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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL MANAGEMENT

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

Worker and Community Right to Know Regulations

Readoption: N.J.A.C. 7:1G with technical changes.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1D-125 et seq., 26:2C-1 et seq., N.J.S.A.34:5A et seq.

Authorized by: Bob Martin, Commissioner, Department of Environmental Protection.

Effective Date: November 13, 2013

New Expiration Date: November 13, 2020

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the Worker and Community Right to Know Regulations at N.J.A.C. 7:1G are readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on December 13, 2013. The Department of Environmental Protection has reviewed these rules and has determined that the rules should be readopted with technical changes that update contact information, and correct cross-references. The rules are necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1, these rules are readopted and shall continue in effect for a seven-year period.

The rules implement the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., through a comprehensive program for the annual disclosure by employers having business activities with certain specified North American Industry Classification System (NAICS) codes, on the Community Right to Know Survey, their inventories of environmental hazardous substances that meet or exceed thresholds established in

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the rules. The rules also implement the requirements of the Federal Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 et seq., codified at Title III of the Federal Superfund Amendments and Reauthorization Act (SARA Title III), and its implementing regulations at 40 CFR 372, which require certain regulated employers to submit a toxic chemical release form (Form R or Form A) to the United States Environmental Protection Agency. In addition to reporting the release information required on Form R, regulated employers are required to report annual throughput data and pollution prevention information on the New Jersey reporting form, known as the Release and Pollution Prevention Report.

Full text of the adopted technical changes follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. GENERAL PROVISIONS

7:1G-1.2 Definitions

“Department” means the New Jersey Department of Environmental Protection, however, for the purpose of N.J.A.C. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and the State Department of Health ***[and Senior Services]***, unless otherwise indicated.

SUBCHAPTER 2. ENVIRONMENTAL HAZARDOUS SUBSTANCE LIST

7:1G-2.1 Designation of Environmental Hazardous Substances (EHSs)

(a) The list of EHSs shall be comprised of the substances listed below:

1. – 4. (No change.)

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5. Any hazardous substance added to the list of chemicals subject to pollution prevention

planning pursuant to N.J.A.C. 7:1K-3.*[5]* *6*; and

(b)–(c) (No change.)

SUBCHAPTER 3. COMMUNITY RIGHT TO KNOW SURVEY

7:1G-3.2 Reporting Exemptions

(a) EHSs meeting any of the following criteria are exempt from chemical inventory reporting on the Community Right to Know Survey:

1. (No change.)

2. EHSs located within a research and development laboratory as defined in N.J.A.C. 7:1G-1.2 and used for R & D activities are exempt from reporting on the Community Right to Know Survey provided the employer has obtained a research and development laboratory exemption from the Department, which may be obtained in accordance with the following procedure:

i. – ii. (No change.)

iii. An approved research and development laboratory exemption may be reviewed by the Department from time to time to ascertain continued eligibility for the exemption. The Department may require clarifying information pursuant to N.J.A.C. 7:1G-*[1.5]* *5.2* or inspect the R&D laboratory pursuant to N.J.A.C. 7:1G-1.5 for this purpose. The Department may rescind an approved R&D laboratory exemption if the employer is found not in compliance with the conditions stated on the R&D laboratory exemption approval letter issued by the Department.

3. – 6. (No change.)

(b)-(i) (No change.)

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SUBCHAPTER 6. TRADE SECRETS

7:1G-6.1 Authority

(a) (No change.)

(b) This subchapter is a jointly adopted rule of the Department of Environmental Protection and the Department of Health *[and Senior Services]* (see N.J.A.C. 8:59-3).

7:1G-6.3 Definitions

“Department” means, for the purposes of this subchapter, both the New Jersey Department of Health *[and Senior Services]* and the New Jersey Department of Environmental Protection, unless otherwise indicated.

7:1G-6.4 General Provisions

(a)–(d) (No change.)

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program

New Jersey Department of Health *[and Senior Services]*

PO Box 368

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Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, Office of Pollution Prevention and Right to Know

New Jersey Department of Environmental Protection

Mail Code 22-03C

PO Box *[405]* ***420***

Trenton, NJ 08625-*[0405]* ***0420***

(f)-(l) (No change.)

7:1G-6.7 Confidentiality and Security of Trade Secret Information

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

(f) Except as provided in N.J.A.C. 8:59-3.15 (6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over pre-hearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of

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Environmental Protection or the Department of Health *[and Senior Services]* pursuant to N.J.A.C. 1:21.

(g)-(h) (No change.)

7:1G-6.8 Decision-Making Agency on a Trade Secret Claim

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

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health *[and Senior Services]* and the Department of Environmental Protection.

7:1G-6.13 Appeal of Determination

(a) If the Department denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the Department's determination to file with the Department a written request for an administrative hearing on the determination. Such request shall be filed with the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Request, Department of Environmental Protection, *[CN 402,]* ***Mail Code 401-04L, 401 East State Street, Seventh Floor***

Trenton, New Jersey 08625-0402.

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

SUBCHAPTER 7. ISSUANCE OF ADMINISTRATIVE ORDERS AND NOTICES OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

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7:1G-7.3 Procedures for the Issuance of Administrative Orders and Notices of Civil

Administrative Penalty Assessments

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

(c) The alleged violator shall have 20 calendar days from receipt of the Administrative Order and/or Notice of Civil Administrative Penalty Assessment within which to deliver a written request for an adjudicatory hearing to:

Office of Legal Affairs

Attention: Adjudicatory Hearings

Department of Environmental Protection

[CN 402]

***P.O. Box 402**

Mail Code 401-04L

401 East State Street, Seventh Floor*

Trenton, New Jersey 08625-0402