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You've Submitted Your RMP – Now What?

In recent months, EH&S managers have been grappling with how to comply with the Accidental Release Provisions of Section 112(r) of the Clean Air Act. In particular, regulated facilities have diligently worked to meet the Risk Management Plan (RMP) submittal deadline of June 21, 1999. In Texas alone, nearly 1,300 plans were submitted to the EPA.

Keeping up with quickly changing developments to the RMP rule has been a moving target for the regulated community. In December 1998, with preparation of many RMPs already underway, EPA modified the rule to add four mandatory and five optional data elements and to protect confidential business information. Subsequent concerns about the regulation of flammable fuels (e.g., propane)

and public access to the offsite consequence analysis (OCA) data have prompted additional changes. Following are examples of how these changes affect the regulated community.

Some facilities storing flammable fuels are off the hook – On April 27, 1999 the U.S. Court of Appeals granted a stay of the RMP rule as it applies to facilities having more than 10,000 pounds of propane in a process. Subsequent congressional action has modified the law to mirror the action of the judicial stay. On August 5, 1999, Con-

gress enacted the *Chemical Safety Information, Site Security and Fuels Regulatory Relief Act*, which, in turn, required EPA to modify the RMP rule.

The provisions of the modified RMP rule specify that if any facility uses a flammable substance as a fuel or if a retail facility holds the flammable substance only for sale as a fuel, an RMP does not have to be submitted for the process. However, if the facility produces a flammable fuel or uses it as a feedstock in producing another product or does not meet the definition of a retail facility, the process still may be subject to the RMP program.

Public access to OCA data is now restricted, but some companies must hold public meetings – Due to concerns about the possible misuse of OCA data (including worst-case scenarios, etc) by terrorists and others, Congress has now directed that OCA data not appear on the internet. However, the superseding legislation does specify that regulated facilities that have Program 2 or Program 3 processes must share OCA data with the public as follows:

1. For "small business stationary sources" (employing 100 or fewer persons and meeting other criteria), a summary of the OCA data for each regulated process must be posted publicly.
2. For other entities a public meeting must be held to discuss the OCA data.
3. All entities having Program 2 or Program

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Outside the Box

Getting at the Root of Noncompliance



David Cabe, P.E.
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Contrary to what some “watch dogs” say, environmental noncompliance is seldom, if ever, the result of a deliberate attempt to circumvent rules and regulations. It is the rare EH&S manager who doesn’t seriously attempt to keep his or her facilities out of trouble. However, in spite of the best intentions, these familiar refrains are struck over and over again:

“I didn’t know that rule applied to me.”
“It wasn’t on my calendar.”
“That report slipped up on me, and I just couldn’t finish it on time.”

A common thread runs through these reasons for noncompliance: somewhere in the process, information was not communicated or acted upon appropriately.

According to a recent study jointly conducted by the Environmental Protection Agency (EPA) and the Chemical Manufacturers Association (CMA), the top two root causes of noncompliance events are 1) misunderstandings about regulations and permit conditions, and 2) human error. Other root causes are failure to follow defined procedures, problems with equipment, and difficulties in communications with regulatory agencies.

In the EPA/CMA survey increased employee involvement and improvement in formal environmental management systems were cited as two of the most successful ways to address noncompliance problems. Environmental management systems such as ISO 14000 and the CMA’s Response Care[®] initiative can provide the framework for tackling non-compliance issues. But regardless of what approach is followed, the key to increasing environmental compliance is the commitment to be systematic.

According to the business consultant, Michael Gerber, frustrations in conducting business are usually no more than the absence of effective systems. In the personal realm, marriage counselors advise couples to agree on the rules for communicating. This set of rules or expectations can be called a system. Similarly, companies plagued with compliance problems can reduce frustrations by developing systems for communicating information.

What are the features of effective compliance management systems? Although they may vary in many respects, effective systems share the following attributes:

- They have broad support throughout all levels of the company.
- They are documented in writing.
- They clearly define procedures, roles, and expectations.
- They include a training component.
- They make use of computer technology to minimize human error.
- They provide for measurement of the system’s performance.
- They provide for staff feedback in ways to continuously improve the system.

You may find it impossible to make time to develop and implement a compliance management system when each day brings its own crisis *du jour*. If this is the case, try to document in writing each compliance problem that was faced, the cause of the problem, and the action taken to correct it. Take ten minutes at the most to dash off a note and toss it into a folder. After a couple of months, open the folder, clean up your notes, and organize them in a way that makes sense to you – by process or activity or by regulation. Now you have the start of a system for getting at the root of non-compliance!

- David Cabe, P.E.
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Zephyr is a professional services firm providing consulting, training and software to the industrial, commercial and public sectors. The firm’s major areas of practice focus on environmental permitting, compliance and corrective action, incident management, occupational health and safety, risk assessments, ISO 14001 implementation, audits and regulatory tracking.

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3 processes must certify to the Federal Bureau of Investigation (FBI) no later than June 5, 2000 that they've held such meetings or posted such notices within one year before, or six months after, August 5, 1999.

OCA data remain available to Federal, State, and local officials, including members of Local Emergency Planning Committees (LEPCs) for emergency planning and response purposes. These officials are prescribed from making OCA data public except under very specific circumstances.

Guidance is now available for self - auditing – The General Duty Clause of the RMP rule specifies that owners and operators of stationary sources that manage hazardous chemicals have a general duty to identify hazards that may result from releases and to minimize the consequences of accidental releases that do occur. Facilities that have prepared and submitted RMPs should be diligent to ensure that the provisions of their plans are being implemented on a continuous basis. Facilities that store and/or use hazardous chemicals but were not required to submit RMPs to the EPA should still be aware of hazards and potential liabilities represented by such on-site chemicals.

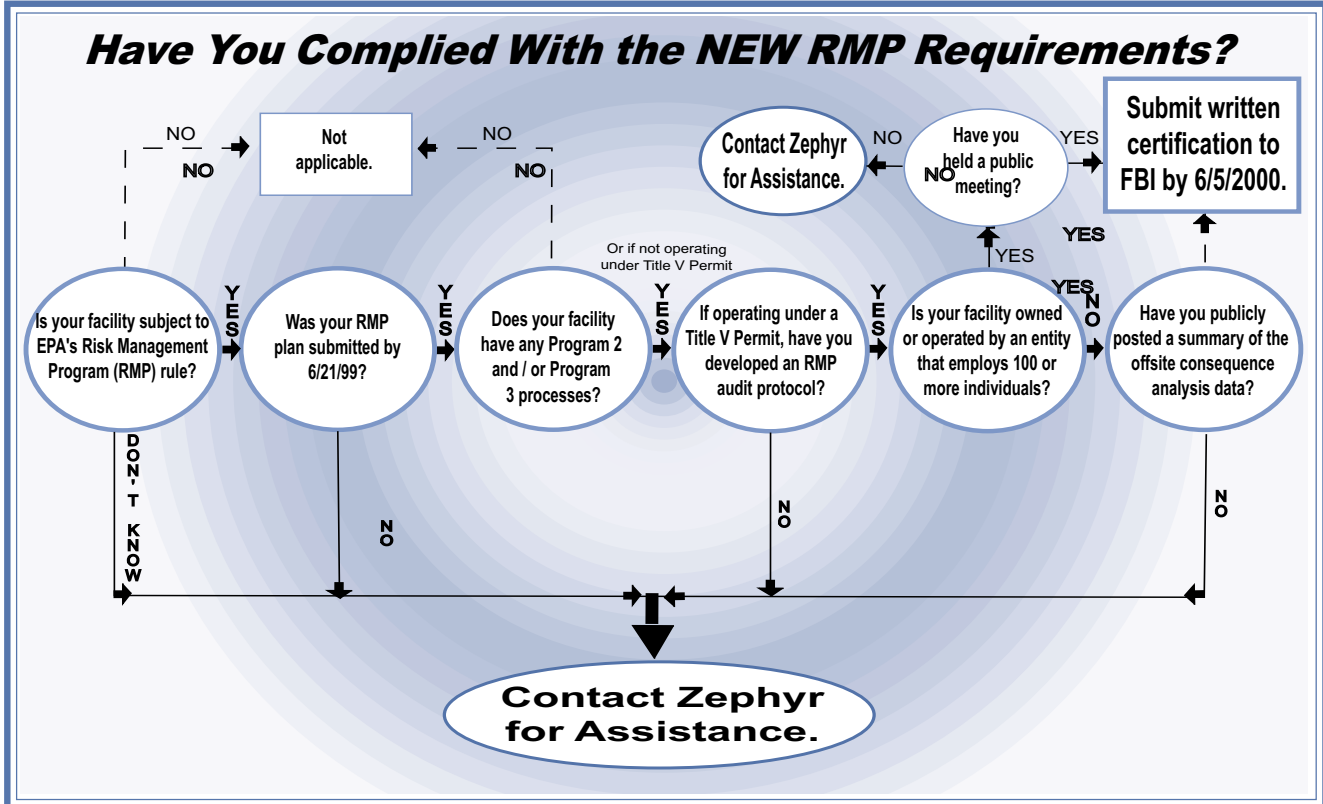
EPA has released guidance for government officials who will audit RMPs. Facilities wishing to ensure that programs and practices are consistent with the provisions represented in their plans may wish to perform a "self-audit" using the EPA audit guidance. Ideally, such audits would be performed by parties other

than those who prepared the RMP. Companies that did not submit an RMP may still wish to audit their facilities to ensure that the provisions of the General Duty Clause are being met. For those companies that must obtain an Operating Permit under Title V of the Clean Air Act, such an audit is a good way to demonstrate that a facility is in compliance with Part 68 (relating to Risk Management Program) implementation.

Conclusions – The RMP rule continues to have a significant impact on the regulated community. For many facilities, it may be the first time they've had to deal with EPA regulations and by reference, many OSHA regulations. For most facilities, it will certainly be the first time they've had to deal with the FBI! Last but not least, regulated facilities must now engage in constructive dialogue with community emergency responders and the public.

The RMP Rule may have far-reaching legal implications. There is some concern that members of the public may take a new view that exposure to even the risk of an accidental release of hazardous chemicals is a "harm." Consequently, it is in the best interests of the regulated community to pay close attention to all the requirements of the RMP rule and any new changes to the rule or its enforcement mechanisms.

- Joe Zupan
Zephyr Environmental Corporation



News Briefs

New Proposals Would Streamline Wastewater Pretreatment Regulations

The EPA is proposing more changes to its wastewater pretreatment rules and programs, affecting industrial users who introduce pollutants into publicly owned treatment works (POTWs). According to EPA, proposed changes to the program requirements would reduce the regulatory burden on both industrial users and State and POTW control authorities without affecting environmental protection. These changes would provide those POTWs that have approved pretreatment programs with additional leeway in setting the terms and conditions of discharge permits. Additionally, certain industrial users could be exempt from federal inspection and sampling requirements as long as they meet the requirements of the local POTW.

EPA Warns Emergency Responders About Use of MSDS Information

In June 1999, EPA issued a Chemical Safety Alert encouraging emergency responders to use multiple data sources in addition to Material Safety Data Sheets (MSDS) to ensure safer responses. EPA stated that an MSDS may not provide sufficient information to effectively and safely respond to accidental releases. The concern is that an MSDS provides hazard information that is primarily associated with the normal use of a chemical. In addition, the MSDS does not consider potential effects of mixtures, process reactions or byproducts. As a result, MSDS information regarding emergency response procedures, fire hazards, and reactivity hazards may not be sufficient for local responder use in emergency situations.

High Ozone Levels Measured In Central Texas – What Next?

During August, both Austin and San Antonio recorded ozone levels in excess

of the 8-hour national ambient air quality standard. The monitoring data are now being reviewed, and, if found to be valid, the Governor could recommend that Travis, Hays, Williamson, Caldwell, Bastrop, Bexar, Guadalupe, Comal, and Wilson Counties be reclassified nonattainment with respect to compliance with the ozone standard. EPA has until July 19, 2000 to make any final compliance redesignations. Its future actions, however, will depend on the outcome of an appeal of the Federal Court ruling remanding the 8-hour standard. This appeal is scheduled to be heard in November 1999. For more information, contact Art Bedrosian at (512) 329-5544.

DFW Ozone Compliance Planning Update

The TNRCC and the North Central Texas Council of Governments (NCTCOG) are working hurriedly to develop a plan acceptable to EPA for solving the Dallas/Fort Worth ozone problem. NCTCOG has set an aggressive deadline of mid-November for providing a set of recommendations to the TNRCC for controlling emissions of oxides of nitrogen, key pollutants in the photochemical reaction that produces ozone. The North Texas group is looking at a variety of possible emissions control measures, including transportation controls, alternative fuels, and restrictions on industrial sources and is ranking these measures according to their relative cost, effectiveness, and public acceptability. Once TNRCC receives recommendations from stakeholders, it must submit an acceptable State Implementation Plan to EPA by March 2000 to avoid federal sanctions.

EPA Finalizes Hazardous Waste Combustion Standard

On July 30 EPA issued its hazardous waste combustor rules under joint authority of the Clean Air and Resource Conservation and Recovery Acts. These rules, which are aimed primarily

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TNRCC Moves Forward with Reorganization

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TNRCC Proposes New Rules for Grandfathered Utilities

EPA Steps Up Enforcement of Ozone-Depleting Substance Rule

TNRCC Makes Progress on Voluntary Permit Rules

Status of Texas Risk Reduction Program Rule

Will the Sun Set on the TNRCC ?

at reducing air emissions of dioxins, furans, lead, mercury, and other heavy metals, take the form of Maximum Achievable Control Technology standards for hazardous air pollutant emissions. They apply to incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste. According to EPA, 172 facilities nationwide will be affected by the rules. For more information, visit www.epa.gov/hwcmact.

TNRCC Moves Forward with Reorganization

As reported in the July 1999 issue of

Currents, the TNRCC has reorganized to consolidate all permitting activities and provide for better integration of multi-media functions. In a September 17 announcement by Jeffrey Saitas, the Executive Director, Leigh Ing was named Deputy of the Office of Permitting. Reporting to her are Victoria Hsu (Air Permits), Grace Montgomery Faulkner (Registration and Evaluation), Jackie Hardee (Remediation), Dale Burnett (Waste Permits), and Ronald Pedde (Water Permits and Resource Management.)

TNRCC Proposes Changes to Upset Reporting and Recordkeeping Rule

TNRCC is accepting informal comments on proposed changes to the draft upset/maintenance rules in Chapter 101 of the Texas Administrative Code. In particular, the draft rule contains new requirements for submitting records of upsets and specifies conditions under which an upset would be considered unavoidable. Upsets would now be classified as either low and high priority, and the list of chemicals specified in the definition of reportable quantities would be modified. Some stakeholders have expressed concern that upset/maintenance rules do not belong in the State Implementation Plan at all and have asked that the TNRCC meet with the EPA about this issue. Comments about the rule changes should be directed to Beecher Cameron at becamero@tnrcc.state.tx.us.

TNRCC Proposes New Rules for Grandfathered Utilities

The passage of Senate Bill 7 by the Texas Legislature amended the Texas Utilities Code to address restructuring of the electric utility industry. The recently enacted law requires the TNRCC to develop a system for distributing emission allowances among electric generating facilities. In addition, it requires owners of grandfathered electric generating facilities to apply for air quality permits by September 1, 2000. Permits must be issued by May 1, 2003 for these grandfathered units to continue operating. The TNRCC staff has proposed re-

visions to Chapters TAC 101, 116 and 117 of the Texas Administrative Code to meet the legislative directives. For more information, contact Celeste Wiley at (512) 329-5544.

EPA Steps Up Enforcement of Ozone-Depleting Substances Rule

Facilities required to apply for an Operating Permit under the Clean Air Act must also certify that they are in compliance with regulations regarding the elimination of ozone depleting substance (ODS) releases to the atmosphere (40 CFR, Part 82). EPA seems to be stepping up the enforcement of violations of Part 82, and the penalties for violations can be costly: EPA recently filed suit against the City of New York, and is seeking civil penalties of up to \$27,500 per day for the past five years. Any facility that may have ODS issues can best ensure compliance by conducting a self-audit of its standard operating procedures and records. In particular, facilities that must certify compliance in their Operating Permit applications may wish to perform such an audit. For more information, contact Matthew Merritt at (512) 329-5544.

TNRCC Makes Progress on Voluntary Permit Rules

As reported in the July issue of *Currents*, the TNRCC has begun the creation of a voluntary system to permit grandfathered air emissions sources in Texas. The Agency's recently released draft changes to its Chapter 116 rules to require that companies seeking Voluntary Emission Reduction Permits (VERPs) for grandfathered sources submit their applications by January 15, 2001. These permits would control emissions from sources in attainment counties using 10-year-old Best Available Control Technology (BACT). However, sources in nonattainment and near nonattainment counties would be required to use the more stringent of 10-year-old BACT or current Generally Achievable Control Technology (GACT). If the 10-year-old BACT/GACT requirements cannot be met, then a grandfathered facility can acquire project

emissions reduction credits (PERCs) to achieve the needed reductions for the VERP. Grandfathered facilities may want to consider obtaining VERPs now, even though they are voluntary, since the sentiment in the Texas Legislature is for even tighter control of emissions from grandfathered sources after January, 2001. For more information, contact David Cabe at (512) 329-5544.

Status of Texas Risk Reduction Program Rule

Knowing when the Texas Risk Reduction Program (TRRP) Rule will actually be finalized has proven to be problematic – the TNRCC has already submitted and withdrawn the proposed rule once based on comments from the regulated community. The rule was re-proposed on March 26, 1999 and adopted during the Commissioner's September 2, 1999 work session. Depending on the *Texas Register* publication date, the rule could become effective sometime in October. Anyone considering any type of corrective action project should be aware of the provisions of the new TRRP. Under the rule, new RCRA and CERCLA projects may be "grandfathered" until May 1, 2001, and new leaking petroleum storage tank projects may be "grandfathered" until May 1, 2003. For more information, contact Joe Zupan at (512) 329-5544.

Will the Sun Set on the TNRCC ?

This summer the Sunset Advisory Commission began reviewing whether the TNRCC's function should be continued and, if so, whether changes in the agency's mission and activities are necessary. Realistically, the State's involvement in the protection of the environment will not end. However, the sunset review process provides state government, the public, and the regulated community an opportunity to have input in a report to the next Legislature about how environmental matters should be regulated in Texas. For more information about opportunities to participate in the sunset review process, visit www.sunset.state.tx.us.

On the Web

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Useful Information

- For more information on EPA's Risk Management Program, visit:
<http://www.epa.gov/swercepp/acc-pre.html>
- For more information on the regulation of ozone-depleting chemicals, visit:
<http://www.epa.gov/ozone>
- For more information on the Texas Risk Reduction Program, visit:
<http://www.tnrcc.state.tx.us/waste/trrp.htm>
- For more information on EPA's hazardous waste combustion standard, visit:
www.epa.gov/hwcmact.
- For more information on ozone levels in Texas, visit:
<http://www.tnrcc.state.tx.us/homepgs/ozonemain.html>
- For more information on permitting of grandfathered facilities in Texas, visit:
<http://www.tnrcc.state.tx.us/grandfathered/index.html>

*We want to hear from you - send your comments online to
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