

OSHA Rescinds the "Retailer Exemption"

Process safety management (PSM) has been a popular topic these last few days, especially since OSHA's announcement on July 22nd rescinding the retail exemption. Bypassing the rulemaking process, which involves the opportunity for public comments, OSHA changed the rules. PSM first hit mainstream radar back around 2000 when OSHA interpreted a retail facility to be one that derived more than 50 percent of its income from direct sales of highly hazardous chemicals to the end user, otherwise known as "the 50 percent test."

For most ammonia facilities this was welcome relief at the time from a rule originally developed for manufacturing facilities. PSM popped back up on the radar screen as a result of the West Fertilizer explosion and the President's August 1, 2013, Executive Order 13650, Improving Chemical Facility Safety and Security.

"There's an old saying that if you think safety is expensive, try an accident. Accidents cost a lot of money. And, not only in damage to plant and in claims for injury, but also in the loss of the company's reputation." – Dr. Trevor Kletz, recognized as the father of process safety. Don't wait for an accident to happen at your facility, register with ResponsibleAg and proactively work to comply with the Federal rules, many of which have been in place since the 70's.

Most agricultural retailers are classified under NAICS code 424910, which is defined as "Farm Supplies Merchant Wholesale," formerly SIC code 5191. As a result of OSHA rescinding the retail exemption, agricultural retailers that store and handle a "highly hazardous chemical" such as anhydrous ammonia would be subject to the requirements of PSM.

OSHA has issued an enforcement policy offering to provide compliance assistance to affected facilities and delay enforcement for six months or until January 22, 2016. Industry partners are sorting through the effect this will have on our industry and are weighing their options on how best to respond to OSHA. For now, here is what we know:

What products are involved? Anhydrous ammonia, aqua ammonia, nitric acid among others are on the list of regulated chemicals. We are awaiting word as to what degree propane will be affected.

What's the big deal? Loss of the retail exemption means the typical anhydrous ammonia facility must now comply with OSHA's PSM Standard. And, because the facility is now subject to PSM, it triggers EPA's requirement to prepare and submit a Program 3 Risk Management Plan.

What's the difference between a Program 2 and 3 RMP? In a word - LOTS! Flow drawings, Process & Instrumentation Diagrams (P&ID), Management of Change program to mention a few, plus stepped-up requirements within Process Hazard Analysis, Compliance Audit and Mechanical Integrity. An engineer will not be required for the typical retail facility but some do seek out their help.

Will this require me to upgrade my equipment? Probably, some degree of upgrades will be required at almost every facility based on coming into compliance with PSM and based on the recent RAGAGEP memo. OSHA's memorandum provides guidance on the enforcement of PSM's recognized and generally accepted good engineering practices (RAGAGEP) requirements, including how to interpret "shall" and "should" language in published codes, standards, published technical reports, recommended practices (RP) or similar documents.

What's the Asmark Institute's plan of action? Asmark will launch the new suite of tools by October 15th.

Can this be done within 6 months? We were given 3 years by EPA to prepare the first RMP. PSM is substantially bigger, will have to be made to "fit" our small facilities with only a few people and completely new to everyone in the retail industry. Becoming compliant in a quality manner with a reasonable understanding will take much longer than six months.

Are there any other regulatory requirements on the horizon? We anticipate EPA will also respond to the President's Executive Order soon with a few new hurdles of their own, such as adding ammonium nitrate and propane to the list of RMP regulated substances and possibly adding requirements to the RMP for new data elements and accident prevention features.

What can I do to be prepared? Read everything available on Process Safety Management and learn all you can in the next month. PSM is not like a SARA Tier II Report that once a year a document is updated and placed in a file. At some facilities, expect there to be an activity that must be performed and documented on a daily basis.

Are you responsible for more than one facility? The Asmark Institute contracted for professional training for our own staff that will help handle PSM. We offered to share this with our clients and ultimately wound up contracting for a number of two-day training courses. Visit: <https://www.asmark.org/TrainingCourses/PSMCourse.cqi> if you are interested in attending one of these courses. *Space is extremely limited.*

Best advice? Start now! This will be unlike any rule, regulation or standard we have come to know. The effects won't be known until the OSHA inspector visits.

Agricultural retailers have operated in a safe and sound manner for several decades and have voluntarily initiated proactive programs such as ResponsibleAg to assist fertilizer retailers achieve and maintain compliance with federal regulations. OSHA's action on July 22nd blindsided the recently formed ag-alliance group and the entire industry. While we can't predict how this will turn out, we do know that we must get started in order to have any hope whatsoever of making the January deadline. Stay tuned for more information as it becomes available. (Asmark Institute)