



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Randy Roig, PhD
President, Specialty Technical Consultants, Inc.
2100 Embarcadero, Suite 204
Oakland, CA 94606

NOV 23 2010

Dear Mr. Roig,

Thank you for your letter of September 1, 2009, which requested interpretations of the Process Safety Management (PSM) standard and Risk Management Program regulation. Your letter asks questions of both EPA and OSHA relating to facilities where multiple owner/operators control regulated processes using various contractual and leasing arrangements. In this reply, I have addressed only your questions addressed to EPA and those addressed to both agencies. EPA and OSHA have discussed your questions and coordinated our responses; OSHA will respond to your questions in separate correspondence.

The first question in your letter concerns the proper method of registering a risk management plan (RMP) in situations where multiple owner/operators control a system. We have addressed a number of specific stationary source ownership scenarios in Chapter 1 of the *General Guidance on Risk Management Programs for Chemical Accident Prevention (40 CFR Part 68)*, including scenarios where two or more separate companies occupy the same site. One or more of these scenarios may apply to your clients. You can obtain a copy of the guidance at www.epa.gov/emergencies/guidance.htm#rmp.

Your next question concerns whether the method of risk management plan registration affects an owner/operator's regulatory burden. Submission of (or failure to submit) an RMP, by itself, does not relieve an owner or operator of their other regulatory obligations under 40 CFR Part 68. The presence or lack of an RMP would be one of many potential factors that the Agency could take into account in any enforcement action taken under CAA Section 112(r).

Later in your letter, you address several questions jointly to EPA and OSHA. The first of these requests clarification on whether a vendor that owns and operates a portion of a process would be considered a contractor under the PSM standard and the Risk Management Program regulations. Both the OSHA PSM standard and the Risk Management Program regulations indicate that the contractor requirements apply to "contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process" (see 40 CFR Part 68.87). Therefore, a vendor that is functioning as an owner or operator would not be considered by EPA to be a contractor.

The next part of your letter relates to potential options for conducting compliance audits at multi-owner sites. Within the bounds set out by the specific requirements of 40 CFR Part 68.79, owner/operators have significant flexibility in the conduct of the triennial compliance audit. Earlier in your letter you indicate that both the manufacturer and vendor coordinate closely to perform process hazards analyses on their

respective subsystems. EPA agrees that this may be a necessary step, and we note here that such coordination and information sharing may also be necessary for each party to properly implement other elements in their prevention program, including the compliance audit. For example, a manufacturer who does not operate one portion of facility controlled by a vendor (and vice versa) may nevertheless be in possession of information necessary for compliance with the rule's process safety information requirements (40 C.F.R. 68.65). Therefore, regardless of the contractual or leasing arrangements at multi-owner sites, EPA believes that all parties should work together closely and share information as needed in order to properly implement all applicable Risk Management Program requirements.

The last part of your letter requests how EPA and OSHA view the compliance obligations of each party at your client's sites. Since there can be a wide range of ownership and managerial arrangements in plant operations, and we do not possess detailed knowledge of each situation discussed in your letter, our answer here must remain fairly general. EPA recognizes that the appropriateness of holding owner/operators and contractors responsible for complying with particular regulatory or statutory provisions will depend on the specific facts and circumstances of each situation. In enforcement proceedings where these issues become relevant, the Agency would carefully consider the actual terms of stationary source owner/operator contractual relationships.

If you have any questions regarding this response, please contact Jim Belke of my staff at (202) 564-8023.

Sincerely,



R. Craig Matthiessen
Director
Regulatory and Policy Development Division
Office of Emergency Management