

On August 17, 2018, the U.S. Court of Appeals for the D.C. Circuit vacated EPA's 20-month delay of implementing the 2017 amendments to the Risk Management Program (RMP) Rule. In its ruling in [Air Alliance Houston v. EPA](#), the court found that the EPA acted outside its authority in establishing the delay and failed to provide the necessary justification for why the delay was needed. With the D.C. Circuit's decision, the 20-month delay has been thrown out and ruled invalid.

Background

EPA reviewed and amended the RMP Rule to address Executive Order (EO) 13650 issued under the Obama Administration. The amended rule, known as the Chemical Disaster Rule, was finalized and published in the Federal Register on January 13, 2017. The rule was supposed to go into effect on March 14, 2017. However, EPA received several petitions requesting for a reconsideration of the rule and a stay on the effective date. Under the new Trump Administration, EPA delayed the effective date by a week and then again by 90 days. On June 9, 2017, the EPA Administrator signed a final rule (known as the Delay Rule) to ultimately delay the effective date for 20 months, until February 19, 2019.

Several environmental groups opposed the Delay Rule and sued the EPA. On August 17th, the D.C. Circuit found the Delay Rule to be invalid. The court summarized its ruling by stating that, "Because EPA has not engaged in reasoned decision making, its promulgation of the Delay Rule is arbitrary and capricious."

Effect of Ruling on Regulated Facilities

Although the delay has been lifted, the Chemical Disaster Rule is technically not yet in effect. The judicial process allows the EPA to petition for a rehearing or appeal the decision to the Supreme Court within 45 days of the date of ruling (from August 17th). This means that the rule will not go into effect until at least the end of the 45-day period. EPA has yet to indicate how it will respond.

In addition, even if the Chemical Disaster Rule goes into effect after 45 days, only one of the six major provisions within the rule immediately becomes effective. The Chemical Disaster Rule provides regulated facilities with some time to comply with its provisions, and most of the deadlines to comply have not yet lapsed as summarized below:

EPA RMP Update



Major Provisions	Effective Date / Compliance Deadline
Third Party Audits <i>Only applies to next scheduled audit following an RMP-reportable incident.</i>	March 14, 2021
Incident Root Cause Analysis <i>Conduct a root cause analysis following a catastrophic release or near miss.</i>	March 14, 2021
Safer Alternative Analysis <i>Only required for industries under certain NAICS codes – 322, 324, 325. Analysis to be conducted as part of PHA.</i>	March 14, 2021
Coordinating Emergency Response Requirements with Local Responders <i>Requires facilities to have documentation that they are coordinating with their local emergency responders.</i>	Effective Immediately (Original Compliance Deadline: March 14, 2018)
Emergency Response Exercises <i>Conduct notifications, tabletop, and field exercises.</i>	March 14, 2021
Information Sharing <i>Provide RMP information to the public upon request.</i>	March 14, 2021

Proposed RMP Reconsideration Rule

The future of the Chemical Disaster Rule is currently uncertain. EPA has a proposed rule (known as the RMP Reconsideration Rule) to make changes to the Chemical Disaster Rule. The RMP Reconsideration Rule seeks to rescind the following elements:

- Third Party Audits
- Incident Root Cause Analysis
- Safer Alternative Analysis
- Information Sharing (rescinds most requirements)

In addition, the rule seeks to modify the requirements for emergency response coordination with local responders and emergency response exercises.

The public comment period for the proposed RMP Reconsideration Rule recently closed on August 23, 2018. All arguments, comments, and supporting data submitted will be reviewed and evaluated by EPA. EPA may make additional changes to the proposed rule based on the information received. We will keep you updated as EPA works towards publishing the final rule.

California Office
27525 Puerta Real, Suite 100-468
Mission Viejo, CA 92691

Phone/Fax: (949) 207-3397
www.psmrmpsolutions.com

Washington Office
16625 Redmond Way, Suite M5
Redmond, WA 98052