

News from the New Jersey Work Environment Council (WEC)

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Five Years After State Rules Were Adopted... Thousands of Jobs and Millions of Residents Still at Risk From Major Toxic Chemical Disaster; Industry and Gov. Christie Have Failed to Act

New Jersey jobs and millions of residents are still at risk from toxic chemical disaster – five years after the NJ Department of Environmental Protection (DEP) under former Gov. Jon Corzine adopted rules to implement the NJ Toxic Catastrophe Prevention Act that were supposed to drastically reduce that risk.

Management at hazardous facilities has too often not acted in good faith to carry out the purpose of the safeguards by not adopting solutions that have been proven by others in the same industry, and Governor Christie has failed to act to protect public safety.

These are the conclusions of ***Failure To Act***, a new 43-page analysis by the NJ Work Environment Council (WEC) of publicly available reports submitted by facilities to DEP under the regulations. *The complete report is at www.njwec.org.*

Designed to protect residents of NJ and surrounding states from a catastrophic release of toxic chemicals or deliberate attack on facilities that handle those chemicals, the DEP safeguards issued in 2008 called on facilities to review options for implementing “inherently safer technology”(IST) – replacing highly hazardous substances with safer ones or adopting safer production processes. The rules require those facilities to identify feasible alternatives and provide a schedule for implementation. If a facility found that an alternative was not feasible, it had to explain why.

Key Findings

A failure to act puts workers and the public at risk.

- Ninety NJ facilities still use large quantities of highly hazardous chemicals that can pose a potential catastrophic safety and health risk to millions of workers and the public if there were a worst-case toxic release caused by an incident or deliberate attack.
- These facilities are located in 19 of the state’s 21 counties.
- There are five NJ facilities at which a worst-case release of toxic chemicals could place at risk any of more than two million people living in the vulnerability zone. These facilities include chemical manufacturers and an oil refinery. Each of these facilities could eliminate or significantly reduce the use of extraordinarily hazardous substances by producing the chemical on-site as needed, completely replacing the chemical, or using a diluted form of the toxic chemical.

- A worst-case chemical release from the potentially most hazardous of these facilities, in Hudson County, could harm up to 12 million people in NJ and much of New York City.
- Another facility, located in Salem County, reported that a potential release could harm over four million residents and extend 25 miles into downtown Philadelphia.
- There are 10 NJ facilities at which a worst-case release of toxic chemicals could place at risk more than 100,000 people. These are in Gloucester, Hudson, Middlesex, Salem, and Union counties.

Failure to consider safer alternatives as required. WEC reviewed the 42 publicly available reports submitted by facilities under the IST rule. Many failed to consider solutions for using safer chemicals and processes which already exist and are being used successfully by others in the industry. Of the nine facilities that claimed that options were economically infeasible, seven failed to provide the required quantitative analyses. None of the reports accounted for the economic *benefits* of preventing large-scale toxic exposures.

Stonewalling. About half the facilities that submitted reports took advantage of a loophole in the regulations that allows management to block public disclosure of their IST review.

Lack of enforcement. The Christie administration has turned a blind eye to facilities that are not switching to safer chemicals and processes. In fact, DEP has not been provided enough staff even to review for compliance many of the update reports facilities are required to file. Some of those update reports have been sitting for nearly two years without being fully reviewed.

Alternatives available. More than one-third of the facilities are using one of three toxic chemicals – chlorine, hydrofluoric acid or anhydrous ammonia – that have safer alternatives that have been adopted by others in the same industry. Water treatment plants, and their suppliers, could completely reduce the risk from chlorine with safer chemicals and processes. Hydrofluoric acid can be substituted or diluted by refineries and chemical plants that use it to make workers and communities safer. The EPA has identified alternative refrigerants to replace anhydrous ammonia for food processing, and power plants can use less hazardous aqueous ammonia or urea to prevent smog pollution.

Progress by some. Some facilities have complied with the safeguards and made their surrounding communities safer. For example, nearly 300 water and wastewater treatment plants that formerly used highly dangerous chlorine have switched to safer processing methods using UV radiation, ozone, or sodium hypochlorite for disinfection.

Recommendations

Among its recommendations, the new WEC report calls on the Christie administration to:

- Stop facility management from declaring safer technology reviews as secret.
- Require facility management to better document their claims that adopting safer chemicals and technologies is not feasible.
- Conduct a study of disinvestment and downsizing by the chemical industry and its impact on worker and public safety.

- Hire additional staff for DEP's Toxic Catastrophe Prevention Program to ensure effective enforcement of the law's requirements.
- Withdraw the DEP "waiver rule" that allows the agency to not enforce the IST provisions of the Toxic Catastrophe Prevention Act.
- Provide opportunity for meaningful community involvement.

The report also calls on the U.S. Environmental Protection Agency (EPA) to issue new rules and guidance, authorized since 1990 under Section 112r of the Clean Air Act, to require high hazard facilities to adopt cost-effective safer chemical processes or other inherently safer technologies to minimize the catastrophic consequences to workers and communities of an accident, natural disaster, or attack. This would implement President Obama's August 1st Executive Order, "Improving Chemical Facility Safety and Security."

The NJ Work Environment Council (WEC) is a coalition of 70 labor, environmental, and community organizations and is a member of the national Coalition to Prevent Chemical Disasters.

Comments from *Failure to Act* Sponsoring Organizations

"Firefighters and other public safety personnel do everything we can to protect our communities when there is an explosion, fire, or other disaster. The least we could expect is for Governor Christie and industry executives to do what is in their power to prevent those disasters in the first place."

-Dominick Marino, President, Professional Firefighters Association of NJ, which represents front line fire fighters and ambulance staff across New Jersey.

"Governor Christie's philosophy is that we don't need enforceable safety standards because industry will voluntarily protect workers and the public, but the facilities' own reports show that approach is not working."

-John Shinn, Director, United Steelworkers District 4, the largest union of workers at oil and chemical facilities in New Jersey.

"Every health professional knows that prevention is more effective than treatment when it's already too late. That's why these standards were put in place five years ago. The problem is that they are not being enforced."

-Bernie Gerard, Vice President, Health Professionals and Allied Employees, which represents 12,000 nurses and other health care workers in NJ, including emergency room employees.

"When a train derailed in our community last November, many local residents ended up in the hospital because of breathing toxic vinyl chloride the train was carrying. We need to prevent these incidents from happening."

-Natasha Lavard, Paulsboro Action Committee (Gloucester County).

"If Governor Christie lived next door to one of these facilities, maybe he would be requiring them to use the safer alternatives that already exist. Precaution and protection should be priorities."

-Valorie Caffee, NJ Environmental Justice Alliance, which represents environmental justice advocates throughout New Jersey.

"If a major fire or explosion occurs at a chemical facility, it can endanger workers and neighbors. It also can jeopardize our jobs if the facility is heavily damaged or destroyed. That's why prevention is critical."

-John Pajak, Vice President, Teamsters Local 877, which (represents workers at Phillips 66 refinery and chemical plants in Linden (Union County).

"New Jersey needs safe schools for students and teachers and safe communities for residents. I hope this report serves as a wake-up call to institute safeguards to prevent potential disasters."

-Donna M. Chiera, President, American Federation of Teachers New Jersey.

"Almost all New Jersey communities could be affected by a preventable disaster, but especially those in poor communities where the most toxic industries tend to be located. So enforcement of the law is a matter of justice as well as a matter of public health."

-Ana Baptista, Environmental and Planning Program Director, Ironbound Community Corporation, Newark.

"DEP and EPA already have the authority to require facilities to adopt feasible safer substitutes and processes. We can't wait a second longer for protection from a toxic disaster."

-Jen Kim, Director, New Jersey Public Interest Research Group.

"We cannot afford even one major toxic catastrophe. There is no excuse for inaction."

-Amy Goldsmith, Clean Water Action.

"For years, many toxic facilities haven't been properly regulated because they are in the poorest communities. It's time to make every company protect our safety, no matter where they operate."

-Avery Grant, Executive Director, Concerned Citizens Coalition of Long Branch (Monmouth County).

"Hard-working DEP staff are committed to making sure industry is using safer alternatives. But the Governor must provide adequate staffing levels to monitor compliance."

-Hetty Rosenstein, New Jersey Director, Communications Workers of America, District 1 (CWA Local 1036 represents DEP employees.

"Toxic facilities that haven't adopted proven, safer alternatives are like a ticking time bomb threatening our communities. They put our families, first responders and environment in jeopardy. By using inherently safer technologies we not only reduce risk but pollution as well."

-Jeff Tittel, Director, Sierra Club NJ Chapter.

"Protection of our families, our communities, and our environment is a moral responsibility. This report documents the fact that neither industry nor the governor are meeting that responsibility today."

-Reverend Fletcher Harper, GreenFaith, which inspires, educates and mobilizes people of diverse religious backgrounds for environmental leadership.

"A preventable toxic disaster will not only destroy lives but do serious damage to our water and the air we breathe."

-Debbie Mans, Executive Director, NY/NJ Baykeeper.