



Dkt # 06-07-03/646
of

RECEIVED
2007 JUN 13 P 2:34
NJDEP - OFFICE OF
LEGAL AFFAIRS

June 8, 2007

VIA REGULAR MAIL/ E-MAIL

Ms. Leslie Ledogar, Esq. ^{of}
Attn: DEP Docket No. #06-07-03/646
Office of Legal Affairs
New Jersey Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

Re: **Comments on Proposed Amendments
Toxic Catastrophe Prevention Act Program/Inherently Safer Technology Review (N.J.A.C. 7:31)
Chemistry Council of New Jersey**

Dear Ms. Ledogar:

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) appreciates the opportunity to provide comments on the above-referenced rule proposal. As you know, the CCNJ represents over 100 companies involved in the business of chemistry (pharmaceuticals, chemicals, flavors and fragrances, petroleum refining, etc.) in New Jersey. The business of chemistry directly employs over 68,000 persons in New Jersey and is responsible for over \$27 billion dollars in revenues in New Jersey each year.

General Comments

As you are aware, some of our members are subject to the Toxic Catastrophe Prevention Act (TCPA) program requirements and to the Prescriptive Security Order requirements of November 2005 which required inherently safer technology (IST) reviews. Those member companies completed IST reviews to the satisfaction of the New Jersey Department of Environmental Protection (Department) and have become the paradigm by which other industries will be measured. It should also be noted that performing IST reviews is inherent to the nature of our business and is crucial to our industry's sustainability and growth. Our members take process safety very seriously and as our record demonstrates, we have become the leaders in how best to manage the safety of a process.

CCNJ commends the Department for not mandating the implementation of IST in this rule proposal and limiting the scope of IST to completing reviews, identifying those feasible technologies selected for implementation, and generating reports, which in turn will be reviewed by Department inspectors. As the Department's preamble recognizes, mandating inherent safer technologies can sometimes displace one risk for another. For example, mandating the storage of fewer chemicals used in a process will equate to more vehicular/rail shipments which in turn create potential risks to our transportation system. In addition, the increased frequency of shipments will also create additional connections and disconnections, very often the cause of loss of containment incidents, and therefore overall increased risk to personnel and community. IST reviews are very site and process specific and decisions of whether to implement an IST should not be made by a governing agency. The role of the governing agency should be to evaluate whether a process is safe and protective of public health and whether the risks are properly managed. Risk management is a core competency of the chemical and petroleum industry and the true intent of the TCPA and Risk Management

Planning (RMP) rules are to validate the existence and practice of such programs. How the process is made safe, whether through IST implementation or process add-ons (such as alarms and cut-off valves, etc.) should be made by the facility. The Department's goal is to assure that whatever system is in place meets the intent of the TCPA, which is protecting public safety and health.

With that said, CCNJ offers the following comments on the rule proposal:

Comment #1: In the pre-amble to the rule (specifically page 1352 of the April 16th NJ Register), the Department goes beyond inherent safety when it incorporates "*active and procedural layers of protection*" in IST reviews. Active and passive protection such as interlocks and procedures do not meet the definition of IST (i.e., eliminating or reducing the inherent hazard of an activity or process). Moreover, active, passive and procedural protections are already covered by the existing TCPA rules under the Process Hazard Analyses (PHAs) with risk assessment. Referring to active and procedural layers of protection under both ISTs and PHAs can and will lead to confusion during audits and inspections. The text of the proposed rule (N.J.A.C. 7:31-3.6(d)) is properly limited to IST. The preamble should be conformed to it. Furthermore, the Department should revise its guidance on IST reviews which it released on January 12, 2006 to remove examples it lists in Appendix A as ISTs when in actuality, they are active protections.

Comment #2: In N.J.A.C. 7:31-3.6 (a), the Department is requiring the owner or operator to complete an initial IST review and report for each covered process within 240 days from the effective date of the rule. CCNJ respectfully requests that the Department give facilities that will be subject to this rule amendment for the first time an additional 120 days (total 240 days) to complete and submit the IST reviews. Additionally, the Department should accept IST reviews that were completed in accordance with the Chemical Sector's Best Practices document.

Comment #3: In N.J.A.C. 7:31-3.6(c), the Department is requiring that the owner or operator conduct IST reviews using a qualified team whose members have expertise in environmental health and safety, chemistry, design and engineering, process controls and instrumentation, maintenance, production and operations and chemical process safety. CCNJ requests language be changed to mirror the existing requirements for team make up as reflected under the PHA element, namely: Each inherently safer technology review required by the section shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific inherently safer technology review methodology being used. This change should be made throughout the rule proposal where the requirement to use qualified teams is referenced.

Comment #4: In N.J.A.C. 7:31-3.6(f)7, the Department is requiring a written explanation justifying the infeasibility determination for each inherently safer technology determined to be infeasible. This owner or operator shall substantiate the infeasibility determination using a qualitative and quantitative evaluation of environmental, public health and safety, legal, technological and economic factors. The wording should be changed to read "qualitative OR quantitative evaluation as appropriate, of environmental" . . . (etc.). As written both qualitative and quantitative analysis is required on all of the variables, some of which may not apply, and some of which do not fit quantitative analysis, for example, how does one quantitatively analyze the legal infeasibility of a technology?

Further clarification is requested on what is meant by qualitative and quantitative. If the Department retains the reference to quantitative evaluation, it should qualify it by calling for quantitative evaluations "where feasible".

Comment #5: The CCNJ commends the Department in allowing the use of any available inherently safer technology review method and not restricting the reviews to select methods.

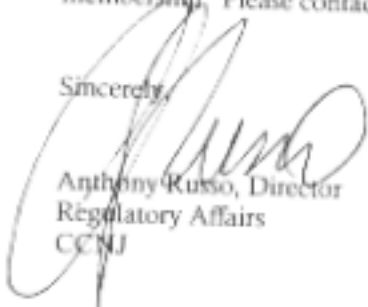
Comment #6: In N.J.A.C. 7:31-3.6(d)4, the CCNJ requests that the words "*inherently safer*" be inserted after the word "*Designing*". This will help clarify that the design of equipment should be geared towards inherent safer designs.

Comment #7: In N.J.A.C. 7:31-3.6(d), the CCNJ requests that the words "meeting the consequence criteria identified in N.J.A.C. 7:31-4.2(e)" be inserted at the end of the first sentence. This would clarify that the IST reviews be performed to prevent toxic and flammable related consequences which is consistent with the intent of the TCPA.

In conclusion, CCNJ would like to voice our disappointment again on the Department's decision to move away from the innovative and effective inspection and enforcement model when it comes to TCPA audits. The CCNJ feels strongly that the current model works well, shows a spirit of cooperation between industry and the Department and focuses resources on what matters, maintaining safe sites. The record supports our position. Conducting surprise inspections on such complex systems serves little purpose and will result in delays and confusion. The CCNJ urges the Department to continue the current practice of scheduling inspections and audits.

Once again, thank you for the opportunity to comment. The CCNJ supports all comments submitted by our membership. Please contact me at (609) 392-4214 to discuss this further.

Sincerely,



Anthony Russo, Director
Regulatory Affairs
CCNJ

cc: CCNJ Membership (via e-mail)