



EPA and OSHA Continue Aggressive Enforcement of Accidental Chemical Releases

Accidental chemical releases in the workplace and offsite into the environment continue to be a high-priority enforcement area for both the U.S. Environmental Protection Agency and the U.S. Department of Labor's OSHA, including releases of anhydrous ammonia and other toxic and flammable substances under the agencies' RMP and PSM programs.

Although both federal agencies have faced criticism the past few years for an alleged lack of environmental and workplace safety oversight in favor of enforcement discretion and compliance assistance – particularly recently in the wake of COVID-19 – the same cannot be said for EPA's and OSHA's enforcement emphasis for accidental chemical releases. Indeed, workplace injuries and potential offsite impacts caused by an accidental chemical release, no matter how minor, are virtually guaranteed to trigger a compliance inspection by EPA and/or OSHA.

The recent spate of enforcement actions by EPA and OSHA highlight these initiatives described further below. While some of the accidental chemical releases have made national news, others have been relatively small accidents. The following summary represents only a snapshot of RMP and PSM enforcement cases the past six months:

- June 2020 – EPA Region 7 – [Manufacturing and Distribution Facility Settles CAA Case for \\$79,900](#) for RMP violations in response to an accidental chemical release that injured one employee;
- May 2020 – OSHA Region 6 – [Texas Chemical Manufacturer Fined Over \\$500,000](#) for three PSM violations after vapor formed at the base of a butadiene finishing tower ignited and caused several explosions and fires;

- May 2020 – EPA Region 7 – [EPA Reaches Settlement With Anhydrous Ammonia Facilities in Iowa and Kansas](#), following inspections by EPA in response to accidental releases of anhydrous ammonia that resulted in injuries to their employees;
- April 2020 – EPA Region 6 – [Texas Specialty Gas Company Settles CAA Enforcement Case with Justice Department](#), with agreed civil penalty of \$257,000, and implementation of an Enhanced Compliance Audit Protocol, following a February 2013 explosion and fire in which one employee was killed and another employee suffered severe burns
- April 2020 – EPA Region 4 – [Alabama and Mississippi Food Manufacturer Settles RMP Case](#), subject to a \$106,250 civil penalty and Supplemental Environmental Project involving the donation of emergency response equipment valued at \$398,438, to the local fire departments;
- March 2020 – EPA Region 9 – [Arizona Produce Storage and Distribution Warehouse Resolves Industrial Refrigeration Violations](#), involving anhydrous ammonia with a civil penalty of over \$25,000 and a SEP valued at \$98,438 to enhance safety equipment and procedures;
- February 2020 – EPA Region 10 – [Welding Supply Company in Washington Pays \\$100,000](#), for cylinders of chlorine and sulfur dioxide stored without adequate RMP compliance.
- February 2020 – OSHA Region 7 – [Iowa Pork Processing Facility Settles PSM Allegations](#) regarding OSHA process hazard analysis and operating procedures.
- January 2020 – OSHA Region 3 – [Philadelphia Refinery Cited for Ten PSM Violations](#) and proposed penalty of over \$130,000 associated with explosions and fires associated with hydrofluoric acid and flammable hydrocarbons.
- January 2020 – EPA Region 7 – [Agriculture Company Settles 40 CFR Part 68 Violations at Ammonia Fertilizer Facilities](#), involving a civil penalty of \$71,652 and a SEP valued at over \$55,000.

Under EPA's [Chemical Accident Prevention Program under CAA Section 112\(r\)](#), facilities that use or store more than a threshold quantity of "regulated substances" in a covered process are required to develop a Risk Management Plan (RMP) and undertake activities to prevent and minimize accidental releases. Similarly, OSHA's [Process Safety Management \(PSM\) program](#) sets forth elements to prevent unplanned releases of "highly hazardous chemicals" that have the potential to

cause a catastrophic incident. Colloquially, OSHA's PSM program is designed to protect workplace employees "inside the fence line," whereas EPA's RMP program is designed to safeguard community members "outside the fence line."

Both EPA and OSHA currently prioritize compliance and enforcement under the respective programs. "[Reducing Accidental Releases at Industrial and Chemical Facilities](#)" is one of the six [EPA's current National Compliance Initiatives](#) and has been a focus area for a number of years. And since 2017, OSHA has implemented a "National Emphasis Program" on [PSM Covered Chemical Facilities](#).

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