



The Florida Senate

Interim Project Report 2000-76

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Committee on Comprehensive Planning, Local and Military Affairs

Senator Lisa Carlton, Chairman

FLORIDA ACCIDENTAL RELEASE PREVENTION AND RISK MANAGEMENT PLANNING ACT

SUMMARY

The Florida Accidental Release Prevention and Risk Management Planning Act, ss. 252.934-252.946, F.S., directs the Department of Community Affairs to seek delegation of the federal Accidental Release Prevention Program of s. 112(r)(7) of the federal Clean Air Act Amendments of 1990; to establish a self-supporting fee structure to fund the state program; and to establish a technical assistance program to assist owners and operators of stationary sources to comply with the act. During the first year of operation of the program, the department has complied with its responsibilities under the act by obtaining delegation of the federal program, adopting administrative rules establishing a fee structure, and providing technical assistance to facilities regulated by the act. Until the United States Environmental Protection Agency completes its database of risk management plans, the department will be unable to fully implement the audit and inspection responsibilities of the act.

BACKGROUND

In 1998, the Florida Legislature enacted the Florida Accidental Release Prevention and Risk Management Planning Act, ch. 98-193, Laws of Florida. The purpose of the legislation was to provide adequate statutory authority for the state to seek delegation of the Accidental Release Prevention Program authorized by s. 112(r)(7) of the Clean Air Act Amendments of 1990,¹ from the United States Environmental Protection Agency (EPA). Unlike the federal program, the Florida act excludes from regulation stationary sources whose only regulated substance under s. 112(r)(7) is liquefied petroleum gas.

The Act authorizes the Department of Community Affairs to administer the program for specified sources in Florida, seek program delegation from EPA, coordinate the program with its other emergency responsibility activities, establish a technical assistance and outreach program to assist the owners and operators of stationary sources who are required to submit risk management plans under the federal act, and report to the State Emergency Response Commission on income and expenses related to the program.

The federal Accidental Release Prevention Program, codified at 40 Code of Federal Regulations (CFR) Part 68, requires the owner or operator of a stationary source (a facility that emits or has the potential to emit air pollutants) which uses, stores, processes, or manufactures any one of 140 regulated substances, over a certain threshold quantity in a process, to develop and implement a risk management program and submit a plan summarizing this program to a national reporting center by June 21, 1999. Examples of regulated sources include chemical plants, water and wastewater treatment facilities, utilities, electronic manufacturers, and pulp and paper manufacturers.

A Risk Management Program must include these basic elements: a hazard assessment of accidental chemical releases upon the surrounding community and the environment; a five-year accident history of any accidental releases which occurred on the site; a prevention program designed to minimize the occurrence of any releases through improved safety practices; and an emergency response program to reduce the effects of any releases which do occur. The summary plan must be resubmitted every five years and revised as conditions at the facility warrant.

A "stationary source" is defined by s. 252.936(18), F.S., to mean: "any buildings, structures, equipment, installations, or regulated substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties,

¹Pub. L. No. 101-549, Title III, § 301, 104 Stat. 2399, codified at 42 U.S.C. §7412

which are under the control of the same person (or persons under common control), and from which an accidental release might occur." The definition does not apply to the transportation of substances regulated by the act.

Risk management plans are intended to provide information useful to emergency management officials as well as the public on the risk and prevention measures in place to prevent releases of hazardous substances. During a hazard assessment, a facility owner or operator examines the extent of the area surrounding the facility which would be affected in the event of a "worst-case release scenario" of the largest single storage or process vessel, assuming the entire contents of that vessel were released to the air and migrated offsite. Once the area of concern offsite has been identified, all potential public receptors, such as residences, offices, schools, and nursing homes, must be identified and the total affected population must be estimated.

The level of detail required for the facility's risk management program depends on the results of each affected process' hazard assessment, accident history, and standard industrial code classification. Each process which contains a regulated substance is assigned to one of three program levels: 1, 2, or 3. In order to be eligible for Program Level 1, processes cannot have had an accidental release within five years prior to the risk management plan's submittal, do not have any public receptors located inside the area of concern, and have coordinated with the local emergency response organizations. Processes in Program Level 3 are included because their industrial code classification has been historically associated with higher rates of accidental releases or because the process is also subject to the OSHA Process Safety Management Standard (29 CFR 1910.119).

Program Level 2 processes are those which have not been specifically assigned to Level 3, based upon their classification code or compliance with the PSM standard, yet are ineligible for Level 1 (e.g., have identified public receptors within their area of concern or have had an accident within the last five years). A typical facility may have multiple processes on-site and each will have its own Program Level. The owner or operator of a stationary source subject to Program 2 or Program 3 requirements is required by 40 CFR 68.10 to, in addition to preparing a Risk Management Plan, to implement a management system, conduct a hazard assessment, implement certain prevention steps and develop and implement an emergency response program.

All plans must be submitted to the national Risk Management Plan (RMP) Reporting Center in Merrifield, Virginia. This center is responsible for uploading all plans to a national database. In this way, all national RMP information is located in a centralized point and can be electronically retrieved by the implementing agency, EPA staff, and the general public. This allows EPA and delegated state agencies to directly retrieve plans for individual states as well as to draw national comparisons across industry sectors on process accident data and prevention techniques. The database for the implementing agencies is under construction and will be known as RMP*REVIEW and should be available by November 1999. The public access database, which does not include hazard assessment information, is called RMP*INFO and became available on the Internet in July 1999. Approximately 15,000 facilities have submitted plans to the reporting center as of August 1999, and approximately 550 of these are located in Florida.

An important element of the program is that the program is required to be self-supporting, with the fees collected to be deposited in the Operating Trust Fund. Under the Accidental Release Prevention Program, the owner or operator submits the Risk Management Plan to EPA yet pays an annual registration fee to the Department of Community Affairs. Pursuant to s. 252.939, F.S., the department is required to adopt a rule setting a fee schedule that cannot exceed \$100 for Program 1 sources, \$200 for Program 2 sources and \$1,000 for Program 3 sources. In addition, no owner of multiple Program 1 stationary sources is charged more than \$1,000, nor may the owner of multiple Program 2 stationary sources be charged more than \$2,000.

Next, the department is required to establish a technical assistance and outreach program by January 31, 1999 to assist owners and operators of stationary sources subject to the act to comply with the Risk Management Plan registration and fee requirements of the act. Also, the department is granted the authority to enforce the act and to inspect and audit facilities regulated by the act. The department is required to prepare, with the advice and consent of the State Emergency Response Commission for Hazardous Materials, an annual audit work plan which prioritizes specified stationary sources for an audit based on factors such as stationary source location and proximity to population centers, chemical characteristics and inventories, stationary source accident history, and self-audits. Section 252.943, F.S., creates a public records exemption for records, reports or information contained in a risk management plan where public disclosure of such records would divulge methods or trade secrets

subject to trade secret protection as defined in 40 C.F.R., 68, part 2, subpart B. This exemption is subject to the Open Government Sunset Review Act and expires on October 2003 unless reenacted by the Legislature.

Finally, section 2, ch. 98-193, Laws of Florida, requires the appropriate substantive committees of the House and Senate to conduct, prior to the regular legislative session in the year 2000, a review of the Act.

METHODOLOGY

Staff prepared a survey covering the implementation and administration of the Accidental Release Prevention and Risk Management Program by the Department of Community Affairs. In addition, staff met with department administrators who implement the program to discuss the results of the survey. In addition, staff contacted several stakeholder groups regulated by the program in order to review their experience under the program.

FINDINGS

The Department of Community Affairs has timely set in place the administrative framework to administer the Accidental Release Prevention and Risk Management Program. First, the department, as required by s. 252.937(1)(a)(1.), F.S., applied for and received delegation from EPA to implement the program. The formal delegation request was sent to EPA on June 12, 1998 and EPA noticed proposed program delegation to Florida in the Federal Register on October 20, 1998, The program delegation became effective on December 20, 1998.

Technical Assistance and Outreach Programs

Since the beginning of the program, a major focus of the department has been on educating affected facilities about the requirements of the program, and s. 252.937, F.S., requires the department to establish a technical assistance and outreach program on or before January 31, 1999. This effort has included mailings to prospective facilities regulated by the act, the presentation of information at trade and government workshops and meetings, and the development of a webpage describing the requirements of the program. Specifically, on February 5, 1999, the department mailed an initial notification letter to 1,539 prospective facilities informing them of the new program and requesting clarification of their regulatory status. A second mail out on March 19, 1999 contained copies of the state law, fee rule, fee forms, and a flyer advertising free training sessions using the EPA required software and

completing a risk management plan. Copies of the fee rule adopted by the department and accompanying forms are posted on a department web site created for the program.²

As required by statute, the department adopted an administrative rule to implement the fee provisions of the act, Chapter 9G-21, Florida Administrative Code. The rule became effective on November 9, 1998. The rule includes the fee structure required by s. 252.939, F.S., based on the program level of processes used by the regulated stationary source, and requires that annual fees are due to the department on June 21, 1999 and on April 1 annually thereafter. The fee schedule established by Chapter 9G-21 is set forth below:

Program Level	Fee for One Stationary Source	Fee for each Additional Location	Fee Cap
1	\$100	\$50	\$1000
2	\$200	\$200 for first 3 sources, \$100 thereafter	\$2000
2 and have SIC Group #01, 02, or 07	\$100	\$100 for first 3 sources, \$50 thereafter	\$800
3	\$1000	\$1000	No fee cap.

Rule 9G-21.003, F.A.C., also provides that late fees are assessed at 10% per month of the annual registration fee, not to exceed 50% of the annual registration fee owed for any fee cycle.

All fees collected by the department are deposited in a separate account in the Operating Trust Fund to be used exclusively to implement Florida’s Accidental Release Prevention Program. The fees provide funds for staffing, outreach to affected industries on program requirements and issues, and the review of risk management plans and inspections of facilities.

²<http://www.dca.state.fl.us/cps/arprmp/start.htm>

Level of Participation in the Program

Facilities regulated under the act were required to submit the fee required by Chapter 9G-21, F.A.C., to the department by June 21, 1999. In addition, these same facilities were required to submit their risk management plans to the EPA by this same date. As of June 24, 1999, 434 of 1,539 facilities notified by the department responded with a completed form indicating their program status. Of the group that responded, 173 facilities are subject to the ARP/RMP program, 196 facilities were found not subject to the program, 53 facilities contain propane as their only regulated substance and therefore are only subject to the federal program and 12 facilities have ceased operations or sold their assets to another company.

Adequacy of the Fee Structure

Section 252.938(1), F.S., expresses the legislative intent that the program should be self-supporting through the collection of fees authorized by the act. A preliminary analysis by the department of the fees received today indicate that the fee revenue will support the program. As of June 30, 1999, the department had collected \$372,625 in fees. However, the department is still receiving fee payments and evaluating submissions to the EPA database in order to determine whether the fee revenue will support the program.

Section 252.945, F.S., granted the department a startup loan for the program in the amount of \$400,000 from the hazardous materials account in the Operating Trust Fund. The loan must be repaid in equal annual installments by 2006, beginning with October 1, 2001. In addition, the department received an EPA technical assistance grant of \$87,299 (figure includes 25% state match) and expended \$44,984.68 of that amount for the fiscal year ending on June 30, 1999.

The 1998 Florida Legislature, through the General Appropriations Act, funded two full time positions and a total of \$135,353 for the first year of the program. The positions include a Planning Manager and a Planner II. The 1999 Florida Legislature authorized two additional full time positions and a total of \$299,738 in budget authority. Hence, a total of four positions has been established to implement the program.

During the 1998-1999 fiscal year, the expenses for the program totaled \$49,534.37. This amount primarily reflects the personnel costs associated with the startup of the program. This amount under represents the actual costs of running the program as many of the initial year

costs for travel, training, technical assistance, outreach and reproduction of materials were absorbed by the EPA technical assistance grant.

Administration and Coordination

The program is integrated into the Department's existing Hazardous Materials Planning Program under the direct supervisory and administrative oversight of the Community Program Administrator of the Compliance Planning Section and the Bureau Chief of the Bureau of Compliance Planning and Support.

Further, the program receives policy direction from the State Emergency Response Commission (Commission). The department is required by section 252.937 (1)(f), F.S., to make quarterly reports to the Commission and to consult with the Commission in the establishment of a technical assistance program and development of an annual audit work plan.

Section 252.937(2), F.S., requires the department to enter interagency agreements with state agencies with regulatory, inspection or technical assistance programs for specified stationary sources such as those implemented by the Department of Labor and Employment Security's Division of Safety, and the Department of Environmental Protection's Division of Air Resources Management and the Division of Water Facilities. An interagency agreement between the department and the Department of Labor and Employment Security's Division of Safety became effective on January 13, 1999, and a similar agreement between the department and the Department of Environmental Protection's Division of Air Resources Management became effective on November 30, 1998. The department is currently in the process of negotiating an agreement with the Department of Environmental Protection's Division of Water Facilities. The agreements generally provide for the sharing of technical expertise and inspection information between the respective agency and the department.

Review and Audit of Risk Management Plans

As described previously, a stationary source owner or operator is required to submit a single risk management plan for all processes directly to EPA using software developed for the submission of such plans. EPA is compiling this information into a national database that will be available to implementing agencies (RMP*REVIEW) in November 1999 via an electronically secure method. Until the EPA database is online, the department will not have the full complement risk

management plan information necessary to conduct audits.

However, the department is currently drafting an annual audit work plan based on the October 1999 scheduled startup date of the EPA national database. In addition, the EPA released audit protocol guidance on August 24, 1999, based on selection criteria for audit prioritization set forth in 40 CFR 68.220, which include the following:

- C Accident history of the stationary source.
- C Accident history of other stationary sources in the same industry.
- C Quantity of regulated substances present at the stationary source.
- C Location of the stationary source and proximity to the public and environmental receptors.
- C The presence of specific regulated substances.
- C The hazards identified in the risk management plan.
- C A plan for providing neutral, random oversight.

Section 252.942, F.S., contains similar criteria for audit prioritization including: stationary source location and proximity to population centers; chemical characteristics and inventories; stationary source accident history; process accident history; compliance or inspection by allied agency programs; and the results of stationary sources' self-audits. The federal and state criteria appear sufficiently similar that compliance with the federal guidelines will likely satisfy the state statutory criteria.

While department staff has been undergoing auditing training at volunteer chemical manufacturing facilities, regulatory audits will not be performed until the EPA database is on line. Similarly, department staff will not be undertaking facility inspections until EPA's database of Risk Management Plans has been completed, unless an accidental release occurs during this period. Accordingly, it is premature to evaluate the adequacy of the audit and inspection programs required by the act.

Electronic Access to Risk Management Information

Section 252.946, F.S., requires the department, the State Hazardous Materials Emergency Response Commission, and any local emergency planning committee to assist persons in electronically accessing risk management data held by the EPA in its centralized database. At the federal level, there is an ongoing debate as to whether it is

advisable for EPA to provide electronic access on the Internet to the off-site consequence analysis data produced by facilities for the Accidental Release Prevention and Risk Management Program.

On August 5, 1999, President Clinton signed into law the "Chemical Safety Information, Site Security and Fuels Regulatory Relief Act," Senate Bill 880. The act exempts from the scope of the federal Accidental Release and Prevention Program propane sold by retailers and other flammable hydrocarbons used as fuels from the list of substances for which a risk management plan must be prepared. However, propane and other flammable hydrocarbons are still covered under federal program if the substance is actually used in chemical reaction as a feedstock or for any other purpose other than heating.

Of greater significance to the Florida program, the "Chemical Safety Information, Site Security and Fuels Regulatory Relief Act" exempts off-site consequence data, which facilities are required to include in their risk management plans, from the federal Freedom of Information Act, and limits public access to this information for a one year period during which the federal government is to: 1) assess the risk of posting off-site consequence data on the Internet; and 2) promulgate regulations governing public access to such data. If these regulations are not issued by August 5, 2000, the Freedom of Information Act exemption expires. The act includes criminal penalties, not to exceed \$1 million for violations committed during any single calendar year, for the unauthorized disclosure by a "covered person" of off-site consequence data. The term "covered person" includes State or local government officers or employees, in addition to federal employees.

The relationship between the public disclosure limitations imposed by the act and Florida public records law is important to ascertain. The act provides that the act supersedes any provision of State or local law that is inconsistent with provisions limiting the public disclosure of off-site consequence data, unless a state is making available data on the off-site consequences of chemical releases collected under state law. Under the Florida Accidental Release Prevention and Risk Management Planning Act Program, facilities submit their risk management plans directly to EPA and EPA then provides this information to the department. Because of this relationship, the argument can be made that the off-site consequence data in the possession of the department was not collected in accordance with State law, but in accordance with federal law.

The federal act also requires each owner or operator of a stationary source covered by the Accidental Release Prevention Program to, within 6 months of the effective date of the act, notice and hold a public meeting to discuss the local implications of the risk management plan submitted to EPA, including a summary of the off-site consequence analysis portion of the plan. Certain small business stationary sources can comply with this requirement by posting a summary of their off-site consequence analysis information within 6 months of the effective date of the act. Each owner or operator is required to send certification to the Federal Bureau of Investigation stating that such a meeting has been held or that the summary has been posted, within 1 year prior to, or within 6 months of August 5, 1999.

As of the writing of this report, the department had not yet received guidance from EPA regarding its responsibilities under the "Chemical Safety Information, Site Security and Fuels Regulatory Relief

Act." Until this guidance is available, the full effect of the act on the Florida program is unclear.

EPA, implemented an outreach program to notify and educate facilities with stationary sources subject to the act, and implemented a fee system that appears sufficient to support the program. It is premature to evaluate the quality and utility of risk management plans submitted by stationary sources or the effectiveness of the department in auditing such plans. However, the department has the resources in place to comply with the auditing requirements of the act.

< In addition, staff recommends the Legislature monitor the application of the requirements of the "Chemical Safety Information, Site Security and Fuels Regulatory Relief Act," as it applies to Florida's delegated Accidental Release Prevention and Risk Management Program.

RECOMMENDATIONS

< Staff recommends the reenactment of the Florida Accidental Release Prevention and Risk Management Planning Act. The department has successfully obtained delegation of the federal program from the

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

Senators Myers and Forman