

RMP Regulatory Trajectory



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Regulatory Updates

Chemical Disaster Rule schedule

- ▶ Provisions of the January 2017 rule related to clarifying regulatory definitions were scheduled to come into effect on March 14, 2017.
- ▶ Other provisions, including most local emergency-response coordination requirements, were supposed to become effective on March 14, 2018.
- ▶ The requirements for emergency response exercises, public information-sharing and post-accident public meetings, third-party audits, more rigorous post-incident analyses, and safer technology requirements are not scheduled to become effective until March 15, 2021.

DC Circuit Court Vacates Risk Management Program (RMP) Delay Rule

- ▶ On August 17, 2018, the DC Circuit Court of Appeals vacated the RMP Delay Rule (June 14, 2017). The Court of Appeals stated, “*Because EPA has not engaged in reasoned decision-making, its promulgation of the Delay Rule is arbitrary and capricious.*”
- ▶ Parties involved will be allowed time to file petitions for rehearing and the government has 45 days to respond. If the court grants a response, it could likely add at least another 30 days until the mandate issues.
- ▶ EPA options moving forward: appeal the ruling, attempt to delay the rule for a period of time that can legally be defended, remove/modify certain Chemical Disaster Rule requirements, or allow the Chemical Disaster Rule to be implemented.

U.S. Court of Appeals Issued Its Mandate

- ▶ On September 21, 2018, the U.S. Court of Appeals for the DC Circuit Court of Appeals issued its mandate which makes the 2017 RMP Amendments now effective.

Requirements Now

Emergency Response Revisions - Now

- ▶ Owners or operators of all facilities with Program 2 or 3 processes are required to coordinate with the local emergency response agencies at least once a year to determine how the source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the source, their quantities, the risks presented by covered processes, and the resources and capabilities at the facility to respond to an accidental release of a regulated substance.

Emergency Response Revisions - Now

- ▶ Additionally, all facilities with Program 2 or 3 processes are required to provide updates annually to ensure that their emergency contact information is accurate and complete.
- ▶ Facilities are required to inform Federal & State emergency agencies about accidental releases
- ▶ Required to update ERP, as necessary incorporating information from exercises, incidents, coordination activities and other sources
- ▶ Make sure that employees are informed of any changes to the ERP

Accident Prevention Program Revisions – Now

- ▶ Include findings from incident investigations in the PHA, as well as any other potential failure scenarios
- ▶ Training requirements are now applicable to supervisors with either process operational responsibilities or responsible for directing process operations
- ▶ Maintain Safety Data Sheets (SDS) instead of Material Safety Data Sheets (MSDS)
- ▶ Process Safety Information must be kept up to date

Accident Prevention Program Revisions – Now

- ▶ Owner/ operator must evaluate RMP compliance for “each covered process” at least every 3 years
- ▶ Multiple revisions to Incident Investigation process:
 - Must include “near misses”
 - Teams **MUST** be established on Pgm 2 processes
 - Replaced “summary” with “report”
 - Increased information required in incident **REPORTS**
 - Include emergency response actions taken
 - Cause & contributing factors of incident
 - Recommendations & schedule to address them

Enforcement

**Accidental Releases- limited to
PSM/RMP.....right?????**

NOT

A Few Examples.....

- ▶ Dyno Nobel (2014) – Region 7 – 112r , General Duty, EPCRA, CERCLA - \$272,000;
- ▶ Monson Companies, Inc. (2012) – Region 1 – 112r, General Duty, EPCRA, RCRA - \$120,000;
- ▶ Pretium Packaging (2013) – Regions 3 & 7 – RMP, RCRA - \$76,000;
- ▶ Severstal Steel Sparrows & Mtn. State Carbon (2014) – Region 3 – 112r, General Duty, RCRA - \$2.4 MM;
- ▶ Coffeyville Resources Refining (2014) – Region 7 – CAA, CERCLA, EPCRA, CWA - \$2.7MM penalty, \$1.3MM SEP, \$10.7 MM compliance costs;
- ▶ Harcross Chemicals (2017) – 6 EPA Regions – RMP and General Duty – Civil penalty of \$950,000
- ▶ MFA (2018) – Region 7 – RMP - \$1.25MM + SEP

EPA's RMP Cases (January 2011 – February 2019)

- ▶ 55 Judicial Cases;
- ▶ 498 Administrative – Formal Cases;
- ▶ 311 w/ Federal Penalties;
- ▶ 36 w/ SEPs

EPA's RMP Cases (average penalties, 1/11-2/19)

- ▶ Average Federal Penalty;
 - \$229,905
- ▶ Average SEP Cost;
 - \$760,781
- ▶ Average Compliance Action Cost;
 - \$2,192,173

EPA Enforcement Trends

- ▶ Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (EPA NEI initiative for FY 2017-19 and NCI for FY 2020-23)
- ▶ Higher Penalties
 - 2010 - \$15 million civil penalty (largest ever assessed)
- ▶ Cases with referrals
- ▶ Review of facilities that deregistered
- ▶ In Region 7, EPA assigned a lawyer to work several months with EPA's chemical risk information branch to learn about the Risk Management Program in preparation for an anticipated rise in RMP enforcement actions

EPA Enforcement Trends

- ▶ There are typically three types of cases:
 - failure to submit a risk management plan;
 - failure to implement a risk management program; and,
 - cases in which there was an accident or release, where the EPA cites failure to adequately implement a risk management program and failure to comply with the Clean Air Act General Duty Clause.

General Duty Clause – 112(r)(1)

- Applies to "owners and operators of stationary sources ***producing, processing, handling or storing any extremely hazardous substances.***"
- Since Nov. 15, 1990, facilities have had a GENERAL DUTY to:
 - Identify hazards which may result from accidental releases
 - Design and maintain facility to prevent accidental releases
 - Minimize consequences of accidental releases that do occur
- No thresholds, no lists, and no regulations. However, EPA issued guidance in May 2000.
 - EPA will look to hazards identified by the facility or industry rather than a specific list of chemicals.
 - Focus on industry practices and standards for addressing a hazard in determining how each regulated entity should comply with the general duty clause.

Final thought on enforcement.....

“...the Accidental Release provisions have the greatest potential for enforcement activity of any regulation currently on the books....”

- *Ranking EPA Enforcement Official*

QUESTIONS??

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