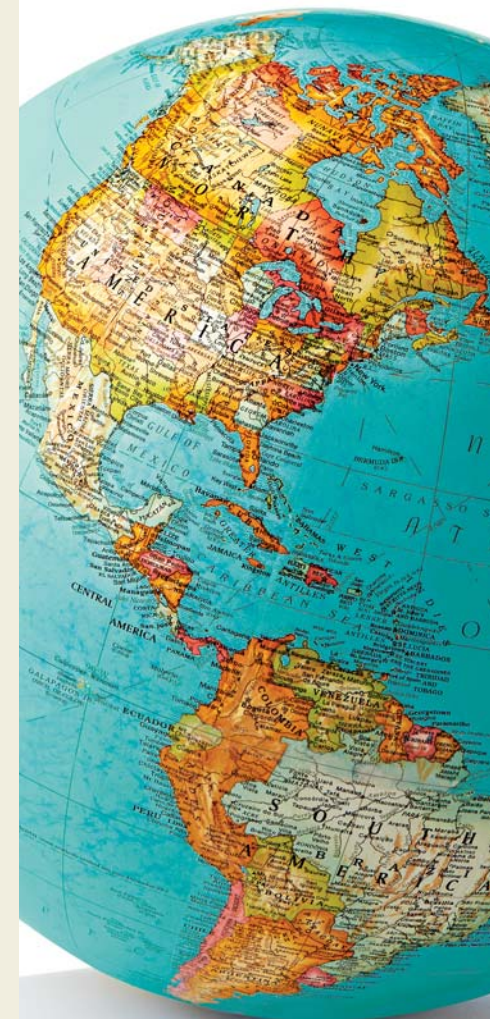




# Chemical Safety Update 2014

Ohio Chemistry Technology Council  
36<sup>th</sup> Annual Meeting  
March 25, 2014

**Jessica E. DeMonte**  
**Squire Sanders (US) LLP**



## Chemical Safety Update

News headlines last year dominated by chemical incidents:

- **April 2013—West, Texas Explosion**
  - Ammonium nitrate explosion occurred at the West Fertilizer Company storage and distribution facility. 15 people were killed, more than 160 were injured, and more than 150 buildings were damaged or destroyed.
  
- **June 2013—Williams Olefins Plant Explosion**
  - Heat exchanger caused explosion at a petrochemical plant located in Geismar, Louisiana. 2 workers were killed and 114 injured.
  
- **January 2014—Elk River Chemical Spill**
  - Crude 4-methylcyclohexanemethanol (MCHM) was released from a Freedom Industries facility into the Elk River near Charleston, West Virginia. The chemical spill occurred upstream from the drinking water source for up to 300,000 residents.

National dialogue on chemical safety and emergency response.

## Chemical Safety Update

Response has been relatively swift:

- All three incidents are being investigated by the Chemical Safety & Hazard Investigation Board (CSB)
- *E.O. 13650: Improving Chemical Facility Safety and Security*
  - President Obama's response to West, Texas
  - Issued on August 1, 2013
  - How is this being implemented?
  - Impacts
- *Chemical Safety & Drinking Water Protection Act*
  - Introduced January 27, 2014 in response to Elk River
  - Scope and status
  - Related state initiatives
  - What do these mean for Ohio?

## E.O. 13650: Objective/ Membership

### Establishes Chemical Facility Safety and Security Working Group

- Objective of Working Group is to improve chemical safety and security in coordination with State regulators, emergency responders, chemical facility owners and operators and local communities.
- Members:
  - Department of Homeland Security (DHS)
  - EPA
  - Department of Labor (DOL)
  - Department of Justice (DOJ)
  - Department of Transportation (DOT)
- Required to consult with:
  - Council on Environmental Quality
  - National Security Staff
  - Domestic Policy Council
  - Office of Science and Technology Policy
  - OMB
  - White House Office of Cabinet Affairs
  - ATF

## E.O. 13650: Data Collection/Sharing

- Development of a Plan to Improve Coordination with State and Local Partners
- Develop proposal for flexible data-sharing process to track data submitted to federal agencies and allow for sharing with State and local entities where possible
  - Assess feasibility of sharing data related to explosive materials with State and local emergency response commissions
  - Assess feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with State and local emergency response commissions
- Develop recommendations on improving information analysis to identify facilities that may not have provided all required information
- Improve data collection while lessening the reporting burden on regulated entities. Minimize duplication of reporting where possible
- Identify changes in existing MOUs between agencies to ensure timely and full disclosure of information

## E.O. 13650: Pilot Program and SOPs

- Deploy Pilot Program to develop best practices and test innovative methods for interagency cooperation
  - Methods for collecting, storing and using facility information
  - Stakeholder outreach
  - Inspection planning
  - Joint inspections
  
- Develop Standard Operating Procedures
  - Identifying and responding to risks at chemical facilities
  - Incident reporting
  - Response procedures
  - Enforcement
  - Collection, storage and use of facility information

## E.O. 13650: Regulatory Revisions

- Modernize key policies, regulations and standards. (Section 6(a))
  - Including evaluating whether Risk Management Program (RMP) and Process Safety Management Standard (PSM) should be expanded
  - Identifying changes that need to be made to the retail and commercial grade exceptions in the PSM standard
  
- Develop regulatory or legislative proposals for strengthening controls on ammonium nitrate safety and security
  
- DHS is to identify list of chemicals that should be considered for addition to the CFATS chemicals of interest list

## E.O. 13650: Work Group Implementation/ Stakeholder Input

- Work group convened stakeholders (including chemical companies) to discuss best practices to reduce safety and security risks in the production and storage of chemicals
  - Listening sessions over the course of the Winter
  - Expansion of Regional Response Teams
  
- Recommendations include:
  - Expanded engagement of the chemical regulated community in the local emergency planning process
  - Improve training for first responders
  - Technical assistance for State/ Local Emergency Response Commissions
  - Funding sources for response planning
  - Electronic reporting and data management
  - Public participation
  
- Feedback open through March 31



## E.O. 13650: Work Group Implementation/ Stakeholder Input

- Expanded engagement of regulated community
  - Include industry members on Regional Response Teams
  - Expand roles for industry on community emergency response planning
  - Assess feasibility of reviving Federal Integrated Contingency Plan (ICP) or one plane facility reporting to decrease duplication
  
- Technical assistance for State/ Local Emergency Response Commissions
  - Establish a “community” via social media to promote information exchange on lessons learned and best practices
  - Revise guidance on emergency response plan development and hazardous materials emergency plans
  - Establish mechanism to update state and locals on safety and security issues for chemicals
  
- Increase use of Electronic Reporting and Data Management
  - Look at ways to ensure information is available electronically
  - Expand Computer Aided Management of Emergency Operations (CAMEO) to include OSHA and develop mobile device apps
  - Develop Web-based EPCRA Tier II Submit to facilitate internet reporting system
  - Leverage DHS security information network to improve first responder access to chemical facility security information

## E.O. 13650: Work Group Implementation/ Stakeholder Input

- Improve Public Participation and Access to Information about Chemical Risks
  - Develop outreach pieces
  - Expand planning membership to outside groups
  - Hold training workshops
  - Include entities in planning and response meetings
  - Develop guidance on successful notification systems

## E.O. 13650: Work Group Implementation

- NJ/NY Pilot Program
  - Operating plan for Federal, State and local governments for collection, storage and use of facility information
  - Analysis of regional risks and information sharing protocols
  - Joint inspections, cross-training and non compliance referrals
  
- ATF and DHS evaluating regulatory updates for data sharing of explosive and CFATS information
  
- EPA /OSHA and ATF issued interim chemical advisory focused on safe storage, handling and management of ammonium nitrate.

## E.O. 13650: Work Group Implementation/ Section 6(a) Request for Information

- Working Group issued RFI to solicit public input on more general policy, regulation and standard modernization (OSHA-2013-0026)
- Section 6(a) document:  
[https://www.osha.gov/chemicalexecutiveorder/Section\\_6ai\\_Options\\_List.html](https://www.osha.gov/chemicalexecutiveorder/Section_6ai_Options_List.html)
- Comments due by March 31

## E.O. 13650: Work Group Implementation/ Section 6(a) Request for Information

- Seeks input on potential revisions to:
  - ❑ EPA Emergency Planning and Community Right to Know Act (EPCRA) and RMP standards to:
    - ❑ Update list of regulated substances (i.e., expanded coverage)
    - ❑ Enhance use of CAMEO
    - ❑ *Identify ways to use “safer” alternatives as a manner of reducing risk*
    - ❑ *Increase worker involvement and labor-management cooperation in hazards investigations*
  - ❑ ATF standards for federal explosives
    - ❑ Develop standards for precursor materials
    - ❑ Apply quantitative risk assessment tools to explosives related industries
    - ❑ Develop means to account for bulk materials
    - ❑ Mitigate duplicative qualification and inspection requirements
  - ❑ CFATS standards
    - ❑ Mechanisms to improve security of storage, handling and sale of ammonium nitrate
    - ❑ Updates to chemicals of interest list and screening thresholds
    - ❑ Updates to expand coverage of reactive substances
    - ❑ Updates to security requirements at ag/ chemical production facilities
    - ❑ Opportunities to harmonize standards across different programs

## E.O. 13650: Work Group Implementation/ OSHA's RFI For PSM

- In December 2013, OSHA issued Request for Information (RFI) regarding expansion of Process Safety Management (PSM) standards. (OSHA-2013-0020)
- Seeks input on the following “rulemaking or enforcement policy” changes:
  - Clarify or eliminate PSM exemptions for atmospheric storage tanks, retail facilities, oil and gas well drilling/servicing and production facilities
  - Expand PSM coverage and requirements for reactivity hazards
  - Update list of Highly Hazardous Chemicals
  - Revise standard to require additional management system elements
  - Add definition for Recognized and Generally Accepted Good Engineering Practice (RAGAGEP)
  - Expand the mechanical integrity element to cover safety critical equipment
  - Management of organizational changes
  - Coordination of emergency planning with local agencies
  - Require third-party audits
  - Expand requirements for dismantling and disposal of explosives
  - Change enforcement policy of PSM exemption for retail facilities and HH chemicals
- Comment period through March 31
- Expects revised standards within 18 months

## E.O. 13650/ Takeaways and Related Developments

- Working Group recommendations expected in May
  - Significant expansion of PSM/ RMP programs likely
  - Expanded lists of chemicals under EPCRA, RMP, PSM and CFATS
  - Potential consolidation of reporting requirements and expansion of electronic reporting
  - Increased safety standards for storage, management and handling of chemicals
- Inherently Safer Technology (IST) requirements(?)
  - Minimize/ Substitute/Moderate/ Simplify
  - Alluded to in the Section 6(a) RFI
  - Supported by the CSB
  - The panel investigating the Chevron incident in California recently recommended that State enforcement agencies consider requiring IST analyses in regulatory decisions

## Chemical Safety & Drinking Water Protection Act

- S. 1961-Chemical Safety Drinking Water Protection Act of 2014
  - Immediate response to Elk River spill in WV (January 9, 2014)
  - Introduced on January 27, 2014 by Senators Manchin (D-W.V.), Boxer (D-Cal.) and Rockefeller (D-W.V.)
  - Hearings before Environment and Public Works Committee
  
- Companion piece-H.R. 4024—introduced in House on February 2, 2014
  
- Neither has moved much since introduction.



## Chemical Safety & Drinking Water Protection Act

➤ Key provisions would:

- Establish State programs under the Safe Drinking Water Act to oversee and inspect chemical facilities that present a threat to sources of drinking water
- Direct States to use existing source water protection plans to identify facilities that present a risk to drinking water
- Set minimum standards for State programs on construction standards, leak detection and spill and overfill requirements, emergency response and communication plans, and notification requirements.
- Require inspections every 5 years/ 3 years for facilities identified in drinking water protection plans
- Authority for drinking water systems to stop immediate threats
- Authority for State's to recoup costs incurred from responding to emergencies

## Chemical Safety & Drinking Water Protection Act

- Companion piece (H.R. 4024) similar but would:
  - Require financial responsibility requirements for Above Ground Storage Tanks (ASTs)
  - Include enforcement order authority for States
  - Include authorization for a drinking water system to commence a civil action or petition EPA to obtain injunctive relief to address any facility that may present an imminent and substantial endangerment to the health of those supplied by the system
  - Permit cost recovery by the State for response actions for a chemical release
  - Require inspections prior to transfer of ownership of a chemical facility and require corrective action
  - States are to provide drinking water operators information on chemical facilities in watershed

## West Virginia Legislation: SB 373

- SB 373 introduced in West Virginia Senate on January 16, 2014
- Establishes Aboveground Storage Tank Water Resources Protection Act
- Has been passed by both Senate and House
- Currently awaiting signature by the Governor

## West Virginia Legislation: SB 373

- Legislation requires:
  - Registration of ASTs (plus registration fees)/ including installation and construction details
  - Permitting program for ASTs including performance standards for design, construction, leak detection.
    - Monitoring, recordkeeping and reporting requirements including leak detection monitoring, and releases reporting
    - Corrective action requirements for releases
    - Annual inspection requirement and certification of inspection submittal
    - Financial responsibility requirements
  - Authority of State to order or take corrective actions in response to AST release
  - Requirement of AST owners/operators to develop and submit for approval Spill Prevention Response Plans
  - Required notices to local governments, water companies and other users of type and quantity of fluid stored in ASTs
  - Signage
  - Leaking AST Fund—Annual fee per tank/ used to respond to releases

## West Virginia Legislation: SB 373

- Public access to information
- Right of Entry
- Enforcement authority
- Civil and Criminal Penalty
- State's authority to abate imminent and substantial endangerment
- Source water protection
  - Requires drinking water sources to develop source water protection plans to address risks and contingencies
  - Plans for communicating with public to notify of risks

## Impacts

- Many states (20+) have some AST program already/ Not Ohio
  - Most limited to petroleum or oil ASTs
- Expands to non-petroleum ASTs—federal proposals even broader
- Increased inspections/enforcement likely even if not enacted
- More stringent drinking water protection based requirements likely at a minimum