



OSHA PSM and EPA RMP Regulatory Update Webinar

December 16, 2022



Agenda

- Introduction
- Overview of Key Proposed Changes
 - OSHA PSM Standard
 - EPA RMP Rule
- Q&A
 - Please submit questions through the chat feature

Panelists



David A. Moore, PE, CSP
President & CEO
AcuTech Group, Inc.

www.acutech-consulting.com
dmoore@acutech-consulting.com



Michael J. Hazzan, P.E., CCPSC, CPSA
Sr. Principal Engineer & MI SME
AcuTech Group, Inc.

www.acutech-consulting.com
mhazzan@acutech-consulting.com



Michael T. Taylor
Shareholder & OSHA Practice Lead
Greenberg Traurig, LLP

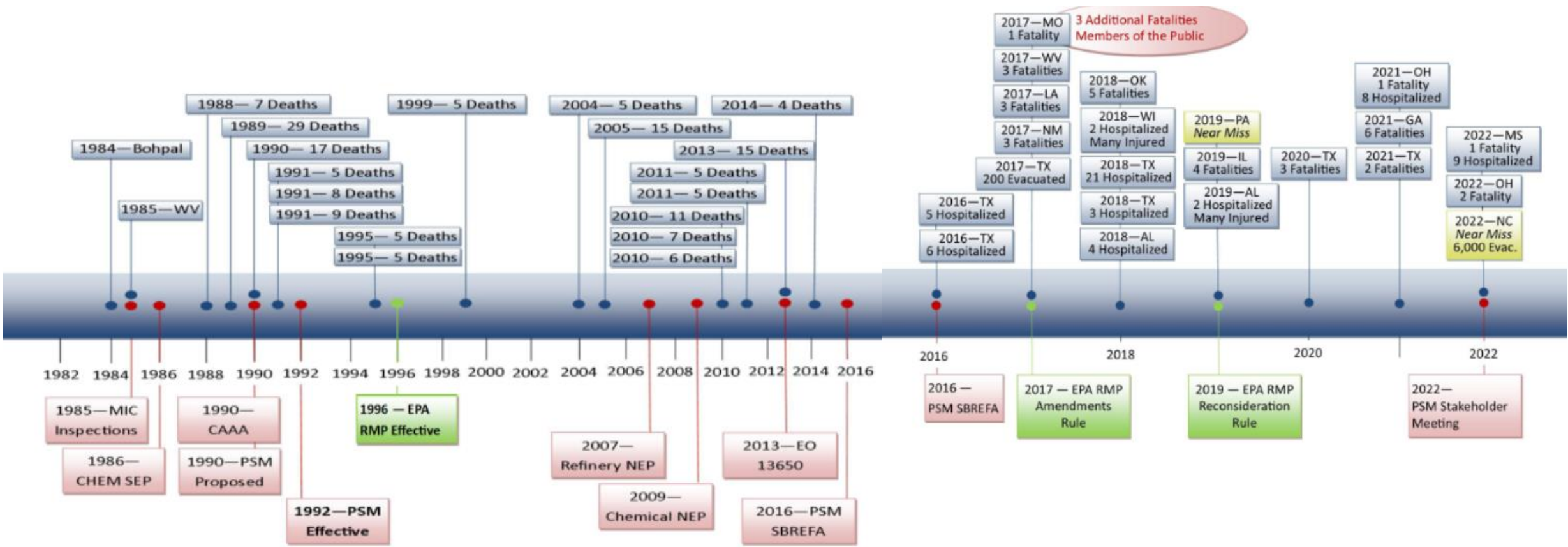
www.gtlaw.com
taylormt@gtlaw.com



Chemical Safety Regulatory Update

- The administration has set a priority to address process safety and risk management planning regulatory updates (OSHA PSM and EPA RMP).
- Most changes were previously proposed during earlier administrations but later denied during a subsequent administration.

PSM and RMP Regulatory History



*From OSHA Stakeholder Meeting - October 2022

Changes to OSHA PSM 29 CFR 1910.119

- Not changed since its initial adoption in May 1992.
- Wide use of 'regulation by interpretation' by OSHA
- Executive order 13650 would have resulted in changes but rulemaking not completed before Jan 2017.
- Small Business Regulatory Financial Analysis (SBRFA) completed in 2020, addressing these changes.
- <https://www.regulations.gov/document/OSHA-2013-0020-0116>

Changes to OSHA PSM 29 CFR

- Expansion of scope and applicability – published in FR on 8/8/2022

Clarifying the PSM exemption for atmospheric storage tanks (Meer exemption OSHA Review Commission (1997))	Removes exemption and so adds flammable liquid storage tanks to the 'processes'; could greatly extend the boundaries of PSM applicability
Oil and Gas Well Drilling and Servicing	Potentially adds thousands of O&G well drilling servicing
Oil and Gas Production Facilities	Potentially adds numerous of O&G production facilities
Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard	OSHA plans to add HHCs; Uncertain how impactful this will be other than AN
Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics	Adds dismantling and disposal in addition to the existing coverage of PSM for manufacturing of explosives, blasting agents and pyrotechnics
Address the Storage, Handling, and Management of Ammonium Nitrate	Adds AN to the list of covered chemicals and expands AN storage and handling facilities to PSM coverage

Changes to OSHA PSM 29 CFR

- Expansion of scope and applicability – published in FR on 8/8/2022

Additional Management System Elements	OSHA is proposing to add elements beyond the 14 current required elements of PSM; Uncertain additional elements (CCPS RBPS was mentioned).
Expanding PSM Coverage and Requirements for Reactivity Hazards.	OSHA is proposing to add reactive chemicals to the list of chemicals covered; adds as a class reactive chemicals not only named chemicals; likely additional processes will be covered.
Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard without Specific Concentrations	OSHA would adopt the same mixture rule as is currently in EPA's RMP to determine PSM applicability; replaces commercial grade criteria currently used; potential for additional inventories of chemicals and processes to be covered.
Retail facilities exemption	Replace $\geq 51\%$ sales criteria with NAICS codes 44/45 for retail; likely to increase number of covered facilities and chemicals.

Changes to OSHA PSM 29 CFR

- Expansion of compliance requirements - published in FR on 8/8/2022

Updating §1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards	Flammable liquids related OSHA standards to be updated
Adding a Definition for RAGAGEP	OSHA would incorporate 2015/2016 RAGAGEP definitions in their enforcement memo therefore codifying the requirements.
Expanding the Scope of Paragraph (j) to Cover the MI of Any Safety-Critical Equipment.	OSHA will incorporate the 10th Circuit Court of Appeals ruling on utilities; expands MI to additional equipment that is determined to be PSM critical; no definition of PSM critical so far but will be published.
Revising ERP to Require Coordination of Emergency Planning with Local Emergency Response Authorities	Requires formal coordination of covered facilities with local emergency response agencies; unknown metric for compliance

Changes to OSHA PSM 29 CFR

- Expansion of compliance requirements - published in FR on 8/8/2022

Clarifying MOC to add Organizational Changes	Require MOOC; no standard or set of requirements proposed at this time
Amending PSI to Require Evaluation of Updates to Applicable RAGAGEP	Requires a process to be established to monitor and evaluate RAGAGEP
Revising Audit Element to Require Third-Party Compliance Audits	Potential for standards for auditor quals; possible for some significant difference in outcome of audits

Changes to EPA RMP 40 CFR Part 68

- Published in FR on 8/8/2022

Natural Hazards	Requires natural events and loss of power to be studied in PHAs; did not specify what natural events to include in the analysis.
Loss of Power (LOP)	PHA must include LOP; include emphasis on need for standby or emergency power in PHAs, but explicit requirement for emergency power.
Stationary Source Siting	Defines siting to include impacts on the community from the facility.
Safer Technologies and Alternatives Analysis (STAA)	NAICS 324/325 within 1 mile of another RMP facility in NAICS 324/325 to conduct a STAA for each process; all facilities in NAICS 324 with Hydrofluoric Acid (HF) alkylation units (45 facilities) consider safer alternatives; using hierarchy of controls.

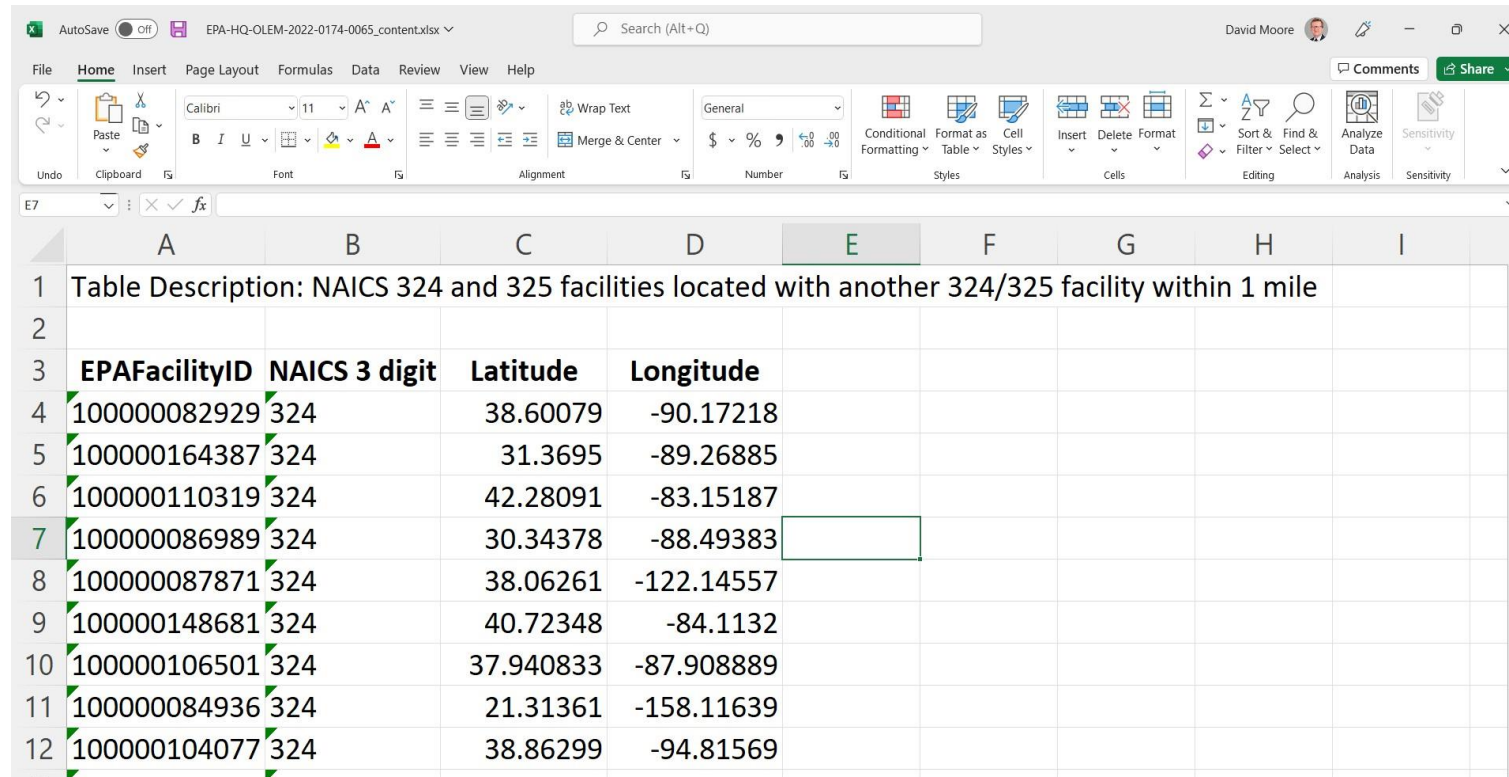
Changes to EPA RMP 40 CFR Part 68

- Published in FR on 8/8/2022

Incident Investigation	Clarifies a root cause analysis is required.
Employee Participation	Adds requirements for Stop Work Authority and requires consultation for process safety recommendations.
Hazard Evaluation Recommendation Information Availability	Adds lists of recommendations to RMP Plan for natural hazards, siting, and loss of power not adopted with justification.
Information Availability	Provision of chemical hazards information to the public living within 6 miles.
Compliance Audits	Third party compliance audits for next scheduled compliance audit following a RMP reportable accident or within 12 months, or NAICS 324/325 sites if they have had one RMP-reportable accident within a 5 year period occur and are located within a 1-mile radius of another RMP regulated NAICS 324/325 facility, or after an implementing agency determines that certain conditions exist that could lead to an accidental release; audit independence and competence requirements; audit report changes.
Emergency Planning	Sites can declare themselves as nonresponding facilities; required annual coordination meetings with first responders; community notification system; drills and exercises; describe release monitoring capability, but no new ones required.
Other Changes	8 others changes that are more limited in scope than those above.

Changes to EPA RMP 40 CFR Part 68

- EPA published on their website an analysis of 1-mile co-located facilities and HF Alkylation facilities.



The screenshot shows a Microsoft Excel spreadsheet with the following data:

	A	B	C	D	E	F	G	H	I
1	Table Description: NAICS 324 and 325 facilities located with another 324/325 facility within 1 mile								
2									
3	EPAFacilityID	NAICS 3 digit	Latitude	Longitude					
4	100000082929	324	38.60079	-90.17218					
5	100000164387	324	31.3695	-89.26885					
6	100000110319	324	42.28091	-83.15187					
7	100000086989	324	30.34378	-88.49383					
8	100000087871	324	38.06261	-122.14557					
9	100000148681	324	40.72348	-84.1132					
10	100000106501	324	37.940833	-87.908889					
11	100000084936	324	21.31361	-158.11639					
12	100000104077	324	38.86299	-94.81569					

Legal Perspectives - What's involved to make the proposed revisions become law?

New Covered Processes	<p>OSHA must show that each new subject matter exposes a significant risk of harm to workers. This is a quantitative analysis.</p> <ul style="list-style-type: none">• New Chemicals added to Appendix A – Changes too?• Oil and Gas well drilling and servicing• Oil and Gas production• Reactive Chemicals
Modifying Existing Language of PSM	<p>OSHA must show that compliance with what is on the books still exposes workers to a significant risk of harm.</p> <ul style="list-style-type: none">• When Changes to PSI Must be Finalized• PHA – Extreme Temperature and Natural Disasters• Safer Technology Alternatives• Add Management Systems• Require Formal Resolution of PHA Team recommendations• MI Critical Equipment
Defining Existing Language	<ul style="list-style-type: none">• Retail facility - OSHA had a definition via an interpretation letter, (50 percent rule) but withdrew that interpretation letter.• Revise definition of a covered process• Define RAGAGEP

Legal Perspectives – Potential Issues to Consider and Timing

- Performance-oriented or more prescriptive?
- When might a proposed final rule be issued?
- Will some requirements be grandfathered into law?
- What could enforcement look like?
 - OSHA is currently understaffed

Conclusions

- At this point it is unclear, but many of the proposals are possibly going to be adopted changing the face of PSM and RMP
- Significant impacts depend on the chemicals handled
- Generally, the higher impact proposals include:
 - *Atmospheric Tanks*
 - *Additional Highly Hazardous Chemicals*
 - *Additional Management System Elements*
 - *Reactivity Hazards*
 - *New Mixture Rule for PSM*
 - *Retail Facilities Exemption*
 - *RAGAGEP Definition*
 - *RAGAGEP Updates*
 - *Safety Critical Equipment in MI*
 - *Safer Technologies and Alternatives Analysis (STAA)*
 - *Information Availability to the Public*
 - *3rd Party Compliance Audits*
- Will PSM and RMP prevention programs start to diverge?
- EPA has continued to include increased and easy public information availability for RMP data, despite the security concerns.

Thank you

Please submit questions through the chat feature.



David A. Moore, PE, CSP
President & CEO
AcuTech Group, Inc.

www.acutech-consulting.com
dmoore@acutech-consulting.com



Michael J. Hazzan, P.E., CCPSC, CPSA
Sr. Principal Engineer & MI SME
AcuTech Group, Inc.

www.acutech-consulting.com
mhazzan@acutech-consulting.com



Michael T. Taylor
Shareholder & OSHA Practice Lead
Greenberg Traurig, LLP

www.gtlaw.com
taylormt@gtlaw.com



References

- PSM:

- <https://www.federalregister.gov/documents/2022/09/20/2022-20261/process-safety-management-psm-stakeholder-meeting>
- <https://www.regulations.gov/document/OSHA-2013-0020-0116>

- RMP:

- <https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-proposed-rule>

- AcuTech White Papers

- <https://acutech-consulting.com/wp-content/uploads/2022/12/AcuTech-OSHA-PSM-Std-Revisions-White-Paper-11-14-22.pdf>
- <https://acutech-consulting.com/wp-content/uploads/2022/12/AcuTech-SCCAP-RMP-Revisions-White-Paper-11-2-22.pdf>