

# RMP - Compliance Challenges



**Bob Presley, C.T., CHMM, A.T.**  
**Technical Leader PSM/ RMP \***  
**Associate EHS Compliance Services**

**MECC Conference**  
**April 23-24, 2019**



# Regulatory Updates

# 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.*”
- ▶ 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

# 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 one Region, 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.

# 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*

**Checking Your  
Accidental Release  
Program –  
Effective Elements**

# Checking Your Program – Effective Elements

## ▶ RMP/ PSM Written Program

- Keep program description as general, as possible, without compromising in regulatory requirements
- Keep changes in procedures, checklists, etc. within the procedure **AND NOT** in the written program description
- Include tables, links, whatever to know how/ where to access the needed information for the RMP/PSM program
- Make sure the written description actually matches what you do. If it doesn't change something to make them match.

## ▶ Historically, 85% of fines & violations handed out by OSHA/ EPA are paperwork

- Make sure any planned activities, i.e. inspections, incidents, maintenance, etc. have procedures to support any checklists or required activities;



# Checking Your Program – Effective Elements

## (cont'd)

- ▶ Make sure system is in place to capture and track **ALL** items identified as needing some action
  - PHA action items, Compliance Audit findings, Incident Investigation actions, etc.
- ▶ Designate **ONE** PSM/RMP Program Manager
  - This person may not have control of everything required, but needs to have access to everything required.
- ▶ Training
  - Train employees AND management on how to document and report in your system – garbage in / garbage out
  - Make sure training material and training process are documented and are reproduceable for **ALL** necessary training

# Checking Your Program – Effective Elements

## (cont'd)

### ▶ Consistency in Reporting

- Confirm that releases are captured in air emissions compilation, which is captured in EPCRA reporting to insure consistency and reduce variations in reporting

### ▶ CLEARLY defined Employee Participation Plan

- Describe process for distributing information (particularly relative to the process) to employees
- Include system for tracking who has seen what

### ▶ Keep track of the dates

- PHAs, PSM and RMPs are to be updated every 5 years – compliance audits required every 3 years – operating procedures reviewed/ certified annually
- Use Outlook or some system to monitor due dates

# Checking Your Program – Effective Elements

## (cont'd)

### ▶ Use RAGAGEP

- Utilize “Recognized and Generally Accepted Good Engineering Practice” standards where possible, CITING your reference
- Avoid using your own standards or criteria where possible

### ▶ Drills/ Interaction w/ LEPC

- Document ANY drills and interactions w/ emergency responders, including any lessons learned
- Capture lessons learned (and associated action items) in Action Item Tracking system

### ▶ General Duty Clause

- **ALWAYS** applies – regardless of volume or concentrations

# QUESTIONS?

**Bob Presley**  
**(314) 324-5323 or (314) 682-1580**  
**represley@burnsmcd.com**



CREATE AMAZING.