



**State of New Jersey  
Department of Environmental Protection  
Bureau of Release Prevention**

***Fact Sheet***

**Discharge Prevention Program –  
Employee Participation**

**March 16, 2007**

**I. Overview**

On March 14, 2007 the Department issued Administrative Order No. 2007-03, which established procedures for participation by employees and their representatives when the Department inspects or audits facilities regulated by the Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E (the DPHS rules). The Department believes that enhancing employee involvement in the inspection or audit and the overall review of the facility will help to improve the discharge prevention program effectiveness at the facility. Owners and operators of the regulated facility and the Department must perform specified activities in accordance with this Administrative Order. This fact sheet describes those activities.

**II. Discharge Prevention Program Background**

After several significant discharges in 1990, the New Jersey Legislature enacted numerous revisions to the Spill Compensation and Control Act (Spill Act) to protect and preserve the lands and waters of the State and protect the health, safety, and welfare of its citizens. The Spill Act directed the Department to enact regulations to implement the revised provisions. The DPHS rules were promulgated in 1991 and readopted in 1996 and 2001.

The Discharge Prevention program within the Bureau of Release Prevention is responsible for administering the DPHS rules. It is a program that regulates some 330 facilities that store either 20,000 gallons of hazardous substances or 200,000 gallons of petroleum products and hazardous substances. Each facility is required to prepare a Discharge Prevention, Containment and Countermeasure (DPCC) Plan and a Discharge Cleanup and Removal (DCR) Plan. The DPCC plan requires secondary containment, tank integrity testing, high level alarms, operating procedures, training, maintenance, etc. The DCR plan summarizes the emergency response actions for the facility in the event of a discharge.

The staff of the Discharge Prevention program review the DPCC/DCR plans for compliance with the DPHS rules. The DPCC/DCR plans are required to be renewed every three years. They also inspect or audit all regulated facilities each year, inspect suspected major facilities, follow up on discharge events, and review reports on discharge events.

Historically, the program has identified what can go wrong in a facility and what the consequences to the public would be. Because of this background, this bureau has been given the lead for domestic security issues affecting the petroleum and chemical sectors. This entails inspecting facilities for compliance with the security best practices.

### **III. Provisions of the Administrative Order**

#### **A. Department Activities**

1. Provide notice to the owner or operator of an upcoming DPHS inspection or audit.
2. Provide a written explanation of the purpose, scope, procedures, progress, or outcome of the inspection or audit to the owner or operator of the facility.
3. Include the information from this fact sheet on the Department web page.
4. Maintain an electronic data base of contact information for employee representatives at DPHS regulated facilities.

#### **B. Owner/operator Activities**

1. Post a notice, or a copy of any Department notice provided, indicating that there will be a Department inspection or audit, conspicuously displayed in the area subject to inspection or audit, immediately upon such notification.
2. If there is an employee representative at the facility, immediately provide a copy of the posted notice to the employee representative.
3. If the Department provides a written explanation of the purpose, scope, procedures, progress, or outcome of the inspection or audit to the owner or operator of the facility, all employees shall be entitled to view a copy of that written explanation. Not more than 24 hours after receiving a copy of the Department's explanation, the owner or operator will:
  - A. Conspicuously display the explanation in the area subject to the inspection or audit; and,
  - B. If there is an employee representative, provide the employee representative with a copy of the explanation.
4. Afford to an employee who works in, or is familiar with, the portion of the facility being inspected or audited, and an employee representative of the employees, if there is an employee representative, an opportunity to participate in the inspection or audit and to accompany Department inspectors during the inspection or audit. A Department inspector may permit additional employee representatives and additional employees to accompany him or her if he or she determines that to do so will aid the inspection. A different employee, employee representative and representative of the owner or operator may accompany the Department inspector during each different phase of an inspection or audit if the inspector determines that this will not interfere with the conduct of the inspection or audit. This provision shall not apply to parts of an inspection or audit in which the Department is exclusively examining written records.
5. At the audit opening meeting and the exit summary meeting at which the Department will meet facility personnel to explain the purpose, scope, procedures, progress and outcome of the audit, invite any employee and employee representative that participates in the inspection or audit. If the Department deems it necessary, the Department shall arrange and conduct a separate meeting with participating employees and employee representatives.
6. After the inspection or audit is concluded, display the name and telephone number of the Department lead inspector for a period not less than 30 days after the conclusion of the inspection or audit in the area subject to inspection or audit and promptly provide this notice to the employee representative, if applicable. Employees have the right to participate in DPHS inspections and audits without retaliation.

### **IV. Miscellaneous**

1. Department inspectors have the authority to resolve all disputes as to who is the representative authorized by the owner or operator and the employees for the purpose of the order. If there is no employee representative, or if the Department inspector is unable to determine with reasonable certainty

who the representative is, he or she will consult with those employees he or she deems necessary to the effective conduct of the inspection or audit.

2. The Department inspector may, at his or her discretion, deny the right of accompaniment to any person whose conduct interferes with a fair and orderly inspection or audit.

3. The Department inspector has the authority to conduct any interview with employees that the Department inspector deems necessary to effectuate the purposes of the order and the DPHS rules. The interviews may be conducted without facility and management personnel present, if deemed appropriate by the Department inspector.

4. The owner or operator of the facility may require an employee or employee representative who accompanies a Department inspector on an inspection or audit to sign an agreement solely for the purpose of protecting trade secrets and confidential business information, except that nothing in the order shall be construed to alter any rules or regulations adopted pursuant to the DPHS rules concerning the protection of trade secrets and confidential business information. Nothing in the order shall affect pre-established employee obligations concerning trade secrets.

5. In the case of a facility which contains information classified pursuant to law by an agency of the federal government in the interest of national security, only persons who are authorized to have access to that information may accompany a Department inspector in areas of the facility containing the information.

6. Nothing in the order delegates any enforcement power of the Department to any employee or employee representative.

7. Nothing in the order supersedes any provisions of State or federal law concerning labor-management relations or reduces any rights or remedies available to employees or employee representatives under any collective bargaining agreement, the Spill Compensation and Control Act, or any other applicable law.

## **V. Answers to Your Questions**

### ***What employees or employee representatives would the Department like to see participate in a DPHS inspection or audit?***

A preferable participant is a person who has experience as an operator or maintenance worker in the DPHS covered area and is knowledgeable on the training program, standard operating procedures, and emergency response plan.

### ***Should members from a union's national or international organization participate in a DPHS inspection or audit?***

The intent of the order is that employees or their representatives who work at the site and have knowledge of the day to day operations and discharge prevention and response plans participate in the audit. The owner or operator's management may decide if they want to invite persons from outside the site to participate.

### ***If employees or employee representatives refuse to participate in the inspection or audit, does the owner/operator have to take any other measures?***

If the owner or operator has made the notifications and afforded employees and their representatives the opportunity to participate as specified in the order and the employees or representatives choose not to participate, the owner or operator does not have to take any further action.

### ***Are employees or representatives expected to participate during the entire time of an audit?***

No. The Department expects that employees would participate during the audit's opening meeting, the field inspection of the facility, and the summary meeting. An employee who works in the portion of the facility being inspected and an employee representative may attend. A DPHS inspection or audit may last one day at a small site to two to three days at a large site such as a petroleum refinery. The Department does not expect that employees or representatives should attend during the site

office review of records and reports for implementation of the discharge prevention program elements. However, Department inspectors may wish to interview employees or representatives regarding the implementation of specific program elements such as training, standard operating procedures, housekeeping and maintenance, or emergency response.

***If multiple employee and/or employee representatives request to participate in the inspection or audit, does management have the discretion to limit the number chosen?***

Yes. Management may limit the number of individuals chosen based upon operational considerations. However, in all cases where multiple individuals have expressed an interest, a minimum of one employee and employee representative (if applicable) must be afforded the opportunity to participate.

## **VI. For further information on the Discharge Prevention program:**

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