EPA Regulation Updates

November 2020
Agenda

Recent EPA Rule Updates

- RMP Reconsideration Rule
- America’s Water Infrastructure Act (AWIA)
- Clean Water Act Hazardous Substance-Worst Case Discharge Planning Regulations
RMP Background

Clean Air Act Amendments of 1990

Created in response to industrial accidents

Purpose:
- prevent accidental releases of substances that can cause serious harm to the public and environment from short term exposure
- mitigate severity of releases that do occur

Requires sources holding specific toxic and flammable chemicals above threshold quantities in a process to develop risk management programs to prevent and mitigate chemical accidents.
Covers facilities with one or more of the 140 regulated substances above threshold quantities.

Requires facilities to:
- Implement an accident prevention program
- Implement an emergency response program
- Conduct a hazard assessment
- Submit a summary report “RMP” to EPA

RMPs available to government, limited public access.
RMP-Program Levels

Dependent on risk:

- **Program 1**
  - No public receptors in worst case scenario zone
  - No accidents w/offsite impacts in last 5 years

- **Program 2**
  - Facilities not in Program 1 or Program 3

- **Program 3**
  - Not eligible for Program 1
  - Already covered by OSHA PSM standard, or
  - Process in 1 of 10 specified NAICS codes
RMP’s-Owner/Operator Requirements

1) Conduct Hazard Assessment (P1, P2, P3)

2) Develop and Implement an Accident Prevention Program (P2, P3)

3) Implement Emergency Response Program (P2, P3)

4) Develop Management System (P2, P3)

5) Submit Risk Management Plan to EPA (P1, P2, P3)
Changes to RMP Regulations begin

- August 1, 2013: President Obama issued Executive Order (EO) 13650 Improving Chemical Facility Safety and Security following catastrophic chemical facility incidents in the US.

- Key areas of emphasis:
  - Strengthening community planning and preparedness
  - Enhancing federal operational coordination
  - Improving data management
  - Modernizing policies and regulations
RMP Amendments rule timeline

- RMP Request for Information published: July 31, 2014
- RMP Proposed Amendments Rule published: March 14, 2016
- RMP Final Amendments published: January 13, 2017
Accident Prevention Program (2\textsuperscript{nd} req-P2/P3) (40 CFR 68 Subparts C/D)

- Third party audits
- Safer technology and alternatives analysis
- Incident investigation root cause analysis

Emergency Response Program (3\textsuperscript{rd} req-P2/P3) (40 CFR 68 Subpart E)

- Enhanced local emergency coordination requirements
- Emergency exercise provisions

Information availability requirements (4\textsuperscript{th} req P2/P3) (40 CFR 68 Subpart H)

- Facility chemical hazard information
- Facility public meeting
Other minor provisions

- Minor changes to accident prevention program provisions
- Technical corrections and clarifications
- Changes to risk management plan

Compliance dates

- New local emergency coordination provisions
  March 2018
- New prevention program, exercises and information availability provisions
  March 2021
- Risk management plans update
  March 2022
RMP Amendments Delayed

- June 2017- RMP Amendments Rule was delayed for 20 months.
- Work began on the RMP Reconsideration Rule
Why was the RMP Amendments Final Rule reconsidered?

- BATF finding that fire and explosion in West, Texas, was caused by a criminal act rather than accident
- Potential security risks with information disclosure requirements in final Amendments rule
- Concerns with the costs of the Amendments rule
- Concerns that EPA did not adequately coordinate with OSHA
## RMP Reconsideration rule’s aim

<table>
<thead>
<tr>
<th>Maintain</th>
<th>consistency of RMP accident prevention requirements with the OSHA Process Safety Management (PSM) standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>security concerns</td>
</tr>
<tr>
<td>Reduce</td>
<td>unnecessary regulations and regulatory costs</td>
</tr>
<tr>
<td>Revise</td>
<td>some compliance dates to provide necessary time for program changes.</td>
</tr>
</tbody>
</table>
RMP Reconsideration final rule timeline

- **June 9, 2017**: EPA's Administrator signed final rule to delay effective date of the RMP rule amendments until February 19, 2019
- **May 30, 2018**: Proposed RMP Reconsideration Rule published
- **September 21, 2018**: DC Circuit Court's vacatur/mandate to make Amendments rule effective
- **December 19, 2019**: Final RMP Reconsideration Rule published
RMP Reconsideration final rule

2\textsuperscript{nd} requirement (P2/P3): Accident Prevention Program

- Rescinded \textit{third party audits}
- Rescinded \textit{safer technology and alternatives analysis}
- Rescinded \textit{root cause analysis incident investigation}
- Retained \textit{minor provisions}: Program 2 incident investigation team requirements and ‘reports’ term; safety information ‘SDS’ term
- Rescinded all other \textit{minor provisions}
RMP Reconsideration final rule

3rd requirement (P2/P3)
Emergency Response/Emergency Coordination

Retained annual coordination with local response organizations and documentation of coordinated activities

Modified provision to enable emergency response planners to obtain information “necessary for” planning and implementation of local emergency response plans
RMP Reconsideration final rule

3rd requirement (P2/P3) Emergency Response/Emergency Exercise

- Retained annual notification drills
- Retained requirement to perform field and tabletop exercises
- Retained tabletop exercises frequency, every 3 years
- Modified field exercises frequency by removing minimum frequency requirement (owner or operator must still consult with response officials on frequency)
- Modified documentation requirements by only recommending items for exercise reports
RMP Reconsideration final rule

4th requirement (P2/P3): Management System-Information Availability

Rescinded requirement to provide chemical hazard information to public on request

Modified public meeting requirement to require meeting within 90 days only for accidents with off-site impacts
What facility chemical information is available to the public now?

- Read-only access to the full version of facility RMPs at reading rooms by appearing in person at a Federal reading room
- Read-only RMP access directly from the local emergency planning committee in the location where the person lives or works
- Submitting a FOIA request to EPA
- Information available under the Emergency Planning and Community Right-to-Know Act
With any initial RMP or RMP resubmission made after December 19, 2024:

- Dec 19, 2023: Conduct first tabletop exercise
- Dec 19, 2024: Conduct first notification drill
- Dec 19, 2026: Conduct first field exercise

According to the exercise schedule established by the owner or operator in coordination with local response agencies.

Comply with new emergency coordination requirements

Comply with remaining minor accident prevention provisions

Develop Emergency Response Program

Develop exercise plans and schedules

Submit RMP with new information elements

Public meetings

Within three years of owner or operator determining that facility is subject to the provisions

Within 90 days of any qualifying accident that occurs after March 15, 2021

Conduct first field exercise
## RMP Reconsideration Final Rule Compliance Dates

<table>
<thead>
<tr>
<th>What</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public meetings</td>
<td>Within 90 days of any qualifying accident that occurs after March 15, 2021</td>
</tr>
<tr>
<td>Develop Emergency Response Program</td>
<td>Within three years of owner or operator determining that facility is subject to the provisions</td>
</tr>
<tr>
<td>Develop exercise plans and schedules</td>
<td>December 19, 2023</td>
</tr>
<tr>
<td>Conduct first notification drill</td>
<td>December 19, 2024</td>
</tr>
<tr>
<td>Conduct first tabletop exercise</td>
<td>December 21, 2026</td>
</tr>
<tr>
<td>Conduct first field exercise</td>
<td>According to the exercise schedule established by the owner or operator in coordination with local response agencies</td>
</tr>
<tr>
<td>Submit RMP with new information elements</td>
<td>The owner or operator would provide new information elements with any initial RMP or RMP resubmission made after December 19, 2024</td>
</tr>
<tr>
<td>Comply with new emergency coordination requirements</td>
<td>Already in effect as of September 21, 2018</td>
</tr>
<tr>
<td>Comply with remaining minor accident prevention provisions</td>
<td>Already in effect as of September 21, 2018</td>
</tr>
</tbody>
</table>
What is EPA doing to prevent future chemical accidents?

- Retention of all prevention provisions that have resulted in long-term trend of fewer significant chemical accidents
- New RMP Reconsideration Rule provisions
- National Compliance Initiative for Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
America’s Water Infrastructure Act

- AWIA signed in October 2018 amending the Safe Drinking Water Act.
- Provides for water infrastructure improvements throughout the country.
- How does this affect emergency planning/management? Amended EPCRA as well.
AWIA

- **Sec 2013: Community water system risk and resilience**
  - Risk Assessments (RA) and Emergency Response Plans (ERP) requirements for community water systems

- **Sec 2018: Source water**
  - Notification requirements for response commissions and state primacy agencies
  - Tier II data availability for community water systems
AWIA Section 2018

- Amends EPCRA
- Intended to mitigate risk of source water contamination
- Motivated by several recent source water contamination incidents (namely the Charleston, WV chemical spill in 2014).
AWIA amends EPCRA 304 to add sub-section 304(e).

- EPCRA 304 covers approx. 355 EHSs and over 700 hazardous substances subject to CERCLA (aka Superfund).

Requires SERCs/TERCs to promptly notify applicable state agency (typically state drinking water primacy agency) of any reportable release and provide agency with:
  - Information collected under 304(b) from initial release notification
  - Follow-up written report under 304(c)
AWIA-Emergency Notification

- State primacy agency is then required to provide all information regarding release to any community water systems whose source water is affected.

- If there is no State Drinking Water Primacy Agency, then the SERC would need to directly notify the Community Water System.
SERC/TERC shall provide the primacy agency with (this is the same information provided by the facility with the release):

- The chemical name or identity of any substance involved
- An indication of whether the substance is on the EHS list
- An estimate of the quantity released into the environment
- Time and duration of the release
- Medium or media into which release occurred
- Known/anticipated acute or chronic health risks
- Proper precautions to take, including evacuation
- Name and telephone of contact person
Emergency Notification
Section 2018 of the America’s Water Infrastructure Act, enacted on October 23, 2018
AWIA Section 304 FAQ’s

- Are SERCs/LEPCs required to identify facilities reporting under Tier II that might impact sources of drinking water?

No, that is not the responsibility of the SERC or LEPC.

The water system or state drinking water primacy agency should provide the SERC/LEPC with the source water protection area, and the SERC or LEPC should provide the water system with the chemical inventory data for that area.
Does a SERC/LEPC have to respond to requests for Tier II data from water systems located in another state?

Yes, the SERC or LEPC is required to fulfill requests for Tier 2 chemical inventory data from community water systems for the portion of the source water area in the jurisdiction of the SERC or LEPC.
AWIA- Section 2018 Chem Data Availability

- AWIA Section 2018(b) amends EPCRA 312 to add Community Water Systems.

Remember 312=Tier II Reporting

Requires SERCs/TERCs and LEPCs/TEPCs are to provide affected community water systems with hazardous chemical inventory data submitted on Tier II forms for their source water area, upon request from the water system.
Are SERCs/LEPCs expected to obtain data for facilities identified by utilities even if those facilities are not reporting?

Yes, if the facility is located within water system’s source water protection area.

If SERC/LEPC already has chemical inventory data on non-reporting facilities in a water systems’ source water protection area, the SERC/LEPC might consider sharing that information with the water system prior to a formal request.

Data requests to the SERC/LEPC need to be specific (i.e., specific facilities in the source water area).
What (if any) use restrictions should be placed on Tier II data provided to a water system?

- SERCs could require a water system to agree to a non-disclosure agreement prohibiting sharing of Tier II data beyond utility.

- SERC/LEPC might consider allowing water systems to share Tier II data with other community water systems using the source and contractors who are helping the water system to analyze and manage the data.
Where can LEPCs be involved?

- Community Water Systems over 3300 persons served will need to complete risk and resilience assessment and emergency response plan.

- These water systems should be reaching out and working closely with LEPCs when developing their emergency response plan.
CWA Hazardous Substances

Clean Water Act Hazardous Substance
Worst Case Discharge Planning Regulations

Motivated by WV chemical spill incident in 2014

Background-
Under CWA 311(j)(5), the President:

shall issue regulations which require an owner or operator of a . . . facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”
CWA Hazardous Substances

Oil requirements promulgated in 1994 Facility Response Plans (FRP) under Subpart D, 40 CFR 112.

EPA never proposed worst-case discharge planning regulations for CWA hazardous substances under 311(j)(5).
CWA Hazardous Substances

- EPA entered into a settlement agreement. The agreement requires the EPA proposes an action by March 2022 and a final action by September 2024.

- National workgroup has been formed and is currently reviewing if any action is necessary.

- Stay tuned!
Questions?

Preparedness and Site Assessment Section:
Bre Bockstahler
EPCRA/RMP Coordinator
303-312-6034
bockstahler.breann@epa.gov

Mark Quick
EPCRA-SEE
quick.mark@epa.gov