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GENERAL PROVISIONS

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Please note: The Department has made every effort to ensure that this text is identical to the official, legally effective version of this rule, set forth in the New Jersey Register. However, should there be any discrepancies between this text and the official version of the rule, the official version will prevail.

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7:27-1.1 Scope

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Air Pollution Control and shall govern the emitting of and such activities as result in the introducing of contaminants into the ambient atmosphere.

7:27-1.2 Construction

- (a) These rules shall be construed so as to permit the Department, the Bureau of Air Pollution Control and its various agencies to discharge its statutory functions.
- (b) The Commissioner and the Director of the Division of Environmental Quality may amend, expand or repeal these rules after public hearing. Such actions shall be filed with the Secretary of State as required by law.

7:27-1.3 Practice where rules do not govern

The Commissioner, the Director of the Division of Environmental Quality or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

7:27-1.4 Definitions

The following words and terms, when used in this Chapter, have the following meanings, unless the context clearly indicates otherwise.

“Air pollution” means the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

“Assertedly confidential information” means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

“British thermal unit” or **“BTU”** means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

“Carbon monoxide” or **“CO”** means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

“Claimant” means any person who submits a confidentiality claim under this subchapter.

“CFR” means the Code of Federal Regulations.

“Class confidentiality determination” means a confidentiality determination made by the Department under N.J.A.C. 7:27-1.17, for a class of information.

“Commissioner” means the State Commissioner of Environmental Protection who is the chief administrative officer of the State Department of Environmental Protection.

“Confidential copy” means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

“Confidential information” means information which the Department determines, in accordance to the procedures at N.J.A.C. 7:27-1.6 et seq., to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:27-1.6 through 1.8, and such confidentiality claim has not expired by its terms, been waived or withdrawn;
2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;
3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;
4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);
5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;
6. The claimant has not waived the confidentiality claim for the information; and
7. No law, regulation (including, without limitation, N.J.A.C. 7:27-1.18 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

“Confidentiality claim” or **“claim”** means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of N.J.A.C. 7:27-1.6 et seq., that the Department treat such information as confidential information.

“Confidentiality determination” means a determination by the Department that assertedly confidential information is or is not confidential information.

“Contract” means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

“Contractor” means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

“Control apparatus” means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

“Department” means the New Jersey Department of Environmental Protection and Energy.

“Emissions information” means, with reference to any source operation, equipment, or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which has been emitted by the source operation, equipment or control apparatus;
2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and
3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

The following list includes specific data fields which the Department considers to constitute emissions information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emissions information:

Facility Identification

Plant name and related point identifiers

Address

City

County

AQCR (Air Quality Control Region)

MSA, PMSA, CMSA (Metropolitan Statistical Areas)

State

Zip Code

Ownership and point of contact information

Locational Identifiers:

Latitude & Longitude or UTM Coordinates

SIC Code (Standard Industrial Classification)

Emission point, device or operation description, information

SCC Code (Source Classification Codes)

Emissions Parameters

Emission type (for example, nature of emissions such as CO, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (for example, the amount released to the atmosphere over time such as pounds per hour or tons per year)

Release height (for example, height above ground level where the air contaminant is emitted to the atmosphere)

Description of terrain and surrounding structures (for example, the size of the area, with adjacent structures and terrain descriptions such as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (for example, the inside diameter of vent at the point of emission to the atmosphere)

Release velocity

Release temperature

Frequency of release (for example, how often a release occurs in events per year)

Duration of release (for example, the time associated with a release to the atmosphere)

Concentration (for example, the amount of an emission stream constituent relative to other stream constituents, expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (for example, density expressed as fraction or multiple of the density of air; molecular weight)

Boiler or process design capacity (for example, the hourly gross heating value of fuel input to a boiler at its maximum design rate or maximum pounds per hour product rate)

Emission estimation method (for example, the method by which an emission estimate has been calculated such as material balance, stack test, use of AP-42 emission factors, etc.)

Percent space heat (for example, the percent of fuel used for space heating)

Hourly maximum design rate (for example, the greatest operating rate that would be expected for a source in a one hour period)

Control apparatus information (for example, type of primary and secondary control apparatus, capture efficiency, and control efficiency)

“EPA” means the United States Environmental Protection Agency.

“Equipment” means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminant emitted is caused by a manufacturing process.

“Final public copy” means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the “final public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Garbage” means animal and vegetable matter originating in houses, kitchens, restaurants and hotels, produce markets and similar places.

“Lead” or **“Pb”** means elemental lead or any compound containing lead.

“Open burning” means any fire where the products of combustion are emitted into the open air, and are not directed through a stack or chimney.

“Ozone” or **“O₃”** means a gas comprised of molecules consisting of three oxygen atoms.

“Person” means and includes corporations, companies, associations, societies, firms, partnerships and joint companies as well as individuals, unless restricted by the context to an individual as distinguished from a corporate entity or specifically restricted to one or some of the above enumerated synonyms and, when used to designate the owner of property which may be the subject of an offense includes this State, the United States, any other state of the United States and any foreign country or government lawfully owning or possessing property within this State.

“Preliminary public copy” means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the “preliminary public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Refuse” means garbage, rubbish and trade waste.

“Requester” means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

“Responsible official” means one of the following:

1. For a corporation:
 - i. A president, secretary, treasurer, or vice-president of the corporation, who is in charge of a principal business function;
 - ii. Any other person who performs similar policy or decision-making functions for the corporation; or
 - iii. A duly authorized representative of the person in (i) or (ii) above, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a preconstruction permit or certificate, or an operating permit, and either:
 - (1) The facilities for which the representative is responsible employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (2) The delegation of authority to the representative is approved in writing in advance by the Department;
2. For a partnership or sole proprietorship: a General partner or the proprietor, respectively;
3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this subchapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
4. For affected facilities under Title IV of the Clean Air Act:
 - i. The designated Title IV representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and
 - ii. The designated Title IV representative for any other purposes under 40 CFR Part 70.

“Rubbish” means solids not considered to be highly flammable or explosive including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

“Salvage operation” means any business, trade or industry engaged in whole or in part salvaging or reclaiming any product or material, including, but not limited to, metals, chemicals, shipping containers or drums.

“Source operation” means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

“Stack or chimney” means a flue, conduit or opening permitting particulate or gaseous emissions into the open air, or constructed or arranged for such purpose.

“State” means the State of New Jersey.

“Substantial damage” means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.

“Substantiation” means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:27-1.11.

“Sulfur dioxide” or **“SO₂”** means a gas comprised of molecules consisting of one sulfur atom and two oxygen atoms.

“Trade waste” means solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste material.

“USC” means United States Code.

7:27-1.5 Municipal ordinances or regulations

No ordinance or regulation of any governing body of a municipality or county or board of health not inconsistent with this Chapter shall be superseded by this Chapter and nothing in this Chapter shall preclude the right of any governing body of a municipality or county or board of health to adopt ordinances or regulations not inconsistent with this Chapter.

7:27-1.6 Procedure for making a confidentiality claim

- (a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.
- (b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:27-1.8) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.
- (c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.
- (d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.
- (e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.
- (f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:27-1.7.

7:27-1.7 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:27-1.6 through 1.30. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:27-1.8(a), be directed to the designee.

7:27-1.8 Correspondence, inquiries and notices

- (a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:27-1.7, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:27-1.10(a)1ii;
 2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:27-1.13(a)1;
 3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:27-1.21(a);
 4. Notices of disclosure under N.J.A.C. 7:27-1.22; and
 5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:27-1.25.
- (b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following addresses:
1. With respect to permits and certificates:

Bureau of New Source Review
Air Quality Permitting Program
Department of Environmental Protection
401 East State Street, Second Floor
PO Box 027
Trenton, New Jersey 08625-0027
 2. With respect to emission statement submittals:

Bureau of Air Quality Planning
Department of Environmental Protection
401 East State Street, Seventh Floor
PO Box 418
Trenton, New Jersey 08625-0418
 3. With respect to compliance reports or enforcement actions:

Administrator
Air and Environmental Compliance and Enforcement
Division of Enforcement Field Operation
Department of Environmental Protection
PO Box 422
Trenton, New Jersey 08625-0422

7:27-1.9 Time for making confidentiality determinations

- (a) The Department shall make a confidentiality determination:
 - 1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:27-1.26 through 1.30, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or
 - 2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:27-1.26 through 1.30.
- (b) The Department may, in its discretion, make a confidentiality determination at any time.

7:27-1.10 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

- (a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:
 - 1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:
 - i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;
 - ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:27-1.11;
 - iii. The address of the office to which the claimant's substantiation must be addressed;
 - iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:27-1.12;
 - v. The method for requesting a time extension under N.J.A.C. 7:27-1.12(b); and
 - vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:27-1.12 shall operate as a waiver of the claimant's claim.
 - 2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:
 - i. The information which is the subject of the request may be confidential information;

- ii. The Department must undertake further inquiry before granting or denying the requester's request; and
 - iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.
- (b) The Department shall send the notice required by (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.
- (c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:27-1.11, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:27-1.13. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:27-1.13.

7:27-1.11 Substantiation of confidentiality claims

- (a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:27-1.10(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:27-1.12:
 - 1. Measures taken by the claimant to prevent disclosure of the information to others;
 - 2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;
 - 3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;
 - 4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;
 - 5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and
 - 6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.
- (b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the

claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:27-1.12 Time for submission of substantiation

- (a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:27-1.10(a)1.
- (b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time; provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.
- (c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:27-1.13 Final confidentiality determination

- (a) If, after review of all the information submitted pursuant to N.J.A.C. 7:27-1.10 and 1.11, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:
 - 1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.
 - 2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.
- (b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:27-1.11, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:27-1.26 through 1.30. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy

the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:27-1.14 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:27-1.15 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:27-1.13(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:27-1.16 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:27-1.17 Class confidentiality determinations

- (a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which would cause the Department to determine consistently that such information is or is not confidential information.
- (b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.
- (c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:27-1.18 Classes of information which are not confidential information

Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, emissions information, as defined at N.J.A.C. 7:27-1.4, is not confidential information.

7:27-1.19 Disclosure of confidential information to other public agencies

- (a) The Department may disclose confidential information to any other State agency or to a Federal agency if:
1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;
 2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;
 3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;
 4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:27-1.27 and 1.28, unless:
 - i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or
 - ii. The claimant has consented to disclosure of the information by the requesting agency; and
 5. The requesting agency agrees not to disclose the information further unless:
 - i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
 - ii. The claimant has consented to disclosure of the information by the requesting agency.

7:27-1.20 Disclosure of confidential information to contractors

- (a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:
 - 1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;
 - 2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and
 - 3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.
- (b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:27-1.21 Disclosure to alleviate an imminent and substantial danger

- (a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:
 - 1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:27-1.12, and notify the claimant of such reduction;
 - 2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:27-1.13(a), and notify the claimant of such advance; or
 - 3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any

disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:27-1.22 Notice to claimants of disclosure of confidential information

- (a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:27-1.19, 1.20 or 1.21, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:
 - 1. The date on which disclosure was made;
 - 2. The name of the agency or other person to which the Department disclosed the confidential information; and
 - 3. A description of the confidential information disclosed.

7:27-1.23 Disclosure by consent

- (a) The Department may disclose confidential information in accordance with the written consent of the claimant.
- (b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:27-1.24 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the Department has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:27-1.25 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

- (a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.
- (b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:
 - 1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1-14.1.
 - 2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:
 - i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;
 - ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;
 - iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and
 - iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

7:27-1.26 Hearing before disclosure of information for which a confidentiality claim has been made

- (a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall

be in accordance with the requirements of N.J.A.C. 7:27A-3.4(a), and shall be delivered to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

- (b) The Department may deny a request for an adjudicatory hearing under (a) above if:
1. The claimant fails to provide all information required under N.J.A.C. 7:27A-3.4(a);
 2. The Department receives the request after disclosure of the assertedly confidential information occurs;
 3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
 4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:27-1.21.
- (c) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:27.
- (e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:
1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
 2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

7:27-1.27 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:27-1.20 through 1.26.

7:27-1.28 Safeguarding of confidential information

- (a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.
- (b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."
- (c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.
- (d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.
- (e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:27-1.29 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:27-1.30 Wrongful access or disclosure; penalties

- (a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.
- (b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for

debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

- (c) If the Department finds that any person has violated the provisions of this subchapter, it may:
 - 1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or
 - 2. Pursue any other remedy available at law or equity.
- (d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.
- (e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

7:27-1.31 Right to enter

- (a) The Department and its representatives shall have the right to enter and inspect at any time, any facility or building, or portion thereof, including all documents and equipment on the premises, in order to ascertain compliance or noncompliance with this chapter or with any preconstruction permit, certificate, operating permit, order, authorization or other legal document issued pursuant thereto, or to verify any information submitted to the Department. This right is absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested, and compliance with appropriate safety standards. This right includes, but is not limited to, the right to:
 - 1. Enter upon the premises of the facility;
 - 2. Sketch or photograph any portion of the facility;
 - 3. Enter upon the premises of a facility where records are maintained under the conditions of the preconstruction permit, certificate or operating permit;
 - 4. Review any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;
 - 5. Copy or photograph any records that must be kept under the conditions of the preconstruction permit, certificate or operating permit;
 - 6. Inspect any part of the facility, including any equipment (including any equipment used for monitoring and any air pollution control apparatus), practices, or operations regulated or required under the preconstruction permit, certificate or operating permit;

7. Interview any employee or representative of the owner or operator; and
 8. Test or sample any substance or material.
- (b) No person shall obstruct, hinder or delay the Department or its representatives in its exercise of its rights under (a) above.
- (c) An owner or operator of a facility, and any appropriate employee or representative of any owner or operator, shall, upon request, assist the Department and its representatives in the performance of any inspection. Such assistance shall include, but shall not be limited to, making available sampling equipment and facilities necessary to conduct sampling to determine the nature and quantity of any air contaminant emitted by the facility.
- (d) During any sampling or testing conducted by the Department, any equipment, and all components connected to, attached to, or serving the equipment, shall be operated under normal operating conditions, or under conditions set forth in any preconstruction permit, certificate, operating permit, order or other State or Federal authorization covering the equipment.

7:27-1.32 Request for an adjudicatory hearing

- (a) An applicant who believes himself or herself to be aggrieved with respect to any decision made by the Department may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:
1. Denies an application, or any part thereof;
 2. Has, in the judgement of the applicant, imposed an unreasonable condition on its approval of an application;
 3. Revokes or withdraws a previously issued approval; or
 4. Denies the request for a stay under N.J.A.C. 7:27-1.33.
- (b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, New Jersey 08625-402

- (c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.
- (d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:
 - 1. The name, address and telephone number of the person making such request;
 - 2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
 - 3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and
 - 4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.
- (e) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:27-1.33 Request for a stay of the effective date of a departmental decision

- (a) The Department may grant a stay of the effective date of a decision to revoke any previous approval. The applicant for a stay shall submit documents which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:
 - 1. The granting of the stay is required as a constitutional or statutory right; or
 - 2. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.
- (b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

- (c) Department decisions are effective according to their terms, unless stayed by the Department in writing.
- (d) Written requests for a stay of the effective date of the Department's decision shall be made to the Department within 20 days of the date upon which the notice of decision was received.
- (e) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.
- (f) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

7:27-1.34 through 7:27-1.35 (Reserved)

7:27-1.36 Applicability

Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable provisions of this chapter.

7:27-1.37 Severability

If any portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:27-1.38 Liberal construction

This chapter, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:27-1.39 Certification of Information

- (a) Except pursuant to (c) below, any person who submits an application, report or other document to the Department shall include, as an integral part of the application, report or other document, the following two-part certification:
 - 1. A certification, signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the certified document. The certification shall state:

“I certify under penalty of law that I believe the information provided in this document 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.”

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document 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.”

- (b) The certification at (a)2 above shall not be required if the individual required to sign the certification in (a)1 above is the same individual required to sign the certification in (a)2 above.
- (c) For the purposes of emissions statements requirements pursuant to N.J.A.C. 7:27-21, the specific certification required by N.J.A.C. 7:27-21 shall be used.