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**Ohio EPA and the “Distribution of Off-Site Consequence Analysis Information”
(40 CFR, Part 1400)**

On August 4, 2000, the final rule governing public access to the Off-Site Consequence Analysis (OCA) sections of Risk Management Plans was published in the Federal Register (40 CFR, Part 1400). This rulemaking was mandated by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRA), and was issued jointly by U.S. EPA and the Department of Justice (DOJ).

The August 4 rule provides the public with read-only access to paper copies of OCA data through (at least) 50 federal reading rooms to be established throughout the United States. At these reading rooms, any member of the public will be able to read, but not remove or mechanically reproduce, a paper copy of the OCA information for up to 10 facilities per calendar month, located anywhere in the country, without geographical restriction. In addition, any person will be able to view OCA information for any facilities located within the jurisdiction of the Local Emergency Planning Committee (LEPC) in which the person lives or works, or for any facilities with a vulnerability zone extending into that LEPC's jurisdiction. At the federal reading rooms, a person will be asked to show identification, and will be asked, by means of a signature, to certify that they have not received access to OCA data for more than 10 facilities (without geographical restriction) during that calendar month. If the person is requesting access to OCA data for facilities based on a home or work address, documentation of that address will be requested.

So far, U.S. EPA anticipates that federal reading rooms will be located at EPA headquarters, in EPA regional offices, and other federal offices. Some reading rooms will operate on a walk-in basis, while others will require an appointment. U.S. EPA anticipates that reading rooms will become available by the first of the year.

This rule (40 CFR Part 1400.6) also “authorizes and encourages” State Emergency Response Commissions (SERCs), LEPCs, and other state and local government agencies to provide the public with read-only access to the OCA information for facilities within their jurisdiction. These state and local government agencies are not required to limit the number of sources to which a person can gain access, require identification, or maintain records of access provided.

Within the Act itself, paragraph (a)(H)(x)(II) states that “(n)othing ...precludes a State from making available data on the off-site consequences of chemical releases collected in

accordance with State law.” Ohio has delegation of the Risk Management Plan program and has statutory authority requiring RMPs to be submitted to Ohio EPA. Ohio EPA legal staff has interpreted this to mean that all RMPs - including the OCA data - collected under this authority are subject to Ohio’s Public Information laws, and therefore, open to public inspection.

In addition, in addressing the comments in the “Discussion” section of the August 4, 2000, Federal Register, U.S. EPA and the Department of Justice attempt to clarify the rule’s provisions for enhanced local access. They say that clarification was requested “...that state and local government officials...may communicate to the public the substance of the of OCA information (i.e. , the OCA data elements reported in the RMPs), even though they may not disseminate the official forms in which the data is reported and compiled (i.e., the OCA portions of the RMPs and EPA’s OCA database).” They go on to state that “...while covered officials may not disseminate the OCA portions of RMPs or any EPA database created from these portions, they may discuss or otherwise communicate the data reported in these portions.” A U.S. Representative summarized it by saying that CSISSFRRRA was passed to address the risk of posed by Internet posting of a large OCA database, not to prevent public officials from sharing OCA data for individual plants with their communities.

Thus, we have two avenues for releasing OCA information in Ohio. The first is that, in Ohio, the RMP program is delegated to the State. This means that all RMPs collected under State authority are subject to Ohio’s Public Information laws, and therefore available for public inspection. Disregarding that, and looking solely to 40 CFR Part 1400, public officials are clearly permitted to disseminate the information contained within the OCA sections of RMPs, as long as they do not distribute the OCA sections themselves.