



DPHS Stakeholder Meeting

A decorative graphic on the left side of the slide. It features a large, detailed green leaf with prominent veins, and several smaller, solid green leaves of different sizes. Interspersed among the leaves are four light gray circles of varying diameters. The overall composition is clean and modern, suggesting a theme of nature or environmental science.

Welcome!

Welcome to the Discharge of Petroleum
and Other Hazardous Substances
(DPHS) stakeholder meeting.

Introductions:

Richelle Wormley, Assistant Commissioner
Compliance & Enforcement

Michael Hastry, Director

DPHS Rulemaking Team:

Paul Komosinsky, Acting Bureau Chief

Daniel Rodriguez, EE (**Rule Manager**)

Audrey Dorofy, CSE

Philip Polios, CSE

Chris Lucien, EE

Roy Soong, EE

Sunday Ogunsola, EE





Purpose

The purpose of this meeting is to initiate conversation with interested stakeholders regarding **amendments being considered for the DPHS rule re-adoption**. We encourage stakeholders to participate in a conversation sharing any concerns or providing any recommendations.



Appendix A: List of Hazardous Substances





What is a Hazardous Substance?

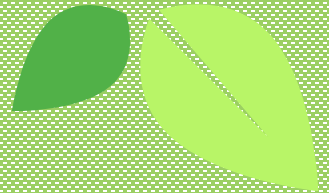
N.J.A.C. 7:1E-1.7:

“Hazardous substance” is petroleum and petroleum products and all substances listed in Appendix A to this chapter, incorporated herein by reference, shall be considered hazardous substances, except that sewage (domestic) and sewage sludge shall not be considered as hazardous substances.



Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, definition:

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, **including petroleum products**, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided, **however, that sewage and sewage sludge shall not be considered as hazardous substances** for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.)





Appendix A Source Lists

- N.J.S.A. 34:5A-1 Worker and Community Right to know Act
- 40 CFR § 116.4 - Designation of hazardous substances (Clean Water Act)
- 40 CFR § 401.15 - Toxic pollutants (Clean Water Act)
- 40 CFR § 302.4 - Designation of hazardous substances (CERCLA)



Caveats

Not from any Source List

There are substances currently listed in Appendix A which were not derived from any of the source lists.

Concentrations

Hazardous substances listed in Appendix A may list a concentration at which they are considered hazardous, but the source list might not designate such a concentration.

Asterisks (*)

Appendix A currently lists hazardous substances with asterisk. Substances with an asterisk are **(for the purpose of the DPHS rule only)** not considered hazardous.

Metals

Elemental or alloyed solid metals above specified dimensions are not considered Hazardous Substances **(for the purpose of the DPHS rule only)**.



Current Process for updating Appendix A:

- To amend Appendix A, the rule amendment process has to be initiated, historically at the time of readoption.
- There are many steps in the rule process.
- The process can take several months.



Rule Amendment Being Considered

- Incorporate the source lists by reference;
- The complete Hazardous Substances list would include those substances incorporated by reference, plus a list of additions, deletions, and changes to the incorporated substances;
- Maintain a courtesy copy of an updated list that can be revised any time the source lists are revised.
- Include all caveats listed on slide 9.



Or...

Continue to maintain the list of Hazardous Substances in Appendix A and adopt an abbreviated amendment process through Public Hearing.



Discussion

What is your opinion on incorporating the list of Hazardous Substances by reference?



De Minimis





What is “*de minimis*”?

The term “*de minimis*” describes something too small or insignificant to be of importance.



How does this apply to DPHS?

If a mixture contains any concentration of hazardous substance, the entire mixture is a hazardous substance. There is no *de minimis*.



History of De Minimis at DEP

For years, the regulated community has requested that the Department set *de minimis* levels for every hazardous substance regulated under the DPHS rule.



The regulated community asked for:

The Department to use criteria already established for other programs, such as the 1 percent/0.1 percent used by the Community Right to Know (CRTK) program for the reporting of mixtures containing reportable substances or carcinogens.

-OR-

The Department to establish concentration limits for every hazardous substance in Appendix A.



DEP Response:

The CRTK 1 percent/0.1 percent approach does not include any determination of possible harm associated with the release/discharge of such a mixture.


The list of hazardous substances in Appendix A to the rules is extensive and establishing individual concentration limits is not feasible; DEP does not currently have the resources.



Case-by-case

In the past, DEP had allowed for a case-by-case determination on mixtures containing hazardous substances when requested to do so. These determinations required a literature search of health and environmental data for the given chemical.

It also considered standards established for the protection of human health in the workplace, drinking water standards, and standards established for remediation of contaminated soils.

A decorative graphic on the left side of the slide. It features two green leaves: a smaller, solid light green leaf in the upper left and a larger, detailed green leaf with visible veins in the lower center. There are also three light blue circles: a large one at the top center, a medium one at the bottom left, and a small one at the bottom right.

Department management has determined that the regulated community is better served by incorporating a case-by-case review process in the rules.



Rule Amendment Being Considered

DPHS is considering allowing for *de minimis* determinations with the onus of researching the effect on human health and the environment being placed on the regulated community. **This would allow an exemption only to the DPHS rule or specified sections of the DPHS rule.**

A certified report would be submitted by the facility to the Department for review.



Discussion

Who should certify the report?

Do you recommend a different method?

Should the Department codify a specific method(s)?



Subchapter 6






Scope of Subchapter 6

Subchapter 6 governs “the Department’s assessment of civil administrative penalties for violation of provisions of the Act, including rules, regulations, plans, information requests, access requests, orders or directives promulgated or issued pursuant to the Act.”



Minor / Non-minor

The column header labeled “Minor” in the penalty table provided in N.J.A.C. 7:1E-6.8 contains the designation of whether a violation is considered minor or non-minor pursuant to the Grace Period Law.

A decorative graphic on the left side of the slide. It features three green leaves of different sizes and shades of green, arranged in a cluster. The largest leaf is at the top left, showing detailed vein patterns. Below it are two smaller leaves, one a darker green and one a lighter green. Surrounding the leaves are four light blue circles of varying sizes, some partially visible at the edges of the frame.

The Department is re-evaluating the
“minor”/“non-minor” designations listed in
the violations’ table.

TOP 10 Violations found from Jan 2008-May 2018

Violation Category	N.J.A.C. Citation	# of Violations
Visual Inspections	2.10(a)	187
Integrity Testing	2.16	180
Recordkeeping (records available for inspection)	2.15(e)	83
Recordkeeping	2.15(a,b,c,d)	68
Training	2.12(c)	57
SOPs	2.14	56
Visual Inspection Records	2.10(b)	56
Drills	4.3(b)4	55
SOPs (content)	2.14(d)	41
New Plan Submission	4.5(d)	47
Financial Responsibility	4.4	47
Pipe Marking	2.4(a)	44



Rule Amendments Being Considered

1. DPHS is reviewing and revising the violation table in Subchapter 6 so that it is consistent with the Grace Period Law.
2. Include “per year” under “Penalty” columns for violations such as refresher training, emergency response drills, and tank inspections.
3. DPHS is considering methods to minimize the occurrences of common violations.

A decorative graphic on the left side of the slide. It features a large green leaf with prominent veins, a smaller solid green leaf, and a light green leaf with a white diagonal line. These are surrounded by four light gray circles of varying sizes.

Discussion

How can the Department minimize the frequency of these violations?



Other Proposed Amendments



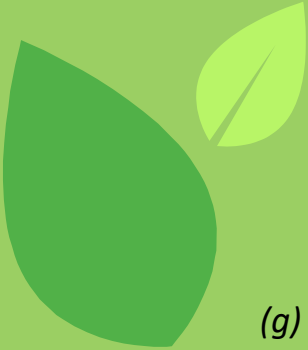


Rule Amendments Being Considered

The Department is considering a change in language for the following:

1. N.J.A.C. 7:1E-4.5(g)
2. N.J.A.C. 7:1E-4.8(d)
3. N.J.A.C. 7:1E-4.8(e)
4. N.J.A.C. 7:1E-4.9(c)

The new language would allow for **electronic submittals** of DPCC/DCR plans, plan renewals, plan amendments, and second copies of plans.



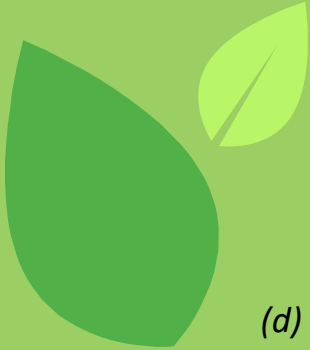
Current vs Proposed N.J.A.C. 7:1E-4.5(g)

*(g) One copy of a DPCC and DCR plan, which must include an original certification pursuant to N.J.A.C. 7:1E-4.11, shall be submitted to the Department for approval. Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved DPCC and DCR plan shall be submitted to the Department. **Copies shall be sent to:***

Replace with:

“Copies shall be submitted in a manner specified by the Department.”





Current vs Proposed N.J.A.C. 7:1E-4.8(d)and (e)

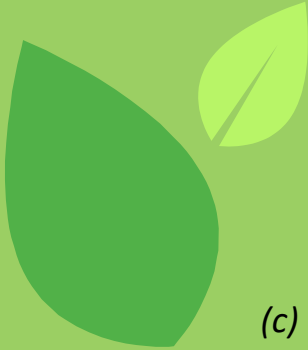
*(d) Within 30 days of receipt of approval, a second copy of the approved amendment shall be **submitted to the Department.***

*(e) Changes to the following information shall be **reported to the Department at the address in N.J.A.C. 7:1E-4.5(q)** within 30 days, but shall not be considered plan amendments subject to the certification and approval requirements of this section:*

Replace with:

“submitted in a manner specified by the Department”





Current vs Proposed N.J.A.C. 7:1E-4.9(c)

*(c) Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.6, a second copy of the approved renewal shall be **submitted to the Department**.*

Replace with:

“submitted in a manner specified by the Department”





Rule Amendments Being Considered

1. Annual refresher training [N.J.A.C. 7:1E-2.12(c)4]
2. Recordkeeping- Tank integrity testing [N.J.A.C. 7:1E-2.15(d)]
3. Transmission pipelines [N.J.A.C. 7:1E-3]
4. Facility Contact and Response Coordinator [N.J.A.C. 7:1E-4.2(b)1 & 4.3(b)3]
5. Plan Amendments [N.J.A.C. 7:1E-4.8(a)]
6. Discharge Confirmation Reports [N.J.A.C. 7:1E-5.8(c)]
7. Plan Renewal [N.J.A.C. 7:1E-4.9(a)]



Annual Refresher Training

The Department is considering a change in language for **N.J.A.C. 7:1E-2.12(c)4** to clarify that annual refresher training covers all training pertaining to the duties and responsibilities of the position involving hazardous substances.

This was always the intention of the rule but upon occasion has been misinterpreted by the regulated community.



Recordkeeping- Tank Integrity Records

Reduce recordkeeping requirements under **N.J.A.C. 7:1E-2.15(d)** concerning tank integrity testing, specifically regarding the monthly API and monthly STI records. The Spill Act requires such records to be maintained for at least 10 years. The Department is considering reducing current DPHS requirements from retaining these types of records for the lifetime of the tank to ten years.



Transmission Pipelines

- Revise **N.J.A.C. 7:1E-3** to clarify that the registration for any new transmission pipeline must be submitted within 30 days of operation.
- Revise **N.J.A.C. 7:1E-3.2(a)** to include the mailing address and e-mail address of the contact person for the transmission pipeline,
- Revise **N.J.A.C. 7:1E-3.2(a)8** to require paper submittals of transmission pipeline maps, not just digital.



Facility Contact and Response Coordinator

Revise **N.J.A.C. 7:1E-4.2(b)1** and **4.3(b)3** to include the requirement for an email address for the facility contact and the response coordinator, respectively.

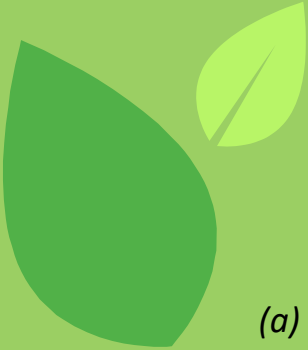


Plan Amendments

Revise N.J.A.C. 7:1E-4.8(a) to include an exception to the required 60-day notification of change.

The Spill Act uses the following language under N.J.S.A. 53:10-23.11d11:

“Except under emergency circumstances, 60 days prior [...]”.



Current vs Proposed N.J.A.C. 7:1E-4.8(a)

(a) Written notice of proposed new construction or installation, substantial modification or replacement of any aboveground storage tank, other aboveground enclosed storage space, any appurtenant structures, or leak detection or other monitoring, prevention, or safety systems or devices shall be provided to the Department at the address in N.J.A.C. 7:1E-4.5(g) at least 60 days prior to the commencement of construction, installation or modification. The notice shall contain information on what new construction, installation, substantial modification or replacement is being proposed along with a preliminary schedule for the proposed work. This provision does not apply to construction, installation or modification contained in a schedule for upgrading in an approved DPCC plan.

Proposed language to insert:

“in a manner specified by the Department”

“Except under emergency circumstances”





Discharge Confirmation Reports

Revise **N.J.A.C. 7:1E-5.8(c)** to allow for the electronic submission of discharge confirmation reports (DCR).

Note:

DPHS is working on an online portal to allow for online DCR submittals.



Plan Renewal

As allowed by N.J.S.A. 58:10-23.11d4, revise **N.J.A.C. 7:1E-4.9(a)** to require plan renewals to be submitted once every five (5) years instead of once every three (3) year.

This will allow the Department to conduct more compliance inspections between plan renewal periods.



Discussion

Does the proposed change in the tank integrity test recordkeeping requirement present any concerns?
(slide 39)

Is a 5-year renewal period too long a period?
(slide 45)



Highlights

Appendix A

Include by reference?

De Minimis

Case-by-case determination;

Onus of research on regulatee

Subchapter 6

Revising minor/non-minor;

“per drill” language; and Penalty amounts

Recordkeeping

Reduce recordkeeping for monthly tank integrity testing conducted under API 653 and STI-Sp001

Revise language

N.J.A.C. 7:1E-2.12(c)4; 3.2(a); 4.2(b)3; 4.3(b)1; and 4.5(g), 4.8(d), 4.8(e), 4.9(a), 4.9(c)

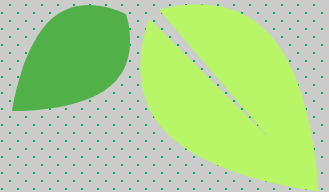
Renewal Cycle

3 years to 5 years



Rule Re-adoption Timeline:

- February 2019: Stakeholder Meeting
- May 2019: Proposal Launch Meeting
- August 2019: Draft proposal document for initial legal review
- October 2019: Proposal to Commissioner for signature
- November 2019: File proposal for publication in NJ Register
- December 2019: NJ Register publication of Rule proposal



ANY QUESTIONS?



A scenic landscape photograph showing a calm body of water reflecting a densely forested hillside. The trees on the hill are in various shades of green and yellow, suggesting an autumn setting. In the foreground, there are large, light-colored, feathery flowering plants, possibly dogwoods, which are slightly out of focus. The sky is a clear, pale blue with a few wispy clouds. The overall mood is peaceful and natural.

“We won’t have a society if we destroy the environment.”

-Margaret Mead



Additional Comments

NJ Department of Environmental
Protection

Bureau of Release Prevention

P.O. Box 420, Mail Code 22-03D

Trenton, NJ 08625-0420

E-mail: Daniel.Rodriguez@dep.nj.gov
Release_Prevention@dep.nj.gov

Please use Subject Line:
“DPHS Stakeholder Follow Up”



This presentation will be made available for you electronically.

We will follow up with an email containing a link where you will find the downloadable file.



Thank you!

Special thanks to all of you for making time to be here today. We appreciate all of your comments and feedback.