

# New Final RMP Rule

Third Party Audits  
Stationary Source Siting  
Emergency Response

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# With You Today



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# Agenda

- Compliance Audits
- Stationary Source Siting
- Emergency Response
- Summary & Conclusions
- Q&A



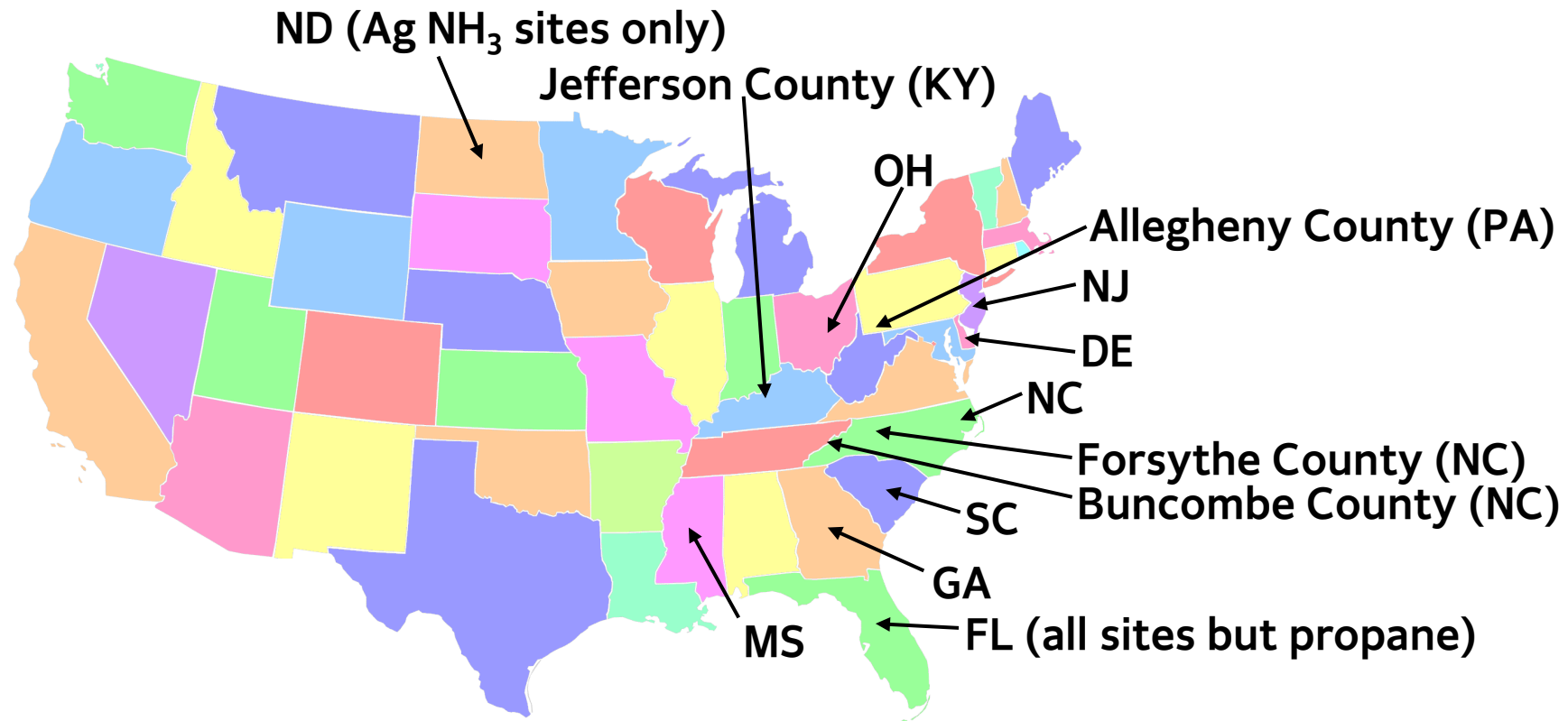
# Compliance Audits – Requirements

- In final RMP Rule third party compliance audits required if:
  - Facility has experienced an event that qualifies for inclusion in RMP 5-year accident history since the last audit (based on 2016-2020 data this would affect approx 3% of RMP facilities), or
  - The RMP implementing agency demands a third-party audit because of concerns about the competency or impartiality of a previous third-party audit.
- Remember:
  - The auditing requirements for owners/operators only applies to the RMP Prevention Program – SubPart C (Program 2 sites) or SubPart D (Program 3 sites).
  - The auditing of the remainder of the RMP program is the responsibility of the RMP implementing agency, not the owner/operator.  
*This includes emergency response (SubPart E).*

# Compliance Audits – Implementing Agencies

## Who are the implementing agencies for RMP?

There are 9 states/territories and 4 counties that have been granted implementing agency status for the RMP Rule in their jurisdictions.



# Compliance Audits – Requirements

- Final RMP Rule requires third party auditors to satisfy two areas: *competency and impartiality*.
- These criteria have to be documented.
- Final RMP Rule is not clear on where/how this should be documented – presumably the audit report would suffice.



# Third Party Auditor Competence

- Knowledgeable with the requirements of the audit element of the Final RMP Rule – *probably experience in PSM/RMP audits and work in each RMP element.*
- Experienced with the stationary source type and processes being audited – *probably experience in work in each RMP element or design/project experience in chemical/processing facilities.*
- Knowledgeable of applicable RAGAGEP practices – *probably experience in PSM/RMP audits and work in MI element.*
- Trained AND/OR certified in proper auditing techniques.



# Third Party Auditor Competence

- Trained AND/OR certified in **proper auditing techniques** (preamble did not clarify this or offer examples):
  - **Trained:** *maybe courses or probably audit experience.*
  - **Certified:** *related **accredited** certifications, e.g.,*
    - *PE (states) (maybe)*
    - *CPSA (BGC) (probably)*
    - *CPEA (BGC) (probably)*
    - *CIH (BGC) (maybe)*
    - *CSP (BCSP) (maybe)*
    - *CCPSC (CCPS) (maybe)*



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# Third Party Auditor Independence & Impartiality

Independence & impartiality provisions:

- No financial benefit from the outcome of the audit, apart from payment for the auditing services.
- Retired employees OK if only continuing financial attachment to the owner/operator are employer-financed or managed retirement and/or health plans.
- At least the audit team leader must be independent - remainder of the audit team can consist of either third party audit firm employees or personnel from the facility being audited.

# Third Party Auditor Independence & Impartiality

Independence & impartiality provisions:

- All third-party audit personnel cannot accept future employment with owner/operator for a period of at least two years following submission of the final audit report.
- Employment does not include performing or participating in third-party audits pursuant to the requirements of the Final RMP Rule.
- All third-party personnel must sign and date a conflict-of-interest statement documenting that they meet the independence criteria. *Whose form? EPA's form? Owner-operator's form?*

# Compliance Audits – Requirements

- Auditors shall have written policies and procedures to ensure that all personnel comply with the competency, independence, and impartiality requirements.



# Compliance Audits – Requirements

- The responsibilities of third-party auditors include:
  - Manage the audit, i.e., initiation, design, implementation, and reporting.
  - Determine appropriate roles and responsibilities for the audit team members based on the qualifications of each team member.
  - Prepare the audit report.
  - **Where there is a team, *document the full audit team's views in the final audit report.***
  - **Certify the final audit report and its contents as meeting the requirements of the Rule – certification language included in the final RMP Rule.**
  - Provide a copy of the audit report to the owner or operator.



# Compliance Audits – Requirements

- The owner/operator is required to:
  - Certify the report of their response to the audit findings (i.e., their corrective action plan, the audit report itself, the corrective actions, and schedule for the prompt correction).
  - **Immediately submit audit reports to the Board of Directors (or comparable body or individual within an owner/operator organization), whether or not they were conducted by third parties.**
  - Generate corrective action plans in response to RMP audits within 90 days of the finalization of the audit report.
  - Retain the past two RMP compliance audit reports (whether or not they were conducted by third parties) and records of audit follow-up and corrections.

# Compliance Audits – What EPA Didn't Include

- Auditing *every RMP covered process* – in the preamble EPS specifically stated that they did this to allow representative sampling in RMP audits, which is common practice.
- Impartiality provision that forbid third party auditors from having done any RMP related work *within 2 years before the audit* – this provision was removed in the Final RMP Rule.
- Third party audit *within 12 months of the triggering event* – third party audit required when next compliance audit is next due, still triennial.

# Stationary Source Siting

- EPA has amended the text for Program 2 and Program 3 hazard reviews and PHAs to:
  - Define stationary source siting evaluation as inclusive of the placement of processes, equipment, buildings, and the hazards posed by proximate facilities.
  - Accidental release consequences posed by proximity to the public and public receptors.
- The new language would make more explicit the requirement that hazard evaluations for processes need to address these matters in the siting evaluation.



# Stationary Source Siting

What does this mean?

- The placement of processes, equipment within the facility.
- Be aware of and consider the apparent presence of facilities within release impact zones that could occur from their facility, and how those releases would be affected because of the presence of nearby facilities (preamble).
- Potential for knock-on effects from releases.
- “Evaluations” must account for stationary source siting. This means PHAs, which is where this Rule provision is included.
- The extension of facility siting checklists typically used in PHAs to address potential offsite impacts should suffice.



# Stationary Source Siting

What does this *not* mean?

- No specific new analysis, particularly no new quantitative analysis of releases.
- No modification of the Hazard Assessment SubPart of the Rule, i.e., WCS and ARS calculations.
- No required modification of facility footprint.
- Does not require analysis of onsite occupied structures – this is within OSHA's domain and a PSM issue.
- Does not require or alter the application of API 752/753/756 – the RAGAGEPs governing facility siting in the PSM Std. These RAGAGEPs do not address offsite consequences – only the effects on onsite occupied bldgs.

# Emergency Response – Requirements

- The Final RMP Rule revised several provisions of the emergency response element of RMP.
- However, when the 2017 RMP Reconsideration Rule was reversed in 2019, several provisions of the 2017 Emergency Response SubPart (SubPart E) of the Rule were NOT reversed and apply today.
  - Annual coordination between RMP covered facilities and local responder - nature and method of coordination not specified (e.g., e-mail correspondence might suffice).
  - Annual exercises of the emergency response notification system be conducted.
  - Table-top exercises required before 12/31/26 and every 3 years thereafter.

# Emergency Response – Requirements

- Must develop and implement procedures for informing the public and the appropriate federal, state, and local emergency response agencies about accidental releases of RMP-regulated substances.
- Must provide necessary offsite entities with release information in order to ensure that the public and the appropriate federal, state, and local emergency response agencies have information to help with their response.

# Emergency Response – Requirements

- Drills & Exercises:
  - Conduct, at a minimum, field exercises by March 15, 2027, and at least once every **10 years**, unless local responders indicate that frequency is infeasible.
- Evaluation reports from these exercises (i.e., the critiques) must be produced within 90 days along with the documentation of recommendations to improve the emergency response program at the facility and the schedule.





# Emergency Response – Related Issues

- There are 10 separate federal regulations that require some form of emergency response planning or activities, including EPA, OSHA, DoT, DHS, others.
- Many states and local jurisdictions also require various emergency response planning or activities by various industries.
- In many facilities a common ERP exists to cover these multiple requirements.
- In many facilities common drills and exercises are conducted to apply to these multiple requirements, e.g., PSM and RMP, PSM/RMP and DHS, etc.

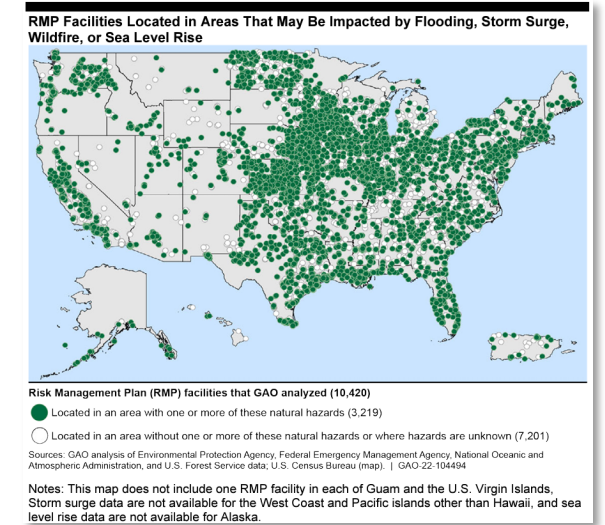
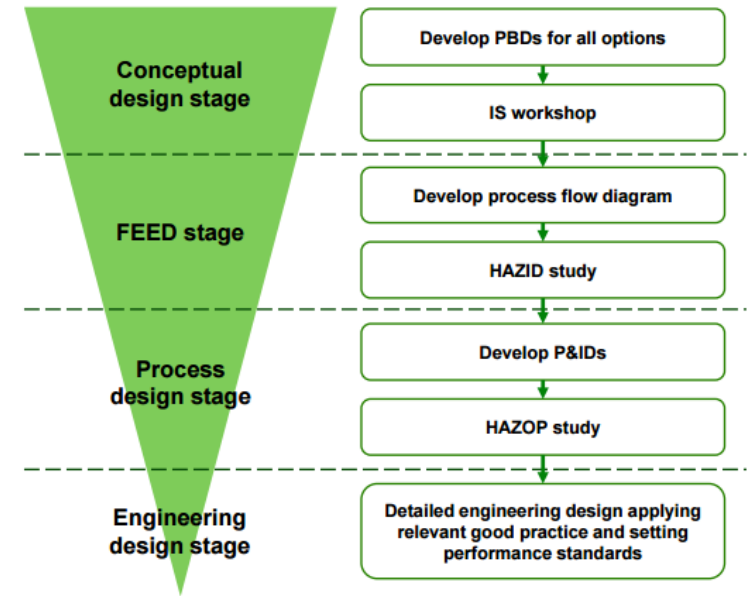
# Emergency Response

- Final RMP Rule does not alter choice to be a responding or non-responding facility.
- What happens if coordination with local responders is not productive?
- If the coordination fails despite good faith efforts by the facility could there be an inference that the burden for providing the response then lies with the owner/operator?



# Summary

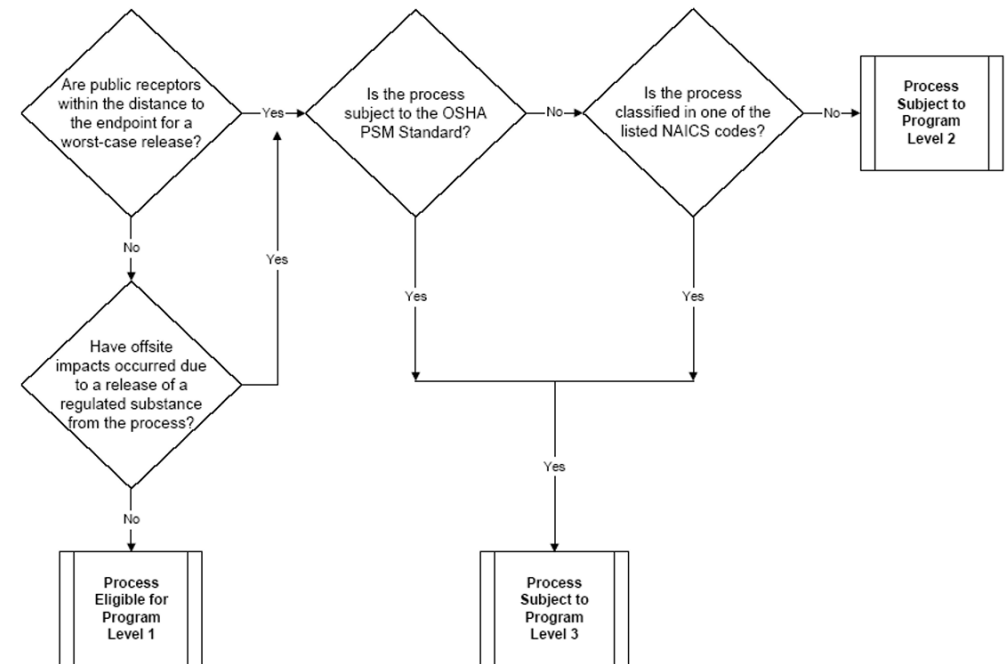
- In our 3 webinars we have covered:
  - Overview of the final RMP Rule
  - STAA
  - Third party audits
  - Stationary source siting
  - Emergency response changes
- What else changed:
  - Natural hazards
  - Loss of power
  - PHA recommendations status
  - Analysis of RAGAGEPs
  - Backup power for monitoring devices
  - Incident investigation RCA
  - Employee participation
  - Information availability to public



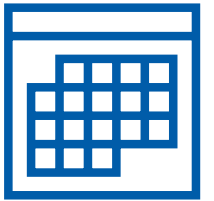
<https://www.gao.gov/assets/gao-22-104494.pdf>

# Summary

- What didn't change:
  - RMP applicability – covered substances and TQs
  - Definition and application of RMP Program levels
  - Registration and RMP submittal requirements
  - Hazard assessment – WCS and ARS calculations
  - Extending the MI requirements to cover any safety critical equipment
  - No definition of RAGAGEP
  - No requirement for MOOC



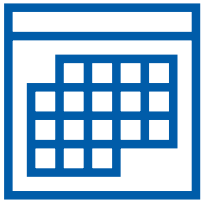
# Timing



- The effective date of the Final RMP Rule was May 10, 2024.
- Deadlines for certain activities and requirements contained in the Final RMP Rule are measured from that date as follows:
  - New STAA, inc inv RCA, 3<sup>rd</sup>-party, employee participation, emergency response public notification and exercise evaluation reports, and information availability provisions required 3 years after the effective date of the final rule, i.e., **May 11, 2027**.
  - Revised emergency response field exercise frequency provision by **March 15, 2027**, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and May 11, 2024.
  - Allow regulated RMP facilities 1 additional year, i.e., **May 11, 2028**, to update and resubmit risk management plans to reflect new and revised data elements.



# Timing



- The final RMP Rule is not clear on the timing for:
  - Natural hazards analysis in PHAs.
  - Loss of power analysis in PHAs.
- Presumably, the next scheduled PHA revalidation after May 10, 2024 should include these requirements.

# Final Conclusions

- For the first time that the **RMP Rule – Prevention Program and the PSM Std will diverge**. OSHA has stated that PSM Std revisions are not a priority in 2024.
- Final RMP Rule contains the first use of worst case/alternative release scenario (WCS/ARS) results other than simple collection and tabulation of the data. **Possible future uses of WCS and ARS results?**
- Final RMP Rule, for the first time in any U.S. federal, state, or local process safety regulation, has included mandatory risk reduction measures (as part of the STAA requirements in PHA element). **This is a major departure from any previous process safety rulemaking.**

# Questions?

The webinar has been recorded.  
We will send the recording out in the coming days.  
Recordings of all webinars available at:  
[www.acutech-consulting.com/webinars/](http://www.acutech-consulting.com/webinars/)

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