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ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

ENVIRONMENTAL SAFETY AND QUALITY ASSURANCE

Notice of Readoption

Toxic Catastrophe Prevention Act Program

Readoption with Technical Changes: N.J.A.C. 7:31

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

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

Effective Date: January 8, 2016.

New Expiration Date: January 8, 2023.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the Toxic Catastrophe Prevention Act Program rules at N.J.A.C. 7:31 are readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on February 9, 2016. The Department of Environmental Protection (Department) has reviewed these rules and has determined that the rules should be readopted with technical changes discussed below because they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

The Toxic Catastrophe Prevention Act rules (TCPA rules) implement the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq. (the Act), which became effective in 1986. The goal of the Act is to protect the public from catastrophic accidental releases of

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

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

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

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The rules are readopted with technical changes to update the Department contact information and to correct cross-references.

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

7:31-1.8 Document availability

(a) Copies of the CFR (40 CFR Part 68) as adopted and incorporated by reference are available for review. Publications incorporated by reference within the Code of Federal regulations are also available for review. These may be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection

Bureau of Release Prevention

PO Box [424] **420, Mail Code 22-03D**

Trenton NJ 08625-[0424]**420**

Telephone (609)633-061[9]**0**

(b) – (c) (No change.)

7:31-8.1 Incorporation by reference

(a) – (b) (No change.)

(c) The following provisions are incorporated by reference with the specified changes:

1.-8. (No change.)

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9. 40 CFR 68.220(g) replace this provision with "If the Department and owner or operator reach agreement on the RMP and risk management program, the owner or operator shall enter into a consent agreement (or consent agreement addendum for previously approved risk management programs) with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement or consent agreement addendum. The consent agreement or consent agreement addendum shall be signed by the owner or operator or his/her representative and by the Chief of the Bureau of [Chemical] Release [Information and] Prevention or his/her supervisor. If the owner or operator has not signed a consent agreement or consent agreement addendum within 120 days of receipt of the preliminary determination, the Department shall prepare and send an administrative order. The administrative order may adopt or modify the revisions contained in the preliminary determination under 40 CFR 68.220(e) with changes specified at N.J.A.C. 7:31-8.1(c)6 or may modify the substitute revisions provided in the response under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c)7-8. An administrative order that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. An administrative order that fails to adopt a substitute revision provided under 40 CFR 68.220(f) with changes specified at N.J.A.C. 7:31-8.1(c) 7-8 shall include an explanation of the basis for finding such substitute revision unreasonable. In the administrative order, the Department shall advise the owner or operator of his/her right to an adjudicatory hearing pursuant to N.J.A.C. 7:31-11.3(b)."

10.-12. (No change.)

7:31-10.4 Confidentiality claims

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(a) – (e) (No change.)

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the work "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention

New Jersey Department of Environmental Protection

PO Box [424]**420**, Mail Code **22-03D**

Trenton, New Jersey 08625-[0424]**420**

The outer envelope shall bear no marking indicating the confidential nature of its contents.

(g) – (j) (No change.)

7:31-11.4 Civil administrative penalty determination

(a) – (b) (No change.)

(c) The Department shall determine the amount of the civil administrative penalty for the offenses described in Table III below on the basis of the category of offense, the frequency of the violation, the type of violation as minor (M) or non-minor (NM), and the applicable grace period if the violation is minor, as follows:

TABLE III

Penalty in U.S. Dollars

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By Offense Category

	<u>Categories of Offense</u>	<u>Cite</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Subsequent Offenses</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
1.-398.	(No change.)						
399.	(No change.)	40 CFR 68.87(c)(1), N.J.A.C. 7:31- 4.1[(a)](c) 29	2,000	4,000	10,000	NM	
400.	(No change.)	40 CFR 68.87(c)(2), N.J.A.C. 7:31- 4.1[(a)](c) 29	2,000	4,000	10,000	NM	
401.	(No change.)						
402.	(No change.)	40 CFR 68.87(c)(4), N.J.A.C. 7:31- 4.1[(a)](c) 29	2,000	4,000	10,000	NM	
403.	(No change.)	40 CFR 68.87(c)(5), N.J.A.C. 7:31- 4.1[(a)](c) 29	2,000	4,000	10,000	NM	
404.- 479.	(No change.)						
480.	(No change.)	40 CFR 68.150(b)(3), N.J.A.C. 7:31- 7.1[(a)](c) 7	(No change.)	(No change.)	(No change.)	NM	
481.- 633.	(No change.)						
	(d) – (g)	(No change.)					