



**State of New Jersey
Department of Environmental Protection**

Bureau of Release Prevention

Fact Sheet

**Toxic Catastrophe Prevention Act Program –
Employee Participation**

Issued: October 26, 2005

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I. Overview

On September 26, 2005, the Department issued Administrative Order No. 2005-05, which established procedures for participation by employees and their representatives when the Department inspects, investigates, or audits facilities regulated by the Toxic Catastrophe Prevention Act (TCPA) and any rules and regulations adopted pursuant thereto. The Department believes that enhancing employee involvement in the audit and the overall risk management program will help to improve risk management 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. TCPA Program Background

On December 3, 1984, the catastrophic leak of poisonous gas in Bhopal, India, occurred that sent shock waves throughout the world. That incident resulted in over 3,800 deaths and more than 150,000 persons with injuries and disabilities. The aftermath is still being felt today.

New Jersey responded to the Bhopal tragedy and took a giant step to prevent this type of accident. In January 1986, the New Jersey legislature enacted the Toxic Catastrophe Prevention Act (N.J.S.A. 13: 1K-19 et seq.), usually referred to as TCPA. In July 1988, the New Jersey Department of Environmental Protection adopted regulations for the TCPA program (N.J.A.C. 7:31-1 et seq.). On December 6, 1989, the Council of State Governments presented an Innovations Award to the New Jersey TCPA program, "in recognition of excellence and innovation in the administration of state government."

Owners and operators of the facilities which handle, use, manufacture, store, or have the capability of generating an extraordinarily hazardous substance (EHS) at certain specified threshold quantities must have a Department-approved risk management program. The owners of the sites throughout New Jersey subject to the TCPA rule have made great strides to manage the risks of potentially catastrophic releases, to prevent their occurrence, and to reduce the potential consequences and likelihood of such accidents. They work constantly to prevent releases and to reduce the potential consequences should a release occur. Registrants meeting TCPA requirements all have comprehensive risk management programs that cover a full range of prevention and protection activities to identify and evaluate the risk of accidents involving EHSs. Risk management programs cover requirements for process safety information, process hazard analysis/risk assessment, inherently safer technology evaluations, standard operating procedures, operator training, mechanical integrity/preventive maintenance, management of change, safety reviews: design and pre-startup, compliance audits, EHS accident investigation, employee participation, hot work permits, contractors, and emergency response planning.

Registrants submit a Risk Management Plan (RMP) to the Department that provides registration information on their processes and EHSs. The TCPA rule requires annual reports including RMP updates and a summary of implementation of the risk management program elements. The Department chemical safety engineer staff, many with decades of industrial experience, audit and inspect the registrants to assure continuing implementation.

Important features of the TCPA rules have been carried forth in the OSHA process safety management (PSM) standard (29 CFR 1910.119) adopted in 1992, and in the USEPA accidental release prevention (ARP) rules at 40 CFR Part 68 adopted in 1996. New Jersey has obtained delegation as the implementing agency from USEPA for the rules developed pursuant to Sec. 112(r) of the Clean Air Act (CAA).

III. Provisions of the Administrative Order

Employees have the right to participate in TCPA inspections and investigations without retaliation.

A. Department Activities

1. When the Department notifies the owner or operator of a facility of an upcoming TCPA inspection or investigation, the Department will instruct the owner or operator to:

- a. Post a notice, or a copy of any Department notice provided, indicating that there will be a Department inspection or investigation, conspicuously displayed in the area subject to inspection or investigation, immediately upon such notification; and
- b. If there is an employee representative at the facility, immediately provide a copy of the posted notice to the employee representative.

2. If the Department provides a written explanation of the purpose, scope, procedures, progress, or outcome of the inspection or investigation to the owner or operator of the facility, all employees will be entitled to view a copy of that written explanation. The Department will instruct the owner or operator of the facility to take the following actions, not more than 24 hours after receiving a copy of the Department's explanation:

- a. Conspicuously display the explanation in the area subject to the inspection or investigation; and,
- b. If there is an employee representative, provide the employee representative with a copy of the explanation.

3. If the Department conducts an inspection or investigation at a facility, the Department will instruct the owner or operator of the facility to afford to an employee who works in, or is familiar with, the portion of the facility being inspected or investigated, and an employee representative of the employees, if there is an employee representative, an opportunity to participate in the inspection or investigation and to accompany Department inspectors during the inspection or investigation.

4. 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/or representative of the owner or operator may accompany the Department inspector during each different phase of an inspection or investigation if the inspector determines that this will not interfere with the conduct of the inspection or investigation. This provision will not apply to parts of an inspection or investigation in which the Department is exclusively examining written records.

5. If the Department conducts a meeting with the management personnel of the owner or operator of a facility to explain the purpose, scope, procedures, progress, or outcome of an inspection or investigation, the Department will instruct the owner or operator of the facility to invite to the meeting any employee and employee representative that participates in the inspection or investigation. If the Department deems it necessary, the Department will arrange and conduct a separate meeting with participating employees and employee representatives.

6. Department inspectors will 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 this 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 investigation.

7. After the inspection or investigation is concluded, the Department will instruct the owner or operator to conspicuously display the name and telephone number of the Department inspector for a period not less than 30 days after the conclusion of the inspection or investigation in the area subject to inspection or investigation and to promptly provide this notice to the employee representative, if applicable.

8. 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 investigation.

9. The Department will have authority to conduct any interview with employees that the Department deems necessary to effectuate the purposes of this Order and the TCPA. The interviews may be conducted without facility and management personnel present, if deemed appropriate by the Department.

10. The Department will include the information from this fact sheet on the Department web page.

11. The Department will maintain an electronic database of contact information for employee representatives at TCPA regulated facilities.

B. Owner/operator Activities

The facility owner/operator must complete the following:

1. Post a notice, or a copy of any Department notice provided, indicating that there will be a Department inspection or investigation, conspicuously displayed in the area subject to inspection or investigation, immediately upon such notification; and

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 investigation to the owner or operator of the facility, all employees will be entitled to view a copy of that written explanation. Not more than 24 hours after receiving a copy of the Department's explanation:

- a. Conspicuously display the explanation in the area subject to the inspection or investigation; 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 investigated, and an employee representative of the employees, if there is an employee representative, an opportunity to participate in the inspection or investigation and to accompany Department inspectors during the inspection or investigation.

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 investigation.

6. After the inspection or investigation is concluded, display the name and telephone number of the Department lead Chemical Safety Engineer for a period not less than 30 days after the conclusion of the inspection or investigation in the area subject to inspection or investigation and promptly provide this notice to the employee representative, if applicable.

IV. Miscellaneous

1. The owner or operator of the facility may require an employee or employee representative who accompanies a Department inspector on an inspection or investigation 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 TCPA concerning the protection of trade secrets and confidential business information. Nothing in the Order shall affect pre-established employee obligations concerning trade secrets.

2. 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.

3. Nothing in the Order delegates any enforcement power of the Department to any employee or employee representative.

4. 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 Clean Air 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 TCPA audit?

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

Should members from a union's national or international organization participate in a TCPA audit?

The intent of this Order is that employees or their representatives who work at the site and have knowledge of the day-to-day implementation of the site's risk management program participate in the audit.

If employees or employee representatives refuse to participate in the 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 process, the tour of the control room, and the summary meeting. An employee who works in the portion of the facility being inspected and an employee representative may attend. A TCPA audit may last from two to three days at a small facility with one process to two to three weeks at a large facility such as a petroleum refinery or large site with many processes. The Department does not expect that employees or representatives should attend during the office review of records and reports for implementation of the risk management program elements. However, Department engineers may wish to interview employees or representatives regarding the implementation of specific program elements such as operator training, standard operating procedures, maintenance, accident investigation, process hazard analysis, or emergency response.

If multiple employee and/or employee representatives request to participate in the 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 TCPA program:

Address: N.J. Department of Environmental Protection
Bureau of Release Prevention – TCPA Program
P.O. Box 420
Mail Code 22-03D
Trenton, New Jersey 08625-0420

Telephone: (609) 633-0610

Fax: (609) 633-7031

Web site: <http://www.nj.gov/dep/enforcement/tcpa.html>