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Critical Legal Issues: WORKING PAPER SERIES

THE CONSTITUTIONAL IMPLICATIONS OF EPA'S PUBLIC MEETING MANDATE FOR ACCIDENTAL CHEMICAL RELEASES

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THE CONSTITUTIONAL IMPLICATIONS OF EPA'S PUBLIC MEETING MANDATE FOR ACCIDENTAL CHEMICAL RELEASES

One of the most significant final actions taken by the U.S. Environmental Protection Agency ("EPA") under the Obama Administration was the promulgation of its highly controversial 2017 amendments[1] to the Risk Management Plan ("RMP") Regulation. The 2017 Amendments represented a comprehensive overhaul of and new direction for the RMP Regulation. One aspect of this new direction, which received far less attention than it should have, was an unprecedented requirement that the owner or operator of a facility that experienced a reportable chemical release hold a public meeting to discuss the release within 90 days of the event. This requirement affronts the First, Fourth, and Fifth Amendment rights of the entities and individuals subject to the RMP Regulation.

I. BACKGROUND ON RMP

In the Clean Air Act Amendments,[2] Congress directed EPA and the U.S. Occupational Safety and Health Administration ("OSHA") to adopt rules applicable to threshold quantities of certain hazardous chemicals and designed to "prevent or minimize the consequences of accidental chemical releases." Congress was responding to a number of catastrophic chemical releases, including those that

[1] 82 Fed. Reg. 4594 (Jan. 13, 2017).

[2] Section 112(r) of the Clean Air Act as amended (42U.S.C. § 7412(r)).

occurred in Bhopal, India and Institute, West Virginia. EPA and OSHA would accomplish Congress' directive "through implementation of management program elements that integrate technologies, procedures, and management practices."[3] The EPA RMP Regulation[4] and OSHA Process Safety Management ("PSM") Standard[5] generally apply when a "regulated substance" is contained within a process in an amount above a specified threshold quantity. The OSHA PSM Standard generally applies to workplace exposures (inside the fence line of the workplace). It imposes an extensive set of performance-based requirements on the employer, which include:

- collecting process-safety information;
- performing a comprehensive process-hazard analysis ("PHA") every five years;
- developing and reviewing operating procedures annually;
- providing training;
- implementing a mechanical integrity program;
- implementing a management of change program;
- performing comprehensive compliance audits every three years;
- conducting and following up on incident investigations;
- ensuring employee participation;
- implementing a hot-work program; and
- implementing a contractor safety program.

For industrial facilities, the RMP Regulation generally adopts the OSHA PSM Standard, with limited refinements, and expands the scope to include requirements designed to address the "outside the fence line" hazards that are the traditional focus

[3] 82 Fed. Reg. at 4600.

[4] 40 CFR 68.

[5] 29 CFR 1910.119.

of EPA's activities. The additional RMP requirements cover facility registration, the filing and updating of an RMP Plan that includes the site's five-year accident history and off-site consequence analysis, and requirements for broader release reporting, emergency response coordination, and providing information to the public.

II. 2017 RMP RULE CHANGES

In proposing what became the 2017 Amendments, EPA stated that its goal was to "improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources," pursuant to the mandates in President Obama's Executive Order 13650.[6] The stated purpose of EO 13650 was to enhance chemical facility safety and security, and EPA referenced incidents such as the West Fertilizer Company explosion in 2013 as justification for both EO 13650 and the 2017 Amendments.[7] In adopting the 2017 Amendments, EPA stated:

> The RMP rule has been effective in preventing and mitigating chemical accidents in the United States and protecting human health and the environment from chemical hazards. However, major incidents, such as the West, Texas explosion, highlight the importance of reviewing and evaluating current practices and regulatory requirements, and applying lessons learned from other incident investigations to advance process

[6] 82 Fed. Reg. at 4594. Exec. Order No. 13650, Improving Chemical Facility Safety and Security (Aug. 1, 2013), https://www.epa.gov/rmp/executive-order-improving-chemical-facility-safety-and-security.

[7] On April 17, 2013, the West Fertilizer Company's facility in West, Texas experienced a series of ammonium nitrate explosions that killed 15 people and injured more than 170 people. Just before the close of the comment period on EPA's proposal, the U.S. Treasury's Bureau of Alcohol, Tobacco and Firearms concluded that the West, Texas incident was caused by a criminal act of arson.

safety where needed.

Regulated entities criticized EPA for overreaching and ignoring valid industry concerns on the cost effectiveness of most of the core changes. Industry stakeholders expressed particular concern with proposed provisions that would change the internal audit requirement to a third-party audit requirement; greatly expand the Process Hazard Analyses requirement by adding a Safer Technology and Alternatives Analysis mandate for the chemical, oil, and paper industries; and demand a root-cause analysis as a component of each required accidental-release investigation. Essentially, EPA took what were traditionally viewed as enforcement tools that could be incorporated, on a case-by-case basis, into enforcement-action settlements and adopted them as universal mandates.

This burdensome regulatory scheme, and its potentially significant legal and financial consequences, overshadowed another proposed requirement—RMP § 68.210(e), which directs the owner/operator of a covered facility to hold a public meeting to discuss a reportable chemical release:

> (e) Public meetings. The owner or operator of a stationary source shall hold a public meeting to provide information required under § 68.42 as well as other relevant chemical hazard information, such as that described in paragraph (b) of this section, no later than 90 days after any accident subject to reporting under § 68.42.

In response to industry petitions for reconsideration, the Trump Administration proposed a rule to rescind most of the 2017 Amendments ("the Reconsideration

Rule"). EPA is expected to finalize the Reconsideration Rule this year and compliance with RMP § 68.210(e) would not be required until March 15, 2021.

If adopted, the Reconsideration Rule would remove from RMP § 68.210(e) the phrase "as well as other relevant chemical hazard information, such as that described in paragraph (b) of this section." EPA justified the removal by explaining that the phrase "could be interpreted to be an overly broad requirement for information." 83 Fed. Reg. at 24868. While that change would limit the mandatory scope of the required meeting to more readily-identifiable information, it overlooks the serious constitutional considerations and practical consequences of retaining the requirement that the owner/operator of the covered facility must hold the meeting and participate in the compelled discussion.

III. PUBLIC MEETING REQUIREMENT

As noted above, RMP § 68.210(e) requires the owner or operator of a covered facility to hold a public meeting within 90 days of any RMP reportable accident, and RMP § 68.160(b)(22) requires the owner or operator to advise EPA whether the required meeting has been held.

At the meeting, the owner or operator must provide two broad categories of information:

(1) the information described in RMP § 68.42, which must be provided to EPA in the site's updated RMP Plan within six months of the incident; [8] and
(2) "other relevant chemical hazard information, such as that described in … [RMP § 68.210(b)]."[9]

The information described in RMP § 68.42 ("the RMP § 68.42 Data") is as follows:

- Date, time, and approximate duration of the release;
- chemical(s) released;
- estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;
- five- or six-digit North American Industry Classification System code that most closely corresponds to the process;
- the type of release event and its source;
- weather conditions, if known;
- onsite impacts;
- known offsite impacts;
- initiating event and contributing factors if known;
- whether offsite responders were notified if known; and
- operational or process changes that resulted from investigation of the release and that have been made by the time this information is submitted.[10]

The information described in RMP § 68.210(b) as illustrative of the category of "other relevant chemical hazard information" is as follows:

[8] Under the RMP Regulation, a reportable release must be reported in the updated RMP Plan within six months. If an emergency chemical release occurs, it generally must be reported immediately to federal and state EPA, the Local Emergency Planning Commission, and the local fire department pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

[9] 40 C.F.R. 68.210(e).

[10] 40 C.F.R. 68.42(b).

- Names of regulated substances held in a process;
- Safety Data Sheets for all regulated substances located at the facility;
- a five-year accident history for the facility;
- whether the stationary source is a responding stationary source or a non-responding stationary source;
- name and phone number of local emergency response organizations with which the owner/operator last coordinated emergency response efforts;
- procedures for informing the public and local emergency response agencies about accidental releases;
- a list of scheduled exercises; and
- Local Emergency Planning Committee contact information.[11]

The preamble to the 2017 Amendments suggests a far broader scope of meeting topics and, even if the Reconsideration Rule narrows the mandatory scope to RMP § 68.42 Data, it clearly forces the facility owner/operator into the unwanted position of responding to a much broader range of inquiries:

> In the event of a public meeting held after an accident, EPA encourages facilities to provide information about any IST [inherently safe technology] or other safer technology alternatives that the facility is using or could be using and suggests that the public use this forum to inquire about ISTs implemented at the facility.[12]

RMP § 68.210(b) is incompatible with rights protected by the First, Fourth, and Fifth Amendments to the U.S. Constitution.

IV. FOURTH AND FIFTH AMENDMENT CONCERNS

The Fourth Amendment to the U.S. Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

[11] 40 C.F.R. 68.210(b).

[12] 82 Fed. Reg. 4651, col. 2-3.

> violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> The Fifth Amendment states, in pertinent part:
>
> No person … shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ….

A regulatory agency has never before adopted a regulation compelling the owner/operator of a regulated facility to hold a public meeting where its representatives must present information about a chemical release or adverse event at a facility. Such a meeting will increase an owner/operator's risk of tort claims, citizen suits, and civil and criminal enforcement actions brought by federal and state EPA, federal and state OSHA, other federal and state enforcement agencies, and even state district attorneys.

In adopting the Clean Air Act, Congress followed the traditional approach of requiring an owner/operator of a covered facility to submit chemical-release reports to EPA and the Chemical Safety and Hazard Investigation Board in accordance with those agencies' regulations. Congress did not, however, authorize or contemplate an EPA rule that, in effect, would compel facility owners/operators to hold public meetings where they would have to disclose this broad body of chemical-release and facility information directly to the public soon after a major incident.

Under EPCRA and CERCLA, after a significant chemical-release incident occurs, the owner/operator of the affected facility must immediately notify the federal and state EPA, the LEPC, and the local fire department, and follow up with the required written reports. The enforcement agencies then decide whether the reports are complete and whether they should pursue further investigation of an incident for possible violations of the law. The Chemical Safety Board may also elect to pursue an investigation.

If EPA decides to inspect the site, the owner/operator may voluntarily allow the inspection, but has the right to limit its scope or insist on a warrant issued by a neutral magistrate based on the appropriate standard of probable cause (civil or criminal) under the Fourth Amendment. If EPA wishes to interview a particular person with knowledge relevant to the incident, the individual may voluntarily agree to speak with the inspector and limit the scope of the discussion. The individual may also refuse to speak with the inspector and insist on a subpoena issued by a neutral magistrate. In both situations, the owner/operator and its representatives retain the right to counsel, the protections afforded by the attorney-client privilege and the Fifth Amendment, and the protections for trade secrets.

No exceptions limit these longstanding and well-established Fourth and Fifth Amendment protections. Where the owner/operator of a facility seeks a building permit or an operating permit, the permitting authority may, if appropriately provided

for in uniformly applied rules, require the owner/operator to send representatives to participate in a public hearing on the application, at which time a discussion of a chemical release may or may not be appropriate. However, that is not the situation presented by RMP § 68.210(e).

Even if one assumed that the public meeting would be limited to the owner/operator's reading verbatim the chemical-release report submitted to EPA, RMP § 68.210(e) can only be viewed as a directive to set aside a specific time when certain individuals representing the owner/operator will be required, against their will, to participate in a public meeting, present certain information to the attendees, and quite possibly be subjected to unwelcome communications from the participants (EPA, the general public, the media, and public-interest groups).

V. FIRST AMENDMENT CONCERNS

The First Amendment to the U.S. Constitution states, in pertinent part, that "Congress shall make no law … abridging the freedom of speech." The U.S. Supreme Court has made clear that First Amendment protections apply to laws and regulations that compel speech as well as those that prohibit speech:

> [T]he right of freedom of thought protected by the First Amendment against [government] action includes both the right to speak freely and the right to refrain from speaking at all.

Wooley v. Maynard, 430 U.S. 705, 714 (1977). Particularly relevant to the RMP public-meeting requirement is the following holding in *Hurley v. Irish-Am. Gay, Lesbian &*

Bisexual Group of Boston, 515 U.S. 557, 573 (1995), in which the Court emphasizes the general rule that if one elects to speak, one may choose what to say and what not to say:

> Since all speech inherently involves choices of what to say and what to leave unsaid, … one important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say…. Indeed this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid [citations omitted].

As the foregoing discussion makes clear, First Amendment protections apply to compelled statements of facts as well as compelled statements of opinion. *Riley v. National Federation of the Blind*, 487 U.S. 781, 797-98 (1988).

The nature of the speech being compelled—non-commercial or commercial—is critical in a reviewing court's determination of the government's burden in justifying its actions. Though a strong argument can be made that the speech being compelled is *not* commercial in nature (as not all speech uttered by a business's representatives is inherently commercial), a court would most likely label it as such. As a general rule, government burdens on commercial speech must pass constitutional muster in accordance with "[the] 'intermediate' scrutiny of restrictions on commercial speech … under the framework set forth in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N. Y.*, 447 U.S. 557 (1980)." *Fla. Bar v. Went for It*, 515 U.S. 618 (1995). EPA might attempt to assert that the rule implicates speech subject to the lower level of

constitutional scrutiny that the Court set out in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), for certain types of compelled commercial speech. However, the exception to the general rule carved out by *Zauderer* does not apply to § 68.210(e).

Under *Zauderer*, the Court held that the government "may at times 'prescribe what shall be orthodox in commercial advertising' [speech that the speaker has chosen to make] by requiring the dissemination of 'purely factual and uncontroversial information'," to correct, clarify, or avoid misleading or confusing information. The constitutionality of that mandate is examined under reduced scrutiny because such a mandate is generic, universally applicable, and constitutionally preferable to a speech restriction. The Court also held that, even under that test, the law or regulation at issue must compel speech in a manner that is not unduly burdensome.

The public-meeting requirement in RMP § 68.210(e) does not meet any of these criteria. The owner/operator of the facility has not chosen to speak, to speak at that time or in that manner, or to include that content. RMP § 68.210(e) is not aimed at avoiding or clarifying misleading speech through a generic and universal disclosure. Rather, it mandates a disclosure of certain categories of information and certain information specific and unique to the owner/operator, the site, and a particular incident. The rule requires the facility operator to hold a public meeting, make a presentation regarding a large amount of information (some potentially sensitive),

and engage in a potentially unbounded Q&A session soon after a reportable chemical release. In the absence of what all of the meeting attendees/participants deem to be an adequate disclosure by the owner/operator, the owner/operator can expect that a complaint will be filed with EPA alleging a violation of RMP § 68.210(e), and possibly seeking an additional meeting.

Because holding a public meeting pursuant to RMP § 68.210(e) places owner/operators under intense pressure, the regulation risks compelling speech that includes educated guesses, assumptions, speculation, and other information that is not fully proven or established, *i.e.,* does not rise to the level of "factual." Such information is, by its nature, often uncertain and controversial. This requirement also risks compelling speech that includes trade secrets, attorney-client-privileged information, and incriminating information without regard for the rights provided by the Fourth and Fifth Amendments. Disclosing information in the manner required by RMP § 68.210(e), regardless of the scope specified in the rule, is clearly unduly burdensome and represents improper regulation by shaming or humiliation, which is further addressed below.

Because the relaxed standard of review articulated in *Zauderer* is inapplicable to the public-meeting rule's burdens on commercial speech, those burdens must pass constitutional muster under *Central Hudson*. Under that standard, to justify a requirement for compelled commercial speech, EPA would have to demonstrate the

following: (1) the asserted governmental interest is substantial; (2) the regulation directly and materially advances that interest; and (3) the regulation is sufficiently tailored so as to be no more extensive than is necessary to serve that interest. *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 367 (2002).

In the preamble to the 2017 Amendments, EPA provided the following explanation for the public meeting requirement:

> [It will] ensure that first responders and members of the community have easier access to appropriate facility chemical hazard information [emphasis added], which can significantly improve emergency preparedness and their understanding of how the facility is addressing potential risks.[13]

EPA does have a substantial interest in improving emergency preparedness. The agency also has a substantial interest in ensuring that first responders and members of the community have a better understanding of how a facility is addressing potential risks so they can advocate improvements and/or make a more informed decision on whether to remain in the community. However, there is no support for the underlying premise that emergency preparedness and the understanding of how the facility is addressing potential risks would be significantly improved if both first responders and members of the community had easier access to the RMP § 68.42 Data on one incident that occurred approximately 90 days earlier. In other words, the regulation does not directly and materially advance the interest

[13] 82 Fed. Reg. at 4596.

identified by the agency.

Other provisions of the RMP Regulation far more effectively address coordination between the facility and first responders. RMP § 68.42 Data provides necessarily incomplete historical information about an incident that the regulated entity immediately would have reported on, in far greater detail, to federal and state EPA, the Local Emergency Planning Commission, and the local fire department pursuant to EPCRA and CERCLA three months earlier.[14] Those agencies are in a better position to assess the need for administrative, operational, or process changes.

As currently written, the rule requires a public meeting at which owner/operators would be forced to disclose any "relevant chemical hazard communication" in connection with a reportable chemical release, an impossibly broad standard that will likely lead owner/operator representatives to provide more

[14] First responders and members of the community would have already been provided with or have access to the relevant facility chemical hazard information for most hazardous chemicals pursuant to other regulatory schemes. EPCRA and CERCLA impose extensive requirements for information sharing, emergency response preparation and coordination activities, and chemical release reporting. Owners/operators must provide safety data sheets, chemical inventory levels and chemical storage information for all hazardous chemicals present in excess of meaningful thresholds to the state and local emergency response commissions and the local fire department per §§ 311 and 312 of EPCRA. Each emergency response plan, safety data sheet, chemical inventory form, toxic chemical release form, and follow-up emergency notice is made available to the public. First responders and members of the community also have access to the filed RMP plan, which would contain each covered facility's five-year accident history. The RMP regulations contain extensive provisions that address EPA's interest in improving emergency preparedness; EPA does not have a separate (independent) interest in providing first responders and members of the community with a better understanding of how the affected facility is addressing potential risks. In any event, the first responders and members of the community have access to the filed RMP, which provides far more detail on these issues than would be contained in the Subsection 68.42 (b) data from a release report. Furthermore, the details of the event in question would be included in the RMP within six months of the event.

information than necessary and could inspire them to mistakenly offer confidential information in oral responses. The regulation is not sufficiently tailored to the asserted interest and not tailored so as to be no more extensive than is necessary to serve that interest.

EPA failed to consider or adopt alternative approaches to advancing its substantial interests that would be significantly less burdensome on owner/operators' speech rights, and not ignore the owner's/operator's First Amendment rights. If, as EPA asserted, the objective of the public meeting was simply to provide easier access to this data, EPA could have mandated submission of the data in written form to EPA or another government agency in time to make it available online or through a Freedom of Information Act request within 90 days of the incident. Or, rather than impose the burden on the owner/operator to hold a public meeting, EPA itself could sponsor a public meeting and invite the owner/operator of the facility that experienced the chemical release to participate on a voluntary basis.

Rather than pursue or even consider these alternatives, EPA adopted a rule that creates a new and unprecedented discovery mechanism for agency enforcement actions and citizen suits, and further perpetuates the policy of the Obama Administration to subject owners/operators of facilities that received a citation or

notice of violation to "regulation by shaming" [15] before any final determination of whether the law has been violated. What makes this situation even more egregious is that the required meeting is likely to be held before any citation or notice of violation has been issued or even in the absence of a pending or planned enforcement action.

VI. REGULATION BY HUMILIATION

In addition to otherwise running afoul of the First, Fourth, and Fifth Amendments, § 68.42(b) violates the recognized administrative-law and Fifth Amendment due-process principle that regulation by humiliation is inappropriate, at least in the absence of a final order that the law has been violated in some egregious manner. The National Labor Relations Board (NLRB) and reviewing courts have addressed this principle in past cases involving alleged unfair labor practices in violation of the National Labor Relations Act. For example, the U.S. Court of Appeals for the D.C. Circuit held in *International Union of Electrical, Radio & Machine Workers v. NLRB*, 383 F.2d 230 (D.C. Cir. 1967), that an order compelling an employer to read a notice of employee rights or the contents of a cease-and-desist order against the employer to a meeting of employees, with no option to have the notice read by an agent of the NLRB, is inappropriate except in extreme circumstances. The court held:

> The public reading by the employer of the order would … be humiliating and degrading to the employer and undoubtedly would have a lingering

[15] https://www.shrm.org/resourcesandtools/hr-topics/risk-management/pages/osha-david-michaels-enforcement-.aspx.

> effect on future relations between the company and the Union. It could as well have an impact on the atmosphere, not only at the time of the reading, but in the future, for peaceful, fruitful, and effective labor bargaining. It is conceivable that some conduct on the part of an employer or a union might reach such extreme dimensions as to justify the novel and drastic step of requiring the offending party to stand up before the employees and read the Board's notice publicly, but we cannot close our eyes to the reality that such a course would inevitably poison the future relations between company and union and be a source of continuing resentment. The ignominy of a forced public reading and a 'confession of sins' by any employer, any employee, or any union representative makes such a remedy incompatible with the democratic principles of the dignity of man.

The D.C. Circuit reaffirmed that principle in *HTH Corporation v. NLRB*, 823 F.3d 668 (D.C. Cir. 2016). Unlike the meeting requirement imposed on a facility by RMP § 68.210(e), an NLRB order is issued by a quasi-judicial body under established procedural due process and is subject to judicial review. The concerns for the rights of the employer and future labor-management relations recognized in *Electrical, Radio & Machine Workers* are equally applicable to the rights of the owner/operator and its relations with first responders and the members of the surrounding community in the RMP context. As the foregoing makes clear, the First Amendment provides the facility owner/operator with the right to speak (hold or participate in a public meeting) or remain silent (not hold or participate in a public meeting).

CONCLUSION

The Fourth Amendment to the U.S. Constitution protects individuals and entities from being subjected to unreasonable searches. The Fifth Amendment

protects individuals and entities from being compelled to make public statements or testify before an enforcement agency or tribunal, or otherwise be subjected to government-mandated scrutiny without due process, and protects individuals against forced self-incrimination. The requirement imposed on the owner/operator of a covered facility by RMP § 68.210(e) to hold a public meeting to discuss a reportable chemical release, even if limited to the RMP § 68.42 Data and excluding "other relevant chemical hazard information," is incompatible with the Fourth and Fifth Amendments. It creates unauthorized discovery and enforcement tools that go beyond those authorized by Congress, ignores due process, exposes individuals to self-incrimination, creates a scenario where confidential business information will be disclosed, and improperly subjects businesses and individuals to punitive measures (public shaming/humiliation and damage to good will). All of those detrimental consequences may arise in the absence of an enforcement action.

The First Amendment protects against government compulsion of commercial speech. Outside the context of generally recognized and uniformly applicable commercial advertising practices, and possibly comparable activities, the government must demonstrate, before compelling commercial speech over the objection of the speaker, that (1) the asserted governmental interest is substantial; (2) the regulation directly and materially advances that interest; and (3) the regulation is sufficiently tailored so as to be not more extensive than is necessary to serve that interest. The

meeting required by RMP § 68.210(e) does not provide easier access to the RMP § 68.42 Data, which was the stated justification for the public meeting requirement. If that was EPA's objective, there are other ways of providing easier access to that data in a less intrusive manner on the regulated facility. The RMP Regulation includes specific provisions for communicating between and coordinating the efforts of the facility and first responders that are far more effective than a public meeting which, from a legal standpoint, would be limited to a necessarily incomplete report about a single event that occurred just 90 days earlier. Similarly, that necessarily incomplete report would not be helpful in educating the members of the community.

In summary, the requirement imposed on the owner/operator of a covered facility by RMP § 68.210(e) to hold a public meeting to discuss a reportable chemical release, even if limited to the RMP § 68.42 Data and excluding "other relevant chemical hazard information, is incompatible with the First, Fourth and Fifth Amendments to the U.S. Constitution. If this requirement remains in the final RMP Regulation, it should be vigorously challenged in court.

