

March 31, 2014

Comments to OSHA On Executive Order 13650: Improving Chemical Facility Safety and Security and the Modernization of OSHA's Process Safety Management Standard

Docket Number OSHA-2013-0026

Submitted via [www.regulations.gov](http://www.regulations.gov)

Receipt 1jy-8ba1-5k5q

The ten local and national organizations listed at the end of this letter are submitting these public comments on "Executive Order 13650. Section 6(a) - Solicitation of Public Input on Options for Policy, Regulation and Standards Modernization, (EO-SPI)" (Docket ID OSHA-2013-0026) as well as in response to OSHA's Request for Information (RFI) concerning the modernization of its Process Safety Management (PSM) standard and other related issues (Docket ID OSHA-2013-0020). This group comment is not intended to provide significant detail on any of the recommendations, but rather to endorse proposals that allied organizations will comment on more comprehensively.

1. We propose that a requirement that all facilities covered by the OSHA PSM standard should be required to register through the existing database of RMP facilities operated by EPA (EO SFI p. 18).
2. We urge EPA to use its existing authority under Section 112(r)(1) of the Clean Air Act to require facilities regulated under RMP (including the OSHA PSM facilities) to demonstrate how they have considered inherently safer chemicals, technologies, and processes; document when, how, and why they have adopted them or not; and adopt inherently safer approaches whenever they are available, effective, and affordable.
3. We recommend that: OSHA, EPA, NIOSH, and the Department of Agriculture research inherently safer substitutes to ammonium nitrate and provide educational and technical assistance to manufacturing, storage, and distribution facilities so they may adopt the inherently safer solutions identified in that research.
4. We support the modernization of OSHA's PSM Standard and EPA's RMP Program including:
  - A. A requirement to use the basic management system principle of continual improvement.
  - B. A requirement for the maximum feasible use of inherently safer chemicals, technologies and processes (EO-SFI, p. 13, Section m) that recognizes the limitations of the provisions of the New Jersey Toxic Catastrophe Prevention Act

(<http://www.nj.gov/dep/rpp/brp/tcpa/>), the Contra Costa County, California Industrial Safety Ordinance (<http://cchealth.org/hazmat/iso/>) and similar programs that require consideration but not adoption of inherently safer chemicals.

- C. The creation of a publicly available database repository of proven, promising and experimental inherently safer alternatives to hazardous chemicals, technologies and processes.
  - D. The development of two or more pilot projects to actively pursue and obtain the implementation of IST in specific processes where the economic and technical feasibility are reasonably well established and the benefits to health and safety would be most significant. Some candidate projects are the elimination of Hydrogen Fluoride (HF) from alkylation processes in refineries, the substitution of chlorine by inherently safer substitutes in both municipal and industrial water treatment processes, and the substitution of the currently used forms of ammonium nitrate by less hazardous substitutes.
  - E. A recommendation by the relevant agencies to the President and Congress to establish and implement economic incentives to encourage firms to discover, test and commercially deploy inherently safer alternatives to hazardous chemical processes.
  - F. The adoption of new requirements to collect and publicly list process safety performance indicators that would be reported by regulated parties and made publicly available in a new format by OSHA for the site, corporate and national levels.
  - G. An explicit requirement defining the roles and accountabilities of upper management in a health and safety management system (i.e., Board of Directors, owners of private businesses, etc.)
  - H. The development and implementation of mechanisms to substantially enhance the currently very limited degree of workforce *participation* in all aspects of the management system required by the PSM standard.
  - I. New requirements designed to ensure that contract labor who perform construction, maintenance and repair work have the necessary skills and health, safety and job protections and are properly trained in PSM.
5. All Agencies and programs should require that safety performance is a key criterion in the selection of firms that are engaged for contract work (i.e. through review of workers' compensation experience, OSHA citations and fines, written site-specific occupational health and safety plans, employee training).

6. Relevant Agencies should develop and implement funding mechanisms based on fees paid by regulated parties to cover the costs of inspection and auditing functions, and to ensure an adequate regulatory workforce. Consider a system that rewards safety improvements and that ties fees to the extent of risk generated: reduce hazards to workers and the community, and fees go down. Fee systems are in place under New Jersey's Toxic Catastrophe Prevention Act as well as under the Industrial Safety Ordinance of Contra Costa County, California.
7. Congress and the President should ensure sufficient funding for the regulatory Agencies to sustain an adequate and competent cadre of field, scientific and technical experts, with competitive salaries to ensure a reasonable rate of retention.
8. OSHA should add a required element to the PSM standard to address human factors such as fatigue, worker-machine interactions (ergonomic design) and other factors that can optimize the protection of human health and safety as well as overall system performance.
9. OSHA should modify the PSM standard to require prompt corrective actions whenever shortcomings are identified under any element of the standard. Corrective actions should always follow the hierarchy of controls and seek inherently safer solutions.
10. OSHA should take advantage of the modernization of the PSM standard to give momentum to the promulgation of I2P2 regulations, which would be, in effect, the application of management system principles to prevention efforts in the broader occupational health and safety arena.
11. Both OSHA and EPA must conduct vigorous compliance assistance and education campaigns for all changes that are made to the PSM standard and RMP program, directed to both employers and employees. They should also ensure that workers in high hazard facilities receive assistance materials and training in their primary languages.
12. The scope of coverage of the PSM standard should be expanded by:
  - a. Extending coverage to all oil and gas production facilities and drilling services, as well as hydraulic fracturing (fracking) operations (OSHA RFI, Parts 3 & 4).
  - b. Expanding coverage to all atmospheric tanks containing gasoline and other hydrocarbons with similarly low flash points,
  - c. Clarifying the coverage to include all atmospheric tanks with flammable liquids when they are "within or connected to a PSM covered process"
13. OSHA should revise the PSM standard to require coordination of emergency planning with local emergency response authorities (OSHA RFI Part 11), including:
  - A. Improve public input during emergency planning, enhanced public information, alerts and outreach during emergencies.

- B.** Require improved coordination between fire brigades and facility fire departments including training and incident pre- planning including quarterly reporting to the public fire agency on all incidents that occurred on-site but were handled by plant personnel alone.
  - C.** Establish a mechanism to measure the costs incurred for both immediate and long- term medical services for affected surrounding communities as a result of a chemical facility incident, and to transfer the burden of those costs to the facilities responsible for them.
  - D.** Ensure that transit districts have developed strategies under emergency planning to respond effectively in the event of an industrial emergency.
  - E.** Establish systems to effectively monitor air contaminants during unusual events and to communicate this information to health care providers, emergency responders and the public through the full range of potential channels and media, as appropriate. Chemical facilities should bear the costs for the purchase and maintenance of state-of-the-art, real-time air monitoring equipment and communications systems.
14. The federal government should establish a system for OSHA and EPA to conduct joint inspections of high hazard facilities, including joint prior review of RMPs submitted by those facilities under EPA rules
15. The federal government should require an annual Clean Air and other environmental regulation compliance audit by an independent third party to be submitted to relevant state and federal agencies with summary documents posted on a publically accessible government website.
16. The federal government should develop and implement a plan to improve toxic air contaminant monitoring and information sharing with real time data and how to increase the availability of air monitoring data on federal, state and local websites; develop user applications and other electronic tools to make data more accessible and clarify reporting thresholds for releases or threatened releases.

BlueGreen Alliance  
Charlotte Brody, Vice President for Health Initiatives  
[www.bluegreenalliance.org](http://www.bluegreenalliance.org)

Center for Effective Government  
Sean Moulton, Director, Open Government Policy  
[www.foreffectivegov.org](http://www.foreffectivegov.org)

Clean and Healthy Indiana  
Lin Kaatz Chary. Executive Director

M&M Occupational Safety and Health Services  
Scott McAllister, Principal Investigator & Linda Morse, Medical Director  
[www.m-mconsulting-ebp.com](http://www.m-mconsulting-ebp.com)

NCOSH, the National Council on Occupational Safety and Health  
Tom O'Conner, Executive Director  
[www.coshnetwork.org](http://www.coshnetwork.org)

The New England Consortium - University of Massachusetts Lowell  
Paul Morse, Project Director  
[www.uml.edu/tnec](http://www.uml.edu/tnec)

New Solutions: A Journal of Environmental and Occupational Health Policy  
Craig Slatin, Editor  
[www.newsolutionsjournal.com](http://www.newsolutionsjournal.com)

RICOSH, the Rhode Island Committee on Occupational Safety and Health  
James Celenza, Executive Director  
[www.coshnetwork.org](http://www.coshnetwork.org)

USMWF, United Support and Memorial for Workplace Fatalities  
Tammy Miser, Executive Director  
[www.usmwf.org](http://www.usmwf.org)

Worksafe  
Gail Bateson, Executive Director  
[www.worksafe.org](http://www.worksafe.org)