



Reply to the attention of:

DEP/GIE/LAL

27 OCT 2010

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

Dear Dr. Roig:

Thank you for your September 1, 2009 letter to the Occupational Safety and Health Administration (OSHA). We apologize for the delay in our response. Your letter requests an interpretation of the requirements of the Process Safety Management standard (PSM), 29 CFR 1910.119 as it applies to onsite vendors of chemicals and gases on the same site as an interconnected PSM covered facility.

Scenario: Your client PHARMA operates PSM covered manufacturing process in four different states. Several of these sites have at least one onsite vendor, VENDOR. VENDOR is a distinct and separate company that operates a PSM covered manufacturing process on PHARMA's site that is interconnected to the PHARMA's process. PHARMA and VENDOR each own, operate, and control their own processes.

Question: Does the multi-employer workplace policy apply, and, if so, what are the respective roles of PHARMA and VENDOR under this policy?

Reply: Description and applicability of OSHA's multi-employer workplace policy is found in OSHA's Field Operation Manual (OSHA CPL 02-00-148) and OSHA's Multi-Employer Citation Policy (OSHA Instruction CPL 2-0.124). The application of the multi-employer workplace policy is highly dependent on the individual relationship and contractual obligations at each individual worksite. This may include consideration of factors such as property ownership and process division. Therefore, we are unable to make a blanket determination of the application of this policy at the workplaces you describe.

Question: What obligations do the two parties have to share data and information under those roles as it would apply to PSM information?

Reply: The PSM standard requires employers to prevent or mitigate the consequences of catastrophic releases of highly hazardous chemicals on their processes. In the case where two legally distinct companies each own, operate, and control their own PSM covered processes, each employer is responsible for its own PSM program. However, there are several elements of the PSM standard that may require these employers to share information:

**Process hazards analysis (PHA) (29 CFR 1910.119(e))** – The PSM standard requires that employers perform a hazard analysis to identify, evaluate, and control the hazards involved in the process. This should include the effect of variations in raw material flows, process conditions,

and other parameters that the PHA team identifies. OSHA expects that an employer would have to communicate with its interconnected supplier(s) to fully understand these possible variations.

In addition, 29 CFR 1910.119(e)(3)(v) requires that employees consider hazards due to facility siting in the PHA. OSHA expects that this would include understanding and considering potential hazards from neighboring processes and facilities, and expects that an employer would communicate with neighboring facilities to fully understand these potential hazards.

Subsequent to identifying the hazards relating to the neighboring process or facility, the employer is required to identify appropriate safeguards. Defining these safeguards would likely require sharing information with neighboring processes or facilities to ensure that they will not have a release that affects the employer's process. This could include sharing information from compliance audits, incident investigations, and other elements of the PSM program.

**Incident investigation (29 CFR 1910.119(m))** – The PSM standard requires that employers investigate incidents, which resulted in, or could reasonably have resulted in a catastrophic release of a highly hazardous chemical in the workplace. If a release or potential release from a neighboring process or facility could have led to a catastrophic release because it affected employees operating the process, or the process itself, OSHA would expect the employer to conduct an investigation. This would likely require the employer to communicate with the owner of the neighboring process or facility to understand the incident and develop actions to protect its employees in the event of future incidents.

**Emergency planning and response (29 CFR 1910.119(n))** – The PSM standard requires employers to establish and implement an emergency action plan for the entire plant in accordance with the provisions of 29 CFR 1910.38. OSHA expects that this plan will include provisions for emergency action that may be necessary in the event of an incident in a neighboring process or facility.

Question: Is VENDOR a “contractor” (as defined under PSM/RMP) to PHARMA or are they essentially an equal party subject to PSM/U.S. Environmental Protection Agency (EPA) Risk Management Program (RMP) requirements for the portion of the system that they own, operate, and maintain?

Reply: We can only speak to OSHA standards; EPA will be responding separately. The contractor provisions of the PSM standard given in 29 CFR 1910.119(h) apply to “contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process.” In the situation of PHARMA and VENDOR, if each is a legally distinct company that own, operate, and control their own PSM covered processes, then neither would be considered a contractor under the PSM standard.

Question: What scenario must PHARMA and VENDOR use to conduct a compliance audit on the system that includes both covered processes, and how should the audit results be shared?

Reply: The PSM standard requires employers to evaluate compliance with the provisions of the standard at least every three years (29 CFR 1910.119(o)(1)). While OSHA agrees that it may be

necessary for PHARMA and VENDOR to share audit information in order to ensure that a release from one employer's process does not affect the other, it is ultimately up to the two employers to decide how this will be done.

Question: How would EPA and OSHA view the compliance obligations of each party for the scenario presented?

Reply: In the case where two legally distinct companies each own, operate, and control their own PSM covered processes, each employer is responsible for its own PSM program.

As you requested, OSHA discussed your questions and our responses with U.S. EPA. The responses were coordinated to the extent possible, and each Agency will respond with its own letter. Also, as you are writing from California, you should note that twenty-seven States, including California administer their own occupational safety and health programs under plans approved by OSHA. These States are required to adopt and enforce occupational safety and health standards which are at least as effective as those promulgated by OSHA. California has adopted a PSM standard which is similar to the Federal standard. For more information on California's enforcement of its standard, I suggest you contact:

California Department of Industrial Relations  
Division of Occupational Safety and Health  
1515 Clay Street, Suite 1901  
Oakland, CA 94612  
PH: (510) 286-7000  
FAX: (510) 286-7037

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the Office of General Industry Enforcement at (202) 693-1850.

Sincerely,



*For* Thomas Galassi, Director  
Directorate of Enforcement Programs