The Environmental Protection Agency (EPA) is increasing enforcement of its Risk Management Program while at the same time proposing significant revisions to its Risk Management Plan Rule. Companies without Risk Management Plans (RMPs) or fully implemented risk management programs are at risk of inspection, which can result in a six-figure enforcement action. In addition, the EPA recently issued a proposed rule which increases the already stringent requirements of the EPA’s Risk Management Program by requiring third-party audits, evaluations of inherently safer technologies and more frequent incident investigations and analyses.

The EPA’s Risk Management Program originates in Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68, and is one of EPA’s mechanisms to address chemical accident prevention at facilities that use certain hazardous substances (listed at 40 C.F.R. 68.130). The implementing Risk Management Program regulations contain a number of requirements, including notification and coordination with local responders in the event of chemical emergencies, and the obligation for some facilities to submit a risk management plan. The obligations are similar to (and sometimes overlapping with) the Occupational Safety and Health Administration’s Process Safety Management program scheme.

Enforcement of the Risk Management Program is a current EPA enforcement initiative. (See National Enforcement Initiative: Reducing Risks of Accidental Releases at Industrial and Chemical Facilities Fiscal Years 2017-19). In Region 7, EPA assigned a lawyer to work several months with EPA’s chemical risk information branch to learn about the Risk Management Program in preparation for an anticipated rise in RMP enforcement actions. Stinson Leonard Street attorneys have evaluated civil administrative and judicial Risk Management Program cases resolved in the last several years. There are typically three types of cases: failure to submit a risk management plan; failure to implement a risk management program; and
cases in which there was an accident or release, where the EPA cites failure to adequately implement a risk management program and failure to comply with the Clean Air Act General Duty Clause. Penalties in the administrative cases frequently result in six-figure settlements, while the judicial cases result in seven-figure penalties with requirements for vast facility improvements.

In late February, the EPA released the pre-publication version of a proposed rule that proposes significant changes to the Risk Management Program. The EPA listed some of the major changes in the proposed rule including:

- **Third Party Audits** – This provision would require a facility that has an RMP reportable accident to use an independent third party to conduct its next scheduled audit. The proposal contains criteria for auditor competence and independence.

- **Incident Investigations and Root Cause Analysis** – The proposal would require an incident investigation after any incident that resulted in or could have resulted in a catastrophic release. The facility would identify the root cause of (i.e., the fundamental reason for) the incident and submit a report.

- **Safer Technology Alternatives Analysis** – Program 3 facilities in three industry categories (paper manufacturing, coal and petroleum products manufacturing, and chemical manufacturing) would be required to evaluate safer technology and alternatives when conducting the process hazard assessment already required by the current RMP rule.

- **Local Coordination** – The proposal would increase communication with Local Emergency Planning Committees (LEPCs) by requiring annual coordination by facilities with LEPCs to clarify response needs, emergency plans, roles and responsibilities.

- **Emergency Response Exercises** – The proposal would require responding facilities to conduct annual tabletop emergency response exercises with a field exercise every five years. All facilities would perform annual notification exercises.

- **Information Sharing to LEPC’s** – The proposal would add new disclosure requirements for facilities to LEPCs. LEPCs would receive incident investigation reports, a summary of inherently safer technology adopted according to a Safer Technology Alternatives Analysis and emergency response exercise reports. The public would receive chemical hazard information, summaries of emergency response exercises and LEPC contact information.

- **Increasing Access to Existing Public Information** – The proposal seeks input on increasing the public’s access to existing public information to assist participation in accident preparedness planning, including chemical hazard information, summaries of emergency response exercises and LEPC contact information.
EPA Ramps Up RMP Enforcement While Proposing Significant Revisions to RMP Rule

Comments on the proposed rule will be due 60 days after the proposed rule is published in the Federal Register, which will likely occur this month.

Stinson Leonard Street attorneys have extensive experience providing comments on federal rulemakings and can assist in evaluating the proposed rule and/or the comment process. In addition, reviewing the proposed rule provides companies with the opportunity to assess current Risk Management Program compliance and make changes to avoid an enforcement action. Stinson Leonard Street attorneys are also knowledgeable in and available to assist in compliance determinations.

For questions, please contact Brittany Barrientos, or the Stinson Leonard Street attorney with whom you regularly work.

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