

New Jersey Department of Environmental Protection

Bureau of Release Prevention

A Guide to DPHS Audit and Facility-wide Inspections

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INTRODUCTION

Facilities may be subject to the Discharges of Petroleum and other Hazardous Substances (DPHS) rules, codified at N.J.A.C. 7:1E and implemented by the Discharge Prevention program, which is part of the Bureau of Release Prevention (Bureau) within the Department of Environmental Protection (Department). Such facilities undergo an audit or facility-wide inspection in order to ascertain on-going compliance with the DPHS rules. This is accomplished by reviewing records and other documents, as well as by a physical inspection of the facility. It may occur as an independent audit inspection or as a facility-wide inspection that is part of the plan renewal review process. Independent audit inspections may be conducted unannounced during normal business hours. Facility-wide inspections are normally scheduled with the Facility Contact during the plan renewal review process.

Discharge Prevention, Containment and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) plans describe how an owner or operator of a facility regulated by DPHS is demonstrating compliance with the DPHS rules applicable to their operations. Owners/operators must comply with all applicable requirements of N.J.A.C. 7:1E in the manner described in their approved DPCC/DCR plans.

This guide has been prepared to help owners/operators understand what to expect during an audit or facility-wide inspection.

INSPECTION - GENERAL

When an inspector prepares for an inspection, a checklist is assembled to guide the inspection. This checklist consists of the requirements covering the regulated activities undertaken at the facility. A sample inspection checklist can be found in the guidance document “Annual Audit Checklist” which is available on the Bureau’s website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm>.

Upon arrival at the facility, the inspector, who may or may not be the same person as your DPCC/DCR plans project manager assigned by the bureau, will identify himself/herself, show proper credentials, ask to meet with the Facility Contact, Response Coordinator or other available responsible individual, and explain the purpose of the inspection.

If access is denied, a Notice of Violation will be issued and enforcement action may be initiated for failure to permit lawful entry and inspection (see N.J.A.C. 7:1E-6.7).

Inspectors will not sign confidentiality agreements or releases of any kind. A visitor log may be signed, provided the log does not have some type of confidentiality statement on it.

Return visits on subsequent days may be required to cover all areas of concern.

Employees and employee representatives must be afforded the opportunity to participate in the inspection, in accordance with the Department’s Administrative Order No. 2007-03. A copy of

the administrative order can be found on the Bureau's website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm>. For inspections that are scheduled in advance, the inspector will remind the facility contact of this requirement by either phone or email.

OPENING CONFERENCE

If advance notice was not provided, the inspector will instruct the facility representative to afford facility employees and an employee representative (if applicable) the opportunity to participate in the inspection. If the inspection was scheduled, the inspector will request to see the posted notice of the inspection and will inquire as to whether any employees or their representative, as applicable, has expressed interest in participating.

An overview of the inspection procedure will be provided to the facility contact and any employee or employee representatives present. The order of the document review and physical inspection can change based on conditions at the facility, the weather, or other factors. The primary objective of the audit or facility-wide inspection is to ascertain facility compliance with regulatory requirements.

Names of attending persons will be obtained for inclusion in the inspection report.

DOCUMENT REVIEW

The inspector will request a variety of documents in order to determine compliance with the various inspection, training, recordkeeping and other requirements of the DPHS regulations. It is a requirement of the regulations that all records be made available for inspection upon request. When the inspection is arranged in advance, it is a good idea to gather the appropriate records prior to the arrival of the inspector. This ensures that the needed documents are readily available and will save time and effort during the inspection. The documents that should be gathered include the following:

Facility copy of approved plan – The inspector will verify that a complete copy of the approved DPCC/DCR plan, including all maps and appendices or attachments, is available on site.

Financial responsibility – The inspector will verify that a current financial responsibility document, worded as specified in Appendix B to N.J.A.C. 7:1E, is available on site.

Integrity testing reports – The inspector will request integrity testing and inspection reports to verify that the owner or operator is complying with integrity testing requirements. These reports should be the most recently completed (since the last DPHS inspection) as well as previous testing reports, because they are required to be kept for the lifetime of the tank.

The inspector will review reports for tanks which were scheduled to be tested since the last DPHS inspection and will verify that testing performed conforms to the methodology indicated

in the approved DPCC/DCR plan. The inspector will also verify that records of previous tests and inspections are being kept as required.

For guidance on integrity testing of ASTs, please refer to “Guide to Testing and Inspection of Aboveground Storage Tanks” which can be found on the Bureau’s website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm>.

Visual inspection and monitoring records – The inspector may request records of inspection for all marine transfer areas, storage areas, process areas, loading/unloading areas, and security fencing, gates, and locks, as applicable, conducted in the past ten (10) years, and all cleanup/removal equipment inspections conducted in the past three (3) years. The inspector will review inspection forms in order to verify that they document all required inspection information and that the inspections have been conducted. Recommendations may be made to improve the forms or their use.

Response drills – The inspector will request records of all simulated emergency response drills performed in the past three (3) years. The inspector will review the drill records to verify that the drills were conducted, with varying types and scenarios, and that a written critique of each drill was prepared. Note that a fire or evacuation drill does not qualify as an emergency response drill, but that drills performed for other purposes, such as PREP (National Preparedness for Response Exercise Program) may. Also, actual emergency responses are not drills.

Contracts/Agreements with cleanup contractor – The inspector will verify that current contracts or agreements for discharge cleanup organization emergency response services are maintained by the owner/operator. These can be evergreen agreements or contingency agreements.

Training program - The inspector will verify that a written description of the employee training program is kept on site.

Training records - The inspector will request records of all training performed in the past three (3) years. The inspector will review forms for each type of training (i.e., initial, job-specific, refresher, and revised-SOP training) in order to verify that they include required information and that training has been conducted. Records can be paper or electronic, as long as the inspector can have access to review them.

Standard Operating Procedures (SOPs) – The inspector will verify that written SOPs for all operations involving hazardous substances and a copy of the SOP index are maintained at the facility and are readily available to employees. The inspector may review one or more SOPs to determine whether all applicable information is included.

Discharge Confirmation Reports (DCRs) – The inspector will request all DCRs for the past ten (10) years and verify that the reports are being retained on file. If there have been no discharges reported at the facility in the past ten years, the inspector may inquire if there are records associated with discharges that were not required to be reported.

Facility inventory - The inspector may verify that inventory reports for the past three (3) years are on file. This is an actual accounting of on-hand hazardous substance quantities, performed on a minimum of an annual basis. Note that a Community Right to Know survey is not sufficient to meet this requirement. Computerized systems that keep on-time inventories may be used to meet this record requirement.

Material Safety Data Sheets (MSDS) or Safety Data Sheets (SDS) – The inspector will verify that MSDSs or SDSs are readily available to employees.

PHYSICAL INSPECTION

The inspector will visually inspect some or all areas where hazardous substances are stored, processed or transferred. For large facilities, where inspection of all areas and/or equipment in a short time period is not feasible, the inspector may select a random representative number of areas to inspect, or may return on another day to continue the inspection.

The visual inspection is to determine if the physical attributes of the facility are in compliance with the requirements of the regulations and the applicable sections of the approved DPCC plan. The areas that may be inspected, and the aspects to be considered, include:

Secondary containment/diversion systems – The inspector will inspect all secondary containment for storage, process, and loading/unloading areas for signs of deterioration, cracks or holes. Vertical components (walls) are to be free of cracks or holes. Horizontal surfaces are to be free of substrate erosion, uneven settling or significant growth of vegetation. There should be no appreciable accumulation of debris within any system. The inspector will also be looking to see that there are no leaks from equipment or storage within the systems and that they are not being used in a manner that impairs the capacity of the system to contain leaks, i.e. storage of equipment or other items.

Storage Tanks – The inspector will verify that if valves are present, they will prevent discharges outside of secondary containment and that overflow or vent lines are directed to appropriate areas. The inspector will also verify that tanks greater than 2,000 gallons in capacity have high level alarms and one (1) of the three (3) required backup provisions (see N.J.A.C. 7:1E-2.2(d)).

Mobile or Portable Storage Tanks – The inspector will verify that any mobile or portable storage tanks are located in a manner which provides secondary containment protection.

Marine transfer operations and Illumination – The inspector will verify that all marine transfer areas have boom readily available, proper illumination, and notification procedures posted. Unless there is a marine transfer occurring at the time of the inspection, compliance of certain aspects of the marine transfer operations cannot be determined.

Tank car/truck loading or unloading areas – Loading/unloading areas will be inspected to verify that ongoing loading or unloading operations are attended to by facility personnel, and systems, such as wheel chocks or brake interlock, are in place to prevent premature departure of

the vehicle.

Housekeeping and maintenance – The inspector will verify that there is no evidence of leaks, discharges, or loose quantities of hazardous substances anywhere in the facility and that adequate quantities of cleanup and safety equipment, as described in the approved DPCC/DCR plan, are kept on-site.

Security – Fences and gates will be inspected in order to verify that they are in good condition. Provisions to illuminate all portions of the facility where hazardous substances are found must be in place, including indoors.

In-facility pipes – The inspector will verify that pipes are marked in a manner which allows identification of the hazardous substance within, blank flanged and marked or physically removed when no longer in service, and protected in order to minimize damage from vehicles.

Flood Hazard Areas – The inspector will verify that measures to protect hazardous substances stored within flood areas are implemented as described in the approved DPCC/DCR plan.

Facility Upgrades – The inspector will verify completion of all upgrades for which the completion date in the approved DPCC/DCR plan has passed.

EXIT CONFERENCE

At the end of the inspection, the inspector will hold an exit conference with the facility representatives to review:

- Findings of non-compliance with the DPHS rules discovered during the inspection
- Any inconsistencies/missing information in the approved plan that may require corrections and may result in enforcement action, and
- Key points and action items, such as the process that is followed concerning possible enforcement action.

All findings of non-compliance may be subject to enforcement action. For violations classified as minor you may, provided the violation meets conditions set forth in N.J.A.C. 7:1E-6.9, be issued a notice of violation (NOV) granting a grace period during which corrective actions must be completed in order to avoid penalties. The NOV will specify each regulatory requirement(s) found to be out of compliance and will indicate corrective actions to be taken. Violations classified as non-minor may result in the issuance of an enforcement action. The enforcement action will specify the required corrective action(s) and include a civil administrative penalty assessment. Civil administrative penalty amounts are list in N.J.A.C. 7:1E-6.8.

The report of your facility inspection may be viewed through the Department's Data Miner on its website at <https://www13.state.nj.us/DataMiner>, usually 21 days following the completion of the inspection. The DIFF number for the facility is the PI ID number.

RECOMMENDATIONS

1. Read the rules

While DPCC/DCR plans have been required for a number of years, the rules and list of regulated substances are periodically revised and amended. The latest version of the rules is effective as of January 27, 2014. Refer to the most recent adopted rules to ensure your facility is in compliance. A courtesy copy of the current DPHS rules is available on the Bureau's website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm>.

2. Obtain and read all available guidance documents

Guidance documents are available on the Bureau's website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm>. They cover topics such as inspection checklist, environmentally sensitive areas, inspecting and testing aboveground storage tanks, soil permeability testing, and changes made to the list of hazardous substances in Appendix A to N.J.A.C. 7:1E.

3. Be familiar with how your approved plans describe the manner in which you are to comply with the rules

You are required to operate in accordance with the descriptions included in your approved plan.

All facility upgrades must be completed by the date(s) specified in your plan. If delays in completing an upgrade are expected, notify the Bureau in writing well **before** the due date. Upgrade schedule extensions are not granted if requested after an approved completion date.

Visual inspections are to be conducted at the frequency stated in your plan.

Tank integrity testing and inspection must be conducted in accordance with the schedule included in your approved plan.

Always have current and valid financial responsibility documentation on site.

Changes to your operations or the content of your plan may require an amendment; if in doubt contact your assigned DPCC/DCR plans project manager within the bureau. If you don't agree that what the consultant wrote is accurate, get it revised prior to submission. Your inspector will be inspecting your facility to ensure that upgrades are completed according to the schedule in your approved plan and that records are kept based on what is described in the plan, among other compliance issues.

4. Be prepared to provide records for review

Read the requirements for recordkeeping at N.J.A.C. 7:1E-2.15. Be prepared to produce

any records requested by the inspector. Failure to make records available for review will result in the issuance of a Notice of Violation.

5. **Conduct self-audits**

In order to avoid possible enforcement actions conduct self-audits of your facility. Use the information contained in our guidance documents, your approved plans and the regulations to self-audit your operations.

6. **Remember to amend or update approved DPCC/DCR plan**

Once a plan is approved, it must be kept current by amendment or updating when things change at the facility. The Bureau has separate guidance available on when and how **notification** and **amendment** must be done, and when and how changes not requiring a plan amendment must be addressed. This additional guidance is available on the Bureau's website at <http://www.nj.gov/dep/enforcement/dp/dpdown.htm> or by contacting the Bureau at (609) 633-0610.

The plan is intended to be a living document. This requires **notifying** the bureau in writing at least sixty (60) days prior to the commencement of proposed new construction, installation, substantial modification or replacement, as per N.J.A.C. 7:1E-4.8(a) **and** submitting **plan amendments** within thirty (30) days of any changes having taken place that necessitates a change in plan, as per N.J.A.C. 7:1E-4.8(b). Failure to do so may result in enforcement actions.

7. **Remember to renew plans on time**

Once every three years following the approval or conditional approval of the DPCC/DCR plans, they must be renewed. The plan approval letter issued by the bureau states the effective period of the approved plan. **One copy of the renewal must be submitted 180 days prior to the expiration date of the DPCC/DCR Plans.** The expiration date of the plans is always in three-year increments from the date the plans were first approved, regardless of the date of renewal plan approvals thereafter. If a DPCC and DCR plan is not submitted for renewal within the three-year timeframe, it is considered expired and the owner or operator will be in violation for not having a plan.

For more information about the Discharge Prevention program, please visit our web site at <http://www.nj.gov/dep/enforcement/dpp.html> or call the Bureau of Release Prevention at (609) 633-0610.