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VIA ELECTRONIC MAIL & USPS

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RE: POTENTIAL REPORTING CHANGES TO THE TOXIC CATASTROPHE PREVENTION ACT PROGRAM

Dear A.C. Wormley:

On behalf of the members of the Chemistry Council of New Jersey (CCNJ), we would like to share our concerns regarding the attached draft “Annual Report Compliance Audit and Near Miss Handout” dated May 2, 2018, which summarizes potential changes to the Toxic Catastrophe Prevention Act (TCPA) annual report requirements.

As you may know, CCNJ represents over 50 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 55,000 persons in New Jersey and is responsible for over \$25 billion in revenues in New Jersey each year.

Focusing on Section 2 in the attached handout, CCNJ has concerns regarding the potential addition of reporting requirements for near miss events. Currently, TCPA facilities are required to report extraordinarily hazardous substance (EHS) accidents only. For some of our members, this single change could result in an order of magnitude increase in the number of line items included in the report. The entering alone is a significant burden, but there is also the added burden of gathering the additional data and details beforehand.

In addition, there is the issue of “near miss” vs. “intended failure”, the latter being expected by design. The question under 2.2.d. in the attached handout (i.e. Did you discover a failed safety system upon testing?) refers to maintenance activities, which are not 100% fail-proof. N.J.A.C.

7:31 only specifies a “potential catastrophic event”, which we do not consider near misses to be.

It is our understanding that the NJDEP is planning to incorporate these potential changes by way of audit form/instructions revision rather than going through the process of a regulatory change. If the Department does decide to proceed with these reporting changes, CCNJ strongly recommends going through the actual rulemaking process, which includes formal stakeholder involvement.

It is also our understanding that the attached handout is being distributed to TCPA facilities one annual report compliance audit at a time. Though we understand that the document is still in draft form, we are concerned about how and when the regulated community as a whole will be informed of these changes, especially if the NJDEP is planning to implement sooner rather than later.

We would greatly appreciate the opportunity to schedule a meeting with you to further discuss our concerns outlined above. We would also be interested in learning more about the background (i.e. What was the trigger for these potential changes?), as well as the Department’s specific plans on implementation (i.e. When do you expect everything to be finalized and distributed to the regulated community?).

Thank you for your consideration of our comments and request to meet. We look forward to continuing to work with the NJDEP on this and other matters of critical importance to CCNJ members.

Sincerely,



Dennis Hart
Executive Director

Attachment