



February 9, 2016

VIA EMAIL

Janine MacGregor
NJDEP - SRWMP
Assistant Commissioner's Office
Janine.MacGregor@dep.nj.gov

Re: Comments on "Planning for and Response to Catastrophic Events at Contaminated Sites" Technical Guidance Document

Dear Ms. MacGregor:

On behalf of the members of the Chemistry Council of New Jersey (CCNJ) and the Site Remediation Industry Network (SRIN), we appreciate the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP) on the "Planning for and Response to Catastrophic Events at Contaminated Sites" (Catastrophic Events) Technical Guidance Document.

As you know, CCNJ represents over 70 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 dollars in revenues in New Jersey each year. SRIN, which is a group of site remediation professionals representing approximately 20 companies, meets bi-monthly to discuss site remediation issues. SRIN includes companies from the power, oil, chemical and pharmaceutical industries, and is supported by CCNJ.

Attached you will find CCNJ/SRIN's consolidated comments on the Catastrophic Events Technical Guidance Document. Although CCNJ and SRIN support and appreciate NJDEP's attempt to learn from Superstorm Sandy, we are concerned that, if not properly utilized, the issuance of this technical guidance document will result in duplication, confusion, and inefficiency at many sites. Instead of a regulated technical document, we believe this should be used as a voluntary guidance reference tool to assist property owners in planning and evaluating

extreme events where potential receptors may be impacted. The proposed intended use of this technical guidance document is too broad, encompassing small discharges, multiple areas of concern, and entire active sites being investigated and remediated at any phase, with a one-size-fits-all approach. CCNJ and SRIN believe this technical guidance document should only apply to sites that do not currently have emergency response action plans, and exclude routine small discharges of hazardous materials that would be addressed under emergency response actions in accordance with N.J.A.C. 7:1E-5.3 (Discharges of Petroleum and Other Hazardous Substances Rules - Discharge notification).

We need to maintain focus on site preparedness and lessons learned, but also appropriately address active sites with emergency response plans already in place that incorporate how to handle and manage catastrophic events. The intent of the Catastrophic Events Technical Guidance should be guidance, not regulation.

Thank you again for the opportunity to comment on the "Planning for and Response to Catastrophic Events at Contaminated Sites" Technical Guidance Document and we look forward to your responses. Please do not hesitate to call me with any questions.

Best Regards,

A handwritten signature in cursive script that reads "Samantha L. Jones".

Samantha Jones
Director of Regulatory Affairs

Attachment

cc: Hal Bozarth, Executive Director

NJDEP Technical Guidance Document Review Form

Document: *"Planning for and Response to Catastrophic Events at Contaminated Sites"*

Review/Comment Period : Begins: Tuesday, December 29, 2015

Ends: Tuesday, February 09, 2016

Reviewer Name / Affiliation :

Samantha Jones / CCNJ/SRIN

Reviewer Email Address (in case the Committee needs to contact you regarding your comment)

sjones@chemistrycouncilnj.org

SEND ALL COMMENTS TO:

Committee Chairperson: Janine MacGregor [Janine.MacGregor@dep.nj.gov]

Page	Section	Subsection	COMMENTS
1	3	1	<p>CCNJ/SRIN proposes the suggested changes below to 1.0 Introduction and Background:</p> <p>Paragraph 1: Due to its industrial history and a progressive contaminated site cleanup program, New Jersey has identified many contaminated sites in need of remediation. By the end of 2014 there were approximately 14,000 contaminated sites under the purview of the New Jersey Department of Environmental Protection (NJDEP or Department). Leading up to and during", and in the aftermath of," Superstorm Sandy in October 2012, "one of" the primary concerns of the Site Remediation and Waste Management Program (SRWMP) "was" securing "and assessing the effects of Sandy on the approximately 14,000 contaminated sites within the State. The focus of the SRWMP prior to the storm was to assist with site preparedness," so as to prevent the release of hazardous materials, and "respond to" addressing any releases that may have occurred due to the storm. "The overall effort was to" in a timely manner reduce or eliminate threats to human health and the environment. In an attempt to learn from that catastrophic event, SRWMP staff and managers who were involved in the response efforts participated in a post-storm exercise "to review, analyze, and learn from the experience". The goal of this exercise was to evaluate lessons learned and identify improvements that could enhance remedial system resiliency for any catastrophic event in the future. "It is important to note 'sites undergoing remediation' includes a broad scope of sites. The types of sites include active and inactive gas stations, active and inactive production sites, and sites under investigation. Active sites will have an Emergency Response Plan/Contingency Plan/Business Interruption Plan, or alternate, that incorporates how to handle and manage catastrophic events at the business units and may not require another plan."</p> <p>Paragraph 2: Through this evaluation, it became clear that", at some SRWMP sites," Licensed Site Remediation Professionals (LSRPs), the Person Responsible for Conducting the Remediation (PRCR, as defined in N.J.A.C. 7:26C-1.3) (1), and property owners could benefit from guidance to help them prepare for, respond to, and recover from catastrophic events...</p> <p>Paragraph 3: To develop this guidance, SRWMP assembled stakeholders from the regulated community, academia, LSRPs and SRWMP staff. The following "stakeholders" helped prepare, review and finalize this document:...</p>
2	1	1.1	<p>CCNJ/SRIN proposes the suggested changes below to 1.1 Intended Use:</p> <p>Paragraph 1: This guidance is designed to help plan for and respond to a catastrophic event", specifically as it could affect sites undergoing remediation. This guidance is voluntary and was prepared to assist in planning." It "may" be used in concert with, but does not supercede...</p> <p>Paragraph 2: CCNJ/SRIN proposes deletion of the last sentence, "However, if there is a new release at that site from a catastrophic event, this guidance document would apply.", since a new release would trigger appropriate requirements.</p> <p>Paragraph 3: CCNJ/SRIN recommends that the technical document be utilized as a guidance reference tool only, not a regulated technical document. The guidance is to be utilized as a tool to assist property owners plan and evaluate extreme events where there are potential receptors that may be impacted. CCNJ/SRIN proposes bolding/italicizing the phrase "best management practices" to illustrate that this document is guidance only, not a regulation. In addition, CCNJ/SRIN recommends defining "best management practices" as it means different things to different people.</p>
3	4	1	<p>The proposed intended use of the technical document is too broad which encompasses a small discharge (less than 100 gallons of petroleum), multiple AOCs, and entire active sites that are being investigated/remediated at any of the remedy phases (PA, SI, RI, RA). This document leads the Investigator to assume that this is one-size-fits-all approach for all remediation sites. It does not matter the size and magnitude of the area(s) of concern, the extent of the contamination, or facility operations not in site remediation.</p> <p>CCNJ/SRIN requests that the intended use for the technical document focus on sites that do not have emergency response action plans. In addition, the document should exclude routine small discharges of hazardous materials that are addressed under emergency response actions in accordance with 7:1E-5.3 DPCC Discharge Requirements.</p> <p>While the document acknowledges that it is not based on rule or statute, it is creating a de-facto standard. Furthermore, ARCCS requires any person conducting remediation to do so "by applying any available and appropriate technical guidance concerning site remediation as issued by the Department" (7:26C-1.2(a)3).</p>

4	4	1	1.1	<p>CCNJ/SRIN requests the following clarifications:</p> <p>1) Is this technical document a document that must be incorporated into existing emergency/contingency planning and submitted along with the required site remediation documents?</p> <p>-or-</p> <p>2) Is this technical document a stand-alone document that must be submitted along with required site remediation documents?</p> <p>As stated in the comments above, many facilities have existing plans that address catastrophic events. The use of a technical guidance document for active sites is duplicative, and multiple emergency response plans can cause confusion.</p>
5	4	1	1.2	<p>NJDEP implies that there was a lack of planning for catastrophic events for Superstorm Sandy. Facilities did prepare and secure their facilities to prevent discharges, spills, equipment, etc. from exposure to the elements of the storm.</p> <p>CCNJ/SRIN proposes the first paragraph of 1.2 Purpose be rewritten as follows: "It is widely accepted that proper planning for unforeseen/catastrophic type events results in less significant impacts, including personal injuries/deaths, property damage, economic-production time losses, and resources dedicated to recovery efforts. Proper planning can also eliminate and/or reduce the unintended release of contaminants and impacts to the environment during these types of events. The purpose of this document is to utilize the lessons learned from Superstorm Sandy to help New Jersey increase its resiliency to these events, specifically as it pertains to properties undergoing remediation. As stated above, the primary intention of this document is to provide a guideline to assess vulnerabilities for Investigators who, without experience/training, may be designated as the individual to prepare for and/or respond to unforeseen/catastrophic events at contaminated sites (mainly LSRPs, PRCRs). This document also can serve as a reminder to Investigators of active facilities that are required by regulation to have many of these plans to implement the environmental activities/infrastructure into their facility-wide plans."</p>
6	5 & 39	2	2.1 & Appendix F	<p>The types of catastrophic events described in the technical guidance are very broad and general. Likelihood and severity of a catastrophic event for a facility, along with the ability to control and mitigate, need to be considered. This catastrophic plan would need to consider every possible event for each of the site remediation sites, and it is not feasible to plan for every conceivable event scenario. This is an administrative burdensome task to conduct and document for each type of category. In addition, the amount of training to perform is labor intensive. The types of catastrophic events do not appear to align with the definition of catastrophic event in Appendix F Glossary. Therefore, CCNJ/SRIN recommends that the definition of catastrophic events be incorporated into Section 2.1.</p> <p>Also, CCNJ/SRIN requests clarification on the following statement: "For unanticipated events, establishing automatic management and operational responses becomes increasingly important." The focus should be on proper planning and training rather than upholding automation as the solution to all concerns.</p>
7	7	2	2.2	<p>CCNJ/SRIN proposes deletion of "future land use" under Land Use section. Evaluation of future land use is important in remediation determinations but not so in emergency planning.</p>
8	7	2	2.4	<p>CCNJ/SRIN recommends that the entire "Economic and Financial Benefits, Planning and Responsibilities" section must be removed. This section is not applicable or required in this technical guidance. This is a business issue that is addressed by having a Business Interruption Plan.</p>
9	8	2	2.5	<p>CCNJ/SRIN requests that "Toxic Catastrophe Prevention Act (TCPA) Program - N.J.A.C. 7:31" be added to the list.</p>
10	9	2	2.6	<p>CCNJ/SRIN proposes the suggested changes below to 2.6 Status of Remediation:</p> <p>Paragraph 1: CCNJ/SRIN proposes deletion of the last sentence, "This Technical Guidance is intended to be used for contaminated sites at any remedial phase; however, it will be most applicable to contaminated sites in the RI, RA and post-RA (limited restricted use and restricted use) phases.", since it should be made clear that this is a guidance document, not a regulation.</p> <p>Also, CCNJ/SRIN request clarification on the Investigator identifying whether the PRCR has conducted catastrophic event planning under the Preliminary Assessment section. There is no legal requirement, other than what may be in an SPCC plan or similar. What is the Investigator expected to conclude and report when the PRCR does not have a plan or they had concluded that one is not required?</p>
11	10	2	2.6	<p>CCNJ/SRIN proposes deletion of "(do these 2 works need to be capitalized?)" under Post Remedial Action section.</p> <p>Also, CCNJ/SRIN recommends revising the example of armoring a cap under the Post Remedial Action section to evaluating appropriate methods for hardening to address potential interference with on-site activities.</p>
12	11 & 12	3	3.1 & Figure 1	<p>CCNJ/SRIN requests clarification that the Risk Probability or Vulnerability Assessment focus only on the site remediation area, not on the entire operating facility that may have one (1) area of concern for contamination.</p> <p>Also, CCNJ/SRIN requests re-evaluation and revision of Figure 1, as it seems inconsistent with the text. For example, a restricted RAO for a site with a cap and deed notice could have been issued. The chart shows that no minimum level of preparation is needed, yet the earlier text discussed armoring of caps.</p>
13	11 & 28	3	3.1 & Appendix A	<p>Specifically, Appendix A provides a schedule counting down to the time the incident is to occur, and requires the Person Conducting the Remediation to report to NJDEP on site status of potentially impacted sites. These reporting requirements would lead to excessive communication. There are no existing regulations that require PRCR to report to NJDEP on site status. NJDEP is overextending their regulatory authority over PRCR.</p>
14	12 & 13	3	Figure 1 & 3.1	<p>CCNJ/SRIN requests clarification on whether "a standalone Catastrophic Event Plan" would now be a new deliverable.</p>
15	13	3	3.1	<p>CCNJ/SRIN proposes the suggested changes below to 3.1 Preparedness:</p> <p>Paragraph 3: Sites where remediation has already been completed, for example, where an Entire Site Remedial Action Outcomes (RAO-E) or Area of Concern Remedial Action Outcomes (RAO-A) "or No Further Actions (NFAs)" have been issues, may require no planning or preparation beyond maintaining a list of current site contacts...</p> <p>NFA is mentioned along with RAO under 1.1 Intended Use on page 4.</p>
16	13	3	3.1.1	<p>CCNJ/SRIN requests clarification on how the decision is made "in cases where catastrophic event planning is warranted".</p> <p>Also, CCNJ/SRIN recommends adding a reference to a more formal Failure Modes and Effects Analysis (FMEA) for more complicated or critical sites.</p>
17	14	3	3.1.1 & Table 1	<p>CCNJ/SRIN proposes changes to the following Operational Definitions:</p> <p>Moderate Impact: Deletion of "significant damage", and replacement with "moderate damage \$10,000 - \$100,000".</p> <p>Critical Impact: Addition of "significant" before "damage >\$100,000".</p>

18	18	3	3.1.3	CCNJ/SRIN requests clarification on what "particular sites of interest as identified by NJDEP" require notification to NJDEP SRWMP Emergency Response Coordinator. Is NJDEP posting a list of sites on their site remediation website?
19	18 & 20	3	3.1.3 & 3.1.5	<p>Federal Departments and agencies are required to make adoption of National Incident Management System (NIMS) by local, state, territorial, and tribal nation jurisdictions a condition to receive Federal Preparedness grants and awards. The NIMS Implementation Objectives were developed to guide jurisdictions in their implementation of NIMS. NIMS implementation is assessed through the direct reporting of data to FEMA utilizing the Unified Reporting Tool. CCNJ/SRIN recommends that all NIMS requirements in the technical guidance be deleted. However, NIMS can be referenced in Section 4.0 as a Reference tool, and included in Appendix D. In addition, CCNJ/SRIN recommends that the right experts be consulted for various technical issues depending on the site and event that one is preparing for.</p> <p>CCNJ/SRIN also requests clarification on the purpose of 3.1.5 Training and Exercises. Since most sites with emergency response plans already have exercise requirements, this section would not apply to them. For smaller, low-risk sites, the "exercise" would consist of periodically updating and verifying their contact lists, which can be included in 3.1.3 Contacts and Communication instead.</p>
20	18	3	3.1.4	A hardcopy of the material and equipment inventory, list of local/state emergency responders, emergency response contractors, and large equipment suppliers are written into existing emergency response/contingency plans. This is redundant and unnecessary.
21	19	3	3.1.4	CCNJ/SRIN recommends that this section open with a reference to HAZWOPER. Only properly trained personnel, and only personnel trained to respond to certain types of emergency, should be deployed.
22	20 & 24	3 & 4	3.1.4	The link to reference (11) (https://rtit.ptaccenter.org) does not work.
23	21	3	3.2.1	CCNJ/SRIN requests clarification on what is the "pertinent information regarding site conditions and the operating status of site systems" that needs to be communicated to NJDEP.
24	22	3	3.2.3	PRCR is responsible for evaluating resources and implementing the response. This is not the responsibility of an LSRP to evaluate resources and implement the response to a catastrophic event nor is it their responsibility to apply and submit for emergency permit waivers. Therefore, CCNJ/SRIN recommends that the following words be deleted: "or applying for NJDEP emergency permit waivers as necessary (air, stormwater, discharge to ground water, surface water discharges, land use, dredging, solid waste, etc.)."
25	23	3	3.4.1	<p>CCNJ/SRIN proposes the suggested changes below to 3.4.1 Post-event reporting:</p> <p>Paragraph 2: "It is the responsibility of the PRCR to evaluate the potential reporting requirements on a site-specific basis as part of his/her post-event activities."</p>
	24	4	3.4.3	While disaster may be an opportunity for upgrade, there may be certain external constraints that would make that impractical. For example, a NJPDES permit that is based on a specific technology or system configuration may dictate that the system be rebuilt as the one in the permit, to avoid revising the permit.
	24 & 25	4		All reference numbers do not seem to correspond to the numbers used throughout the technical document. References need to be aligned to where they are cited. Follow standard citing criteria.
	30		Appendix C	<p>Contacting NJDEP prior to a catastrophic event should not be necessary, and would lead to excessive communication with little to no value.</p> <p>CCNJ/SRIN proposes deletion of "Can the information below be placed in a table? A table doesn't show up in the printed copy."</p>
	31 & 32			CCNJ/SRIN proposes deletion of pages 31 and 32 in their entirety as they provide no value.
			Appendix	An appendix with a simple Emergency Response Template would be most useful in this document.