

THE VOLATILE DEBATE OVER REGULATION OF REACTIVE CHEMICALS

By Lynn L. Bergeson

The regulation of chemicals believed to be “reactive” has been hotly debated for many years. According to the Occupational Safety and Health Administration (OSHA) “(c)hemical reactivity presents serious, sometimes catastrophic hazards to workers when the hazard is not thoroughly understood and controlled.” The U.S. Chemical Safety and Hazard Investigation Board (CSB) reports that there were 167 serious reactive chemical accidents over a two-decade period and that 108 people were killed in 48 of these incidents. Despite these numbers, many believe legislative or regulatory action is unlikely.

OSHA regulates highly hazardous chemicals under its Process Safety Management (PSM) standard. This is intended to protect workers from hazards associated with catastrophic releases of "toxic, reactive, flammable, or explosive chemicals" and applies to processes with more than a threshold quantity of any of 137 listed chemicals.

The U.S. Environmental Protection Agency (EPA) also regulates certain aspects of workplace chemical hazards pursuant to Clean Air Act (CAA) Section 112(r), which requires affected facilities to develop and register a Risk Management Program (RMP) to prevent chemical accidents. If a source uses a process that has one or more of certain listed regulated substances present in more than a "threshold quantity," certain responsibilities are triggered.

The Debate

The current debate relates to the adequacy of existing regulatory controls over reactive chemicals. According to a CSB Reactives Report from September 2002, there were 167 serious incidents in the United States involving uncontrolled chemical reactivity from January 1980 to June 2001. The report also urged EPA to update its RMP rule to cover catastrophic releases of reactive chemicals.

EPA announced amendments to the RMP in April 2003, but the regulation of reactives was not changed. CSB also urged OSHA to, among other things, amend the PSM standard to control reactive hazards that could have "catastrophic consequences," and to implement a program to define and record information on reactive incidents.

In November 2003, OSHA declined to pursue CSB's recommendations. OSHA instead agreed to take steps regarding reactive chemical hazard management, largely consisting of enhancing its education and outreach efforts to broaden awareness of reactive chemical hazards.

OSHA also has a commitment to make certain information available for no charge. It maintains a Web page specifically on chemical reactivity safety, osha.gov/dep/reactivechemicals/index.html. Included on the Web page is informational

guidance published by the Center for Chemical Process Safety (CCPS) of the American Institute of Chemical Engineers on model reactive hazard management systems, among other things.

Despite the passage of time, it is likely that additional guidance and related non-regulatory, collaborative measures will be OSHA's preferred response to CSB's concerns with reactive chemicals. There are several reasons that support this view. First, the second Bush Administration does not support regulatory action in this area. Although the AFL-CIO denounced OSHA's response to the CSB recommendations and characterized it as a "serious indictment" of the administration's "dismal worker safety and health record," Bush's reelection largely renders this rhetoric hollow.

Second, there is no consensus among stakeholders regarding how best to proceed. The views of the American Society of Safety Engineers (ASSE) may best characterize the sentiments of other professionals in the field. In a letter dated September 4, 2003, to OSHA and EPA, ASSE expressed its view that although the OSHA PSM and EPA RMP are two of the most successful programs the federal government has ever undertaken, it is not clear that these programs are appropriate for reactive chemicals.

Third, some question whether additional regulation is really necessary. In March 2004, OSHA and Reactive Alliance members signed an agreement to work together to provide their members, customers, contacts and others involved in the manufacture and use of chemicals with information to access training resources to protect them and their communities from the hazards posed by reactive chemicals.

This is especially true against the current backdrop of regulatory reform efforts championed by OMB. In a March 2005 report, OMB summarized the results of its initiative, commenced in 2004, to reform regulation of the U.S. manufacturing sector. This is intended to relieve the manufacturing sector from "unnecessary regulatory burdens."

The debate is not likely to go away soon. Absent a catastrophic incident involving reactive chemicals, the regulatory situation is not likely to change.**MT**

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