

## DPHS Stakeholder Meeting Summary

February 11, 2019

### 1. Opening Remarks by Director Mike Hastry:

- a. Two of the most significant items to discuss:
  - i. Proposed methods for updating the list of Hazardous Substances (currently included in the Discharge of Petroleum and Other Hazardous Substances (DPHS), N.J.A.C. 7:1E, as Appendix A)
  - ii. Allowing a process for de minimis determinations that may exempt a regulated facility from parts of N.J.A.C. 7:1E. Also, codifying the process.
- b. Other issues, include:
  - i. Revising Subchapter 6 Minor/Non-minor designations.
  - ii. Revising the language of the rule that will allow for the electronic submittal of Discharge Prevention, Containment, and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) plans, DPCC/DCR plan amendments, Discharge Confirmations Reports (DCRs),

### 2. Discussion of Appendix A

The Department is considering the following rule amendment:

Withdrawing the current list of hazardous substances listed in Appendix A and incorporating 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. The Department will maintain a courtesy copy of an updated hazardous substances list that can be revised any time the source lists are revised.

- a. Options:
  - i. Include the list of hazardous substances that incorporates by reference the lists of substances from the sources identified in the definition of “hazardous substances” from the Spill Act.
    - 1. Any caveats which currently exist would be specified in the rule (examples: substances added to the list by the Department of Environmental Protection (Department) through rulemaking, metals in either their pure elemental form or alloyed, in solid pieces with at least one dimensional measurement equal to or exceeding 100 micrometers or chemically bonded to an inert substrate, or any flammable substance or inert gas listed in Appendix A and which is designated with an asterisk).

- ii. Maintain the list as it currently exists in Appendix A but allow for an abbreviated rule amendment process to allow for the revision of the list to reflect changes to any of the source lists (the source lists are in the definition of “hazardous substance” provided by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11). This method would also include a requirement for public hearing.
- b. Responses
  - i. Many attendees from regulated facilities expressed a preference for the list as it exists in Appendix A. They agree that the Department should incorporate an abbreviated rule amendment process with public hearing.
    - 1. One attendee representing public/environmental groups feels that once a substance is added to any of the source lists, the Department should be regulating those substances.
  - ii. The attendee representing public/environmental groups is in favor of incorporating the list by reference.
    - 1. Many attendees from regulated facilities are concerned that it will be hard to keep up with a “moving target”. The argument is that with Appendix A and an abbreviated rule amended process, the regulated facility owner/operators will be able to follow any revisions made to the list of hazardous substances.
    - 2. All parties want to know what method the Department will use to communicate when the list of hazardous substances is revised.
- c. Other comments/concerns:
  - i. The rulemaking team is currently in the process of reviewing all source lists and updating Appendix A to reflect any changes made to those lists.
  - ii. How soon does a facility have to come into compliance with DPHS rules for substances that have been added to the list of hazardous substances?
    - 1. For a non-major facility: N.J.A.C. 7:1E-4.5(c) states, “If 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 [...] no more than 180 days from the effective date of the addition to Appendix A.”
    - 2. For a current major facility: The Department has to make that determination. The Stakeholder group discussed options ranging from no less than 30 to no more than 180 days, but did not reach a conclusion.

### 3. Discussion of *de minimis*

The Department is considering the following rule amendment:

Allowing for *de minimis* determinations with the onus of researching the effect on human health and the environment being placed on the regulated facility owner/operator making the exemption request. 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.

#### a. Response:

- i. Attendees from regulated facilities think it is a good idea, especially for smaller facilities, such as warehouse that only store totes and drums, that have a low potential for a discharge.
- ii. The attendee representing public/environmental groups would like for the Department to notify the public of the case-by-case process and thinks the process should involve public comment. They also believe that codifying a process can prove to be problematic to communities. They argue that cumulative impacts can be lost.

#### b. Other comments/concerns:

- i. Would the process be codified? - DEP response: The intention would be to codify the process.
- ii. Will a *de minimis* determination exempt facilities from the Spill Tax? – DEP response: The Spill Tax applies to all major facilities. As mention above, a *de minimis* determination will only allow for exemptions to specified sections of the DPHS rule.
- iii. Who will certify the submitted documents/report? Industry recommendations include: Licensed Site Remediation Professional (LSRP), Certified Hazardous Materials Manager (CHMM), or Certified Industrial Hygienist (CIH).
- iv. What DPHS requirements will be exempt? – DEP response: This is still to be determined and may differ by case.

### 4. Discussion of Subchapter 6

The Department is considering the following rule amendments:

- Revising the violation table in Subchapter 6 so that it is consistent with the Grace Period Rule;

- Including “per year” under “Penalty” columns for violations such as refresher training, emergency response drills, and tank inspections; and
  - Revising the penalty amounts for citations which are regularly violated in an effort to make regulated entities more conscientious.
- a. Response:
- i. Many attendees from regulated facilities think that the Department should have more guidance documents which they believe will help minimize or even eliminate violations caused by misinterpretations of the rule. – The use of an environmental management system was recommended for use by the regulated facility.
- b. Other comments/concerns:
- i. How is “annual” defined? – DEP response: Annual is meant to address a calendar year, not a 12-month period.
  - ii. Does the Department accept electronic inspection records? – DEP response: Yes. As long as the inspection records meet the specified requirement of the rule.
  - iii. Can the Department provide a template to follow for the visual inspections required under N.J.A.C. 7:1E-2.10? – DEP response: That would be hard to draft considering the range in size and complexity of the facilities regulated by the DPHS rule.

## 5. Other Amendments

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

- N.J.A.C. 7:1E-4.5(g);
- N.J.A.C. 7:1E-4.8(d);
- N.J.A.C. 7:1E-4.8(e); and
- 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 submittals.

The Department is also considering the following rule amendments:

- Revise the language of 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;

- 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;
  - 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;
  - Revise N.J.A.C. 7:1E-4.2(b)3 and 4.3(b)1 to include the requirement for an email address for the facility contact and the response coordinator, respectively;
  - Revise N.J.A.C. 7:1E-4.8(a) to include an exception to the required 60-day notification of change to address emergency circumstances;
  - Revise N.J.A.C. 7:1E-5.8(c) to allow for the electronic submission of discharge confirmation reports; and
  - 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.
- a. Response:
- i. Most stakeholders seem to agree with the Department’s effort to allow for electronic submittals of plans, plan renewals, plan amendments, second copies of plans, and DCR submittals. There were concerns, however, about the language “in a manner specified by the Department”.
    1. Where would the Department post the method by which those items should be submitted? DEP Response: We expect to post this on a Department or DPHS program web page.
    2. Facilities would like to provide input on the design of an online application for electronic submittals.

3. Would a copy of a facility's online submittals be available for that facility?

DEP Response: Yes, regulated facilities would be able to view their previous submissions.

- ii. Some attendees from regulated facilities expressed that they would benefit from more guidance provided by the Department outlining more specifically what is expected to be covered in the annual refresher training.
- iii. Most stakeholders seem to agree with the revisions to subchapter 3. The environmental community recommended that the 30-day requirement be increased to 60 days to be consistent with the advanced notification for substantial modifications. The regulated facility wants both to be a 30-day requirement.
- iv. Attendees from regulated facilities had no objections to providing email addresses for facility contacts, response coordinators, and the contact person for the transmission pipeline(s).
- v. In regard to the online DCR submittals, attendees from regulated facilities want to know:
  - 1. Who will certify the online DCRs and how they will certify the submissions electronically? – DEP response: The details are being worked out.
  - 2. Would a copy of online submittals be available for the facility? – DEP response: Yes
  - 3. Is there going to be a phased in approach or a drop-dead date? – DEP response: The Department will review this item.
  - 4. How will confidential items be handled? – This is being worked out.
- vi. Attendees had no objections to changing the recordkeeping requirements for monthly API-653 and STI SP001 monthly inspection records.
- vii. Most stakeholders agree on the change to the renewal cycle from three to five years, which will allow for more compliance inspection. They also agree that more compliance inspections should be assigned to those facilities where violations are found the most.

b. Other Concerns/Comments:

- i. Could training records and annual emergency response drills be submitted on a web portal? – DEP response: That is not the current intent.

Some industry representative stated that these types of records could be too numerous for many of our larger facilities.