



UH, OH... HERE COMES MORE REGULATIONS THAT WE NEED TO WORRY ABOUT.

PART 3

by: Bill Lape, SCS Engineers

In the last issue of the Breeze, I went over an overview of the changes that the Environmental Protection Agency (EPA) made to 409 CFR Part 68 that went into effect on May 10, 2024. During the next several articles, I want to offer a more detailed history of the regulatory pendulum that we find ourselves riding, provide detailed descriptions of the most recent changes that went into effect, and present some strategies for compliance. This month's article will focus on the history behind the regulations.

If one has been involved with the ammonia refrigeration industry for any length of time, they are generally aware that the Occupational Safety and Health Administration's (OSHA's) Process Safety Management (PSM) standard became effective in Federal Regulations on May 24, 1992 (OSHA 29CFR1910.119, 2024). In addition, the Environmental Protection Agency's (EPA's) Chemical Accident

Prevention Provisions, known colloquially as the Risk Management Program (RMP), became effective in Federal Regulations on June 21, 1999 (EPA 40CFR68, 2024). OSHA's PSM standard has remained unchanged in the 30+ years since. EPA's RMP provisions were modified to a minor extent in 2004. These modifications changed the deadlines for submitting RMP accidents and emergency contact changes and removed the requirement to summarize the Offsite Consequence Analysis (OCA) in the Executive Summary. This removal was due to security concerns after the terrorist attacks on September 11, 2001.

At this time, the two Federal Regulations overlapped significantly. This was intentional based on public comments received when the rules were being considered. Figure 1 shows the overlap between the two regulations as of 2015.



Figure 1: PSM & RMP Regulatory Overlap as of 2015

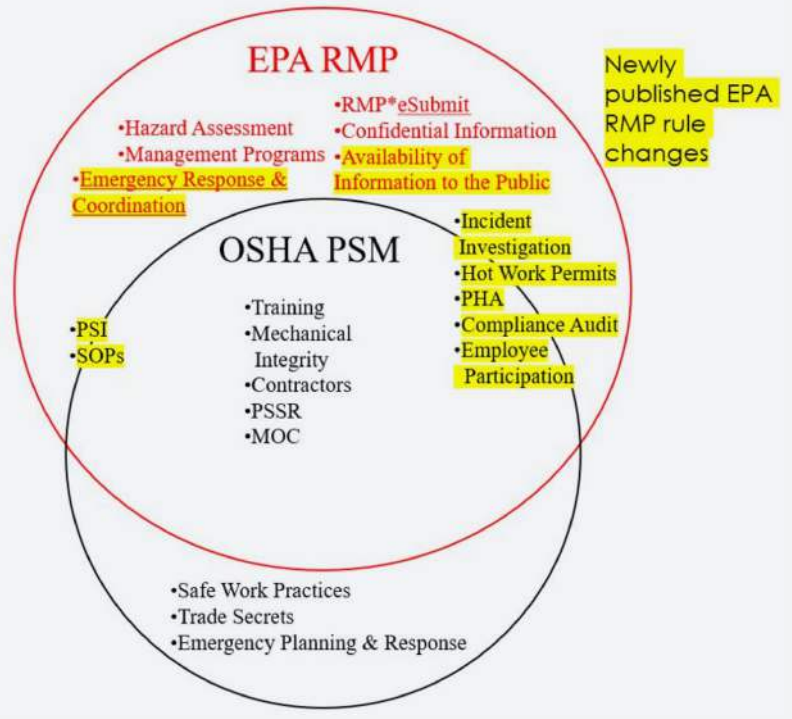


Figure 3: PSM & RMP Regulatory Overlap as of May 2024

On April 17, 2013, in West, TX, a fire broke out at the West Fertilizer Company. Less than 20 minutes after being reported, while local firefighters attempted to fight the blaze, approximately 30 tons of fertilizer grade ammonium nitrate detonated, killing 15 people, twelve of whom were first responders, and injuring more than 260 others. Over 150 offsite buildings, including nearby homes and business were severely damaged. Many were condemned as unrepairable.

The U.S. Chemical Safety Board investigated the accident but was unable to identify a cause of the fire. It did, however, highlight gaps in both EPA's and OSHA's regulations governing highly hazardous chemicals, as well as in reporting of such chemicals under the Emergency Planning and Committee Right to Know Act (EPCRA).

The incident in West, TX, led then President Obama to issue Executive Order #13650 (Exec. Order No. 13,650, 2013). In this Executive Order, the President called upon OSHA, EPA, and the Department

of Homeland Security (DHS) to improve coordination and communication. In addition, it called upon these agencies to improve coordination and communication with local first responders. Most importantly, it called upon OSHA and EPA to update the PSM and RMP regulations respectively, and for DHS to update their Chemical Facility Anti-Terrorism Standard (CFATS) rule.

OSHA issued a Request for Information (RFI) to solicit public input on updates under consideration for the PSM standard on December 9, 2013 (OSHA, 2013). Following the public comment period, OSHA conducted a Small Business Review as required by the Occupational Safety and Health (OSH) Act that created OSHA. After this, progress on regulatory changes to PSM stalled for a variety of reasons.

DHS issued a Request for Information (RFI) to solicit public input on updates under consideration for the CFATS rule on August 18, 2014 (DHS, 2014). Following the public comment period, progress on

regulatory changes to CFATS also stalled for a variety of reasons.

EPA issued a Request for Information (RFI) to solicit public input on updates under consideration for the RMP rule on July 31, 2014 (EPA 2014 RFI, 2014). Following the public comment period, draft rules were issued for further comment on March 14, 2016 (EPA 2016 Proposed Rule, 2016). Final rule changes were issued on January 13, 2017 (EPA 2017 Final Rule, 2017).

There were several minor changes to the Prevention Program rules, including establishing deadlines for incident investigations, explicitly requiring that the Process Hazard Analysis (PHA) address industry accidents, and establishing a requirement that supervisors of employees working on the covered process must also be trained to the same standards as the employees themselves.

The rule changes also incorporated some major changes, including a requirement to have compliance audits conducted by an independent third party in the event



Figure 2: Video Stills of West Fertilizer Company Explosion (USCSB, 2016)

that a facility experienced an RMP reportable accident. In addition, a requirement to make information available to the public upon request was included in the January 2017 rule.

Finally, there were several major changes to the Emergency Response Provisions of the RMP rules. The requirement to coordinate with the Local Emergency Planning Committee (LEPC) was expanded to include specific topics to be discussed, along with requirements for documenting the coordination meetings. A requirement was also implemented for any facility subject to the RMP rules to conduct notification exercises annually to ensure that personnel are trained to make the appropriate calls should local response be necessary, or the release exceeds the reporting thresholds established under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and EPCRA. EPA also stated in the rule changes that in order to be considered a “non-responding” facility, both the coordination and notification exercise requirements must be met. For “responding” facilities, the rule changes implemented requirements to conduct tabletop and field response exercise with local first responders within specific time frames, every three years for tabletop exercises and at least every ten years for field exercises.

After the Trump administration took office at the end of January 2017, there were attempts to rescind the December 2017 RMP rules changes under the Congressional Review Act (CRA). This act, which is codified in 5 U.S.C §§801-808 is designed to strengthen Congress’ oversight of Federal agencies. The CRA allows Congress to pass a joint resolution of disapproval, which, if signed by the President, or if Congress successfully overrides a Presidential veto, prevents the rule from going into effect or from continuing to be in effect. Ultimately, these attempts failed. On June 14, 2017 (EPA Delay, 2017), the EPA administration published a rule delaying enforcement of the rule changes indefinitely. Lawsuits were then filed against the EPA, and on December 3, 2018 (EPA Enforcement Renewal, 2018), the original

dates of enforcement were reestablished. EPA then began a new, formal rulemaking process to “correct” many of the changes made in the January 2017 rule.

With the new rulemaking process complete, a “reconsideration” final rule was issued on December 19, 2019 (EPA 2019 Changes, 2019). This “reconsideration” rescinded all of the minor Prevention Program rule changes from January 2017. It removed the third-party audit requirements. It replaced the requirement to make information available to the public upon request with a requirement to hold a public meeting if the facility experienced an RMP Reportable Accident with known offsite consequences. The Emergency Response rule changes from January 2017 remained largely intact except for the removal of the minimum required frequency for field exercises.

With the change in administration at the end of January 2021, the Biden Administration tasked the EPA with reconsidering the “reconsideration.” The EPA held Public “Listening” sessions in 2022 to obtain feedback and direction from public input. Draft rule changes were published on August 31, 2022 and a “reconsideration part 2” final rule was published on March 11, 2024 (EPA 2024 Final Rule, 2024).

With the publication of these “final” rule changes in March 2024, the regulatory landscape is not as clearly defined. Figure 3 shows the overlap between the PSM and RMP regulations as of May 2024.

In the next article, I will dive into the specific changes that went into effect last May.

Please feel free to email me with questions at NH3isB2L@gmail.com.

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