Making Sense of OSHA’s New PSM Interpretations

Scott Berger
Vice President
AcuTech Consulting Group
sberger@acutechconsulting.com
+1.571.299.9704
www.acutech-consulting.com

Michael T. Taylor
Partner
BakerHostetler
mttaylor@bakerlaw.com
+1.202.861.1556
www.bakerlaw.com
Scott Berger

- BS/MS Chemical Engineering, MIT
- Vice President, AcuTech Consulting Group
- 14 years as Executive Director of CCPS
- 25 years at Rohm and Haas and Owens Corning
  - process development, engineering, manufacturing, and process safety/HSE
- Certified Process Safety Professional
- Fellow of CCPS
- Fellow of American Institute of Chemical Engineers
Overview of AcuTech

- Founded in 1994 – Corporate head office in Washington, DC
- Global experience – work in over 50 countries, offices in US, MENA, India, China
- Leaders in Professional Security and Safety Services – petroleum, chemicals, pharma, food, electronics, and other industries which handle hazardous materials
- World class services meeting the highest level of safety and security required by the world’s most demanding companies
- Focused training
- New – Acuity risk management software facilitates process safety and security excellence
Michael Taylor

- Partner in the Washington, D.C. office of BakerHostetler
- Founder of BakerHostetler’s OSHA Forum
- Focus practice exclusively on workplace safety and health-related issues
- Represented numerous companies in response to OSHA's Process Safety Management National Emphasis Programs
- Represents oil and gas companies in response to BSEE’s Revised Workplace Safety Rule
- Former General Counsel of the Federal Occupational Safety and Health Review Commission
Darren Crook

- Associate in the Cleveland office of BakerHostetler
- Assists with all facets of pre-litigation and litigation involving the Occupational Safety and Health Administration, including counseling clients in advance of an OSHA inspection, participating in opening, informal, and closing conferences, and successfully litigating cases before the Occupational Safety and Health Review Commission.
Overview of BakerHostetler

- Team includes lawyers with significant experience handling catastrophic workplace events and prior experience with the federal Occupational Safety and Review Commission, the agency in charge of adjudicating workplace safety and health disputes between OSHA and the regulated community.
- Able to provide OSHA inspection counseling, OSHA compliance counseling, crisis management, accident investigations, catastrophe management, and whistleblower representation.
- Have provided such expertise to clients in a wide range of industries, including construction, oil and gas, energy, banking, healthcare, chemical, grain handling, refrigerated warehouses, utility, and manufacturing.
Today’s Agenda

• What is new?
• What does it mean to you?
• What do you need to do now?
• What else could you expect from OSHA?
New OSHA Interpretations

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• Appears responsive to Executive Order #13650

• Definition and enforcement guidelines related to Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)

• Redefinition of applicability related to solutions: replacement of the “Commercial Grade” definition
RAGAGEP Clarification

RAGAGEP includes:

• Applies to Process Safety Information and Mechanical Integrity elements – no change
• Includes voluntary consensus documents
• May include manufacturer’s recommendations
• Internal company documents
Consensus Documents

• ANSI Standards, typically developed by certified Standards Development Organization (SDO)
• Uses “Shall” language; shall represents requirement
• Note that Standards could also have provisions with “May” language
  – Generally means the provision is optional
  – But not if “May” provision is less protective than a PSM or other RAGAGEP requirement
Non-consensus Documents

• For example, Chlorine Institute and Center for Chemical Process Safety (CCPS)
• Doesn’t mention any new documents beyond what is stated in Appendix C, i.e.
  – “Some publications of the Chlorine Institute”
  – DIERS emergency relief vent guidelines
• OSHA has not clarified which non-consensus documents are RAGAGEP or criteria for determining RAGAGEP
Manufacturer’s Recommendations

• E.g. recommended maintenance intervals
• In some cases, manufacturer’s recommendation is more frequent than what is generally practiced. This may prove controversial
Internal Company Documents

• These must be at least as protective as OSHA PSM and consensus standards
• If internal document more protective, OSHA will enforce based on internal document
Applicability relative to solutions

- For many years, OSHA only included “Commercial Grades” of solutions containing PSM covered chemicals in determining applicability.
- This was inconsistent with EPA’s approach to RMP, which included solutions > 1% of the covered chemical.
- OSHA changing its definition to harmonize with EPA.
What does it mean to you?

• Approach taken for the refining and chemical NEP appears to be becoming the norm
• OSHA signaling changes likely to be included in proposed PSM update and attempting to implement them before the new requirements are in force.

• If your process was previously not covered due to the previous “Commercial Grade” interpretation, it may be covered now. (The converse could also be true)
What do you need to do now?

- Maintain focus on continuous improvement
- Ensure all process safety information is current and accurate
- Ensure that inspection, testing, and preventative maintenance requirements are clearly specified, with the basis of these requirements
- Determine if you have overlooked standards or other generally recognized and accepted requirements that may apply
- Reevaluate all solutions of PSM covered chemicals that are either considered “commercial grade” or are >1%
What Else Could you Expect From OSHA?

• OSHA under great pressure from the President via executive order to improve process safety quickly
  – Expect both proposed changes, and tactics to end-run the rulemaking process to implement some of the changes earlier

• EO focus areas include
  – Strengthening off-site emergency response
  – Improve coordination and data collection between agencies
  – Standardizing data collection/reporting across agencies
  – Improving inspector knowledge
  – “Modernizing” regulations:
Some Possible Targets for Modernizing Regulations

- Revisiting regulatory interpretations
- Updating the list of covered chemicals
- Expanding industries covered (e.g. oil/gas drilling)
- Harmonization between PSM and RMP
- IST
- Reactive chemicals and combustible dust
- Strengthening employee involvement and contractor management
- Change to offsite reporting endpoints (AEGLs)

Can expect Advanced Notices of Proposed Rulemaking soon
Thank you! Questions?

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