

# Accidental Releases — Dotting Your I's Crossing Your T's

Midwest Environmental Compliance Conference

Bob Presley, C.T., CHMM, A.T.

**What's changed?**  
**What's supposed to change?**

# Final Amendments to the RMP Rule

- ▶ Address and improve accident prevention program elements
- ▶ Enhance emergency preparedness requirements
- ▶ Make sure Local Emergency Planning Committees (LEPCs), local emergency response officials and the public can access information in a user-friendly format to help them understand the risks at RMP facilities and better prepare for emergencies

**What does that mean for  
me and my facility?**

# Updating Your RMP/PSM Program — BMP Based on EPA Findings

- ▶ **Document** your employee participation. **Don't** simply say you involve employees; have something to **prove it**.
- ▶ When you have a chemical covered under PSM only or both RMP and PSM (where thresholds may be different), **strongly** suggest addressing it within the framework of the RMP.
- ▶ If you have listed chemicals (or others listed somewhere) that are below threshold amounts, remember that you are still subject to the general duty clause.  
**Do a hazard assessment/OCA anyway!**

# Updating Your RMP/PSM Program — BMP Based on EPA Findings

- ▶ Make sure your written program accurately reflects what you really do.
- ▶ Make sure your supporting documentation reflects what is in your written plan.
- ▶ Monitor your dates (i.e., annual oper. procedure certs, reporting personnel changes, compliance audit due dates, re-submittal, etc.).
- ▶ Document **any** progress/activity on required action items.
- ▶ Inspections mean **nothing** if they're not documented. Document your inspections and inspection process.

# Updating Your RMP/PSM Program — BMP Based on EPA Findings

- ▶ Document your emergency response drills and activities and appropriate follow up activities.
- ▶ Make sure your EPCRA, Emissions Report/EIQ and other reports actually say the same thing.
- ▶ Find someone to do your third-party audits who **knows** what they're doing. Make sure they provide the documentation necessary for you to fix what's broken.
- ▶ Add the tracking systems necessary to follow through on maintenance activities, inspections and other changes that have been identified as necessary.

**Accidental Releases —  
Limited to PSM/RMP... Right?**

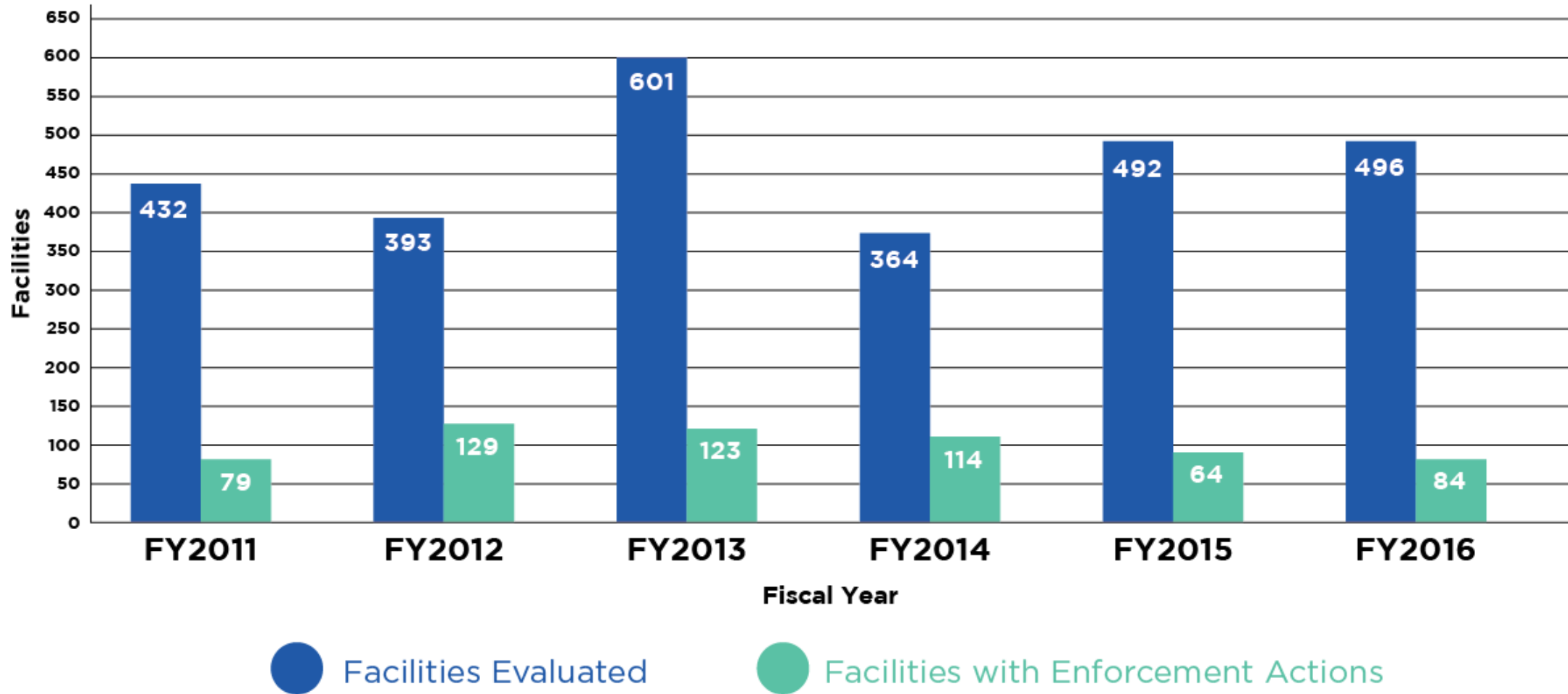
**WRONG**



# 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 million**
- ▶ Coffeyville Resources Refining (2014) – Region 7 – CAA, CERCLA, EPCRA, CWA - **\$2.7 million penalty, \$1.3 million SEP, \$10.7 million compliance costs**
- ▶ Harcross Chemicals (2017) – 6 EPA Regions – RMP and General Duty – **Civil penalty of \$950,000**

# ANNUAL NUMBER OF AIR TOXIC EMITTING FACILITIES WITH EPA EVALUATIONS AND CONCLUDED ENFORCEMENT ACTIONS



# EPA Enforcement Trends

- ▶ Reducing risks of accidental releases at industrial and chemical facilities (New initiative for FY 2017-19)
- ▶ 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
  - 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

# 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?



**Bob Presley, C.T., CHMM, A.T.**

EH&S Compliance Department Manager

314-324-5323

[represley@burnsmcd.com](mailto:represley@burnsmcd.com)