

OSHA National Emphasis Program for Chemical Industry Facilities and Contractors

Effective November 29, 2011 the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") published directive number CPL 03-00-014 regarding Process Safety Management ("PSM") of Highly Hazardous Chemicals (which are identified on a list found in Appendix A of 29 CFR 1910.119). This directive covers chemical facilities and it is intended to reduce or eliminate the workplace hazards associated with the catastrophic release of highly hazardous chemicals. Under the directive, there will be both programmed and unprogrammed inspections of facilities which "will begin immediately in all regions." (See Directive Executive Summary, Abstract-2).

There are two categories of Covered Chemical Facilities ("CCFs") that have been delineated by OSHA. The first CCF category consists of facilities that are likely to have ammonia used for refrigeration as the only highly hazardous chemical, and the second CCF category consists of "all other facilities." Accordingly, if a client is engaged in the chemical industry with a "process safety management covered process" they should anticipate being inspected.

Programmed inspections will be conducted in facilities that are known to OSHA as having a risk of catastrophic releases. Unprogrammed inspections will also take place in other CCFs described in the directive; however, the National Emphasis Program does not apply to petroleum refineries. The scope of this notice is OSHA-wide.

To the extent that you own, operate or provide services to any CCF containing highly hazardous chemicals in amounts at or greater than the threshold quantities listed 29-CFR-1910.119, you should expect to be inspected either in a programmed inspection, which is based upon objective or neutral selection criteria, or in an unprogrammed inspection in response to alleged hazardous working conditions that have been identified at a specific work site.

States have been required to notify OSHA within sixty (60) days of November 29, 2011 regarding whether the state's emphasis program will be identical to or different from the federal program. Accordingly, as of February 1, 2012, this program has gone "live."

The purpose of this National Emphasis Program is to address the fact that process safety management of highly hazardous chemicals can lead to releases that may occur relatively infrequently but, due to their catastrophic nature, often result in multiple injuries and fatalities. OSHA will use four (4) sources for targeting programmed inspection site selection:

1. USEPA Chemical Accident Prevention Provisions, Program 3 Risk Management Plans.
2. Explosives Manufacturing NAICS Codes.
3. OSHA's Integrated Management Information System ("IMIS") Database.
4. **OSHA Area Office knowledge of local facilities.** (emphasis added)

The fourth category, which refers to area office knowledge of local CCFs implies that sites selected for inspection can be subjective on the part of the TOSHA (in the case of Tennessee) or OSHA (in the case of Georgia) field office. Additionally, facilities identified as "having been previously cited for process

safety management violations” will be an area of focus.

Certain CCFs will be excluded, such as facilities known to be out of business or facilities that are approved participants in OSHA’s Voluntary Protection Program (VPP) or OSHA Consultation Safety and Health Achievement Recognition Program (SHARP). Additionally, facilities that have already received an inspection under this National Emphasis Program in the last two (2) years and CCFs in the petroleum refinery industry are excluded. Nonetheless, while these CCFs may be excluded, they are still be subject to inspection based on a third party complaint. Thus, a neighbor or disgruntled employee could provoke an inspection.

Unprogrammed inspections will be precipitated by a complaint or referral or by accidents and catastrophes.

Inspections can be expanded beyond the scope of this National Emphasis Program if, during the compliance evaluation, the OSHA representatives identify deficiencies that exist in other areas.

Also of great importance is the fact that the OSHA inspectors will inspect both the host employer and any contract employers. This means that chemical companies should have appropriate subcontractor agreements with any third party contractors operating within their facilities. We have recently assisted a general contractor in strengthening its subcontractor agreement to better protect the contractor from deficiencies or malfeasance by subcontractors.

The inspections will be thorough and will include an opening conference, inspection of chemical lists, interviews with management and employees, expansion of the inspection based on other issues discovered and a closing conference. The inspection officer will also review any abatement for process safety management citations issued within the previous six (6) years to determine whether such hazards still exist or has been properly abated. Citations will be issued for violations and such violations will be classified normally as “Serious.”

OSHA will develop an outreach program to assist the chemical industry with letters, news releases, seminars on plant process safety topics and working with OSHA’s cooperative programs including voluntary protection, strategic partnership and alliance programs.

Finally, the chemical industry operators should expect that these “routine inspections” will include assessment of mechanical integrity (such as a valve that no longer meets applicable code and has to be changed) and operating procedures. The inspectors will be looking for mechanical integrity and for site emergency planning materials and documentation. This aspect of the inspection could result in engineering control alterations to the chemical plant, and could result in substantial capital expenditures if processes/operations are determined to be inadequate.

Please contact [Michael Mallen](#) at (423) 785-8435 or [Brian Humphrey](#) at (423) 785-8309 if we can assist you in anticipation of these inspections.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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