

THE ADVANCED CLEAN AIR COMPLIANCE COURSE

Risk Management Planning

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Risk Management Planning

- CAA Section 112(r); 40 C.F.R. Part 68
 - <http://www.epa.gov/swercepp/acc-pre.html#Brochures>
- Program Requirements
- 1999 Changes
- Enforcement/Audits
- General Duty Clause
- Relationship to Other Programs
- Changed focus in CEPPO – Counter Terrorism

Program Requirements -- Applicability

- Stationary Source
- With greater than threshold quantity
- Of a regulated substance (toxics/flammables)
 - <http://www.epa.gov/ceppo/caalist.html>
- In a process
 - Process = all equipment which may be involved in the same accident
 - Need to document

Program Requirements -- Program Level

- Program 1: No accident in last 5 years with offsite impacts; impact of worst case release doesn't reach public receptor
- Program 3: In listed SIC category or subject to federal/state OSHA PSM
- Program 2: All others
- EPA Users Manual available on-line
 - <http://www.epa.gov/swercepp/pubs/srmp/manual.pdf>

Program Requirements -- Risk Management Process

- RMP were due to EPA by 6/21/99
- Hazard Assessment
 - Worst case and alternative release scenarios, with offsite consequence analysis
- Release prevention program (OSHA PSM)
- Emergency response program
- Update every 5 years and when covered process changes

1999 Legislative Changes

- Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act
- Impacts facilities with listed 112(r) fuels and availability of offsite consequence analysis
 - Fuels: EPA Final Rule March 13, 2000 (65 Fed.Reg. 13243)
 - OCA: EPA Final Rule August 4, 2000 (65 Fed.Reg. 48107)

2000 Changes -- Fuels

- Exempts from program listed flammables if used as a fuel or if held for sale as a fuel at a retail outlet
 - Consistent with OSHA
- Flammables not exempt if used as feedstock
- Retail facility: >50% of income from direct sales to end users OR >50% of fuel sold is through cylinder exchange program

2000 Changes -- Fuels

- EPA does not unilaterally remove or modify previously submitted RMPs to reflect exemptions
 - If you qualify for exemption, notify EPA in writing and request that submission be withdrawn
 - If you qualify but are still subject to program for other substances, need to modify RMP and resubmit
- If you don't -- RMPs remain in database

2000 Changes -- OCA

- National security concerns about availability of OCA for worst case and alternative release
- Congress restricted access until at least 8/5/2000
- Sections 2-5 of RMPs available only to covered persons
 - Covered persons = EPA or state/local officials in SERC/LEPC
 - Prohibited from distributing except to other covered persons

2000 Changes -- OCA

- Facilities can distribute OCA to whomever they want
 - If facility wants EPA to make OCA publicly available it must notify EPA in writing
- Facility must have held public meeting by 2/1/2000 to summarize information
 - Written notification to FBI by 6/5/2000 that public meeting held
 - FBI to EPA: Many facilities failed to submit required notice or submitted deficient notice

2000 Changes -- OCA

- OCA's available for reviewing in public reading room
 - Location on EPA's web page
 - Restricted access: No copying or removing, but can take notes
- Internet access to selected OCA information
 - Would not include information specific to the release rate, receptors, or other information that would increase the risk of a chemical release caused by a terrorist or criminal

Enforcement of 112(r)

- Three types of noncompliance
 - Nonfilers
 - Facilities where a release occurs
 - 13 cases to date (pending or resolved)
 - Facilities targeted for RMP audits
- EPA Regional office or state/local authorities with lead responsibility

Nonfilers

- 15,000 RMPs submitted to date; EPA expected 34,000
- Regions have difference approaches
 - VII: 50% noncompliance rate -- audits
 - I: Computerized screening database (TRI?)
 - VI: List of 10,000 facilities; use CAA Section 114 information requests
- Watch EPA “Enforcement Initiative” approach -- Continuous release; TRI Nitrate

Where Release Occurs

- EPA will investigate
 - Did the facility file an RMP
 - Was the RMP current
 - Were RMP procedures followed
- General Duty Clause

Auditing of RMP Facilities

- EPA Guidance Document (8/99)
 - http://www.epa.gov/swercepp/pubs/audit_gd.pdf
- Goal of program: Verify RMP information against an independent source of the same information (databases, inspections, etc.)
- How to select facilities to audit

Audits

- Level 1 Audit
 - Determine applicability of RMP requirements
 - Was facility placed in appropriate program level
 - Did facility submit RMP meeting regulatory requirements
- Level 2 Audit: Verify documentation required by RMP and review processes subject to RMP

Target Facilities

- Guidance and regs (40 C.F.R. 68.220(b))
- Factors
 - History of accidental releases
 - Facility sector has history of releases
 - Large quantity of 112(r) chemicals
 - Close proximity to sensitive receptors
- “Random, neutral inspection scheme”

Target Facilities

- Facilities in OSHA Voluntary Protection Program not supposed to be targeted based on neutral inspection scheme or history of releases
- State/local publicity or request/complaint from community
 - TCPA experience in New Jersey

Post-Audit Process

- EPA Guidance sets out “standard process”
- Preliminary determination
 - Identifies deficiencies in RMP, with timetable for revision and resubmission
- Facility has 90 days to respond
 - Accept and remedy
 - Reject with written explanation
- If reject, EPA/state make final determination
 - If facility still doesn't remedy within timetable, referred to enforcement authority

General Duty Clause

CAA Section 112(r)(1)

- Duty to design and maintain a safe facility
- Similar to OSHA general duty clause
- Probably greatest source of potential enforcement cases
 - See EPA Enforcement Alert
 - <http://es.epa.gov/oeca/ore/enfalert/terra.pdf>

General Duty Clause - Applicability

- Not limited to RMP facilities
- Any facility with any extremely hazardous substance in any amount
 - Congress: includes any substance which, upon release, has the potential to kill or seriously injure humans, or cause significant property damage, or significant damage to the environment

Compare to OSHA

- Elements to prove a violation of GDC
 - Failure to render workplace free of hazard
 - Hazard recognized by specific facility or generally within the industry
 - Hazard causing, or likely to cause, death or serious harm
 - Feasible means to eliminate or materially reduce the hazard
- In practice: Where there is an accident, there is a violation of the GDC

GDC -- Site Security

- EPA 2/2000 Alert: All facilities should have some measure of site security in place to prevent intrusion and limit damage if intrusion (or sabotage) occurs
- Includes facility design and development and implementation of policies and procedures
- Specific citation to GDC in Alert

EPA Enforcement under GDC

- 3 complaints filed to date
 - All involve chemical facility where explosions resulted in injury/death
- Coming wave: Nonfilers first
- Concern: EPA utilizing Alerts and Guidance published on website as de facto “notice” of regulatory obligations
 - Butterfly valves alert
 - <http://es.epa.gov/oeca/ore/enfalert/risk.pdf>

Chemical Safety Board

- 1990 CAA created Chemical Safety and Hazard Investigation Board
 - Independent Body -- NTSB
 - Investigate accidents, issue reports with recommendations for minimizing repeat accidents, and annual reports to Congress
- EPA/CSB Memorandum of Understanding
 - Both will investigate accidents (death, serious injury, property damage)
 - EPA has lead in emergency response; EPA focus on compliance, CSB on cause

Chemical Safety Board

- Has completed and released six final reports on investigations
(<http://www.csb.gov/#Reports>)
 - Four investigations launched since 1/1/2002
- Conducting comprehensive Hazard Investigation of reactive chemical hazards
 - Follow-on *Morton* investigation
- Safety Bulletin issued on “Management of Change” – arising from 2-1998 incidents

OSHA

- 1990 CAA: OSHA has jurisdiction under CAA to protect workers from accidental releases of 112(r) chemicals
- OSHA PSM Rules: 29 C.F.R. 1910.119
 - EPA Part 68 rules modeled after PSM
- 1996 Agreement between EPA and OSHA
 - Recognize independent legal authorities
 - Both agencies involved if release affects workers
 - Deal with agencies in consistent manner