Environmental Protection Agency (EPA). This amendment would shift the responsibility for maintaining a current list of hazardous substances from the Department to the regulated community. Compliance with this amendment would be particularly onerous for any facility that may not currently be a major facility but would become one upon a change to a source document. It is unlikely that these facilities would be on the correct distribution lists that alert stakeholders about these types of changes.

The Department is fully aware of the existing major facilities in the State, since access to this information is available through the Department's DataMiner database. Therefore, the Department should bear the onus of providing notification directly to the regulated community when changes are made to the list of hazardous substances. The Department should not shift the responsibility for maintaining the hazardous substances list to the facility. Rather, the Department should continue maintaining a comprehensive list, which has been done since September 12, 1991.

If the Department is unwilling to provide notification directly to the regulated community when changes are made to the list of hazardous substances, then a mechanism must be provided for facilities to develop and submit their DPCC plan within a certain timeframe to reach full compliance (that is, 180 days). (7)

12. COMMENT: The proposal to amend the definition of a hazardous substance to include all hazardous substances as defined at N.J.S.A. 58:10-23.11b should be modified to clarify that the

Department bears the responsibility of providing notification directly to the regulated community when changes are made to this list of hazardous substances. (10)

13. COMMENT: The Department should list all hazardous substances at N.J.A.C. 7:1E Appendix A, and not base the definition on multiple EPA and Department source lists. (3)

14. COMMENT: It can be challenging, especially for the general public, to monitor the New Jersey Register for updates to the hazardous substances list. Therefore, the Department should make additional efforts to ensure that the regulated community is aware of the potential changes to N.J.A.C. 7:1E Appendix A. (4)

15. COMMENT: The proposed rules amend the definition of "hazardous substance" to include all hazardous substances as defined in the Spill Act at N.J.S.A. 58:10-23.11b, which includes those adopted by the EPA. This proposed amendment would shift the responsibility for maintaining a current list of hazardous substances from the Department to the regulated community. The Department should reconsider shifting the responsibility for maintaining the list of hazardous substances back to the Department, which has been the case since 1991. (6)

16. COMMENT: The Department proposes to automatically list at N.J.A.C. 7:1E Appendix A all substances added to source lists. Pursuant to the proposed rules, the Department would notify the public of an addition to N.J.A.C. 7:1E Appendix A through a published notice of administrative change in the New Jersey Register, which would bypass public input. The Department should not allow substances by default at N.J.A.C. 7:1E Appendix A. Rather, the Department should provide notice and allow the public to comment on any addition to N.J.A.C. 7:1E Appendix A through the public comment process of a rulemaking. The public must be given the opportunity to provide input on the appropriateness, as well as the costs and benefits, of any addition to N.J.A.C. 7:1E Appendix A. (4)

17. COMMENT: The Department proposes to automatically update the list of hazardous substances at N.J.A.C. 7:1E Appendix A as changes to the source lists occur. As a general matter, the Department should not automatically list at N.J.A.C. 7:1E Appendix A every substance added to source lists, but rather should carefully evaluate each substance to determine whether it is appropriate to be added to N.J.A.C. 7:1E Appendix A. The Department should consider whether: the source lists were established and are used for purposes other than containment and release response planning; and sufficient chemical hazard, toxicity, fate and transport, and physical/chemical property data exist, by which the regulated community can reasonably prepare suitable DPCC and DCR plans. Only those substances that are suitable for listing at N.J.A.C. 7:1E Appendix A, and for which sufficient data are available, should be listed there. (4)

18. COMMENT: The Summary of the Department's proposed rulemaking indicates that there may be a delay between when a substance is added or removed from a source list and when N.J.A.C. 7:1E Appendix A is updated. In that situation, the Department states that the amended source list will govern. Proposed N.J.A.C. 7:1E-1.7(c) states that when changes are made to the source lists, the Department will make updates to N.J.A.C. 7:1E Appendix A. However, the language in the rules does not specify a time frame for updating N.J.A.C. 7:1E Appendix A when a source list is updated. Further, the proposed amendment does not identify that the source list will be the prevailing document. The intention expressed in the Summary of the notice of proposal — that the source document(s) prevail if there is a lag in updating N.J.A.C. 7:1E Appendix A — is not clear in the proposed rule text. After rules are promulgated, the intention set forth in the Summary is often not remembered or respected by changing administrations if it is not clear in the rule text. (2)

19. COMMENT: The Summary of the proposed rulemaking states that there may be a delay between when a substance is added or removed from a source list and when N.J.A.C. 7:1E Appendix A is updated. If there is a delay, the amended source list will govern. However, this is only discussed in the Summary. As no timeframe is provided in the rule text, it is unclear which source document prevails if there is a lag in updating N.J.A.C. 7:1E Appendix A. If the Department does not shift the responsibility for maintaining a single list of hazardous substances back to the Department by clarifying that N.J.A.C. 7:1E Appendix A governs (not the source lists), then the Department should clarify which source document controls in the event of a lag in updating N.J.A.C. 7:1E Appendix A. (6 and 7)

20. COMMENT: The Department has proposed the automatic addition of substances to the hazardous substance list once they are added to one of the identified source lists. However, the rules are unclear about the effective date of an addition. The Department should clarify whether the effective date of the addition will be the date the source list was updated, the date of the New Jersey Register notice, or some other date. (4)

21. COMMENT: Issuing formal administrative notices advising the public of changes to N.J.A.C. 7:1E Appendix A will be useful. However, the Department should establish a grace period for facilities to comply with requirements related to shifts in substances being added to or removed from N.J.A.C. 7:1E Appendix A. Facilities should have a minimum of 180 days after each notice before the change at N.J.A.C. 7:1E Appendix A is effective. This is necessary to give facilities a realistic timeline to determine whether they are impacted by changes made to N.J.A.C. 7:1E Appendix A and begin making adjustments in their planning and operations, especially for facilities that may go from being outside to inside the scope of this program due to the change. Further, the Department should revise its proposed protocol for cases in which there

is a delay between the addition or removal of a substance from a source list and when N.J.A.C. 7:1E Appendix A is updated. In these scenarios, the rulemaking will have the source list govern whether the update to N.J.A.C. 7:1E Appendix A is pending. This effectively puts the onus of updating the list of hazardous substances covered by this rulemaking onto the facility owner/operator in these instances. Keeping N.J.A.C. 7:1E Appendix A updated should be the responsibility of the Department, and as such, substances should only be covered by this program after they have been added to N.J.A.C. 7:1E Appendix A through a formal notice and subsequent grace period. (5)

22. COMMENT: The regulated community has invested in maintaining compliance, and a list of hazardous substances that is not static makes operations, such as warehousing, difficult, especially as a secondary containment is often at a premium. A major facility that is in full compliance with the regulation may unknowingly violate the regulation as the list of hazardous substances is modified on an unknown schedule. The rules need a grace period for a non-major facility that has been operating in compliance with applicable regulations to bring their facility up to conformance with the DPHS regulations as new substances are added to the source lists. The regulated community would like to see a 180-day notification of changes in the list of hazardous substances in order to provide them with the time necessary to address any changes needed when there is a change to N.J.A.C. 7:1E Appendix A. (2)

23. COMMENT: The rules should include a grace period for a non-major facility that has been operating in compliance with current regulations to be brought into conformance with the applicable amendments when there is a change at N.J.A.C. 7:1E Appendix A. (7)

RESPONSE TO COMMENTS 9 THROUGH 23: The Department thanks the commenters for their recommendations, but is not adopting proposed N.J.A.C. 7:1E-1.7(a), (c), and (d) for the reasons set forth in the Summary of Agency-Initiated Changes.

Specific Substances

24. COMMENT: The Department should confirm that saran, PVC, and LOPAC would not be subject to a threshold analysis, DPCC plan, or any other requirements (including discharge notification) pursuant to the proposed rules. (7)

RESPONSE: The Department proposed to add saran, PVC, and LOPAC at N.J.A.C. 7:1E Appendix A with a double asterisk (**). See 56 N.J.R. at 847. As explained in the notice of proposal, the Department of Community Affairs determined that these substances are not normally hazardous to the health and safety of a person in their common chemical state, but which become unusually hazardous to firefighters and the surrounding community in the event of the exposure of the substance to a fire. See 56 N.J.R. at 835. Upon adoption, these three substances will be added at N.J.A.C. 7:1E Appendix A with a double asterisk. Pursuant to adopted N.J.A.C. 7:1E-1.7(b)3, substances with a double asterisk are identified as not hazardous for the purposes of N.J.A.C. 7:1E, DPHS rules. Therefore, a facility would not be subject to the requirements of this subchapter, if storing only these substances.

25. COMMENT: The proposed rules explicitly include petroleum and petroleum products as hazardous substances, but no definition of petroleum and petroleum products is provided. Petroleum encompasses a vast spectrum of substances, bearing a wide spectrum of physical/chemical properties, toxicities, fate, and transport characteristics. The hazards

associated with petroleum naphtha, for instance, are vastly different from that of asphaltenes. The Department should explain its reasoning or the basis behind its assumption that all petroleum substances are hazardous for the purpose of this rulemaking. The Department should re-examine its presumption that all petroleum and petroleum products are hazardous, and, as appropriate and necessary, the Department should list those petroleum substances at N.J.A.C. 7:1E Appendix A, as well as provide a definition of petroleum and petroleum products. (4)

RESPONSE: There is an existing definition of "petroleum" or "petroleum products" at N.J.A.C. 7:1E-1.6, Definitions. As the Department has proposed no changes to the existing definition, the comment is beyond the scope of this rulemaking. For purposes of N.J.A.C. 7:1E, petroleum or petroleum products will continue to be defined to mean "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." This existing definition is consistent with the definition in the Spill Act at N.J.S.A. 58:10-23.11b.

26. COMMENT: In this rulemaking, the Department proposes to add 263 additional chemical substances or categories to the list of chemicals at N.J.A.C. 7:1E Appendix A. All of the additional substances would be subject to the Department's DPCC and DCR regulations.

However, the Department's DPCC/DCR regulations require highly specific and detailed information about each regulated substance's chemical hazards, human toxicity, toxicity to terrestrial and aquatic organisms, environmental fate and transport, physical and chemical properties, and other considerations. Such information simply does not exist for the vast majority of the 263 substances the Department proposes to add to N.J.A.C. 7:1E Appendix A, including the 159 per- and polyfluoroalkyl substances (PFAS). The PFAS substances are proposed to be added to the list simply because they have been added to a source list - the Environmental Protection Agency's list of reportable substances pursuant to the Toxic Release Inventory (TRI) regulations. But the purpose and intent behind the TRI regulations is not the same as New Jersey's DPCC/DCR regulations. The TRI is a publicly available database containing information characterizing possible releases of toxic substances. Data used to quantify releases reported to TRI are often speculative or inaccurate. Absent the detailed information required by the Department's rules, it is not appropriate to subject these substances to the containment and release response planning requirements of the Department's rules. (1 and 4)

RESPONSE: It is not accurate to characterize the Department's DPCC/DCR regulations as requiring highly specific and detailed information about each regulated substance's chemical hazards, human toxicity, toxicity to terrestrial and aquatic organisms, environmental fate and transport, physical and chemical properties, and other considerations. The Department does require, at N.J.A.C. 7:1E-4.3(b)8, that DCR plans include off-site response measures. Those response measures must include the 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, as well as provisions for an environmental assessment of the impact of any discharge. That information may be available from the manufacturers of those

substances or products containing those substances, as well as studies conducted by third parties. The owner and/or operator of a major facility is expected to conduct an environmental impact using the best available information for those substances stored at the facility, including any of the PFAS substances the Department is adopting at N.J.A.C. 7:1E Appendix A.

The Department has included chemicals covered by the TRI Program because Section 313 of Emergency Planning and Community Right-to-Know (EPCRA) is one of the source lists identified in the Spill Act. Generally speaking, TRI tracks the waste management of certain toxic chemicals that may pose a threat to human health and the environment. In general, chemicals covered by the TRI Program are those that cause cancer or other chronic human health effects, significant adverse acute human health effects, and significant adverse environmental effects. See https://www.epa.gov/toxics-release-inventory-tri-program/tri-listed-chemicals. As the commenters have not identified the specific data relied upon when the EPA that it characterizes as speculative or inaccurate, the Department is unable to respond to that claim and will adopt as hazardous substances the PFAS substances that were added to the source list identified in the Spill Act.

Nominal Concentrations

Proposed

27. COMMENT: The Department proposes to allow facilities to submit a nominal concentration request for mixtures that have a concentration of hazardous substances below one percent of the mixture (or less than 0.1 percent if the toxic chemical is a carcinogen). Pursuant to the proposed new provisions of the rules, requests for nominal concentrations will be approved if removing the quantity of that mixture (or mixtures) will reduce the capacity of hazardous substances below

the threshold necessary to classify the facility as a major facility. These facilities would then only be required to submit abridged DCR and DPCC plans. The Department should adopt this portion of the proposed rulemaking since it will streamline the requirements for facilities that are only above the major facility threshold because of mixtures containing nominal concentrations of hazardous substances. This is a reasonable method of lowering the regulatory burden for these facilities while still ensuring they are doing their due diligence. (5)

28. COMMENT: The proposed rule defines nominal concentration as "a concentration of hazardous substance in a mixture that is less than one percent of the mixture, or less than 0.1 percent of the mixture in the case of a toxic chemical that is a carcinogen as defined by Occupational Safety Hazard Administration's (OSHA) Hazard Communication Standards (HCS) [emphasis added]." Substances that meet that definition do not require any type of request, review, or approval by the Department to determine if the concentration within the mixture is nominal, therefore, making all the provisions at N.J.A.C. 7:1E-1.12, 4.2, 4.3, and 4.10 regarding nominal concentration "approvals" unsupported. By defining a nominal concentration and then attempting to further restrict that definition, the Department is creating confusion and the potential for nonconformance. Codifying a means by which facilities with nominal concentrations of hazardous substances can seek and obtain a waiver from the DPHS regulations is appreciated, but the process by which a facility must obtain "approval" for a very limited exception is poorly established and does not benefit human health and the environment. Therefore, the Department should eliminate all of the proposed language regarding nominal concentrations beyond the definition in the final rule. (2)

29. COMMENT: The Department should not adopt any of the provisions concerning nominal concentrations except for defining the term "nominal concentration." Given the extensive

requirements for a facility with a nominal concentration waiver, as set forth in the proposed rulemaking, there is very little reduction in the regulatory burden on a facility that receives the waiver. As written, the waiver provisions will take Department resources away from facilities that are handling hazardous substances that may be harmful to human health or the environment. This appears to be a misallocation of limited resources. But assuming the Department moves forward with the adoption of these proposed rules, the timeline for facilities with approved nominal concentration approvals should be consistent with the other timelines stipulated in the proposal. Specifically, pursuant to the proposed rulemaking, facilities that are granted nominal concentration approvals are only given 120 days to come into compliance with the DPCC/DCR regulations if the Department later decides to rescind their approval. This is not consistent. Further, the Department should clarify whether facilities with a nominal concentration will need to prepare DCR plans. As these facilities would still be "major facilities," it would appear that they are subject to the DCR plan requirement. (2)

30. COMMENT: Pursuant to the proposed rules, a facility that is granted a nominal concentration approval has 120 days to comply with the DPCC/DCR regulations if the Department decides to rescind the approval at a later date. As proposed, the timeline for facilities with approved nominal concentration approvals is not consistent with the other timelines (that is, 180 days). This results in regulatory uncertainty.

For those major facilities with previously approved nominal concentration exemptions and those that will be requesting an approval pursuant to the proposed rulemaking, the proposed process and subsequent determination does very little to reduce the regulatory burden. Specifically, a facility must develop written DPCC/DCR plans, request a nominal concentration approval during each five-year renewal cycle, certify that they are a major facility (despite not

having substances on site that pose a threat to human health or the environment in their current state), pay a spill tax levied on the full quantity of the mixture (versus the quantity of the hazardous substance), and design/install secondary containment in all process and storage areas. What is the value/benefit of going through this process if you are still a major facility and subject to these requirements? In addition, there is no certainty that the Department will approve these requests.

Facilities would also need to comply with various administrative requirements and succumb to frequent Department oversight obligations. Pursuant to the proposed rulemaking, Department staff would be spending less time on facilities that are handling hazardous substances that actually may be harmful to human health or the environment in order to spend resources on facilities with nominal concentration approvals. This appears to be a misallocation of already strained resources.

It is also not entirely clear whether facilities with a nominal concentration approval are required to prepare a Climate Resiliency (CR) Plan or if there are New Jersey-certified analytical laboratories that are qualified for isolated single-component analysis of 0.1 – one percent. Given these outstanding concerns and questions, the Department should not proceed with the adoption of the nominal concentration provisions of the proposed rulemaking. (7)

31. COMMENT: The costs associated with complying with the proposed requirements for a facility with nominal concentration mixtures is excessive since the Department has already determined that the substance in question does not pose a threat to human health or the environment. (10)

32. COMMENT: A facility that is currently not considered “major,” because it has a nominal concentration waiver, would immediately become a major facility upon adoption of the proposed

rulemaking. The costs associated with complying with the proposed rules for nominal concentration mixtures is excessive, given that the Department has already determined that the substance in question does not pose a threat to human health or the environment. For example, if exterior secondary containment is required, the cost for a major facility to fully comply can easily exceed $1,000,000. If these facilities have not changed their operations since receiving their nominal concentration waiver, the Department's rules would require full compliance within 180 days. This is unrealistic. Moreover, the economic impact analysis outlined in the proposed rules does not address the applicant's time, costs, and effort in preparing these documents. (7) RESPONSE TO COMMENTS 27 THROUGH 32: The Department thanks the commenters for their feedback and recommendations, but the Department is not adopting proposed N.J.A.C. 7:1E-1.12, or the references thereto, for the reasons set forth in the Summary of Agency-Initiated Changes.

33. COMMENT: The proposed rules define facilities with nominal concentration approvals as "major facilities." The costs associated with complying with the proposed rules for nominal concentration mixtures is excessive given that the substance in question has already been determined by the EPA and OSHA to not pose a threat to human health or the environment. (2) RESPONSE: As explained in the Summary of Agency-Initiated Changes, the Department is not adopting the provisions concerning nominal concentration requests. Thus, the cost of compliance is no longer at issue.

Existing Exemptions

34. COMMENT: As proposed, facilities that have already been granted hazardous substance exemptions, or other nominal concentration exemptions, would be required to submit requests pursuant to these new guidelines or comply with these DPHS requirements. This is unnecessary, as the Department has already evaluated each facility's previous request for an exemption. Requiring a facility to undergo this process again will create unnecessary administrative burdens, and could potentially force a facility to comply with requirements that the Department previously determined are not warranted, which would create an immense financial burden for a facility that does not have the existing infrastructure to comply with the newly proposed requirements. This issue is compounded by the short, 180-day deadline the Department has proposed. The Department should allow these existing exemptions to continue. Revoking an existing exemption is unnecessary and would cause harm. (5)

35. COMMENT: Pursuant to the current rules, a facility with less than 20,000 gallons of stored chemicals with nominal concentrations of hazardous substances, such as liquid polymer, was not required to prepare and submit DPCC and DCR plans. Pursuant to the proposed rulemaking, these chemical mixtures would be covered within the scope of the Release Prevention Program and would require the submission of plans. This requirement will have obvious adverse effects on sewer operations and user rates, which will be based solely on the possibility of trace amounts, less than 0.1 percent, of formaldehyde. (9)

36. COMMENT: The immediate revocation of previously issued nominal concentration approvals is unwarranted as there is no justification provided that supports the Department's decision to rescind these previous approvals, effective immediately. In addition, the Department has not provided examples of facilities not complying with their waiver or exceeding the nominal concentrations of hazardous substances. A facility that is currently not considered "major" but

has nominal concentrations that would make them a major facility (if not for the current exemption) would immediately become major upon adoption of the proposed rulemaking. In other words, these facilities must be in compliance as "major" before actually being one.

The current policy of the Department's Bureau of Discharge Prevention is that major facilities knew, or should have known, that they are subject to the regulation and, therefore, facility upgrade schedules are no longer being allowed as part of an initial submission. The timeframe of 180 days to reach full compliance with the requirements of the proposed rules is unrealistic given the Department's current policy that all major facilities in New Jersey must be in full compliance upon entering the program. (7)

37. COMMENT: The Department should not immediately revoke previously issued nominal concentration approvals. Not only has the Department provided no justification for the revocation, the costs associated with complying with the new requirements for a nominal concentration waiver would be prohibitive. Therefore, the Department should not proceed with the adoption of the nominal concentration amendments. (6)

38. COMMENT: Given the limited benefit of requesting a nominal concentration approval pursuant to the newly proposed rules, the proposed amendments appear to be directed towards those entities that have a current approval. The number of facilities that obtained nominal concentration approvals and are still operational is unknown, but it seems likely that it would be a small number. Nonetheless, for those facilities, the revocation of a previously issued nominal concentration approval means they will have 180 days from the effective date of the rules to come into compliance with the majority of the requirements for a major facility at a cost that may easily exceed $1,000,000 if exterior secondary containment is required. These facilities have not changed their operations since receiving their nominal concentration approval. Therefore, the

Department should not immediately revoke previously issued nominal concentration approvals.

(2)

RESPONSE TO COMMENTS 34, 35, 36, 37, AND 38: The Department thanks the commenters for their recommendations, but is not adopting proposed N.J.A.C. 7:1E-1.12 for the reasons set forth in the Summary of Agency-Initiated Changes. As the Department is not adopting the provisions concerning nominal concentration requests, it will not be rescinding previously issued exemptions.

Exclusions

39. COMMENT: The Department should not exclude petroleum from the proposed new nominal concentration approval. The Department does not explain why only petroleum substances are excluded from the proposed requirements. Petroleum substances encompass a wide variety of hazards and toxicities, and facilities do indeed store mixtures with nominal concentrations of petroleum substances posing little or no hazard. (4)

RESPONSE: The Department thanks the commenter for the recommendation, but is not adopting proposed N.J.A.C. 7:1E-1.12 for the reasons set forth in the Summary of Agency-Initiated Changes.

Climate Resiliency Plan

40. COMMENT: The Department should not adopt proposed N.J.A.C. 7:1E-4.12 because there is no statutory authority in the Spill Act to require a climate resiliency plan. Further, Executive Order No. 100 (2020) required the Commissioner of the Department (Commissioner) to issue an Administrative Order identifying the regulations that the Department intended to update in order

to integrate climate change considerations. The Commissioner issued that Administrative Order in January 2020, but did not identify these rules among those that should be updated to integrate climate change considerations. In response to the Administrative Order, amendments to several regulations, as well as the Resilient Environments and Landscapes (REAL) rules have been put forth. The REAL proposal is intended to address climate resiliency in the Department regulations, and includes only one reference to the DPHS regulations, a cross-reference at N.J.A.C. 7:1E-2.9 to N.J.A.C. 7:13, stating that "hazardous substances within the flood hazard area as defined at N.J.A.C. 7:13 shall be adequately protected so as to prevent such hazardous substances from being carried off by or being discharged into flood waters." The requirements of this reference are already addressed in the proposed rulemaking at N.J.A.C. 7:1E-2.9. Note that this proposed change is being published prior to the REAL proposal being published in the New Jersey Register and open to public comment. Nowhere in the REAL proposed rulemaking, nor in the Spill Act, is there a reference to a climate resiliency plan being recommended for inclusion at N.J.A.C. 7:1E. The Department cannot rely on Executive Order No. 100 (2020) or the Spill Act for its authority to require a major facility to submit a climate resiliency plan. Therefore, the Department should not adopt proposed N.J.A.C. 7:1E-4.12. (2)

41. COMMENT: The Department proposed a new requirement for facilities to submit climate resiliency (CR) plans. These plans require facilities to evaluate changing climate factors, such as rising sea levels, increased rainfall, extreme weather events, and increased flooding and consider potential protections that could be used against discharges that may be caused by these events. These mitigation measures are not required to be immediately implemented, but the new requirements are meant to promote awareness and have facilities begin planning for possible mitigation strategies that could be implemented. While many in the regulated community may

agree with the Department that climate change poses a risk and creates potential new challenges for facilities, the CR plan requirements in this rulemaking are onerous and beyond the scope of the Department's authority. The new requirements will also disincentivize facilities from genuinely evaluating possible mitigation strategies. In this rulemaking, the Department references Executive Order No. 100 (2020) as its basis for establishing this new CR plan requirement. While paragraph 1(c) of the executive order does require the Department to integrate climate change considerations into regulatory and permitting programs, paragraph 2 of the same executive order requires the Commissioner to identify regulations that will be updated in accordance with paragraph 1(c). N.J.A.C. 7:1E was never identified by the Commissioner for updates and, therefore, the Department does not have the authority to implement this CR plan pursuant to the executive order. (5)

42. COMMENT: The Department's proposed new provisions at N.J.A.C. 7:1E-4.12, if adopted, would require the owners/operators of major facilities to prepare and submit a CR plan to address climate change considerations as part of their discharge prevention and response planning. There is no requirement in the Spill Act for a CR plan; therefore, the Department does not have a legislative mandate for such a plan and, in fact, does not have the statutory authority to require major facilities to develop a CR plan. Executive Order No. 100 (2020) states that the Department should "[i]ntegrate climate change considerations, such as sea level rise, into its regulatory and permitting programs, including but not limited to, land use permitting, water supply, stormwater and wastewater permitting and planning, air quality, and solid waste and site remediation permitting." The DPHS rules are not one of the identified regulatory and permitting programs that the Department must consider for the integration of climate change. Moreover, Administrative Order 2020-01 issued by the former Commissioner, Catherine McCabe, did not

specifically name N.J.A.C. 7:1E for updating. Therefore, the Department is overreaching their regulatory authority with the proposal of CR requirements for DPHS. Further, there is no mention of a CR plan included in the Department's New Jersey Protecting Against Climate Threats (NJPACT) REAL draft rule proposal, which was posted online in May 2024. (7)

43. COMMENT: The Department's proposed rulemaking includes new provisions requiring major facilities to prepare a CR plan. The CR plan contents include assessing discharge vulnerabilities and evaluating potential mitigation measures resulting from frequent and intense precipitation events and other climate change impacts. There is no clear legislative mandate or statutory authority pursuant to the Spill Act or other State legislation for the Department to require such a plan. If the Department intends to adopt the CR plan provisions, the development of such a plan should be limited to a one-time submission, similar to an Environmental Sensitivity Area plan. (9)

44. COMMENT: The Department lacks statutory authority to require the submission of a CR Plan. (3)

45. COMMENT: Not only does the Department lack the statutory authority to require the submission of a CR Plan, but there is no reason to require facilities to develop such a plan. (10)

46. COMMENT: Facilities adequately address the protection of hazardous substances from the effects of flooding at N.J.A.C. 7:1E-2.9. Requiring similar information for the CR plans will result in unnecessary confusion between the different regulations. (7)

47. COMMENT: It is appropriate for discharge prevention, containment, and countermeasure plans to consider the potential for extreme weather events and other natural disasters. New Jersey, as a coastal state, has and will always be vulnerable to nor'easters, hurricanes, severe rainstorms, and flooding. In fact, the existing DPCC planning and construction rules already

account for extreme weather events. Plans must consider flood hazard areas and ensure that the facilities are adequately protected from flood waters and washouts. Existing N.J.A.C. 7:1E-2.9 requires that hazardous substances stored within a Federal Emergency Management Agency (FEMA) mapped floodplain "shall be adequately protected so as to prevent such hazardous substances from being carried off by or being discharged into flood waters." Construction and maintenance standards for tanks, pipes, spillover areas, and other buildings and equipment already consider the possibility of tropical storm winds, flooding, and other extreme weather. These standards have proved more than adequate given the minor number of any major spills from these facilities since the DPCC rules have been in place. Where there have been spills, such as during Superstorm Sandy, adequate plans were in place to contain and mitigate those discharges. We do not object if the Department, in looking at construction and other standards, were to determine that they needed to be clarified or, with justification, strengthened. We do not object to specifically requiring major facilities to be aware of sea level rise in their longer-term planning. However, the Department's proposed amendments appear to be using the uncertainty of potential long-term changes to weather systems to seem responsive to a perceived problem: climate change. (1)

48. COMMENT: Proposed N.J.A.C. 7:1E-2.9 not only adequately addresses the facility requirement to protect hazardous substances from the effects of flooding, it includes a two-foot buffer. Preventing a discharge of hazardous substances is the mission of the Bureau of Discharge Prevention. The CR plan requires a reiteration of much of the data that is already included in the DPCC and DCR plans. This duplication of work is unnecessary and unhelpful. The information that the Department is requesting in the CR plans is primarily, if not totally, in their possession.

If the goal is an awareness campaign for the regulated community, a deliverable plan prepared by the Department and disseminated may be better received and helpful. (2)

49. COMMENT: The Department cites several climate studies already in its possession as a resource to be used as part of the CR plan development. Accordingly, the Department already has this information in its possession and does not need the facilities to generate such information. There is no environmental benefit provided by a CR plan requirement. The facilities that are in areas impacted by recent super storms, hurricanes, and inland flooding have already considered the impact of these events and have addressed them on a facility specific level. There is no need for this requirement. (2)

50. COMMENT: This rulemaking appears to assume that companies are willing to put their businesses at risk while ignoring the potential for adverse weather impacts. Businesses strive to remain in business, and the chemical industry sees chemicals as their product. Facilities that have had impacts from various storms, either onsite or nearby, have noted those effects and have made changes or implemented contingency plans to deal with storms in the future. Therefore, all language regarding climate resiliency is unnecessary. (2)

51. COMMENT: The Summary of the proposed rulemaking states that there is no requirement to implement the CR plan. However, once rules are adopted, the intention behind the written regulation is often not remembered or respected by changing administrations. Proposed N.J.A.C. 7:1E-4.12(c) and (d) require the evaluation and documentation of many factors, including, but not limited to, the facility's proximity to sea level rise projections, the identification of measures to mitigate the impacts of climate change, and the identification of those items to be selected and implemented. Also, the rules require facilities to select and identify an implementation schedule for mitigative measures, as well as a justification for measures that are considered to be

infeasible. While economic factors are allowed to be considered in this analysis, what the Department considers to be feasible from an economic standpoint may not be feasible to a company struggling to remain in business in the State. If this plan is intended to raise awareness and not be used as a regulatory device in the future, this information should not be required. Forcing the regulated community to document potential mitigation measures that they may decide not to implement immediately exposes them to potential liability and/or denial of insurance claims. (2)

52. COMMENT: According to the Summary of the proposed rulemaking, there is no requirement to implement mitigation measures identified in the CR plan. Yet, proposed N.J.A.C. 7:1E-4.12(b) requires that major facilities identify measures to mitigate the impacts of climate change identified in the analysis required by the proposed rule, to identify those mitigation measures that are deemed to be feasible, and to develop an implementation schedule for those measures. The language of the proposed rules suggests that there is a requirement to implement, even if the Summary says otherwise. The Department must clarify the mitigation implementation requirements for the CR plan. (12)

53. COMMENT: The proposed rules would require facilities to provide written justification for each measure that is considered, but ultimately not implemented, as part of the CR plan. This requirement effectively penalizes facility owners/operators for considering mitigation strategies that are ultimately not adopted, regardless of the reason. In doing this, owners/operators will understandably be less willing to consider broad ranges of mitigation strategies in an effort to avoid having to go through a time-consuming justification process. Adopting the proposed rules, as written, would effectively disincentivize facilities from engaging in good-faith discussions of

possible mitigation techniques. Moreover, requiring facilities to create a record of strategies considered and not implemented will also create potential insurance and liability concerns. (5)

54. COMMENT: Though the Summary of the proposed rulemaking states that the owner/operator would not currently be required to implement mitigation measures, proposed N.J.A.C. 7:1E-4.12(d)4ii and iii, requires facilities to select and identify an implementation schedule for mitigative measures, as well as justification for measures that are considered to be infeasible. This information would not be necessary, unless the CR Plan is intended to be used as a regulatory device in the future. Further, the regulated community becomes immediately exposed to potential liability and/or denial of insurance claims if they are required to document potential mitigation measures that they may end up deciding not to implement. The significant amount of added regulatory burden and costs needed to comply with proposed new N.J.A.C. 7:1E-4.12 cannot be stressed enough. What the Department considers to be feasible from an economic standpoint may not be what is actually feasible for a company struggling to remain in business in this State. The Department should not proceed with these proposed new rules. (7)

55. COMMENT: In the past, the Department has allowed the environmentally sensitive area mapping plans to be generated one time and submitted one time with no updates required. However, proposed N.J.A.C. 7:1E-4.9(e) would require facilities to renew their CR plans every five years, along with the renewal of their DPCC and DCR plans. The Department should not require facilities to submit CR plans at all, but if the proposed requirement is adopted, the Department should amend the provision to remove the renewal requirement. The exercise of drafting a plan that is not intended to be implemented does not need to be repeated every five years. Further, the timeline for preparing the CR plan will require facilities that have a renewal date after one year and 180 days from the effective date of the rulemaking that are not yet

required to submit a DPCC plan renewal to expend additional resources to prepare a plan that is not intended to have any binding consequences. This will further impact those facilities that will then have DPCC/DCP plan updates on a different schedule than their CR plan updates. This is short-sighted, arbitrary, and capricious. (2)

56. COMMENT: It makes very little sense to have facilities prepare plans and detail mitigation measures for sea level rise scenarios to the year 2100 for one, 2.5, four, and seven feet above sea level increases from the base year 2000. DPCC plans are required to be renewed every five years pursuant to the proposed rules (three years pursuant to the existing rules), so there is nothing to be gained from having plans predict and plan for SLR over the next 75 years. The regulated industry will be able to detect any acceleration of relative SLR decades before that rise will have any meaningful effect to the facilities covered by these rules. Having plans in place now for what may or may not happen 75 years from now, especially since those plans would have to be submitted and updated continually, is nonsensical. Circumstances will certainly change. Businesses will come into being, close, and evolve, as will the substances they store. This requirement will only make work for engineers and planners, make New Jersey an even more expensive place in which to do business, and serve absolutely no benefit to the people of this State. The Department should not adopt these provisions. (1)

57. COMMENT: The Department estimates that the cost of a CR plan will be approximately half the cost of the DPCC plan. However, the estimated cost of a DPCC plan is based on a mature regulatory program such that there are many experienced consultants with the ability to compile a facility's plan based on a general template. This framework does not exist for the CR plan. The Department should not require a facility to devote significant resources and money to produce a CR plan that is to be used for awareness rather than any measurable environmental benefit.

Moreover, the website cited by the Department for tools and resources is not conducive to the analysis that is being requested as there are too many subpages and no real direction regarding what resources should be used. (2 and 7)

58. COMMENT: If, as the Department states, the "awareness campaign" will result in companies acting in their best interest to make themselves more resilient during extreme weather events, then the money required to prepare a CR plan would be put to better use making appropriate facility changes. (2)

59. COMMENT: The Department should consider other less costly/duplicative and more effective methods to promote this awareness, such as a deliverable prepared and disseminated by the Department. Another, more targeted, approach is for the Department to use existing FEMA flood map information to identify and prioritize sites that need to develop CR plans. FEMA flood maps are a valuable resource that provide detailed and accurate data on areas susceptible to flooding, etc. By leveraging this existing information, the Department can effectively identify sites that are at genuine risk of being impacted by rising sea levels and other climate-related effects. Requiring every site to develop a CR plan could lead to unnecessary expenditures and administrative burdens for those operating in low-risk areas. This might also dilute the focus and resources that should be directed towards high-risk areas, where the impact of climate change is more imminent and severe. This alternative method would provide a balanced and efficient approach (versus imposition of a blanket requirement regardless of vulnerability), ensuring that regulatory efforts are both effective and economically sensible. The time, money, and effort spent on preparing a CR plan would be put to better use upgrading facilities so they are more resilient during extreme weather events. (7)

60. COMMENT: The proposed rulemaking will impact major facilities differently depending on their location to the nearest water body. This provides a competitive advantage to a subset of major facilities while negatively impacting another subset. The regulated community wants to be inspected and regulated against factors that are consistent and that they can control. For companies that have multiple facilities in the State, this rulemaking will lead to inconsistencies, even across the same organization. (2)

61. COMMENT: The rules should not be adopted because it is not clear what the Department expects to be included in the CR plan. The rules suggest looking at the Department's climate website, but there is no real direction for performing the analysis. There are too many subpages and no real direction on what resources should be used to conduct the analysis. (2)

62. COMMENT: The rule provisions concerning the CR plans to be submitted by a facility should be more detailed. For example, it is not clear what the Department means when it asks for an assessment of the "potential" for a discharge. Likewise, it is difficult to meaningfully quantify the risk of a release resulting from extreme weather events. The Department requires the CR plan to include an assessment of mitigation measures considered by the facility, but determined to be infeasible. However, the rules do not specify whether the Department is seeking a list of all measures identified by the facility owner, including those rejected and summarily determined to be unworkable or only those mitigation measures worked out in some detail as to feasibility and practicality, and ultimately rejected as a result of this analysis. Finally, the Department does not indicate its intended use of this information; understanding the intended use of the information would provide greater clarity to the regulated community. (4)

63. COMMENT: The Department should revise the proposed CR plan requirements to not just assess benefits but carry out a reasonable cost-benefit analysis of each mitigation measure. For

this evaluation to be fully meaningful, the benefits should be considered in light of the costs of mitigation measures, and only those measures for which the benefits clearly outweigh the costs should be implemented. Additional guidance is needed with respect to how this evaluation is to be conducted, given potential constraints. (4)

64. COMMENT: The Department should take a different approach to climate resiliency planning. The Department should work collaboratively with regulated facilities to provide guidance on different approaches a facility may utilize, instead of putting this onus on facilities. The Department has more access to resources predicting long-term climate impacts and experts who can consider possible mitigation strategies. This would provide facilities with resources to promote awareness and begin planning for possible mitigation strategies without the potential of being forced to go through intense scrutiny if a considered strategy becomes no longer viable. (5)

65. COMMENT: The CR plan identifies extreme weather events. Because the list is not prescriptive, too much will be left to the discretion of individual case managers and/or future administrations. Further, changes to the expectations of the CR plans are likely to occur without appropriate rulemaking. All of this will lead to conflict between the regulated community and the Department. (2)

66. COMMENT: The proposed rules require a facility to document in the CR plan "potential impact to the facility from extreme weather events including, but not limited to hurricanes, tropical storms, tornados, or significant precipitation." The "included but not limited to" language allows too much flexibility for individual Department staff and future staff without requiring a formal rulemaking. (7)

67. COMMENT: The proposed rules require that CR plans specify the potential impact to the facility from extreme weather events. However, the rules do not adequately describe how a

facility should specify the impacts. For instance, there is no definition of an extreme weather event or potential impacts. Further, the Department does not adequately explain how a facility should conduct the evaluation or the data it should use in the evaluation. Additional guidance is needed. (4)

68. COMMENT: The Department must clarify the requirements of the CR plan. Specifically, the Department must amend the rules on adoption to indicate whether the plan needs to be certified by a New Jersey certified professional engineer; identify the format that is to be used; and state whether the CR plan must be integrated into DPCC/DCR plans or should be submitted as a stand-alone plan. (12)

RESPONSE TO COMMENTS 40 THROUGH 68: The Department proposed the CR plan provisions to promote resiliency planning, while leaving implementation of this planning to the discretion of each major facility. The Department thanks the commenters for their feedback, but for the reasons set forth in the Summary of Agency-Initiated Changes, the Department is not adopting proposed N.J.A.C. 7:1E-4.12, the proposed definition of "CR plan" at N.J.A.C. 7:1E-1.6, Definitions, or the reference to "climate resiliency plans" at N.J.A.C. 7:1E-4.1, Scope.

Terminology

69. COMMENT: Climate or climate change does not cause extreme weather. The Intergovernmental Panel on Climate Change (IPCC) considers climate change as: "A change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes

in the composition of the atmosphere or in land use." It is important, especially for a governmental scientific agency, such as the Department, to use correct terminology to describe its actions and intent. The Department should reference potential changes to extreme weather as a concern, not climate change, which is merely the statistical documentation of any changes.

Despite the references to the Department's website and previous published documents, there is no consensus on whether extreme weather, especially the frequency or strength of hurricanes, will increase in the near future. The IPCC is not predicting an increase in either the frequency or severity of tropical cyclones. The IPCC has not identified any worldwide statistical detection in tropical storm frequency or severity outside the anticipated range of natural variability. Labeling such variances "climate change" does nothing to further facilitate protection or the appreciation of risk. Given the uncertainty of the world community on the future impact of hurricanes, it will be confusing to require major facilities to plan for "the effects of climate change." It would be much simpler, and more accurate, if the Department required plans to prepare for hurricanes with a certain wind speed, duration, and flooding likelihood. Such definitive statements of impacts to prepare for would avoid the expensive exercise of hiring experts to pour through the Department's documents, search the scientific literature for potential changes in extreme weather, and then propose plans to address what there is no certainty about. New Jersey has suffered through major storms and such storms are likely to happen again. Facilities should prepare for these types of extreme weather. (1)

70. COMMENT: The science on climate change is fluid and makes many of the predictions theoretical. As a scientific agency, the Department, and specifically, the Bureau of Discharge Prevention, must regulate on the science, not on theories. (2)

RESPONSE TO COMMENTS 69 AND 70: As noted in the notice of proposal, the purpose of the CR plan provisions was to promote resiliency awareness and resiliency planning at major facilities. See 56 N.J.R. at 836. However, as explained in the Response to Comments 40 through 68, the Department is not adopting proposed N.J.A.C. 7:1E-4.12. Though the Department disagrees with commenters' concerns about the use of the term "climate change," the Department's decision not to adopt those provisions should eliminate the concerns about the Department's terminology.

Sea Level Rise/Flood Hazard

71. COMMENT: Though the proposed amendments include a provision for the Department to revise the flood profile in Method 1 to account for changes in flood elevations due to increased precipitation, there is no trigger for a modification based on decreases in precipitation or sea level.

As written, the proposed amendment conflicts with N.J.A.C. 7:13-3.2, which requires the use of specific maps depending on the promulgation date of regulated waterways. Proposed N.J.A.C. 7:1E-2.9 very clearly uses the word "or" when referring to FEMA or State-delineated maps. Also, the amended reference to N.J.A.C. 7:13-3.3 at proposed N.J.A.C. 7:1E-2.9 precludes the use of other appliable methods of determining flood hazards delineated (Methods 2 – 6).

The proposed amendment at N.J.A.C. 7:1E-2.9 appears intended to override the jurisdiction of the EPA and FEMA to implement an additional two-foot buffer over currently delineated floodplains pursuant to the July 17, 2023 rule amendments. The Department posted a draft of the NJPACT REAL rule proposal on their website in May 2024, which addresses this issue; however, this rulemaking has not been formally published in the July New Jersey

Register, let alone adopted. We request that the Department provide clarification regarding how proposed N.J.A.C. 7:1E-2.9 and the to be proposed N.J.A.C. 7:13-3.3 will work together.

Major facilities have already expended limited resources to design and install secondary containment, as needed, to comply with the requirement for six inches of rainwater plus the largest container. The Department must clarify that this amendment is applicable to new secondary containment only. (7)

72. COMMENT: The proposed amendments at N.J.A.C. 7:1E-2.9 refer to the Flood Hazard Control Act rules (which are also undergoing revision in a separate rule proposal) specifically determining the flood hazard area and floodway based on the Department's delineation or the FEMA tidal floodplain. Method 1 uses a flood elevation equal to two feet above the design flood elevation shown on the flood profile adopted as part of the Department delineation. In addition, that regulation has a provision for the Department to revise the flood profile to account for changes in flood elevations due to increased precipitation, but there is no trigger for a modification based on decreases in precipitation or sea level. The reference to N.J.A.C. 7:13-3.3 precludes the use of other applicable methods of determining flood hazards delineated at N.J.A.C. 7:13-3.4, 3.5, and 3.6 (Methods 2 – 6). The floodway of a delineated waterway is the area mathematically determined to be required to carry and discharge floodwater resulting from the 100-year flood under certain conditions. The flood hazard area is then an additional two feet above the 100-year floodway. There is no scientific basis for this two-foot addition. The rulemaking appears intended to override the jurisdiction of the EPA and FEMA in order to implement a two-foot buffer over currently delineated floodplains. In low-lying areas, two feet may cover a substantial distance, requiring facilities that may have been in the program for 40-plus years to expend limited resources to address a hazard that has a probability of one in 100,

plus account for an additional two-feet. Major facilities have already expended their limited resources to design and install secondary containment, as needed, to comply with the requirement for six inches of rainwater plus the largest container. This rulemaking may have the effect of requiring an additional two feet of protection. Not only is this cost prohibitive, it is also infeasible in many applications. (2)

RESPONSE TO COMMENTS 71 AND 72: When the Department published the notice of proposed amendments and new rules (56 N.J.R. 833(a)) on May 20, 2024, N.J.A.C. 7:1E-2.9(a) provided as follows: "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." See N.J.A.C. 7:1E-2.9(a) as it existed on May 20, 2024 (emphasis added). The Department's notice of proposal simply proposed to amend the cross-reference of "N.J.A.C. 7:13-7.1" to "N.J.A.C. 7:13-3.3." See 56 N.J.R. at 848. This change was necessitated by a 2006 proposal to repeal the Flood Hazard Area Control rules, N.J.A.C. 7:13, and to substantially reorganize the subchapters. See 38 N.J.R. 3950(a). As part of the proposed reorganization, N.J.A.C. 7:13-7 was repurposed and renamed "Permits-By-Rule." See *Id*. The provisions concerning the determination of flood hazard areas was reorganized at N.J.A.C. 7:13-3. See *Id*. This reorganization was adopted in 2007. See 39 N.J.R. 4573(a). Since the adoption, the cross-reference to the Flood Hazard Area Control Act rules at N.J.A.C. 7:1E-2.9(a) has been out-of-date.

Based upon the reorganization, the Department intended to match the original cross-reference to N.J.A.C. 7:13-7.1 as accurately as possible. It appeared that N.J.A.C. 7:13-7.1 was meant to pertain only to the portion of the rule text referring to "or the floodway of any

watercourse as delineated by the Department," which is covered at Method 1. But having reviewed the comments, the Department agrees that limiting the cross-reference to Department-delineated floodways could cause confusion, given that the beginning of the same provision refers to the "the tidal floodplain as delineated by the Federal Emergency Management Agency." Further, as the commenters pointed out, the reference to N.J.A.C. 7:13-3.3 alone, would appear to preclude the use of other applicable methods of determining flood hazards delineated by FEMA, which are listed in other provisions at N.J.A.C. 7:13-3. Upon adoption, the Department will change N.J.A.C. 7:13-2.9(a) to cross-reference the entire subchapter, rather than any particular provision(s) within N.J.A.C. 7:13-3 to avoid any confusion.

The Department also recognizes that after publishing its notice of proposal in May 2024, the Department's Watershed and Land Management Program (WLM Program) published a notice of proposal on August 5, 2024, which updated the Flood Hazard Control Act rules, including the provisions at N.J.A.C. 7:13-3.3. See 56 N.J.R. 1282(a). The two rule proposals are unrelated and the proposed reference to N.J.A.C. 7:13-3.3 at proposed N.J.A.C. 7:1E-2.9(a) was not intended to refer to another proposed rule. By revising N.J.A.C. 7:1E-2.9(a) upon adoption to cross-reference N.J.A.C. 7:13-3, rather than a particular provision at N.J.A.C. 7:13-3, the commenter's concerns should be alleviated.

It is not clear whether the comments concerning the two-feet buffer and secondary containment costs refer to the proposed cross-reference to the existing Flood Hazard Control Act rule or a concern about the separate notice of proposal, which would amend some of the provisions at N.J.A.C. 7:13. If the comments are referencing to the latter, those comments are beyond the scope of this rulemaking and should have been addressed to the appropriate docket number. To the extent the comments are concerned about the existing Flood Hazard Control Act

rule provisions, there appears to be a misunderstanding of the DPHS rule requirements. To clarify, the requirements at N.J.A.C. 7:1E-2.9 are separate from the secondary containment requirements at N.J.A.C. 7:1E-2.6. Provisions made to prevent the washout of hazardous substances may include moving of drums stored in a portion of the facility in a flood zone or area prone to flooding, filling of tanks with low levels of product, or an increase in containment walls. Any increase in a containment wall would be supplemental to the secondary containment requirements, but would not be required if other measures can protect the hazardous substance from being carried off site. Therefore, there is no provision in the adopted rules that would require the owner/operator of a facility to increase their secondary containment at a prohibitive cost.

73. COMMENT: After contacting the Bureau of Dam Safety and Flood Control (Bureau) for the purpose of requesting the flood area maps as referred to at N.J.A.C. 7:13, the commenter was advised that the section only dealt with dams and did not have the referenced maps. The representative from Dam Safety then contacted another employee in the Department who provided a five-page Word document that described how to get to the maps in question. This illustrates how difficult it is to use the tools that have been provided. (2)

RESPONSE: Pursuant to existing N.J.A.C. 7:13-3.3(a), that provision of the Flood Hazard Area Control rules, N.J.A.C. 7:13, “sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a Department delineation. Appendix 2 of N.J.A.C. 7:13 lists the Department delineated waters of New Jersey. Requests for copies of a Department delineation, including flood profiles and maps, as well as any questions regarding the use, derivation or modification of these delineations, should be directed to the Department's Office of

Floodplain Management." The commenter describes contacting the incorrect bureau within the Department, and being redirected to the correct unit within the Bureau for information. The commenter was then provided with written instructions describing the process for obtaining the necessary maps. The Department does not agree with the commenter's depiction of this experience as "difficult." After one telephone call, the commenter was redirected to the appropriate staff and was provided with the assistance needed to accomplish the task online with thorough written instructions.

Wastewater Treatment Facilities

74. COMMENT: The Department should exempt all water and wastewater treatment facilities with hazardous chemicals of less than 0.1 percent from the discharge prevention program. These facilities are regulated by other programs within the Department already and the concentrations of liquid polymers and formaldehyde are nominal. (9)

RESPONSE: The commenter does not specify the other programs within the Department that already regulate the facility; accordingly, the Department cannot provide a specific response. It is not unusual for a facility to be subject to the rules of more than one division within the Department, or more than one department within State government. In fact, many facilities are not only subject to State government authority, but also subject to the ordinances of a local municipality in which the facility is located. In some cases, facilities must also comply with Federal rules. Each of these governmental bodies has a legitimate interest in and specific purpose when implementing regulatory oversight. Thus, regulation by one governmental authority does not exempt a facility from compliance with another governmental authority, except in cases of preemption. For the reasons set forth in the Summary of Agency-Initiated Changes, the

Department will not be adopting the proposed nominal concentration provisions. However, the Department will continue to consider whether it is possible to adequately protect human health and the environment through an alternative approach to nominal concentrations in the future.

Guidance

75. COMMENT: The Department's proposed amendments are complex and will create uncertainty within the regulated community, particularly those amendments concerning N.J.A.C. 7:1E Appendix A, climate resiliency plans, release reporting volumes, and the designation of all petroleum products as hazardous. Therefore, the Department should provide educational opportunities relative to the final promulgated rules and engage the regulated community to assist in developing a comprehensive DPCC/DCR implementation guidance document, that would clarify the Department's interpretation of the final rules. Specifically, the Department should provide DPCC, DCR, and CR plan preparation guidance, and provide examples of DPCC, DCR, and CR plan language in areas where there is the most regulatory uncertainty. (4) RESPONSE: For the reasons set forth in the Summary of Agency-Initiated Changes, the Department will not be adopting the proposed amendments concerning N.J.A.C. 7:1E Appendix A. Further, as explained in Response to Comments 40 through 68, the Department is not adopting the proposed Climate Resiliency provisions. As discussed more fully in the Response to Comments 95 through 100, the Department's position on the reporting of discharges has not changed since the publication of the notice of proposal. As discussed more fully in the Response to Comment 25, the Department did not propose to amend the definition of petroleum products within the definition of hazardous substances.

To the extent that clarification is necessary as a result of the adopted amendments, the owners and/or operators of existing facilities and future facilities are encouraged to schedule a meeting with the Department prior to the official submission of a new plan, a plan renewal, or a plan amendment. Further, the Department has existing guidance documents available on its website related to the preparation, renewal, and amendment of plans. See https://dep.nj.gov/brp/dphs/#dphs-plan-preparation-and-amendments. Upon adoption of the rules, the Department will review the existing guidance documents and make any necessary updates.

Economic Impact

76. COMMENT: The Department's rulemaking does not adequately address the economic impact of compliance with the proposed new requirements and amendments. Of greatest concern is the proposed addition of CR plans, maximum storage capacity in DPCC plans, and the removal of the discharge notification exemption for small discharges. After examining the economic impact of this rulemaking, an economic firm determined that the rules would reduce the direct output of chemical distributors in New Jersey by over $11 million, reducing the overall economy of New Jersey by over $35.33 million. The Department should adjust this rulemaking by removing provisions that place new burdens on major facilities and focusing on improvements that can be made within the current scope of the regulation and streamlining requirements. (5)

RESPONSE: The Department conducted an economic analysis that "describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated," pursuant to the Rules for

Agency Rulemaking, and the Administrative Procedure Act, N.J.A.C. 1:30-5.1 and N.J.S.A. 52:14B-1 et seq., respectively. As required, the Department has provided commenters with the opportunity to provide feedback and critiques of its analysis. The commenter described the Department's analysis as cursory, and conducted its own analysis based upon a number of assumptions. The analysis by the commenter included a finding that the greatest increase in costs and resulting economic impacts would stem from the proposed provisions concerning the CR plan. As explained in the Response to Comments 40 through 68, the Department is not adopting the proposed Climate Resiliency provisions. This will significantly reduce the costs associated with those provisions as predicted by the Department and the commenter. While the Department cannot eliminate every cost associated with rulemaking requirements, the Department makes every effort to take a balanced approach to rulemaking that considers both the costs and environmental impacts and their corresponding costs and benefits. In short, the Department carefully considered the feedback and critiques from all commenters, as is the purpose of a comment period, and believes the adopted provisions have been adequately addressed.

77. COMMENT: Liquid polymer (non-hazardous) typically has a small amount (less than 0.1 percent) of formaldehyde, which is classified as hazardous. The formaldehyde contained in the liquid polymer is not an added ingredient, but rather a byproduct of the manufacturing process of the polymer. Regardless, the manufacturer is required to list the formaldehyde as less than 0.1 percent, in the event there are any trace quantities found. Pursuant to the previously existing rules, a facility was not required to prepare and submit DPCC and DCR plans for less than 20,000 gallons of stored chemicals with nominal concentrations of hazardous substances, such as liquid polymer. However, pursuant to the proposed amendments, these chemical mixtures would

be included in the DPCC program and would require DCR plans. Additionally, pursuant to the proposed amendments, formaldehyde is considered a hazardous substance and may be considered a petroleum product and is, therefore, not eligible for a waiver under the nominal concentration provisions. As such, liquid polymer, which contains less than 0.1 percent of formaldehyde, must be included in the DPCC total count, which will put some facilities over 20,000 gallons of hazardous chemicals and will require those facilities to submit to the DPCC program and require the preparation of DCR plans. The cost of compliance, for a facility that was not considered a major facility previously, is prohibitive. (9)

RESPONSE: The Department interprets the comment as raising a concern that a small amount of formaldehyde contained in liquid polymer would potentially bring a facility within the applicability of the DPHS rules. The Department's proposed amendments did not include any amendments to the definition of "major facility" or the classification of formaldehyde as a hazardous substance. Pursuant to the previously existing rules and the adopted rules, a facility is considered a major facility if it is "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." See N.J.A.C. 7:1E-1.6. Additionally, formaldehyde was listed at N.J.A.C. 7:1E Appendix A as a hazardous substance before the Department published its notice of proposal on May 20, 2024. If, prior to the notice of proposal, the commenter was an owner or operator of a facility having a total aggregate, combined storage capacity of less than 20,000 gallons, including the liquid polymer, the facility was not considered major pursuant to the current or adopted rules, because it did not meet the 20,000-gallon threshold set forth in the definition of a major facility. Nothing in the proposed or adopted amendments changes the threshold storage

capacity that would determine whether a facility is major or not. If the commenter is the owner or operator of a facility having a total aggregate, combined storage capacity of 20,000 gallons or more, including liquid polymer that contains formaldehyde, then the greater amount of storage capacity is the factor that determines the facility's status as a major facility. The difference in status has everything to do with the storage capacity and nothing to do with the proposed amendments. It is possible that the Department has misinterpreted the comment, and the commenter is indicating that the owner or operator of the facility in question holds one of the limited exemptions previously granted by the Department. If this is the more accurate interpretation of the comment, the Department refers the commenter to the Summary of Agency-Initiated Changes, wherein the Department indicated it will not adopt the provision to rescind the previously granted exemptions nor the provisions concerning nominal concentration requests.

180-Day Compliance Timeline

78. COMMENT: For utilities that may be subject to the proposed rules because they use liquid polymers containing small amounts of formaldehyde that could push them above the 20,000-gallon threshold, developing an initial DPC, revising a budget, hiring consultants according to bidding and public contract laws, evaluating containment areas, designing potential modifications, securing bids for construction, and then doing the construction itself will take significant time. Additionally, utilities that are in the process of developing DPCs may need to amend their plans in consideration of the 200 hazardous chemicals being added. Utilities in either scenario would be hard-pressed to complete all the necessary steps within the narrow 180-day window. The Department should amend the proposed compliance timeline of 180 days to at least 12 months and, ideally, to 24 months. This will allow government entities not previously

subject to the major facility requirements to make the necessary changes to comply, and it will allow those that have already been required to do a DPC to modify their plans to accommodate the hazardous substances that have been added. (3)

79. COMMENT: For a facility that was not previously covered within the requirements of the Release Prevention Program, compliance will take time. A facility will need to budget, seek funding, hire consultants, evaluate and write programs, perform studies and site surveys, modify containment areas, develop contract specifications, bid public contracts, construction, among many other things, which likely cannot be performed by a public entity in less than three years, let alone within 180 days from notification and/or the date the rule is adopted. A facility would also need time to evaluate all of its options, including modifying operations to remain outside the scope of the program. That might include modifications to a facility's storage capacity. There is also the possibility that a facility that is covered by the scope of the program already would need to revise its DCR/DCPP plans to include modifications based on one or more of the 200 new hazardous substances proposed to be added at N.J.A.C. 7:1E Appendix A. Such a facility might need to make modifications to monitoring equipment; evaluate, modify, and design pipe supports; make changes to inspections and monitoring, training plans, and recordkeeping with digital backup; and modify the financial cleanup requirements, the transmission pipeline section, among other items. Not only will the cost of compliance, for facilities in these scenarios, be prohibitive, the 180-day time period for compliance is unreasonable. A facility will need at least two to three years to perform evaluations, prepare the DPCC and DCR plans, make all the necessary modifications to the site, prepare a CR plan and otherwise achieve compliance with the proposed new and amended rules. The 180-day timeframe is just not realistic, especially for governmental agencies that must comply with public laws and requirements. (9)

RESPONSE TO COMMENTS 78 AND 79: N.J.A.C. 7:1E-4.5(c) provides that "[i]f 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." However, N.J.A.C. 7:1E-4.2(d) makes clear that the Department is aware that 180 days is not necessarily enough time to complete all of the upgrades necessary to implement the proposed plan. Specifically, N.J.A.C. 7:1E-4.2(d) provides: "[t]he 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." In other words, the DPCC plan may include a timeline for the facility to, among other things, modify containment areas, develop contract specifications, bid public contracts, and complete construction. The purpose of the 180 days is to ensure the facility has a plan to come into compliance. To the extent that compliance would require significant modification of the facility and/or its equipment, the plan should include a timeline. Completion of the plan is not necessary within the initial 180-day period. As explained in the Response to Comments 40 through 68, the Department is not adopting the proposed Climate Resiliency provisions.

180-Day Approval Timeline

80. COMMENT: The proposed rulemaking clarifies that the Department has 180 days to approve a DPCC or DCR plan once the submission is deemed complete. Given the Department's current caseload and resources, it is not unusual for a major facility to receive no communication from

the Department within the stipulated time of 180 days. The regulated community finds this frustrating because they are subject to regulatory enforcement for missing codified deadlines while the Department seemingly does not have any negative consequences for failure to meet their codified deadlines. Considering that the facility may not operate as a major facility without an approved plan, delays make entry into the market difficult, expensive, and sometimes impossible. (2)

RESPONSE: The Department prioritizes the review of initial plan submissions and makes every effort to complete the review within 180 days. There is currently no backlog on review of these plans. During the review process, the facility is responsible for correcting any items found not meeting compliance requirements. Response times to the Department's requested plan revisions and site upgrades can create a lag in the approval process. Additional permitting delays from townships or municipalities also cause delays. Reviews of initial plans are approved within 180 days, as long as no external delays or constraints are present. The Department acknowledges that there is a current backlog of DPCC/DCR plan renewal applications. As stated, initial plan reviews are prioritized over renewal applications, since a delay in the review of the renewal application will not result in delay of business operations. The Department also notes that as a result of the adopted amendments, renewal applications will be submitted less frequently, freeing up staff time to work on initial applications.

Reporting Exemptions

81. COMMENT: The proposed rules are exempt from reporting non-PCB-containing transformer oil discharges, bearing less than 50 ppm of polychlorinated biphenyls (PCBs). The Department does not explain why it specifies this exemption only. It is conceivable that other discharges at

N.J.A.C. 7:1E Appendix A substances, in mixtures, pose similarly low risk. The Department should consider additional reporting exemptions, establish a sound basis for making exemptions, and exempt not just low-concentration transformer oil discharges, but all other discharges at N.J.A.C. 7:1E Appendix A substances that pose virtually zero risk. (4)

RESPONSE: In the notice of proposal Summary, the Department provided a detailed explanation of the decision to have a limited exception to the reporting requirements for a discharge of transformer fluid from a transformer that has no PCBs or a low concentration of PCBs that occurs during a state of emergency. See 56 N.J.R. at 841. As noted in the Summary, the reporting exception is limited to a very specific set of circumstances, and is not a full exemption from the reporting requirement. A facility is still required to report the discharge within 24 hours after the state of emergency is terminated. *Id.* The exception was not included solely because of the assessment of the low risk posed by the substance. Rather, the Department recognizes that the facility's response to the state of emergency would be of paramount importance during the emergency. The reporting requirement must still be met afterward. *Id.*

DCR Response Plan Scenario

82. COMMENT: The proposed rules specify that DCR response plans are to be based on different scenarios from year to year, to address all anticipated emergency response scenarios. To avoid regulatory uncertainty, the Department should provide considerably more detail in its regulations and include examples of scenarios that should be included. The proposed rules are unclear about the scope of all anticipated emergency response scenarios. For example, should the regulated community consider far-fetched worst-case scenarios, or is the Department envisioning reasonable worst-case scenarios, which are the basis for planning? Further, the Department

should specify the degree to which CR plans must be taken into account in preparing DCR response plans. (4)

RESPONSE: The Department agrees that the language concerning the emergency response scenarios could be clearer. Upon adoption, the Department is changing the language at N.J.A.C. 7:1E-4.3(b)4 to clarify that: (1) the scenarios should be realistic; (2) worst-case scenarios should be drilled occasionally; and (3) drills in the same areas and involving the same processes should not be repeated in consecutive years. As explained in the Response to Comments 40 through 68, the Department is not adopting the CR plan requirements. The thrust of those provisions concerns flooding potential, which should be taken into account when addressing emergency response scenarios.

DPCC Plan Proposed Amendments

Regulatory Compliance Upgrade Schedules

83. COMMENT: The Department should not require a facility that will become a major facility to be in full compliance with all regulatory obligations immediately. Instead, the Department should allow a facility to submit a schedule for the necessary upgrades. This was how the Department handled upgrades until a few years ago. (2)

84. COMMENT: The notice of proposal Summary states that if the owner or operator must upgrade a facility to meet regulatory requirements, that plan must include a schedule for those upgrades. In addition, there is no change at N.J.A.C. 7:1E-4.2(d), which reaffirms that plan updates are intended to remain part of the rule. The regulated community needs the ability to establish upgrade schedules rather than be subject to administrative consent orders (ACO). An ACO is intended to be a regulatory “stick” to be used when a facility has established a history of

non-compliance or stalling in the implementation of the upgrade schedule. While facilities do need to plan for changes, the nature of an ever-changing global marketplace requires that companies be agile as new products are developed and/or customer needs change. The flexibility granted by the upgraded schedule allows a facility to approach the Department to enter the program and still get into the marketplace without being unduly restricted in their activities. (2) RESPONSE TO COMMENTS 83 AND 84: As noted in the comments, the Department has not proposed a change at N.J.A.C. 7:1E-4.2(d). Accordingly, the comments are beyond the scope of this rulemaking and appear to be a criticism about an existing provision, rather than a comment on a proposed amendment. Nevertheless, the Department notes that N.J.A.C. 7:1E-4.2(d) provides: "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." This language makes clear that an owner or operator of a major facility may submit a compliance schedule to upgrade equipment with its DPCC plan. The Department has neither changed the rule language nor its policy on this point. On the other hand, a compliance plan cannot be submitted as part of a renewal of the DPCC plan for the purpose of installing new or replacement equipment at an existing major facility. A facility that is already regulated and has previously submitted its DPCC plan should not be introducing new equipment or procedures, unless they are designed and built to meet all the applicable standards at the time the equipment is installed or the procedure is instituted. The use of a compliance plan as part of a renewal would be inappropriate.

Requirement to Identify the Maximum Number of Storage Containers

85. COMMENT: The proposed rules require a major facility to identify hazardous substance storage areas, including the type, size, and maximum number of containers. However, the proposed rules do not establish a *de minimis* container size. The rules are silent with respect to how small a container must be, and this omission creates considerable regulatory uncertainty. Therefore, the Department should clarify and establish a reasonable *de minimis* container size. A 55-gallon drum is a reasonable *de minimis* container volume. Certainly, a container as small as a gallon would pose a risk of the sort these rules are intended to mitigate. (1 and 4)

RESPONSE: The Department did not propose a change to the requirement at N.J.A.C. 7:1E-4.2(c)3ii that a major facility must identify the type and size of containers in hazardous substance storage areas. Accordingly, the request to include a *de minimis* container size is beyond the scope of this rulemaking.

Metric

86. COMMENT: The Department should not adopt the newly proposed requirement that a facility list, in the DPCC plan, the maximum number of containers that may be kept in each storage area. A facility requires flexibility in terms of packaging and shipping material to meet client needs. While one client may prefer their material to be shipped in several hundred-gallon drums, another client with the same amount of material may prefer the same amount of material be shipped in smaller containers. While this may increase the amount of containers, the amount of material is unchanged. However, the increase in containers may require an amendment to a plan, which could impede the ability of a facility to meet the client's needs. (2)

87. COMMENT: The proposed rules require a major facility to list the maximum number of containers that can be stored in each storage area. In the Summary of the notice of proposal, the Department states that "the number of containers that a facility can store at any one time is as important as the actual number of containers that is in the storage area at the time the plan is filed." In fact, the maximum number of containers is not an accurate measurement of the total storage capacity of a storage area. A storage area with a 10,000-gallon storage capacity may contain between 30 and 36 totes, 180 drums, 2,000 pails, or 10,000 one-gallon jugs. This rulemaking adds an administrative burden to major facilities for no appreciable reduction in risk to public health, safety, or the environment. Further, this is an unnecessary constraint on third-party warehouses, that sell "pallet" spaces and not "container" spaces. (2)

88. COMMENT: The proposed rules would add a new requirement for a major facility's DPCC plan. Specifically, a facility will have to identify the maximum number of containers that can be stored in each storage area. The Department should not adopt this proposed requirement as it would be unnecessary, subjective, and difficult to follow. First, the requirement does not clarify which containers should be considered when making this determination. The typical container used by a facility varies depending on that facility's operations and it is not practical to expect all facilities to make an accurate determination of their maximum capacity for a container they are not as familiar with. Also, the rules do not clarify whether this determination is expected to be exact or approximate. If this is expected to be an exact determination, it will take significant time for facilities to determine for each of their storage spaces, especially for facilities with multiple large spaces that they may not typically utilize for storing containers. Second, the Department does not justify a need for this information. Providing this information to the Department does not present any benefit as the majority of facilities will never utilize the maximum amount of

their storage space. Considering this, collecting information on the maximum number of containers that can be stored in each area would offer no value to the Department or the facilities making these calculations. Instead, the actual containers on site should be used by the Department to gauge the amount of substances that may be held at a facility at any given time, a metric that facilities already provide to the Department pursuant to the existing rules. The Department should remove this requirement in the final rules. (5)

89. COMMENT: The proposed rules would require a major facility to report the maximum number of containers that can be placed in each storage area. This requirement would result in a substantial administrative burden on the regulated community with no appreciable increase in protection of public health or the environment. As the number of containers in a storage area is usually always changing, facilities do not typically assign certain areas with maximum container numbers. Given that secondary containment requirements are based on containing a single unit of the largest container, there is no need for a facility to determine the maximum number of containers that can be placed in each storage area. The maximum number of containers is not an accurate measurement of the total storage capacity of a storage area. The Department should not adopt this proposed requirement. (6 and 7)

90. COMMENT: The Department should not adopt the proposed amendment to the rules that would require a facility to list the total number of containers. The existing requirement for a facility to maintain a listing of container type and volume more accurately reflects the actual volume of hazardous substances stored. (3)

RESPONSE TO COMMENTS 86, 87, 88, 89, AND 90: Prior to publication of the notice of proposal, N.J.A.C. 7:1E-4.2(c)3ii required a DPCC plan to include a description of "other" storage (meaning not the storage in above- or underground tanks) by providing the type and size

of the containers in those other storage areas. In the notice of proposal Summary, the Department explained that it wanted to amend the rules to be consistent with the definition of "storage capacity," which refers to the "capacity which is dedicated to, used for, or intended to be used for storage of hazardous substances of all kinds." See 56 N.J.R. at 839. Thus, the Department proposed to amend the rules to require a description of not only the type and size of containers, but the maximum number of containers in an area. After reviewing the comments, the Department has determined that it can achieve its goal of consistency with the definition of storage capacity by changing the rules upon adoption to require a description of the storage capacity in each storage area, rather than a description of the maximum number of containers. Upon adoption, N.J.A.C. 7:1E-4.2(c)3ii will be revised to reflect this change.

Discharge Notification

91. COMMENT: The proposed rules require discharge notification to be immediate. The Department should define immediate to mean within one hour, rather than reporting within 15 minutes. It is not always feasible to report within 15 minutes due to the need to call other agencies, take physical action that could mitigate environmental impact, and interact with other agencies responding on site. (11)

RESPONSE**:** The Department did not propose a change to the requirement at N.J.A.C. 7:1E-5.3(b) that states that notification of a discharge received by the Department pursuant to N.J.A.C. 7:1E-5.2(a) 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. Accordingly, the request to change this provision is beyond the scope of this rulemaking.

92. COMMENT: The Department proposes to amend the rules to require that cleanups be conducted in accordance with the approved DCR plan and the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) at N.J.A.C. 7:26C. The Department did not provide any explanation (that is, recent facility compliance and enforcement issues) or a technical justification for this proposed amendment.

In 2012, the Department proposed the same amendment, which was eventually adopted. At the time, the regulated community argued that there would be unintended consequences on operations, as well as complications and additional costs with the licensed site remediation professional (LSRP) process, resulting from these minor discharges since there is no *de minimis* exemption for hazardous substances. In 2017, the Department proposed to amend the rules to restore the option of responding to the discharge according to either the discharge cleanup and removal plan or according to the ARRCS and the Technical Requirements. At the time of that rulemaking, the Department noted that "Since the 2012 amendment, facilities have been required to hire LSRPs to sign off on responses under the facilities' respective discharge cleanup and removal plans, after the fact, adding little or no value to response or cleanup, while adding extra and unnecessary costs."

The Department's proposed amendment to flip-flop on this issue is a clear example of the lack of regulatory certainty. Worse, the Department has failed to provide any justification for the changes. (7)

93. COMMENT: The Department did not provide any indication during the 2019 stakeholder meeting that the Bureau was planning to propose cleanups to be conducted in accordance with the approved DCR plan and the ARRCS at N.J.A.C. 7:26C. The Department proposed the same amendment, and the regulated community argued that there would be unintended consequences

on operations, as well as complications and additional costs with the LSRP process, resulting from these minor discharges since there is no *de minimis* exemption for hazardous substances.

In 2017, the Department clearly recognized that requiring the hiring of LSRPs to sign off on responses pursuant to the facilities' respective discharge cleanup and removal plans, after the fact, adds little or no value to response or cleanup, while adding extra and unnecessary costs. In August 2018, the Department codified the changes (that is, removed “and” and replaced with “or”) and provided certainty for the regulated community. However, this proposed amendment to the rules would remove this valued regulatory certainty. The arguments made in 2012 hold true today. The Department should not adopt this amendment. (8)

94. COMMENT: One of the Department’s proposed amendments to the rules requires that cleanups now be conducted in accordance with the approved DCR plan and the ARRCS at N.J.A.C. 7:26C. On May 7, 2012, the Department published an amendment at N.J.A.C. 7:1E-5.7(a)2 that required any person responsible for a discharge at a major facility to respond to the discharge pursuant to both the facility's DCR plan and to the ARRCS and the Technical Requirements. The result of the 2012 amendment is that the facility was required to hire an LSRP to respond to each and every discharge, even if the discharge response is also covered within the facility's discharge cleanup and removal plan. However, upon adoption of the 2012 amendment, the Department committed itself to internal coordination among the Site Remediation Program and the Division of Environmental Safety and Health, and their respective stakeholders, to ensure that the amendments to the DPHS rules minimized, to the extent possible, any negative operational or financial burdens on the facilities subject to those rules.

Subsequently, the Department proposed to amend the DPHS rules at N.J.A.C. 7:1E-5.7(a)2 to restore the option of responding to the discharge according to either the discharge

cleanup and removal plan or according to the ARRCS and the Technical Requirements noting, that the DPHS Rules at N.J.A.C. 7:1E-5.7(c) authorized the Department to require a facility to remediate pursuant to ARRCS and the Technical Requirements. Accordingly, in the event that a response pursuant to a discharge cleanup and removal plan is not sufficient to remediate the discharge, the Department has the authority to order the facility to hire an LSRP to conduct the remediation, as required at SRRA, N.J.S.A. 58:10C-1 et seq. In August 2018, the Department codified the changes and provided certainty for the regulated community.

In short, the Department has already recognized that requiring the hiring of LSRPs to sign off on responses pursuant to the facilities' respective discharge cleanup and removal plans, after the fact, adds little or no value to response or cleanup, while adding extra and unnecessary costs. Therefore, the Department should not proceed with the proposed changes. (6) RESPONSE TO COMMENTS 92, 93, AND 94: The Department acknowledged in the notice of proposal Summary that it was reversing its position on a prior regulatory amendment. See 56 N.J.R. at 841. Further, the Department explained the rationale supporting its position. Allowing a facility the option of responding to a discharge according to either the discharge cleanup and removal plan or according to the ARRCS and the Technical Requirements is problematic because "DCR plans do not detail remediation requirements for subsurface soils or groundwater contaminated by a discharge, nor is 'small discharge' defined … The DCR plan addresses initial containment and mitigation strategies, and ARRCS provides the cleanup and removal requirements; the rules are complementary, not substitutes for each other." *Id*. For this reason, it is necessary for a facility to comply with both the discharge cleanup and removal plan, as well as the ARRCS and the Technical Requirements.

***De minimis* Discharge Notification**

95. COMMENT: The Department's rulemaking to amend the rules to specify that there is no exemption for a *de minimis* discharge notification will result in gratuitous and unnecessary reporting. A zero threshold is impractical and infeasible and introduces considerable regulatory uncertainty. For example, the cost of reporting a 50-millileter spill, both to the facility and to the regulatory authority, far outweighs the benefit. For the DPCC/DCR regulations to be workable, and to avoid instances of frivolous non-compliance and to be consistent with common practice, the Department must establish a reasonable minimum reportable quantity. (1 and 4)

96. COMMENT: Pursuant to the current regulations, facilities are required to report discharges to the Department with the exception of small discharges that are not subject to reporting pursuant to any other State or Federal law. In this proposed rulemaking, the Department proposes to remove this reporting exemption for small discharges. The only exception is for the discharge of transformer fluid from a transformer with no PCBs or a low concentration of PCBs. The proposed amendment is overly broad and would unduly burden both regulated facilities and the Department.

When the Department coordinated with industry and environmental groups in the late 1990s, the small discharge exemption was established to alleviate concerns related to frequent notifications from facilities. As determined when this exemption was first established, these notifications are unnecessary when there is a negligible discharge that does not migrate off site and is fully addressed by the facility within 24 hours. Moreover, these frequent notifications will unduly burden facilities with administrative costs and overwhelm the Department with notices, which will make the data related to these notices less useful as it will be diluted by large amounts of negligible discharges. It is essential that this exemption remain in some form.

As the rules are currently written, to meet the criteria for this exception a discharge must not be reportable pursuant to any State or Federal regulation, not migrate off site, and be stopped and cleaned up/removed within 24 hours of the discharge. These are strict criteria and if they are met, there is no need for reporting requirements through the DPHS program. The Department should not adopt the proposed amendments concerning the discharge notification. (5)

97. COMMENT: The proposed rules remove the current exemption for small discharges to keep records of their response in lieu of notifying the Department, assuming the facility is not subject to report pursuant to any other State or Federal law (except for non-PCB containing transformers, which is proposed to still be exempt). The termination of this small discharge exemption will cause increased regulatory burden without any benefits of further protecting the environment and public health. It will also be burdensome to the Department, as expenses will be incurred for review/approval of reports submitted pursuant to DCR plans. As proposed, and because there is no *de minimis* quantity exemption, even a 40-milliliter (ml) vial of oil that is dropped on the ground (land of the State) would require notification to the Department's hotline and an LSRP.

The rulemaking states that "[w]hen discharges are not reported, even based on a good faith reading of the rule, the Department cannot adequately track the discharges." This rationale is unsound because these small discharges are made known to the Department as part of plan renewals. The Department also has the opportunity to review these discharges during the annual compliance inspections.

Additionally, the Department indicated that personnel will have more time for these annual inspections: "The two additional years between renewals will afford the DPHS program time to perform more frequent compliance inspections." Requiring independent reporting beyond

this renewal process or from the compliance inspections simply increases the administrative burden on both the regulated community and the Department with no corresponding benefit to human health and the environment.

Additionally, the notice of proposal Summary justifies the removal of the exemption by stating "[a]n owner or operator that prepares a confirmation report for a smaller discharge can use the report as an opportunity to analyze the cause of the discharge and evaluate the facility's response. The owner or operator can determine if the response was appropriate and adjust the facility's protocol to ensure a proper response to a future discharge." The Department has not considered other options that are currently required. Spill drills are required and are optimal in providing this information or satisfying the Department's concerns on this point. (6, 7, and 8)

98. COMMENT: During the stakeholder meeting held in February 2019, the Department did not provide any indication that amendments concerning discharge notifications were even being considered. This is a perfect example of how critical it is for the Department to engage in timely and consistent communication with stakeholders. Though it is important for the regulated community to provide comments on rule proposals, the greatest value in the rulemaking process occurs during the interaction and sharing of information prior to the point at which the Department begins drafting language. That is because the Department's intent may not exactly be aligned with how the regulated community might interpret the language. The Department should not proceed with the proposed changes. (7)

99. COMMENT: The express inclusion of the non-PCB containing transformer oil in the Department's proposed amendments at N.J.A.C. 7:1E-5.3(e) has the effect of removing the reporting exemption for other discharges that can be cleaned up within 24 hours. In the Summary, the Department states that a small discharge is not defined in the rules, thus making

the reporting trigger difficult to evaluate. The Summary further indicates that a facility storing five million gallons of product may subjectively consider a 5,000-gallon discharge small. While this may be true, the existing requirement to cleanup any small discharges within 24 hours, including associated soil remediation, makes this argument moot.

N.J.A.C. 7:1E-5.7(a)2i requires that cleanups be conducted in accordance with the approved DCR plan and the site remediation requirements. This will slow down the pace of cleanups at major facilities. Instead of incentivizing a major facility to clean up a discharge immediately, this will have the effect of turning minor spills into science fair projects. There are not enough LSRPs in the State to manage the increased workload that would result from the revocation of this exemption. In addition, the time associated with an LSRP-led remediation will have the unintended consequence of the plume expanding as time elapses. Major facilities are experts in their products and are qualified to clean up a small discharge to soil without the additional burden of complying with the ARRCS Rule.

It should be noted that the current rule for notification to the spill hotline were adopted in October 1996. The rule has been in effect for over 25 years. In the Summary, the Department addressed the proposed amendment by stating: “While well intentioned, the Department has determined that this requirement has had the unintended effect of creating confusion throughout the industry, resulting in failure by a number of facilities to report discharges, and in the case of major facilities, failure to submit Discharge Confirmation Reports when required.” As this rule is only applicable to major facilities, failure by other entities to report discharges based on this rule is outside the purview of the regulation. Additionally, over five plus years, the Department has issued citations for failure to notify of a discharge seven times and failure to submit a

confirmation report four times. Of the 24 total violations associated with the existing provisions, 15 were attributable to two entities. This is clearly not an industry-wide problem.

Requiring a call into a spill hotline to document something that is going to be immediately removed (unless this proposal goes through) is a waste of Department resources and is unrealistic given the current number of licensed site remediation professionals available in the State. Additionally, this will add even more confusion to the regulated community, because facilities that are subject to N.J.A.C. 7:31 were identified by the De Minimis Task Force as subject to the reduced reporting requirements and N.J.A.C. 7:31 still has this reduced reporting rule in effect.

The Department proposed to amend N.J.A.C. 7:1E-5.8(c)5 to require that discharge reports include the cause, as well as the source, of the discharge, if that information is known. Of the 15 total citations associated with written discharge confirmation reports, 11 were paperwork violations, including missing phone numbers, cost estimates, and common names of hazardous substances. While the proposal to include the cause of the discharge in the confirmation report seems like a reasonable requirement, citing major facilities for reporting oversights on their written reports in lieu of requesting the additional information seems excessive. (2)

100. COMMENT: The Department should not adopt the proposed amendments at N.J.A.C. 7:1E-5.3(e). By including non-PCB containing transformer oil results, the Department is preventing the exemption for other discharges, which can be cleaned up in 24 hours. If the preamble states that as a small discharge is not defined in the rules, the reporting trigger becomes difficult to evaluate. (10)

RESPONSE TO COMMENTS 95 THROUGH 100: As explained in the notice of proposal Summary, the exemption for small discharges resulted in confusion throughout the industry. See

56 N.J.R. at 837. First, the regulated community's interpretations of a "small discharge" have been subjective because there is no definition. *Id*. The commenters expressed a concern that without an exemption for a *de minimis* spill, one as small as 50 milliliters, would invoke mandatory reporting. However, this concern is misplaced. The rules require notification of the Department in the event of a "discharge," which is a defined term. To qualify as a discharge, a hazardous substance must be released, spilled, pumped, poured, emitted, emptied, or dumped "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."

Additionally, as explained in the notice of proposal Summary, the Department has found that the provision exempting small discharges from the notification requirements has resulted in the belief, by some in the regulated community, that these incidents do not warrant vigilance and proper follow-up inspections and maintenance to prevent a new or recurring discharge. *Id*. The exemption provision was never intended to minimize the significance of these incidents. Rather, the small discharge prevention provision was initially conceived when the program was new, and the regulated community expressed concern about the frequent notifications they would have to make in the event of small discharges. Decades later, the program has matured and facilities should be well-versed in the practice of discharge prevention. As one commenter noted, reported discharges in the last five years are infrequent. Accordingly, the volume of discharge notifications should not be considered burdensome to any facility. However, for a facility that does experience a small discharge, the preparation of a confirmation report may be useful in analyzing the cause of the discharge and evaluating the facility's response. *Id*. Awareness of an underlying problem and prompt correction of deficiencies will ultimately contribute to fewer

discharges, which will result in reduced cost to the facility for the cleanup and removal of discharges. *Id*.

The Department does not anticipate reporting from major facilities to increase significantly, if at all. Most facilities have mature programs. Some facilities are already in the practice of reporting all discharges, no matter the size of the discharge.

Amendment of DPCC and DCR Plans

101. COMMENT: The Department should expand the scope of an "emergency situation" as set forth at N.J.A.C. 7:1E-4.8(a) to include environmental improvements, such as the replacement of tank bottoms, miscellaneous tank repairs, and secondary containment repairs to avoid unnecessary delays. (11)

102. COMMENT: The Department proposed to amend the 60-day written notice requirement for facility upgrades at N.J.A.C. 7:1E-4.8(a), by adding: "except in emergency situations as determined by the Department." However, the definition of "emergency" does not provide major facilities with the ability to take business impacts into consideration when determining if the project necessitating an amendment to the plan is an emergency. (7)

103. COMMENT: Existing N.J.A.C. 7:1E-4.8(a) requires a facility to provide a 60-day advance notice of changes to aboveground storage. The Department proposes to add the language "except in emergency situations as determined by the Department." The proposed language does not provide major facilities with the ability to take business impact/considerations into account when determining if the project necessitating an amendment to the plan is an emergency. (2)

RESPONSE TO COMMENTS 101, 102, AND 103: As explained in the notice of proposal Summary, the Department proposed to amend the rule to provide an exception to the 60-day-

notice requirement for emergency situations. See 56 N.J.R. at 840. The exception for emergencies originates in the Spill Act, at N.J.S.A. 58:10-23.11d11. The Legislature left the definition of emergency up to the Department and the Department explained that emergencies included, but would not be limited to, situations resulting from a fire, an explosion, or any unplanned sudden or non-sudden discharge of a hazardous substance, because these situations would constitute an immediate threat to human health and safety or a threat to the environment. See 56 N.J.R. at 840. Business impacts do not constitute a threat to human health or the environment and were not intended to be covered within the emergency exception.

104. COMMENT: The Department should amend N.J.A.C. 7:1E-4.8(a) to decrease the time of advanced written notices from 60 days to 20 calendar days to allow facilities to implement changes more quickly. (11)

105. COMMENT: The Department does not approve design plans for facility upgrades. Therefore, major facilities are making modifications essentially at risk, regardless of pre-notification to the Department. Enforcement of this requirement will be, or at least appear to be, arbitrary and capricious. With an average of less than two citations per year, the Department's proposed amendment to the rules cannot be justified. If the Department would like pre-notification of plan amendments in order to communicate their concerns on design plans to a major facility, the Department could accomplish this by making the review of plan amendments a service that the Department provides without requiring this review through rules. (2)

RESPONSE TO COMMENTS 104 AND 105: The 60-day review period set forth at N.J.A.C. 7:1E-4.8(a) is consistent with the Spill Act requirement, at N.J.S.A. 58:10-23.11d11, and cannot be shortened by the Department. Furthermore, as one commenter noted, the review period allows

the Department to communicate compliance items that are identified during the review process. If compliance with the rule is determined to be deficient, then the facility owner or operator may require additional time to make modifications. In these cases, the review period is a benefit to the regulated community.

105A. COMMENT: The Department is expected, pursuant to N.J.A.C. 7:1E-4.8(c), to approve or deny an amendment to a DPCC or DCR plan within 60 days of receipt of the submission. However, the regulated community is regularly frustrated by the Department's inability to meet the 60-day deadline. The Department should post a tracker online indicating the Department's success rate at meeting its own deadlines. (2)

RESPONSE**:** The Department has not proposed to amend the 60-day review period. Accordingly, the commenters' request is outside the scope of this rulemaking. Nonetheless, there are currently other online tools in development that will allow for online submittals of discharge confirmation reports and, eventually, DPCC and DCR plans. The Department may consider the request as a potential future development.

Renewal and Record Retention Schedules

106. COMMENT: The Department proposed to amend the record retention requirements for daily and monthly inspections from the lifetime of the tank to 10 years or the lifetime of the tank, whichever is shorter. The 10-year alternative is still too long. The Department should reduce the record retention requirement to six years, since DPCC plan renewal will be every five years and will allow Department inspectors sufficient opportunity to review compliance during the review period. (11)

RESPONSE: For a tank with a lifetime of longer than 10 years, records of repairs and integrity testing conducted pursuant to N.J.A.C. 7:1E-2.16 are essential for establishing appropriate monitoring of the tank integrity. These records will continue to be required for the lifetime of the tank. The daily and monthly records may not be of great value beyond the 10 years, but are a good method of monitoring integrity between the facility's non-routine, in-house inspections. Accordingly, the Department will adopt the provision as proposed.

Mapping Criteria: Surface Water Run-off

107. COMMENT: The Department proposed amendments pertaining to the submittal of general site plans, land use maps, and transmission pipeline maps that would require facilities to include the direction of surface water run-off and remove ArcView as an acceptable digital format. While an obsolete program, such as ArcView, must be removed, the Department must provide advanced notice to allow users of those programs to adjust their processes. Moreover, the additional requirement of reporting the direction of surface water run-off is complicated due to the need for maps to be compatible with the Department's Geographic Imaging System (GIS). This GIS compatibility prevents facilities from simply adding arrows to a printed map. Instead, the Department should permit all major facilities (not just those facilities with nominal concentration requests) to display their site using the alternate method referenced at proposed new N.J.A.C. 7:1E-4.10(h). This would significantly reduce the financial burden put on facilities when updating maps and allow for those who utilized ArcView software to submit their maps without having to start from scratch with another GIS software. (5)

108. COMMENT: The Department proposed amendments pertaining to mapping criteria at N.J.A.C. 7:1E-4.10(b)4 that would require the addition of directional arrows for surface water

run-off. This new requirement is not simply a matter of adding an arrow sticker to hard copy maps as these plans must be provided in a GIS-compatible format. As drainage and land use maps are not required to be updated on the DPCC/DCR renewal cycle, facilities with mature DPCC/DCR plans may have maps that were prepared in ArcView, which is a defunct program pursuant to the Department's own admission. This is not a minor amendment as it will require the regulated community to expend resources to have a map updated for the sole purpose of adding surface flow arrows. This will require a sitewide detailed survey, potentially at a frequency that cannot be maintained if there are surficial changes due to repairs or other issues. Also, the Department will need to expend additional resources to review and approve these revised maps for facilities that may have been in the program for decades. These additional resources are not identified by the Department in their economic impact analysis. (7)

109. COMMENT: The Department proposed amendments pertaining to mapping criteria at N.J.A.C. 7:1E-4.10(b)4 that would require the addition of directional arrows for surface water run-off. This new requirement is not simply a matter of adding an arrow sticker to hard copy maps as these plans must be provided in a GIS-compatible format. As drainage and land use maps are not required to be updated on the DPCC/DCR renewal cycle, facilities with mature DPCC/DCR plans may have maps that were prepared in ArcView, which is a defunct program, as noted by the Department. The Department should not adopt an amendment that will require the regulated community to expend resources to have a map updated for the sole purpose of adding surface flow arrows. (6)

110. COMMENT: The Department proposed amendments at N.J.A.C. 7:1E-4.10(b)4 that would require the addition of directional arrows for surface water run-off. As drainage and land use maps are not required to be updated on the DPCC/DCR renewal cycle, facilities with mature

DPCC/DCR plans may have drainage and land use maps (DLU) that were prepared in ArcView. As noted by the Department, this is a defunct software program. In addition, the plans must be provided in GIS compatible format, so the updating of DLU maps is not simply a matter of adding an arrow sticker to the hard copy maps. This rulemaking will require the regulated community to expend resources to have a map updated for the sole purpose of adding surface flow arrows. Further, the Department will have to expend additional resources to review and approve new DLU maps for facilities that may have been in the program since the 1990s. On the other hand, N.J.A.C. 7:1E-4.10(e) allows for facilities with a "nominal concentration approval" to submit maps with a coordinate centroid in New Jersey State Plane feet (NAD 1993) using alternate means, such as scanning an existing site plan for submission. The Department was likely referring to NAD 1983 (and NAD 1993 was likely a typographical error), to be consistent with the existing mapping requirements. If the NAD 1983 technology is sufficiently advanced to allow the Department to site a facility without preparation in GIS compatible format, this reduced requirement should be extended to all major facilities, not limited to facilities with nominal concentration approval. (2)

RESPONSE TO COMMENTS 107, 108, 109, AND 110: The Department has reviewed its files and has determined that there are no ArcView records containing maps for major facilities. The Department also determined that only seven facilities have maps that do not contain directional flow information. As a result, facilities with DLU maps missing this information, may simply place arrows or contour lines on the hard copies of their existing maps. The Department did not intend for existing DLU maps to be revised to meet the requirement. However, newly submitted DLU maps and DLU maps that are being revised pursuant to other rule provisions must include

directional flow arrows that meet the requirements. The Department has changed N.J.A.C. 7:1E-4.10(b)4 on adoption to reflect these expectations.

Financial Responsibility

111. COMMENT: The notice of proposal Summary states that Financial Assurance (FA) must include "the removal of any abandoned structure"; however, the regulation does not refer to abandoned structures as something that must be covered by FA. The Department should clarify this apparent inconsistency. (6 and 7)

RESPONSE: The Department has not proposed to amend the scope of financial responsibility pursuant to N.J.A.C. 7:1E-4.4. The discussion in the Summary, which was highlighted by the commenters, is related to the Department's proposal to increase the financial responsibility coverage amounts per occurrence. Accordingly, the commenters' concerns about the extent of financial responsibility are beyond the scope of this rulemaking. Nonetheless, the Department refers commenters to the Spill Act at N.J.S.A. 58:10-23.11d5, which requires the owner or operator of a major facility or transmission pipeline to retain on file with the Department evidence of financial responsibility for cleaning up and removing a discharge or release of a hazardous substance, and for the removal of any abandoned structure owned or operated, as the case may be, by the owner or operator of a major facility or transmission pipeline.

Miscellaneous Provisions

Definitions

112. COMMENT: Integrity testing is required for "non-impermeable secondary containment," but no definition of non-impermeable secondary containment is provided. The Department

should provide a definition of non-impermeable secondary containment and provide examples for illustrative purposes. (1 and 4)

RESPONSE: Prior to proposal, the provision at N.J.A.C. 7:1E-2.10(a)2 referred to the relevant containment systems as “not impermeable.” In the notice of proposal Summary, the Department referred to relevant aboveground storage tank containment systems as “not impermeable.” See 56 N.J.R. at 837. The Department’s use of a new term, “non-impermeable,” in the rule text set forth in the notice of proposal at 56 N.J.R. at 848 was an error. Thus, N.J.A.C. 7:1E-2.10(a)2 will be changed on adoption to reflect the appropriate description: “not impermeable.” To the extent that there is some confusion about what the Department means when it refers to material that is “not impermeable,” the Department refers the commenter to the definition of impermeable at N.J.A.C. 7:1E-1.6. "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. Materials that do not meet the definition of impermeable, would not be impermeable.

113. COMMENT: The Department should add a definition of an “experienced, qualified inspector” associated with tank integrity testing to avoid potential conflicts during facility compliance reviews. (11)

RESPONSE: As stated in the notice of proposal Summary, an experienced, qualified inspector is knowledgeable in the construction and operation of the tank, as well as any industry or other standards that could be used in whole, or in part, in the evaluation of the continued use of the tank. See 56 N.J.R. at 838. The terms “experienced” and “qualified” are commonly understood

without the need to reference a dictionary or other authoritative text. The Department has used each of these terms in other rule provisions without the need to include an official definition. Accordingly, the Department will not add a definition for either term upon adoption.

High-Level Alarm

114. COMMENT: Based on the violation data publicly available, it appears as if there were three instances in which the Department identified an issue with a high-level alarm. With a violation history of less than one instance per year, the proposed change to the rules at N.J.A.C. 7:1E-2.2 may not be warranted. (2)

RESPONSE: The historical issuance of relatively few official violations of the high-level alarm requirement notwithstanding, there have been instances when high level alarms are not in good working order. The proposed amendment is meant to clarify that high level alarms must not only be designed to alert personnel of high liquid levels, but they must also be in good working order. High liquid levels alarms must be able to function as they were designed.

Integrity Testing

115. COMMENT: The Department's proposal to amend N.J.A.C. 7:1E-2.16(d)2 precludes using American Petroleum Institute (API) 510 tank integrity testing standard's similar service and risk-based inspection scheduling on field-erected steel aboveground storage tanks with storage capacity greater than 2,000 gallons operated under pressure that must follow API 510 or American Society of Mechanical Engineers (ASME) Section VII, as well as the schedule and series of tests and inspections that the applicable standard establishes. If the proposed amendment to the rules is intended to refer to pressure vessels, those are typically built to ASME

Section VIII, not ASME Section VII, as set forth at N.J.A.C. 7:1E-2.16(d)2. Section VII deals with the care of power boilers only. This may be a typo that should be rectified in the final rule. (4)

RESPONSE: The Department thanks the commenter for highlighting this error. To the extent there may have been confusion, the Department clarifies that the error in cross-reference occurred in the notice of proposal Summary. However, the proposed amendment at N.J.A.C. 7:1E-2.16(d)2 correctly identifies Section VIII of the ASME. Thus, no correction to this amendment is necessary upon adoption.

116. COMMENT: The Department should allow review of integrity test reports within 150 days of receipt of the completed tank integrity test report or checklist or before the tank is returned to service, whichever is later, rather than the proposed 90 days. This additional time period will allow facilities more time to budget and schedule expensive repairs in accordance with the company's capital budgeting procedures. (11)

RESPONSE: The Department will change the rules upon adoption to allow for 120 days or before an out-of-service tank is placed in service, whichever is later, as this is a reasonable timeframe.

Records

117. COMMENT: There have been only two citations relating to pipe supports issued since January 1, 2019, yet the Department has proposed to add "and maintained" to the pipe support requirements at N.J.A.C. 7:1E-2.4. As a practical matter, this will add to the administrative burden, as case managers are likely to require some sort of evidence of preventative maintenance

and/or inspections on the pipe supports. This is not addressed in the inspection requirements at N.J.A.C. 7:1E-2.10, which could lead to a conflict and miscommunication between the regulated community and the case managers. The Department should not amend this provision to include "and maintained." (2)

RESPONSE: Records of the inspection and repair of pipe supports, or any other equipment related to discharge prevention are required to be maintained pursuant to existing N.J.A.C. 7:1E-2.15(c)2. Maintenance of pipe supports would fall under the general category of repair. Accordingly, the Department does not agree that there will be any added burden.

118. COMMENT: The proposed amendments at N.J.A.C. 7:1E-2.15(a) and (d) make the current regulations more user friendly. However, there may be conflict between the regulated community and case managers if Department resources do not allow for facility inspections within a three-year time period, and major facilities have not retained the documentation since the previous inspection. (2)

RESPONSE: N.J.A.C. 7:1E-2.15(a) requires an owner or operator of a major facility to maintain records for three years after the relevant event, which could be an employee training drill, drill for discharge prevention, inspection of the cleanup and removal equipment, or a facility inventory. Likewise, N.J.A.C. 7:1E-2.15(d) makes clear that records of visual inspections be kept for a period of 10 years or the lifetime of the tank, whichever is shorter. The recordkeeping requirement does not begin to run on the date of the previous audit by the Department. The event triggers the timeline. Therefore, the timing of the inspection of a facility is irrelevant. Furthermore, the Department is adopting the proposed amendment of the rules that allows renewals to be conducted every five years, instead of every three years. As noted in the notice of

proposal Summary, the two additional years between renewals will afford the DPHS program time to perform more frequent compliance inspections. 56 N.J.R. at 840.

119. COMMENT: While monthly visual inspections of aboveground tanks containing hazardous substances sounds positive in theory, in practice, there will be confusion within the regulated community regarding the recordkeeping requirements for tanks that are greater than 2,000 gallons, and those that are less than 2,000 gallons. Based upon a review of DPCC violations issued from 2019 through March 2024, it appears that the regulated community already struggles with documenting visual inspections. In addition, it is unclear how facilities that store portable tanks such as isotainers are expected to comply with the requirement. By nature, these tanks are transient and may be on site for one day or over a year. These tanks are stored in stacks, moved multiple times during on-site storage, and there is not a practical means to document visual inspection of every isotainer in a secondary containment area. Additionally, these portable containers are subject to rigorous Department of Transportation inspection and testing requirements. (2)

RESPONSE: As intermodal containers are usually not meant to remain onsite and are regulated by the Department of Transportation, they are generally not required to be tested pursuant to the requirements at N.J.A.C. 7:1E-2.16. However, if the intermodal tank, with a capacity greater than 2,000 gallons, is a semi-permanent or permanent fixture at the facility, the Department may require integrity testing of the intermodal tank. Intermodal tanks are expected to follow the inspection protocols of the Department of Transportation. They will not be subject to the recordkeeping requirements at N.J.A.C. 7:1E-2.15 for aboveground storage tanks, unless they are semi-permanent or permanent fixtures. Additionally, intermodal tanks must also meet the visual

inspection requirements at N.J.A.C. 7:1E-2.10(a)5. Monthly visual inspections are not impractical. All areas are not required to be inspected within one business day. Instead, inspections may be completed within a calendar month.

120. COMMENT: The proposed rulemaking requires that records are "adequately retrievable in the event the original records are lost or destroyed," though there is no definition of "adequately retrievable." It is not clear whether "adequately retrievable" would include a facility's time and ability to hire an outside firm to retrieve the records in the event of a server failure or a cyber ransom attacks. Additionally, the fine narrative ("Failure to ensure records can be retrieved in event of loss or destruction") is not aligned with the regulatory text. The Department should clarify these issues upon adoption. (7)

121. COMMENT: The proposed amendments at N.J.A.C. 7:1E- 2.15(f) would require that records are "adequately retrievable in the event the original records are lost or destroyed." This requirement states that "records may be retained on microfilm or microfiche, or may be kept in an electronic or computerized format." As written, it appears as if facilities that maintain records only in hard copy form are not required to have backup documents available. The Department should clarify whether this was the intention. Further, there is no definition of "adequately retrievable." It is not clear whether "adequately retrievable" would include a facility's time and ability to hire an outside firm to retrieve the records in the event of a server failure or a cyber ransom attacks. Upon adoption, the Department should include a defined period of time in which the facility has to retrieve documents that may have been lost. Due to the potential for cyber security matters such as ransomware, a 60-day period would be appropriate. It should be noted, that of the 54 citations associated with recordkeeping that were issued since January 1, 2019,

none of them cited N.J.A.C. 7:1E-2.15(f). Further, the fine associated with a violation of this provision is listed as non-minor and does not have a grace period. Finally, the narrative of the fine is "Failure to ensure records can be retrieved in event of loss or destruction," but this is not what the regulation states. (2)

RESPONSE TO COMMENTS 120 AND 121: The Department agrees that the proposed amendment is ambiguous and does not reflect the intent. Upon adoption, the Department will change N.J.A.C. 7:1E- 2.15(f) to indicate that an owner or operator is required to maintain a copy of original records that is adequately retrievable, regardless of the format of the original record. The Department will not assign a time period or define "adequately retrievable." If ransomware is a concern, owners and operators should review their options to determine the most secure manner in which to maintain a copy of the records. The Department does not regard a violation of this provision as minor. This type of violation does not meet the essential criteria for being designated minor. First, this type of violation cannot be corrected. If the records have not been maintained, they cannot be recreated after the fact. Similarly, if the original documents are lost and they have not been adequately backed up, they cannot be recreated. Second, these violations undermine the regulatory goals of the program. For instance, records of tank integrity testing are needed to track the continuing useful life and overall condition of the tank. If the records are not kept, these goals cannot be met. Finally, as set forth in footnote two of the penalty table at N.J.A.C. 7:1E-6.8(c), the narrative in the "category of offense" column 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.

Annual Drill

122. COMMENT: Facilities are required to conduct a hands-on drill every other year. However, the Department should clarify whether a facility that does not clean up any spills and only calls the oil spill response organization (OSRO) is required to hold a hands-on drill every other year for the purpose of making agency and OSRO notifications. The Department should also clarify whether tabletop drills are acceptable to the Department every year. (11)

123. COMMENT: The Department should create an annual drill form to facilitate consistent documentation. (11)

RESPONSE TO COMMENTS 122 AND 123: Annual emergency response drills are meant to determine the currency and adequacy of, and personnel familiarity with, the emergency response action plan and DCR plan. Simulated drills are still required if mitigating measures, such as process or transfer shut-offs, are required as part of the response to a leak or discharge. These types of responses must be outlined in the facility's emergency response plan, and the DCR plan and personnel familiarity with them must be tested. Proposed N.J.A.C. 7:1E-4.3(b)4iv, provides a general outline for a form. The Department does not require a specific outline and does not believe a globalized annual drill form must be created. Therefore, the Department is not changing the requirement to conduct a hands-on drill every other year.

124. COMMENT: Proposed N.J.A.C. 7:1E-4.3(b)4 will clarify that emergency response drills must be completed at least once per calendar year. Regarding the drill requirements, the preamble states that "the Department does not consider a general fire or evacuation drill to meet the requirements of the annual DCR emergency response drill." However, there are facilities that evacuate and contact a Discharge Cleanup Organization in the event of any spill or leak. This should be accounted for in the regulation. The Department's proposed amendment at N.J.A.C.

7:1E-4.3(b)4i through iv breaks the drill requirements into separate line items, which should make compliance with all aspects of the regulation clearer. (2)

RESPONSE: Unless the fire or evacuation drill covers mitigating measures, notifications, and cleanup (if conducted by the facility), they do not meet the requirements for an annual emergency response drill required at N.J.A.C. 7:1E-4.3(b)4. In the case of a facility that evacuates and contacts a Discharge Cleanup Organization in the event of a spill or leak, the facility is still required to have a hands-on drill to enact everything that their operators and staff are responsible for, such as identification of spill/discharge, notifications, shutdowns, and evacuation. The Department recommends including the Discharge Cleanup Organization and other applicable outside response organizations.

Electronic Submittal of Documents

125. COMMENT: The Department should adopt the proposed amendment that would allow electronic submission of documents. To further streamline submittal of documents, the Department should allow consultants access, on behalf of major facilities, to upload final plans to the Department's One Drive and submit electronic submittals through the Department's portal or by other means designated by the Department. (11)

126. COMMENT: The Department should clarify whether consultants will be allowed to create Discharge Confirmation Reports (DCRs), or other required submissions, within the Department's online system, which will then be certified by the facility's highest ranking individual, similar to what the Department allows in other programs. (11)

RESPONSE TO COMMENTS 125 AND 126: The Department acknowledges that there is general support for the provision allowing electronic submission of documents. The Department

is in the process of developing the online submittal portal and will consider whether the system will have the ability to grant access to individuals outside of the facility access.

Certification

127. COMMENT: The Department should clarify whether certifications of electronic submittals will require the purchase of third-party software by all certifiers (responsible official, licensed land surveyor, off-site response measures and/or New Jersey professional engineer) and associated costs. (11)

RESPONSE: The Department is currently developing an online portal similar to those used by other Department programs. At this time, the Department does not anticipate associated subscription fees for owners or operators of major facilities.

Emergency Response/Hazardous Substance List

128. COMMENT: The Department's current policy of requesting that the DPCC plan includes an exhaustive list of all hazardous substances stored at a facility is unnecessarily restrictive. A general list detailing the types of hazardous substances a facility stores should be more than sufficient when developing appropriate emergency response procedures. Requiring more detailed information from major facilities constrains their activities and exposes them to additional enforcement actions. As changes are made to the list of hazardous substances, plans will need to be amended in accordance with N.J.A.C. 7:1E-4.2(c)3iii to add new compounds to the plan. This is not a good use of Department or facility resources. (2)

129. COMMENT: The Department's current policy of requesting that the plan include all hazardous substances stored at the facility is unnecessarily restrictive. A list of the hazard classes should be more than sufficient when developing appropriate emergency response procedures. (7)

RESPONSE TO COMMENTS 128 AND 129: The Department did not propose to amend the rules with respect to the requirements for identification of hazardous substances. Therefore, the comments are beyond the scope of the proposed rulemaking. Nevertheless, the Department disagrees with the commenters' contentions that a list of hazard classes would be sufficient for emergency response, mitigation, cleanup, and remedial purposes.

Confidentiality Provisions

130. COMMENT: The proposed rules repeal provisions that set forth the process that the Department must follow to make a class confidentiality determination. DPCC/DCR information is considered confidential as these plans are not available for public review, which potentially creates confusion. Further, this was not discussed at all during the February 2019 stakeholder meeting. (7)

RESPONSE: As explained in the notice of proposal Summary, the Department is repealing N.J.A.C. 7:1E-8.9 and 8.10, which set forth the process for making a class confidentiality determination, for documents submitted pursuant to the Discharges of Petroleum and Other Hazardous Substances rules. However, those rule provisions were adopted by the Discharges of Petroleum and Other Hazardous Substances program prior to the passage of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and the adoption of the Department's General Practice and Procedure rules at N.J.A.C. 7:1D-3. By repealing the prior class confidentiality rules and determinations, the Discharges of Petroleum and Other Hazardous Substances program has

not made any determination as to the confidential status of some or all of the documents previously covered pursuant to the class confidentiality determinations. The program is only changing the manner in which a confidentiality determination is made and ensuring there are no conflicts with more recent legislation and/or rules. To be clear, N.J.A.C. 7:1D-3.2(b)7 provides that the Department shall not disclose records, including DPCC and DCR plans and related general site plans, if the Department determines that disclosure would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism. Requests for confidentiality may still be made pursuant to N.J.A.C. 7:1E-8, Confidentiality Determinations, which will be reviewed in accordance with the provisions at N.J.A.C. 7:1E-8 and 7:1D-3.

Storage Space

131. COMMENT: N.J.A.C. 7:1E-2.6(c)6 refers to the storage of incompatible container materials in a single containment area without specifying the distance between incompatible materials or the likelihood or actual potential for those incompatible materials to discharge into that secondary containment. Upon adoption, the Department should clarify that the proposed rules do not require physically separate warehouse or storage space for incompatible materials. (2)

132. COMMENT: The Department should revise the language at N.J.A.C. 7:1E-2.6(c)6 to ensure that it is clear that physically separate warehouse/storage space is not required for incompatible materials. (7)

RESPONSE TO COMMENTS 131 AND 132: The Department did not propose to amend the language at N.J.A.C. 7:1E-2.6(c)6, which refers to the storage of incompatible container materials in a single containment. Therefore, the Department will not clarify the language upon adoption. Nonetheless, the Department notes that the language at N.J.A.C. 7:1E-2.6(c)6 is not ambiguous: "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." The requirement for a physically separate space will depend on whether there is a substantial likelihood of them mixing in the event of leakage. Each major facility must assess this based upon the relevant factors unique to their site.

Penalties

133. COMMENT: The Department should increase the fine for facilities that are acting as a major facility without a DPCC and DCR plan to allow those facilities who have acted properly and who have taken the time and expended the cost to develop and implement a compliant plan to have a fair bargaining position when it comes to their business operations. (2)

RESPONSE: As set forth in the notice of proposal Summary, the Department proposed to delete N.J.A.C. 7:1E-4.5(b) and its corresponding penalties, because it contained deadlines that were obsolete. See 56 N.J.R. at 842. The Department also proposed to amend N.J.A.C. 7:1E-4.5(a) and a corresponding penalty for the failure of a major facility to submit DPCC and DCR plans. *Id*. The newly proposed penalty did increase the penalty for the same violation, which was previously found at N.J.A.C. 7:1E-4.5(b). *Id*. To be clear, the owner or operator of any operation

meeting the definition of a major facility is subject to penalty pursuant to N.J.A.C. 7:1E-4.5(a) if they have failed to submit DPCC and DCR plans prior to operating as a major facility.

134. COMMENT: Many areas of the fine schedule have been broken down. Where one fine would have been issued in the past, it is proposed to be broken down into many separate components. One example of this is the Department's proposal to separate the integrity testing fines into a per tank, per integrity testing, per inspection component basis, and establish individual fines. If a facility has an integrity test that goes wrong on a tank, the burden to replace that tank is significant. Coupling that financial cost with fines and penalties for each element of the integrity test that is not completed or may have been stopped because another element already identified that the tank has failed would be an onerous burden on a facility. As a general comment, many of the proposals include breaking compound sentences within a regulation into separate points to make it easier for the regulated community to comply. The current structure at N.J.A.C. 7:1E-2.16(l) introduces a new compound sentence with three separate parts with three individual fines. This runs counter to the efforts made in other sections of the rulemaking. (2) RESPONSE: The Department believes that the proposal to amend the penalties to break them down into smaller parts in the penalty table is a more targeted approach. By breaking the penalties into more specific provisions, owners and operators can better understand the potential penalty for failing to meet each specific requirement, as set forth in the referenced testing standards. For example, when it comes to integrity testing, the penalties have been assigned when there is a failure to meet a specific component, rather than assessing a larger penalty for failing to conduct the inspection. The Department proposes a penalty on a per tank basis as it is a

more appropriate deterrent. The penalty for failing to inspect one tank and the penalty for failing to inspect 20 tanks should not be weighted equally.

As mentioned by the commenter, newly adopted N.J.A.C. 7:1E-2.16(l), Integrity testing, is in paragraph format and non-compliance with this new provision is addressed as three separate line items in the revised penalty table at N.J.A.C. 7:1E-6.8(c)4. The commenter states that this is not consistent with other sections of the rules, such as the restructuring of the paragraph at N.J.A.C. 7:1E-4.3(b)4 into subparagraphs. The Department proposed to restructure the provision at N.J.A.C. 7:1E-4.3(b)4 to include subparagraphs to provide a list of requirements that is easier to follow. The Department determined that the paragraph at N.J.A.C. 7:1E-2.16(l), is not as lengthy or complex as N.J.A.C. 7:1E-4.3(b)4, and, therefore, does not require subparagraphs for ease of use.

135. COMMENT: There are several general items concerning the proposed amendments to the penalties and fines that the Department should clarify. Specifically:

1. The Department proposed to delete N.J.A.C. 7:1E-2.2(d)3, but the corresponding fine has not been deleted;

2. The Department has identified N.J.A.C. 7:1E-2:14(g) as a non-minor offense, but it has a grace period associated with it. Given there is a grace period established, this should be reclassified to a minor offense;

3. Pursuant to proposed N.J.A.C. 7:1E-2.16(e), the violations associated with the API 653 inspections are identified as non-minor while the violations associated with SP001 lack a designation. This is seemingly inconsistent;

4. Since the fines for N.J.A.C. 7:1E-6.5(a)2 and 3 are proposed to be the same, it seems that N.J.A.C. 7:1E-6.5(a)3 can be deleted. (2)

136. COMMENT: The Department should confirm that the fines currently associated with N.J.A.C. 7:1E- 2.2(d)3 and 6.5(a)3 are proposed to be deleted. (7)

RESPONSE TO COMMENTS 135 AND 136: The Department will revise the penalty table to reflect that it has addressed these errors. Specifically, the fine for N.J.A.C. 7:1E-2.2(d)3 will be deleted; the grace period for N.J.A.C. 7:1E-2.14(g) will be deleted; and the designation of "NM" will be added for N.J.A.C. 7:1E-2.16(e) for SP001.

At N.J.A.C. 7:1E-6.5(a)1, 2, and 3, the rule provides ranges for which the Department may assess a civil administrative penalty for first, second, and third or subsequent offenses of penalties outlined at N.J.A.C. 7:1E-6.8(c)2, 3, 4, and 5. Although some penalties in the table for second and third or subsequent offenses are assigned the same dollar amount, not all are. Therefore, N.J.A.C. 7:1E-6.5(e)2 and 3 will remain to maintain consistency with the overall structure of the penalty table.

137. COMMENT: The Department should not impose penalties on a facility that fails to submit a CR plan, given the mitigation measures identified in the plan are not required to be implemented and the program serves no purpose. (2)

RESPONSE: As discussed in the Response to Comments 40 through 68, the Department is not adopting the originally proposed provision requiring a major facility to submit a separate CR plan. Any failure to submit the information required for the DPCC/DCR plan shall be subject to penalty pursuant to N.J.A.C. 7:1E-4.5(a) in the penalty table.

138. COMMENT: The Department proposes to double fines for noncompliance to address inflation and reflect the current value of the dollar. However, to determine an appropriate fine, it must be set at an amount that is necessary to incentivize compliance and deter negative behavior. The Department offers no evidence that the new amount will achieve those objectives, or whether similar results can be achieved through fines set at lower amounts. Moreover, it is important to note that compliance is also a function of publicity and corporate policy and standards and not solely a result of the deterrent effect of fines. While the fine levels proposed may be appropriate, the Department should analyze if they will improve compliance or if the same compliance can be achieved at lower dollar thresholds. (1 and 4)

139. COMMENT: The Department has not provided a financial basis to justify the proposal to double all of the existing fines. Further, some violations that previously fell under a single fine may now be subject to multiple separate penalties. (9)

140. COMMENT: The Department should address the concerns of the regulated community about the proposed increase in the number and size of the fines. (3)

RESPONSE TO COMMENTS 138, 139, AND 140: As explained in the notice of proposal Summary, the Department has not increased the penalties since the inception of the program more than 30 years ago. See 56 N.J.R. at 842. The overall increase in penalty amounts is consistent with the value of a dollar, based on the Consumer Price Index. *Id*.

Summary of Agency-Initiated Changes:

1. The Department will not adopt the proposed amendments at N.J.A.C. 7:1E-1.7(a), (c), and (d) at this time. Pursuant to the proposed amendments, any changes made to the source lists identified in the Spill Act would have automatically been incorporated into the Department's list

of hazardous substances. The intent of the proposed amendment was to ensure that the Department's list of hazardous substances remains up to date. Additionally, the proposed amendments would have required the Department to provide notification of changes to the list of hazardous substances through a published notice of administrative change or rulemaking, depending on the type of addition or removal. Several commenters raised concerns about the potential for confusion, the mechanism for notice, the timing for compliance (grace period), and the potential added regulatory burden. Accordingly, the Department will give further consideration to the matter to determine whether a regulatory change is necessary or if the process currently utilized to add compounds to or remove compounds from N.J.A.C. 7:1E Appendix A is sufficient. Given that the Department is able to add and remove compounds using the existing process, there will be no harm to the regulated community or the environment if the proposed amendments at N.J.A.C. 7:1E-1.7(a), (c), and (d) are not adopted. The Department will continue to consider potential amendments to determine whether a revision would provide greater consistency with the source lists identified in the Spill Act.

2. The Department will not adopt the proposed nominal concentration provisions at N.J.A.C. 7:1E-1.12 and its references at N.J.A.C. 7:1E-1.6, 4.2(e), 4.3(c), 4.10(h), and 4.11(a) and (b) at this time, in order to further evaluate whether it is appropriate to streamline the process or pursue an alternative. Additionally, the Department will not adopt the provisions that would have rescinded any previously granted hazardous substance exemptions granted by the Department. At this time, the Department will consider whether it is possible to adequately protect human health and the environment through an alternative approach to nominal concentrations. As the Department will not be rescinding any existing exemptions previously

granted, facilities will not be harmed by not adopting this portion of the proposed rulemaking. The Department will continue to work with stakeholders to address this long-standing concern.

3. The Department will not adopt proposed new N.J.A.C. 7:1E-4.12, the proposed definition of "CR plan" at N.J.A.C. 7:1E-1.6, Definitions, or the reference to "climate resiliency plans" at N.J.A.C. 7:1E-4.1, Scope. The intent of the proposed CR plan provisions was to promote resiliency planning, while leaving implementation of this planning to the discretion of each major facility. Commenters raised concerns about the Department's authority, the potential duplication of efforts, the potential for confusion about implementation and renewal, as well as cost. At this time, the Department will consider whether it is possible to promote resiliency through an alternative approach. There will be no harm to the regulated community or the environment if the proposed amendments are not adopted since the implementation of resiliency planning was proposed to be left to the discretion of the regulated facilities. The Department will continue to consider potential amendments to promote resiliency planning in the future.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), requires State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The adopted amendments, repeals, and new rules at N.J.A.C. 7:1E are not promulgated pursuant to the authority of or in order to implement, comply with, or participate in any program established pursuant to Federal law, or State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. However, there are comparable Federal standards or requirements. The majority of these Federal regulations, including the Oil Pollution Prevention rules (40 CFR 112) and various

U.S. Coast Guard rules (33 CFR 126 and 150 through 156), have been promulgated pursuant to the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Their purpose is to prevent pollution of surface waters by petroleum and petroleum products. Rules concerning the reporting of discharges of hazardous substances other than petroleum and petroleum products into the environment (40 CFR 304) have been promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act. The Department's analysis has shown that the proposed amendments exceed standards established by the Federal regulations for discharge reporting.

Pursuant to 40 CFR 302, reportable quantities (also referred to as RQ) are established at the Federal level for the reporting of discharges to the environment. The adopted rules do not include reportable quantities. It would be very difficult, if not impossible, for the Department to establish a reportable quantity for every substance set forth at N.J.A.C. 7:1E Appendix A. The circumstances of the discharge, such as the concentration of hazardous substance involved and whether it is to land or water, affect the impact that a discharge will have. The EPA acknowledged this in its proposal of reportable quantities. In the summary accompanying proposed 40 CFR 302 in 1983, the EPA stated, "The different RQ levels do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release, and extensive scientific data and analysis would be necessary to determine the hazard presented by each substance in a number of plausible circumstances. Instead, the RQs reflect the Department's judgment that the Federal government should be notified of releases to which a response may be necessary. The reportable

quantities, in themselves, do not represent any determination that releases of a particular size are actually harmful to public health or welfare or the environment."

Rather than establishing reportable quantities, the Department requires the reporting of all discharges, except those outlined at proposed N.J.A.C. 7:1E-5.3(e), so that it can ensure that the proper actions are being taken to protect the public health and welfare and the environment. Discharges to which the owner or operator is competent to respond do not have to be reported immediately by telephone. The records that are required to be kept will still enable the Department to ensure that the proper action was taken in response to the discharge. The cumulative effect on the environment of discharges across the State, past and present, can be better assessed when information on all discharges is available.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

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.

…

["CR plan" means the climate resiliency plan required pursuant to N.J.A.C. 7:1E-4.]

…

["Nominal concentration" means a concentration of hazardous substance in a mixture that is less than one percent of the mixture, or less than 0.1 percent of the mixture in the case of a toxic chemical that is a carcinogen as defined by Occupational Safety Hazard Administration's (OSHA) Hazard Communication Standards (HCS).]

…

7:1E-1.7 Hazardous substances

[(a) Except as provided at (b) below, hazardous substances shall include all hazardous substances as defined at N.J.S.A. 58:10-23.11b, petroleum and petroleum products, and all substances listed at N.J.A.C. 7:1E Appendix A, incorporated herein by reference.]

(a) Petroleum and petroleum products and all substances listed at N.J.A.C. 7:1E Appendix A, incorporated herein by reference, shall be considered hazardous substances, except that sewage and sewage sludge shall not be considered as hazardous substances.

(b) (No change from proposal.)

*[(c) The list of hazardous substances pursuant to (a) and (b) above is set forth at N.J.A.C. 7:1E Appendix A, and maintained on the Department's website at https://www.nj.gov/dep/enforcement/dp/dpdown.htm. When a substance is added to, or removed from, a source or list identified in the definition of "hazardous substances" at N.J.S.A. 58:10-11b, or there is a change to a CAS number or special designation, the Department will update its website and publish a notice of administrative change in the New Jersey Register to similarly change N.J.A.C. 7:1E Appendix A. The notice will provide the name or category of the substance and its CAS number, if any, and any asterisk designation as provided at (b)2 and 3 above.

(d) In the event that there is an inconsistency among the sources or lists identified in the definition of "hazardous substances" at N.J.S.A. 58:10-11b, the more stringent substance listing shall prevail (for example, if one source identifies a substance as hazardous and another does not, the Department will consider the substance hazardous for purposes of this chapter).]*

SUBCHAPTER 2. PREVENTION AND CONTROL OF DISCHARGES AT MAJOR FACILITIES

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 at N.J.A.C. 7:13-*[3.3]***3*** shall be adequately protected so as to prevent such hazardous substances from being carried off by or being discharged into flood waters.

(b) (No change.)

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. (No change.)

2. Once daily for integrity and leaks, all *[non-impermeable]* ***not impermeable*** secondary containment systems and diversion systems for aboveground storage tanks, and the aboveground storage tanks within these systems;

3. - 6. (No change from proposal.)

(b) (No change.)

7:1E-2.15 Recordkeeping

(a)-(e) (No change from proposal.)

(f) *[Records may be retained on microfilm or microfiche, or may be kept in an electronic or computerized form if they are]* ***In the event of the loss or destruction of an original record, the owner or operator shall maintain a copy of the records in a format that is*** adequately retrievable *[in the event the original records are lost or destroyed]*, ***such as an electronic format like a server or cloud, or a second set of hard copies located in a separate space***.

7:1E-2.16 Integrity testing

(a)-(k) (No change from proposal.)

(l) *[The]* ***Within 120 days of receipt of the completed tank integrity test report or checklist or before an out-of-service tank is placed in service, whichever is later, the*** owner/operator shall review the inspection findings and recommendations *[within 90 days of receipt of the completed tank integrity test report or checklist]*, establish a repair scope, if needed, and determine the appropriate timing for repairs, monitoring, and/or maintenance activities. The owner/operator shall implement the repair schedule, document, in writing, the

disposition of all recommended repairs and monitoring, and provide reasons for recommended actions that are delayed or deemed unnecessary.

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*[, and climate resiliency 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)-(b) (No change from proposal.)

(c) The DPCC plan shall include, at a minimum, the following technical information, in the following order or indexed to this order:

1.-2. (No change.)

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

i. (No change.)

ii. The type*[,]* ***and*** size*[, and maximum number]* of containers *[that can be stored]* ***and storage capacity*** in each storage area; and

iii. (No change.)

4.-15. (No change from proposal.)

(d) (No change.)

*[(e) If the Department approves a nominal concentration request submitted pursuant to N.J.A.C. 7:1E-1.12, then the facility's owner or operator shall prepare and implement an unabridged DPCC plan pursuant to N.J.A.C. 7:1E-4.5 or an abridged DPCC plan containing:

1. The following general information:

i. The name, telephone number, and location of the facility, including street and mailing address, county, municipality, and tax lot and block number;

ii. The name(s), telephone number(s), and business address(es) of the owner or operator of the facility;

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

iv. The name and business address of the owner's or operator's registered agent, if applicable;

v. A brief description of the facility;

vi. A general site plan, in the format prescribed at N.J.A.C. 7:1E-4.10(a), or an alternative in accordance with N.J.A.C. 7:1E-4.10(h);

vii. The anticipated date on which the facility will become operational as a major facility; and

viii. A list of discharges that have occurred at the facility in the 36 months preceding the date of the plan submission pursuant to N.J.A.C. 7:1E-4.2(b)11;

2. Technical information, in the following order or indexed to this order:

i. Tank identification, such as name or number, and location pursuant to (c)1i above;

ii. Material of construction and tank orientation, whether horizontal or vertical, pursuant to (c)1ii above;

iii. Tank size and contents pursuant to (c)1iii above;

iv. A description of underground storage tanks, addressing all standards at N.J.A.C. 7:1E-2.2, pursuant to (c)2 above;

v. A description of all other storage, not covered at (e)2i, ii, iii, or iv above, addressing all standards at N.J.A.C. 7:1E-2.2, pursuant to (c)3 above;

vi. A description of any tank car or tank truck loading/unloading area, addressing all standards at N.J.A.C. 7:1E-2.3, pursuant to (c)4 above;

vii. A description of in-facility pipes, including location and identification, such as name or number, the marking system used, and procedures for minimizing the chance of a vehicular collision with overhead pipes addressing the standards at N.J.A.C. 7:1E-2.4, pursuant to (c)5i, ii, and v above;

viii. A description of process areas, addressing all standards at N.J.A.C. 7:1E-2.5, pursuant to (c)6 above;

ix. A description of all secondary containment or diversion systems, addressing all standards at N.J.A.C. 7:1E-2.6, pursuant to (c)7 above;

x. 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 addressing the standards at N.J.A.C. 7:1E-2.9, pursuant to (c)9 above;

xi. A description of all visual inspection and monitoring procedures addressing the standards at N.J.A.C. 7:1E-2.10, pursuant to (c)10 above;

xii. 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 addressing the standards at N.J.A.C. 7:1E-2.12, pursuant to (c)12 above; and

xiii. A current index of all standard operating procedures that have been written pursuant to N.J.A.C. 7:1E-2.14, as prescribed at (c)14 above.]*

7:1E-4.3 Discharge cleanup and removal plan

(a) (No change.)

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

1.-3. (No change from proposal.)

4. Provisions for a simulated emergency response drill conducted at least once per calendar year to determine the currency and adequacy of, and personnel familiarity with, the emergency response plan and this DCR plan. When possible, this annual drill can be combined with other emergency response drills. This drill shall:

i. (No change from proposal.)

ii. Be based on *[different]* ***distinct, realistic*** scenarios from year to year *[in order to address all anticipated emergency response scenarios]****, ranging from best- to worst-case scenarios,*** involving hazardous substances ***stored, handled, processed, or transferred*** at ***various locations throughout*** the facility***. Facility owners and operators shall avoid repeating drills in the same storage, process, handling or process area in consecutive years. Worst-case scenarios shall be exercised occasionally***;

iii.-iv. (No change from proposal.)

5.-11. (No change from proposal.)

*[(c) If the Department approves a nominal concentration request submitted pursuant to N.J.A.C. 7:1E-1.12, then the facility's owner or operator shall prepare and implement an abridged DCR plan containing, at a minimum, the following information, in the following order or indexed to this order:

1. The name, title, email address, and 24-hour business telephone number of the facility's response coordinator or alternate pursuant to (b)1 above;

2. Notification procedures, pursuant to N.J.A.C. 7:1E-5;

3. Provisions for an annual simulated emergency response drill pursuant to (b)4 above;

4. 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 pursuant to (b)5 above;

5. 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 pursuant to (b)6 above;

6. On-site response measures pursuant to (b)7 above, including response to leaks, and the types and sizes of discharges that facility personnel will respond to; and

7. 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 N.J.A.C. 7:1E Appendix B.]*

7:1E-4.9 DPCC and DCR plan renewals

(a) At least once every five years following approval or conditional approval of the DPCC and DCR plans, the owner or operator shall renew the DPCC and DCR plans *[and CR plan]*. One copy of the renewal shall be submitted electronically or in hard copy, as the Department directs. Hard copies, if required, shall be submitted to the address at 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)-(e) ((No change from proposal.)

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

7:1E-4.10 Mapping criteria

(a) (No change.)

(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.-3. (No change.)

4. Locate and label all arterial and collector sewers, storm sewers, catchment or containment systems or basins, diversion systems, watercourses into which surface water run-off from the facility drains, and ***, on or after June 16, 2025,*** the direction of surface water run-off ***shall be labeled on DLU maps submitted as part of any newly filed DPCC and DCR plans or amended DPCC and DCR plans***.

(c)-(g) (No change from proposal.)

*[(h) The owner or operator of a major facility with an approved nominal concentration request may substitute an alternate method of displaying the site, if such alternate method delineates the

items required at (a)1 and 2 above, and provides the facility's coordinate centroid in New Jersey State Plane feet (North American Datum 1993). One such alternative for general site plans includes the scanning of the existing general site plan to produce a digital image for submission to the Department.]*

7:1E-4.11 Certifications

(a) Any person who submits summary test results, the DPCC and DCR plans, *[a CR plan,]* plan amendment, plan renewal, confirmation report, ***or*** transmission pipeline registration*[, or nominal concentration request,]* to the Department shall include, as an integral part of the summary test results, plan, plan amendment, plan renewal, confirmation report, ***or*** transmission pipeline registration*[, or nominal concentration request]* 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 at (a) above, any person who submits *[a]* DPCC and DCR plans, *[a CR plan,]* plan amendment, plan renewal**, *or*** transmission pipeline registration*[, or nominal concentration request]* to the Department shall include, as an integral part of the plan, plan amendment, plan renewal**, *or*** transmission pipeline registration*[, or nominal

concentration request]*, 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 at (b) above shall be signed by the ranking official at a level of authority to commit the necessary resources to fully implement the DPCC and DCR plans, *[the CR plan,]* plan amendment, plan renewal**,** or transmission pipeline registration.

(d)-(g) (No change from proposal.)

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(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 this chapter.

1. (No change from proposal.)

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 set forth in the following table, unless revised pursuant to (d) below:

Category of Offense[2]	Citation	First Offense	Second Offense	Third or Subsequent Offense	Minor[3]	Minor Days[4]
(No change from proposal.)						
Failure to provide adequate lighting	2.13(a)	$*[$]*10,000	$20,000	$50,000	NM	
…						
Failure to establish standard operating procedures (SOPs)	2.14(a)	$4,000	$8,000	$*[$]*20,000	NM	
…						

*[Failure to equip storage tanks with fast response systems (No change from proposal.)	2.2(d)3	$10,000	$20,000	$50,000	M	30]*
…						
Failure to incorporate modifications of procedures into the SOPs prior to implementation	2.14(g)	$1,000	$2,000	$5,000	NM	*[30]*
…						
SP001: (All Categories)						
AST record		$ 1,000	$ 2,000	$ 4,000	***NM***	

Periodic (Monthly and Annual Inspections)		$ 1,000	$ 2,000	$ 4,000	***NM***
Formal external inspection		$ 2,000	$ 4,000	$10,000	***NM***
Leak test		$ 2,000	$ 4,000	$10,000	***NM***
Formal internal inspection		$ 4,000	$ 8,000	$20,000	***NM***
Failure to follow API 510 or ASME VIII for shop-built tank	2.16(e)2	$ 2,000 The above penalties shall apply for other requirements of the API 510 or ASME VIII not otherwise specified below. Penalty assessed	$ 4,000	$10,000	NM

		on a per tank and per testing/inspection component basis, as listed:			
Formal external inspection		$ 2,000	$ 4,000	$10,000	NM
Formal internal or on-stream inspection		$ 4,000	$ 8,000	$20,000	NM
...					
*[Failure to renew CR plan	4.9(a)	$ 2,000	$ 4,000	$ 8,000	NM]*
...					
*[Failure to submit an initial CR plan	4.12(e)	$10,000	$20,000	$50,000	NM

Failure to submit an initial CR plan for a newly designated major facility	4.12(f)	$10,000	$20,000	$50,000	NM
Failure to submit an initial CR plan for a new major facility	4.12(g)	$10,000	$20,000	$50,000	NM]*