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More EPA and OSHA Chemical Safety Rules: R. Stan Jorgensen (ECCL)

Arkansas Environmental Federation Convention Presentation

Arkansas Environmental, Energy, and Water Law Blog

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R. Stan Jorgensen undertook a presentation at the Arkansas Environmental Federation Convention titled *More EPA and OSHA Chemical Safety Rules ("Presentation")*.

Mr. Jorgensen is a Principal and an Environmental Engineer with ECCL.

Mr. Jorgensen's *Presentation* provided both a historical overview of and update on recent changes to both the United States Environmental Protection Agency ("EPA") and Occupational Safety and Health Administration ("OSHA") chemical safety rules.

The *Presentation* initially outlined:

- OSHA & EPA Created (1970)
- OSHA Proposed Process Safety Management Rules (PSM) (July 1990)
- Clean Air Act Amendments addressing EPA Risk Management Programs (November 1990)
- Final PSM Rules (February 1991)

A description of OSHA's PSM Program (29 C.F.R. 1910.119) noted:

- Includes toxic, reactive, flammable, or explosive chemicals
- List of toxic and reactive chemicals and threshold quantities
- Flammable gases or liquids with flashpoints, below 100° F in a quantity above 10,000 pounds (exemptions for comfort heating, vehicle fuels, liquids in atmospheric tanks, retail facilities, oil and gas drilling and servicing, and unoccupied remote facilities)

Requirements are stated to include a Process Hazard Analysis ("PHA") every five years and impartial PSM Compliance Audit every three years.

Section 112 (r) of the Clean Air Act was discussed and includes:

- Authorizes EPA Accidental Release Prevention Rules
- RMPs
- Offsite Consequence Analysis
- EPA and OSHA Coordination

The history of the RMP Rule was discussed and RMP chemicals were noted to include:

- List of Toxic Substances

- List of Regulated Flammable Substances

The RMP includes:

- Hazard Assessment (every five years)
- Worst-Case Release Scenario Analysis
- Alternative Release Scenario Analysis
- Offsite Consequence Analysis

The *Presentation* included an example of a Worst-Case and Alternative Scenario on a Local Map. Also discussed were the RMP Accident Prevention Programs:

- Program 1 – Worst-case release does not impact a public receptor and no significant accidental release within five years
- Program 2 – All others except Program 3 (mini PSM program)
- Program 3 – Processes which do not qualify for Program 1 and if the process:
 - Is subject to OSHA PSM rules; or
 - Is on a list of NAICS codes including:
 - Pulp and Paper
 - Petroleum Refineries
 - Fertilizer Manufacturing
 - Pesticide Manufacturing
 - Chemical Manufacturing

The 1999 Chemical Safety Information Site Security and Fuels Regulatory Relief Act (112r Amendments) were addressed and it was noted they:

- Defined Public Access to Worst-Case and Alternative Release Scenarios
- Required Public Meetings for Programs 2 and 3 RMP Facilities
- Removed Flammable Fuels at Retail Facilities for RMP Coverage

Mr. Jorgenson described ECCI's experience with RMP inspections referencing:

- EPA use of Contract Inspectors
- 21-Page Inspection Checklist
- Program 3 Inspections Become PSM Program Inspections

RMP Arkansas statistics were provided:

- 223 facilities listed on websites
- 30% are water/wastewater utilities
- 30% have been deregulated
- 53 accidental releases from 28 facilities
- 57% of reported releases are from two facilities

The changes to both previously referenced programs were identified:

- August 2, 2013
- Executive order to improve chemical facility safety and security
- Expand EPA RMP and OSHA PSM programs as appropriate to reduce the risks associated with hazardous chemicals
- July 31, 2014
- EPA publishes request for information related to potential RMP changes
- Adding substances
- Expand mechanical integrity
- Require third party audits
- Expand mandatory Program 3 NAICS codes

- June 5, 2015
- OSHA adopts EPA's 1% concentration threshold in mixtures
- July 22, 2015
- OSHA limits the PSM retail exemption to NAICS 44-45 (retail), NAICS 42 wholesale and NAICS 48-49 transportation and warehousing exemptions from PSM disappear
- October 20, 2015
- OSHA provides the retail facilities enforcement discretion through July 22, 2016
- November 24, 2015
- EPA publishes extension on compliance date for RMPs for retail facilities until January 22, 2017
- November 4, 2015
- The small business advisory panel is formed for the executive order to improve chemical safety and security. Panel membership includes:
 - 32 Small Business Representatives
 - EPA's Director of Emergency Management Implementation
 - OMB's Administrator of Regulatory Affairs
 - SBA's Chief Counsel for Small Business Advocacy
- December 23, 2015
- OSHA publishes new interim enforcement policy to not cite retail facilities for PSM violations through September 30, 2016
- February 19, 2016
- Small Business Advisory Panel submits recommendations to EPA Administration on RMP changes under the Executive Order
- Panel Recommendations:
 - Audits – Limit independent criteria to individuals rather than entire companies
 - Root Cause Analysis – Do not require for near misses, only for reportable releases
 - Local Coordination – Classify a "good faith effort" to coordinate as acceptable
 - Emergency Response Exercises – participating by local responders should not be required
- March 14, 2016
- EPA proposed RMP rule changes
- Root cause analysis required as part of incident investigations
- Independent third-party auditors are required to complete a compliance audit after a reportable release
- Requirements to coordinate with local emergency response agencies at least once per year and conduct annual emergency notification exercises
- Facility chemical hazard information required to be provided to the public on a facility website or through local public meetings following a reportable release

Mr. Jorgensen's *Presentation* noted that EPA estimated 12,542 affected facilities which included facilities such as:

- Agricultural chemical distributors/wholesalers
- Food and beverage manufacturing
- Chemical manufacturing
- Warehouse and storage

[Copies of the slides to Mr. Jorgensen's *Presentation* can be downloaded here.](#)