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The Risk Management Program: General Duty Clause and New Rule Developments

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Predicated by the recommendations of the 1990 Clean Air Act Amendments' Section 112(r) and becoming law in December 1997, the Risk Management Program (RMP) minimizes the risks surrounding the accidental release of hazardous substances, bringing potential dangers to acceptable levels. Although the Clean Air Act Amendments of 1990 introduced the RMP General Duty Clause in Section 112(r)(1), (Purpose and General Duty), the EPA acknowledged the General Duty Clause Provisions within the scope of the RMP rule (40CFR 68.1). The general duty provisions mandate *all* stationary sources to identify their potentially hazardous processes and set forth a plan to maintain a safe facility and to undermine the possibility as well as the consequences of an accidental release from a fire, explosion, leak or spill. Facilities have been required to comply with the General Duty Clause since the Congress enactment of the Section 112 (r) in November 1990. Developing an effective plan implies an analysis of the various possible hazardous scenarios and subsequent options that will eventually lead to the optimum solution, and the ideal RMP is a fine balance between operational, environmental, developmental, liability and common sense issues. Moreover, those facilities that produce, process, handle or store chemicals on the RMP list in quantities greater than specified threshold amounts, are subject to the more rigorous constraints of the RMP rule, requiring preparation of a documented plan to:

- Identify hazardous chemical risks
- Estimate the onsite as well as the offsite consequences for the public in the worst and alternative case scenarios
- Design procedures for safe facility maintenance
- Train employees in the execution of safe procedures
- Prevent releases from occurring
- Minimize the consequences of releases if they do occur
- Inform the public

With the strict interpretation of the RMP being used as a guide, the RMP rule has

increased management awareness in general and new perspectives have been developed such as the improved dissemination of safety information and a higher grade of mechanical integrity. While the RMP's General Duty Clause may be unknown or disregarded at some companies, others have systems in place to deal with processes involving chemicals not on the RMP list through incident investigations, hot work permits, emergency preparedness response planning, preventative maintenance program, and training. It is important to note that compliance with the General Duty Clause cannot be verified by specific requirements in the rule. However, EPA is creating a Guidance for Implementing the General Duty Clause.

Although the General Duty Clause under the RMP rule involves possible offsite consequences, there is a General Duty Clause in the OSHA Process Safety Management rule that addresses the onsite consequences as well. Thus, the idea that a facility is exempt when using unlisted chemicals or listed chemicals when storage quantities are below the regulatory threshold is inappropriate. The only possible exemption is from the submission of RMP documentation, but an RMP should still be in place for all processes, even those facilities housing chemicals not on the RMP list or below the threshold. For example, isopropanol, a flammable liquid, and aqueous ammonia in a concentration below 20%, a toxic substance, are not on the RMP list, but facilities that utilize these chemicals are now legally required to abate the potential of hazardous releases.

Ammonia, chlorine, formaldehyde and hydrochloric acid are toxic chemicals typically included in the RMP rule list, which contains flammable substances as well. Pursuant to Section 112(r), facilities handling at least one hazardous chemical out of the 77 toxic substances listed, or at least one of the 63 flammable substances, were required to develop an RMP and submit information to the EPA by June 21, 1999. The EPA then gathered the information in a database that will eventually be made available to the public in part. The federal government is anticipating completion of an assessment and rulemaking by August 5, 2000, to address the future public availability of offsite consequence analyses stored in the database.

In the last year alone, however, there have been a series of RMP milestones. On April 29, 1999, the U.S. Court of Appeals granted a stay of the RMP rule to facilities having more than the applicable 10,000 pound threshold of propane in a process. Later, the EPA proposed a permanent exception for facilities holding up to 67,000 pounds, but the proposal did not take effect. The EPA then clarified the U.S. Court of Appeals' stay by providing a six-month stay of effectiveness for facilities using flammable hydrocarbons as a fuel, and December 21, 1999, became the new deadline for affected facilities. The U.S. Court of Appeals' stay was lifted January 5, 2000.

On August 5, 1999, President Clinton signed the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act, removing the RMP requirement from facilities utilizing flammable hydrocarbons strictly as a fuel or from retail facilities that hold flammable substances for sale as for sale as a fuel.

Here are three important issues from the August 5th law.

1. Public access to the EPA database is restricted until at least August 5th, 2000, due to terrorist concerns.
2. Facilities subject to the RMP rule are required to announce and hold a public meeting by February 1, 2000, to provide the public with details of the offsite consequences.
3. Certification that the meetings were held must be provided to the Federal Bureau of Investigation (FBI) by June 5, 2000.

Propane facilities, the overwhelming majority covered by RMP, had a wild ride on this roller coaster of rules and regulations. Although the August 5th law removed the RMP requirement from all facilities using flammable substances as a fuel, those facilities who distribute or use propane as a process feedstock are still covered. However, these facility owners do not have to hold a public meeting by February 1, 2000. Only those operators required to submit an RMP by June 21, 1999, must hold a public meeting. Those owners and operators covered by the judicial stay do not have to hold public meetings.

Many Indianapolis owners affected by the RMP requirements participated in a joint public meeting organized by the Marion County Hazardous Materials Planning Committee on January 10, 2000, as advertised in *The Indianapolis Star/News* for four weeks prior. Small business stationary sources, however, may post a public summary of their offsite consequence analysis in lieu of the public meeting.

Meanwhile, the RMP program is still being developed and new regulations are expected. For more information on RMP development visit the EPA Chemical Emergency Preparedness and Prevention Office home page at <http://www.epa.gov/ceppo>.