

# **Updates to RMP/PSM - What You Need to Know**

***AWMA TECHNICAL CONFERENCE***

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# **New Interpretations of Processes**

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# New Interpretations

- *“The first sentence of the regulation defines process as “any activity involving a highly hazardous chemical.” § 1910.119(b). Nothing on the face of this definition requires a vessel to contain a highly hazardous chemical in order to be part of a process. And its plain terms do not suggest that we should construe this definition to apply to such a narrow category of vessels. Instead, its terms suggest the opposite—the comprehensive phrase “any activity involving” captures a wide swath of vessels in that they need only be part of an any activity that involves a highly hazardous chemical. Thus, the definition of process unambiguously includes vessels which do not contain a highly hazardous chemical. And because the text of the regulation is unambiguous, we do not consider Wynnewood’s arguments based on extratextual sources, including the preamble, and we conclude that the Wickes boiler may be considered part of a process even though it did not contain any highly hazardous chemicals.””*

October 27, 2020, the U.S. Court of Appeals for the Tenth Circuit [Scalia v. Wynnewood Refining Co., LLC](#)

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**National Enforcement  
and Compliance  
Initiatives (NECI)**

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# ***EPA'S NECI***

- (FY 2020-23) Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
- Reducing Risks of Accidental Releases at Industrial and Chemical Facilities. The EPA plans to continue this initiative for the FY 2024-2027 cycle
  - Focus on enforcement responses to catastrophic accidents,
  - Focus on advancing environmental justice,
  - Focus on addressing climate change by considering vulnerability of facilities to natural hazards

# **National Emphasis Program (NEP)**

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# *OSHA's NEP*

- CPL 03-00-021 - PSM Covered Chemical Facilities National Emphasis Program - 01/17/2017
  - January 2017, OSHA issued a new National Emphasis Program for PSM Covered Chemical Facilities to further protect workers' health and safety in certain industries that pose high risks to people and the environment. This is still in play.

## ***OSHA's NEP***

Inspection targeting sources have been added to include EPA RMP Program 1 and Program 2 processes. This instruction also clarifies that targeting explosive manufacturing includes pyrotechnic manufacturing facilities.



# **Regulatory Requirements –**

**Right now, today, until**

**tomorrow**

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# *Latest Changes*

- **Prevention Program**

- Added amplifying regulatory text to emphasize that natural hazards (including those that result from climate change) and loss of power are among the hazards that must be addressed in Program 2 hazard reviews and Program 3 process hazard analyses.
- Requires justification in the Risk Management Plan when hazard evaluation recommendations are not adopted.
- Facility siting should be addressed in hazard reviews and explicitly define the facility siting requirement for Program 2 hazard reviews and Program 3 process hazard analyses.
- Requires justification in the Risk Management Plan when facility siting hazard recommendations are not adopted.

# *Latest Changes*

- **Prevention Program** (cont'd)
  - Requires a safer technologies and alternatives analysis (STAA) and practicability of inherently safer technologies and designs considered for (a) RMP-regulated processes classified under North American Industrial Classification System (NAICS) code 324 and 325 within one mile of another RMP-regulated facility that also has a process classified under NAICS code 324 or 325
  - Requires justification in the Risk Management Plan when STAA recommendations are not adopted.
  - Requires a formal root cause analysis incident investigation when facilities have had an RMP-reportable accident.

# *Latest Changes*

- **Prevention Program** (cont'd)

- Requires the next scheduled compliance audit be a third-party audit when an RMP-regulated facility experiences either:
  - two RMP-reportable accidents within five years, or
  - one RMP-reportable accident within five years by a facility with a Program 3 process classified under NAICS code 324 or 325 within one mile of another RMP regulated facility that also has a process classified under NAICS code 324 or 325.
- Requires a justification in the Risk Management Plan when third-party compliance audit recommendations are not adopted.

# *Latest Changes*

- **Prevention Program** (cont'd)

- Requires employee participation in resolving process hazard analyses, compliance audit and incident investigation recommendations and findings.
- Outline stop work procedures in Program 3 employee participation plans.
- Requires Program 2 and Program 3 employee participation plans to include opportunities for employees to anonymously report RMP-reportable accidents or other related RMP non-compliance issues.

- **Emergency Response**

- Requires a 10-year frequency for field exercises unless local responders indicate that frequency is infeasible.
- Requires mandatory scope and reporting requirements for emergency response exercises.

# *Latest Changes*

- **Emergency Response** (cont'd)

- Requires non-responding RMP facilities to develop procedures for informing the public about accidental releases.
- Requires release notification data be provided to local responders.
- Confirm a community notification system is in place for notification of RMP-reportable accidents

- **Information Availability**

- New requirements for the facility to provide chemical hazard information upon request to residents living within 6 miles of the facility, in the language requested. Under the current regulation, facilities are not required to provide this information.

# *Latest Changes – Compliance Dates*

- **Three years after effective date of final rule (May 10, 2024):**
  - New STAA, incident investigation root cause analysis, third-party compliance audit, employee participation, emergency response public notification, exercise evaluation reports, and information availability provisions
- **Revised emergency response field exercise frequency provision**
  - March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and the date of publication of the proposed rule in the Federal Register (August 30, 2022).
- **Four years after the effective date of the final rule**
  - Updates and resubmission of risk management plans with new and revised data elements.

# ***OSHA - Changes Being Considered***

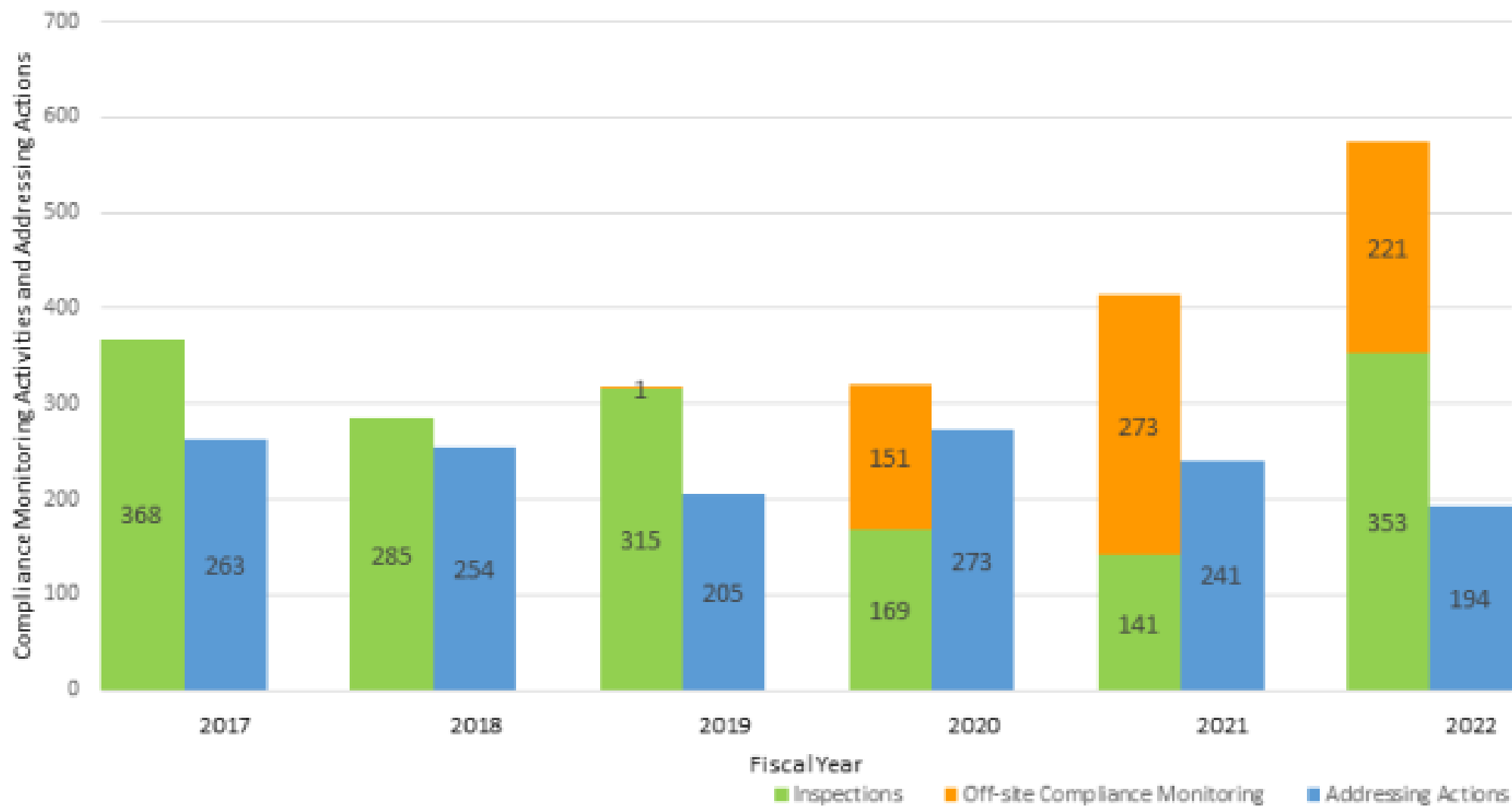
- ***PSM Stakeholder Meeting - October 12, 2022***
  - Defining RAGAGEP
  - Mechanical integrity for all “critical” equipment
  - Stop work authority
  - Collecting & assessing reactive hazard data
  - Assessing updates to RAGAGEP
  - Safer Technology and Alternatives
  - Rationale for PHA recommendations that are not adopted
  - Clarifying equipment “deficiencies”



# ***OSHA - Changes Being Considered (cont'd)***

- ***PSM Stakeholder Meeting - October 12, 2022***
  - Clarifying management of organizational change
  - Root cause investigation
  - Emergency response coordination
  - Third party audits
  - Written PSM management systems
  - Evaluation and corrective action
  - Codifying major interpretations
  - PHA consideration of natural disasters and extreme temperatures

# Annual Number of EPA Compliance Monitoring Activities and Addressing Actions at Facilities that Use Extremely Hazardous Substances



\*Addressing action means that a facility is subject to a federal enforceable order (judicial or administrative) requiring compliance, or has been inspected and found to have no significant violations.

# ***Most Frequent PSM Citations***

## **1910.119**

- ***(f)(1) Operating procedures..... 38***
- ***(d)(3) PSI pertaining to equipment .....28***
- ***(e)(3) PHA specific criteria..... 26***
- ***(j)(4) MI Inspection and Testing ..... 21***
- ***(e)(5) PHA recommendation ..... 12***
- ***(l)(1) MOC implementation ..... 12***

# **What to Expect in an Inspection**

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# ***Potential Inspection Candidates IF there is no RMP and....***

- *Information sources indicate you may have chemicals above threshold quantities, such as:*
  - EPCRA Tier II and TRI reports,
  - Release and accident reports, i.e. Media, NRC, etc.,
  - Facility is part of RMP targeted Industrial Sector,
  - Federal or state databases, i.e. ECHO, etc.
- *Deregistered facility that appears to be active.*

# ***Potential Inspection Candidates IF you have an RMP and....***

- ***RMP submission is late or,***
- ***There has been a RMP reportable accident at the Site or,***
- ***EPA considers that type of facility “high risk” or,***
- ***High non-compliance within that Sector or,***
- ***There is a tip, complaint or referral.***

# Tips from Inspectors

- *Consider getting all required documentation in electronic format,*
- *Consolidate your recordkeeping,*
- *Make plans for transfer of ownership from current PSM/ RMP Program Manager to his/her successor,*
- *Don't wait for inspector to show up to review your PSM/ RMP elements – pull them out occasionally and review them.*

## ***Final thought on enforcement.....***

***“...the Accidental Release provisions have the greatest potential for enforcement activity of any regulation currently on the books....”***

- ***Ranking EPA Enforcement Official***



# ***QUESTIONS??***

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