RMP 2018: THE RECONSIDERATION

• Background

• RMP program area changes
  – 2017 changes
  – 2018 proposed revisions

• Path Forward
  – Proposed changes
  – RMP rule litigation
RMP 2018: BACKGROUND

• Clean Air Act § 112(r)
• Applicability
• Requirements
  – Hazard assessment
  – Accident prevention program
  – Emergency response program
  – Submit a Risk Management Plan (RMP) to EPA
• Enforcement
  – State vs. Federal
  – Program violations
  – General duty clause
RMP 2018: BACKGROUND

- 2014: EPA Request for Information
- 2016: EPA Proposes RMP rule changes
- January 2017: EPA adopts final RMP rule changes
- March 2017: EPA convenes RMP reconsideration proceeding
- March 2017: Final Rule: 90-day administrative stay of effective date
- June 2017: Final Rule: 20-month delay of effective date
RMP 2018: OVERVIEW OF PROGRAM AREAS

• Prevention Program Requirements
  – Incident Investigation
  – Compliance Audits
  – Safer Technology and Alternatives Analysis

• Emergency Response Preparedness Requirements
  – Coordination with Local Responders
  – Facility Exercises

• Information Availability Requirements
  – Public Availability of Information
RMP 2018: PREVENTION PROGRAM REQUIREMENTS

INCIDENT INVESTIGATION

• 2017 Changes
  – Expanded the scope of the requirement
    o Incident that “resulted in a catastrophic release” explicitly includes incident where the affected process is decommissioned or destroyed as a result of, or following, the incident
    o Incident that “could reasonably have resulted in a catastrophic release” explicitly defined to include a “near-miss”
  – Formalized requirement to prepare an investigation report
  – Report must address “root causes” identified through a recognized method

• 2018 Proposed Rule
  – Rescind all 2017 changes
RMP 2018: PREVENTION PROGRAM REQUIREMENTS

COMPLIANCE AUDITS

• 2017 Changes
  – Scope of requirement: “for each covered process”
  – Third-party audits
    o Triggers
    o Auditor qualifications
    o Audit report and response to audit findings

• 2018 Proposed Rule
  – Rescind all 2017 changes
RMP 2018: PREVENTION PROGRAM REQUIREMENTS

SAFER TECHNOLOGY AND ALTERNATIVES ANALYSIS

• 2017 Changes
  – Part of the Process Hazard Analysis (PHA)
  – Applicable to Program 3 facilities in three industries:
    o chemical manufacturing
    o coal/petroleum products manufacturing
    o paper manufacturing
  – Requirement to evaluate the “practicability” of safer technology / alternatives

• 2018 Proposed Rule
  – Rescind all 2017 changes
RMP 2018: EMERGENCY RESPONSE PREPAREDNESS

COORDINATION WITH LOCAL RESPONDERS

• **2017 Changes**
  – Responding source vs. non-responding source
  – Annual coordination
  – Information sharing with local emergency responders
  – Documentation of coordination efforts
    o Names and contact information; dates of coordination; nature of coordination activities

• **2018 Proposed Rule**
  – Annual coordination still required
  – Clarify information sharing / eliminate potential open-ended obligation
  – Compliance Date: one year after effective date of rule
RMP 2018: EMERGENCY RESPONSE PREPAREDNESS

FACILITY EXERCISES

• 2017 Changes
  – Notification exercises
    o Exercise of emergency response notification mechanisms
    o Frequency: at least once each calendar year
  – Emergency response tabletop exercises
    o Simulated accidental release
    o Discuss procedures for notification, mobilization, coordination, evaluation, treatment
    o Facility response personnel, contractors as appropriate, invite local public emergency response officials
    o Frequency: consult with local response officials; not less than every 3 years
RMP 2018: EMERGENCY RESPONSE PREPAREDNESS

FACILITY EXERCISES

• 2017 Changes (continued)
  – Emergency response field exercises
    o Simulated accidental release
    o Test procedures for notification, mobilization, coordination, evacuation, treatment
    o Facility response personnel, contractors as appropriate, invite local public emergency response officials
    o Frequency: consult with local response officials; not less than every 10 years
  – Evaluation reports
RMP 2018: EMERGENCY RESPONSE PREPAREDNESS

FACILITY EXERCISES

• 2018 Proposed Rule
  - Notification exercises
    o Annual notification exercise still required
    o Initial notification exercise deadline is 5 years after effective date of the rule
  - Emergency response **tabletop** exercises
    o Tabletop exercises still required at least every three years; no change to scope
    o Initial exercise deadline delayed until 7 years after effective date of rule
  - Emergency response **field** exercises
    o Field exercises still required; no change to scope
    o Consult with response officials to determine “an appropriate frequency” (no minimum frequency)
  - Evaluation report still required
RMP 2018: INFORMATION AVAILABILITY REQUIREMENTS

PUBLIC AVAILABILITY OF INFORMATION

• 2017 Changes
  – Information for the public
    o Categories: names of regulated substances; safety data sheets; accident history; emergency response program information; scheduled exercises; LEPC contact information
    o Mechanism: notify public that the information is available upon request
    o Public meeting within 90 days of any “RMP reportable” accident
    o Protections for CBI and classified information
RMP 2018: INFORMATION AVAILABILITY REQUIREMENTS

PUBLIC AVAILABILITY OF INFORMATION

• 2017 Changes (continued)
  – Information for the local emergency planning and response organizations
    o Part of annual coordination activities
    o Copy of emergency response plan / emergency action plan
    o Updated emergency contact information
    o “Any other information that local emergency planning and response organizations identify as relevant to local emergency response planning”
    o No protections for CBI or classified information
RMP 2018: INFORMATION AVAILABILITY REQUIREMENTS

PUBLIC AVAILABILITY OF INFORMATION

• 2018 Proposed Rule
  – Information for the public
    o RMP remains available to the public
    o Rescind obligation to provide 2017 categories of information to public upon request
    o Retain obligation to hold public meeting following “RMP reportable” accident (but eliminating obligation to provide information beyond § 68.42(b))
  – Information for the local emergency planning and response organizations
    o Eliminate the obligation to provide “any other information” local responders identify as relevant
    o Add protections for CBI and classified information
  – Compliance Dates
    o Post-accident public meeting: 2 years after effective date of rule
    o RMP updates: 5 years after effective date of rule
RMP 2018: THE RECONSIDERATION

PATH FORWARD

• 2018 Proposed Rule
  – Comment deadline: July 30, 2018

• RMP Rule Litigation
  – Challenge to 2017 substantive changes: ACC v. EPA (DC Cir. No. 17-1085)
    o Case held in abeyance; 90-day status report last filed June 18, 2018
  – Challenge to 20-month delay: Air Alliance Houston v. EPA (DC Cir. No. 17-1155)
    o Decision issued August 17, 2018
    o Court vacates EPA’s 20-month delay
THANKS!

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