

EPA's Risk Management Plan With Craig Haas

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On this episode of the Environmental Law Monitor, host [Daniel Pope](#) is joined by guests Craig Haas and [Kevin Collins](#) to discuss the Environmental Protection Agency's risk management plan regulations.

Craig Haas is a senior environmental scientist. He is currently the national manager for EPA's Chemical Accident Prevention Regulatory Enforcement program.

Kevin Collins is a partner in Bracewell's Austin office, where helps clients manage the problems that arise during government investigations.

How does the general duty clause differ from traditional RMP regulations?

The RMP regulations are codified at 40 CFR Part 68. You will find it implements the statutory requirements of Clean Air Act 112 R Section 7. Clean Air 112 R Section 1 is the general duty clause. They both are accident prevention requirements under the Clean Air Act, but the regulations at Part 68 only apply to facilities with a listed chemical above the threshold quantity. For example, ammonia anhydrous ammonia above 10,000 pounds makes it subject to the Part 68 RMP regulations. For those facilities that are below threshold or that have other extremely hazardous substances that are not listed, they are still subject to the general duty clause requirement that's in Section 112 R1. There are three duties enumerated at 112 R1. First, you have to identify the hazards associated with your chemicals and your processes. Second, you have to design and maintain a safe facility. Third, you have to minimize the consequences of any exit releases that may occur. Even if you don't have a functional quantity of those regulated substances, that doesn't mean that you

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have no duty whatsoever to operate safely. You do have a duty, and you'll find that duty at section at Clean Air Act 112 R1.

What's the best way for these smaller organizations to demonstrate compliance with those three statutory duties?

Do a hazard review. If a facility is taking a serious look at the hazards posed by their operation, that will make the EPA more comfortable than a facility that doesn't understand what they're doing, and it's sadly common for them to find that lack of sophistication at smaller facilities. They simply don't know what they're dealing with. So we're looking at a general duty clause facility, and the EPA sees an actual hazard review performed, perhaps by a qualified engineer; that would be great. The second thing is to design and maintain a safe facility obligation. There are a lot. If a facility understands the codes and standards and is working to comply with them, that would also give the EPA comfort.

With the agencies starting to develop a hybrid sort of inspection model or tool where they can do some things over a zoom call in advance of a visit to minimize the days on site, would the EPA consider using document rooms, electronic document rooms, so they have quick access to documents and maybe have a zoom call to pull the document up and then have a discussion with the facilities experts before they get to the site to try to get some of their questions answered? Craig, could you see that becoming part of the EPA's tool box?

The EPA has been doing those sorts of things. It's become much more document-intensive, with a lot more information request letters going out. In a couple of instances, they've been doing multi-gain compliance valuations even at facilities like refineries, completely remotely. I think everybody understands, though, that that's not ideal. Because it's in an accident prevention program, you don't want to have somebody slap a coat of paint on that and then take a camera around and show the EPA team. But there is an opportunity for the EPA to do more upfront work, such as giving facilities a greater lead time as to when they are physically going to be on site. Also, requesting a more specific set of documents so that whatever review process needs to occur does occur before they even get there to minimize the time we're there.

How are the EPA teams dealing with making sure that companies are doing what they're supposed to do with respect to the modified rules around emergency response?

Those new requirements have made their way into the checklists. They're also working on some guidance documents that are in the review process now to release. Everybody should go to www.epa.gov/RMP, where you're going to find a lot of that stuff because that has been a moving target over the last four or five years. The EPA had the modernization rule, then the reconsideration rule, and now potentially new rulemaking, so the ground is shifting somewhat. The heart of the regulation, though, has not changed. It's remained the same, so the changes have been on the margins, not really on the core.

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For any questions you may have about RMP regulations, please contact [Daniel Pope](#) or [Kevin Collins](#).

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