Accident Prevention
Subcommittee Meeting
Hall of States - Washington, DC
November 5, 1999
8:30 a.m. - 4:30 p.m.

I. OPENING REMARKS - Jim Makris

Jim Makris (U.S. EPA/CEPPO) opened the meeting and facilitated introductions by the Subcommittee members and the public (see attached list of attendees). Mr. Makris noted that Jerry Scannell (National Safety Council) was unable to attend the meeting, and Bob Perry (Center for Chemical Process Safety [CCPS]) would be substituting for Jack Weaver (CCPS) at today's meeting. Next, Mr. Makris introduced Leonard Bailey, who is replacing Jim Meade as the Department of Justice (DOJ) representative on the Subcommittee. Mr. Bailey works within the Terrorism and Violent Crime Section of DOJ.

Since the Subcommittee last met, Public Law (P.L.) 106-40, the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, was signed by the President (explained in more detail below). Mr. Makris noted that the implementation of this particular public law was somewhat different in that Congress has asked for assessments on both issues that will ultimately be submitted to the President for his decision.

Mr. Makris also noted that the Office of Management and Budget (OMB) has taken a leadership role in the process, which will hopefully ensure the project is kept on schedule.

II. OVERVIEW OF P.L. 106-40 - Kathy Jones

Kathy Jones (EPA/CEPPO) presented an overview of the key provisions of P.L. 106-40. According to Ms. Jones, 14,566 risk management plans (RMPs)have been received to date. She contrasted this number with EPA's estimate that 35,000 RMPs would be received. Karen Schneider (EPA/CEPPO) clarified that EPA's estimate was based on the Regulatory Impact Analysis. She added that most EPA Regions felt that EPA's estimate was too high and that the number of RMPs received represents close to full compliance. Most EPA Regions believe that the compliance rate is at least 80 percent, but Region 7 (covering the States Iowa, Kansas, Nebraska, and Missouri) believe that compliance is only about 50 percent. EPA Region 2 provided one example that might explain the disparity between the estimate and the actual number of RMP submittals. EPA Region 2 visited 57 sites that they thought would be covered and determined that the sites actually were not covered by the RMP rule because they had changed the types and/or amount of chemicals used on-site. Ms. Schneider stated that, because states and EPA will be inspecting and auditing facilities in the coming year, EPA will have a better idea of the compliance rate after the next year.

Compliance Discussion

Mr. Makris stated that at a recent conference several facilities had said that they have changed the amount or types of chemicals they store or use on site so that they are not covered by the RMP rule. According to Mr. Makris, Wharton is assisting EPA in determining which facilities did not report and why.

Bert Langley (Georgia Environmental Protection Division) stated that the compliance rate in Georgia is high, mirroring EPA's statistics. There were numerous incompletes and deficiencies in the submissions, and a number of facilities reduced their inventory to avoid the rule's requirements. In addition, there are many facilities that use propane as a backup fuel and are, therefore, no longer covered by the rule. Mr. Langley described one technique of avoiding rule coverage. He said that some facilities, mostly located in residential areas, are buying half-full one-ton cylinders of chlorine, yet paying the same amount as for a full cylinder. The State of Georgia is trying to convince these facilities that compliance is a cheaper and more effective option.

Tim Gablehouse (Jefferson County Local Emergency Planning Committee [LEPC]) stated that, in Colorado, small businesses tend to have a very low level of compliance, while large businesses have a high compliance rate. He added that compliance is especially low in the agricultural sector. Ms. Schneider stated that Region 7's estimate of 50 percent compliance was based on the number of agricultural business in the Region.

RMP Statistics

Ms. Jones provided a list of the top 5 states submitting RMPs: Texas (1,320 RMPs submitted), Illinois (1,027), California (975), Iowa (912), and Kansas (769). Ninety-seven percent of RMPs were submitted electronically and only three percent were submitted on paper. Of the electronic submittals, 87 percent were complete, 10 percent were incomplete, and 3 percent were unprocessed because of damaged diskettes. Of the paper submittals, only 16 percent were complete, 20 percent were incomplete (most of these were certification letter problems), and 64 percent were unprocessed because some data elements were omitted. Ms. Jones concluded from these data that RMP*Submit enabled facilities to submit more complete RMPs due to the system of electronic checks in the program.

The top three industry sectors submitting RMPs were farm supply wholesalers/retailers, water supply and irrigation suppliers, and wastewater treatment facilities. The top four chemicals reported were ammonia, chlorine, flammable mixtures, and propane. Five percent of facilities submitted Level 1 processes, 50 percent submitted Level 2, and 45 percent submitted Level 3. An average of 1.82 processes per RMP were reported, and an average of 1.27 chemicals per process were reported. In the accident history section, 1,151 facilities reported 1,927 accidents. The chemicals most frequently reported in accidents were ammonia, chlorine, propane/flammable mixtures, and hydrogen fluoride.

Mr. Makris stated that there are fewer accidents reported in RMP than in other EPA programs. Jim Belke (EPA/CEPPO) noted that the threshold for reporting accidents in RMP relative to other programs is high. He added that some facilities reported accidents in RMP that were not subject to reporting under the program. Dr. Rosenthal (Chemical Safety and Hazard Investigation Board) stated that the Chemical Safety Board (CSB) database includes incidents that are much more minor than those that must be reported under RMP.

Ms. Jones stated that for the toxic worst-case scenarios section, 13,537 scenarios using 56 of the 77 chemicals were reported. The top four chemicals reported were ammonia, chlorine, sulfur dioxide, and hydrogen fluoride. On the distances to endpoint reported, the range was 53 feet to 255 miles, with a median of 1.6 miles. The quantity released ranged from one to 100 million pounds, with a median of 44,000 pounds. The population affected by a toxic worst-case scenario ranged from 0 to 84 million people affected, with a median of 1,500. Craig Matthiessen (EPA/CEPPO) speculated that some of the outliers are probably errors and that EPA will analyze the data closer.

For flammable worst-case scenarios, facilities submitted 3,110 scenarios using 42 of 63 chemicals involved. The top chemicals reported were propane, flammable mixtures, and hydrogen. In response to Mr. Makris' question about whether this indicates that other chemicals were not used, Mr. Matthiessen explained that a variety of chemicals could be used in a mixture and would not be reported individually. Ms. Jones stated that the distance to endpoint reported in flammable worst-case scenarios ranged from 0.1 to 40 miles, with a median of 0.4 miles. Mr. Matthiessen stated that this is consistent with previous analyses. Ms. Jones stated that the quantity released ranged from one to 343 million pounds, with a median of 108,000 pounds. Finally, the population affected ranged from 0 to 115,000 people, with a median of 17.

For the toxic alternative release scenarios reported, the distance to toxic endpoint ranged from 0.1 to 78 miles, with a median of 0.24 miles. The quantity released ranged from 0 to 5.3 million pounds, with a median of 2,000 pounds. The population affected ranged from 0 to 1.6 million. Mr. Matthiessen explained that EPA expected a shorter distance to toxic endpoint because the distance should take into account mitigation factors.

Ms. Jones stated that EPA was pleased that 84 percent of facilities filled out the optional field naming their LEPC. She stated that more information on RMP submittals is available on the CEPPO website. Mr. Matthiessen added that EPA needs the Subcommittee's input on how to educate facilities to eliminate the outliers in the data and correct other deficiencies. Ms. Jones stated that, in an Electronic Submission Workgroup meeting, it was decided that EPA would not publish an annual report on the data because all the data was to be published on the Internet. However, since some of the data are now being withheld from the public, EPA may consider publishing an annual report in the future.

Next, Ms. Jones provided information on the flammable fuels exemption. Under P.L. 106-40, flammables are not covered when used as a fuel or sold at retail facilities. However, fuel manufacturers and non-retail distributors are covered. In addition, the General Accounting Office (GAO) must provide a report to Congress within two years regarding modifications made to the

National Fire Protection Association's (NFPA's) Code 58 to provide information to emergency responders.

Public Access to OCA Data

Regarding public access to off-site consequence analysis (OCA) data, the law provided for a one-year moratorium on public access to OCA sections of RMPs and other related materials. During this moratorium, the federal government is to complete an assessment and rulemaking to address the future public availability of these OCA materials. If these actions are completed, the Freedom of Information Act (FOIA) exemption will remain; if not complete, the FOIA exemption will be lifted. Ms. Jones clarified that the materials restricted by this law include sections 2 through 5 of the RMP (worst-case release scenarios and alternative release scenarios), corresponding portions of the RMP database, and any statewide or national rankings of stationary sources derived from the information. Ms. Jones also explained that the term "covered person" under the law refers to Federal officers, employees, and contractors; State and local officers, employees, and contractors; and qualified researchers.

In addition, the law requires that the public be provided OCA data without site identification. In addition, the law does not prohibit covered persons from discussing the data, as long as the data are not replicated. Furthermore, if a facility discloses the data, the restrictions on the covered person are lifted.

Public Meeting/Certification Letter

Ms. Jones explained that the law mandates that facilities that were required to submit an RMP for a Program 2 or Program 3 process, must announce and hold a public meeting by February 1, 2000, to discuss their RMP, including a summary of their OCA. If a facility meets the applicable definition of "small business stationary source," they may opt to publicly post a summary of their OCA information. In either case, facilities must certify to the FBI by June 5, 2000, that the meeting has been held or the summary has been posted. Furthermore, facilities that make their OCA data available to the public without restriction, are required to notify EPA of such actions. EPA must then provide a list of those facilities to the public.

Ms. Schneider noted that, to date, 16 notices have been received by EPA from facilities that have disclosed their OCA data without restriction. Ms. Schneider asked for the Subcommittee's input on how to make this list of facilities available to the public as required by law.

Dr. Rosenthal stated that EPA should ask each facility that has disclosed its data for its opinion, because some facilities may actually want EPA to post their OCA data. If facilities do not reply to the inquiry, then EPA should post their names with instruction on how to obtain the data. Dr. Rosenthal also suggested as a possibility that the information not be provided via the RMP*Info database, but rather through paper copies.

Mr. Gablehouse questioned whether it would be possible to asterisk those facilities that have disclosed their OCA data within RMP*Info. Ms. Schneider noted that it is technically possible,

but not very easy, especially for a small number of facilities. Ms. Schneider also commented that it may be easier for users to scan a consolidated list of companies that have disclosed their data, rather than search the entire database for asterisks. Mr. Gablehouse agreed with Ms. Schneider and suggested the possibility of including a "hot button" within RMP*Info that directs users to another page in the database that provides the list of relevant companies. Ms. Warren suggested that the format to identify facilities that have disclosed their data should be very obvious to clearly inform the public that such a list exists. As a note, Mr. Makris stated that he suspects that there are actually many more facilities that are disclosing their data than have provided notification to EPA.

Gene Steadman (Celanese) expressed concern regarding the very common public perception that a lot of the data are not available to the public. Mr. Steadman stated that, to the contrary, most of the data that might be needed by the public are readily available. Mr. Makris noted that Mr. Steadman identified the primary problem: what constitutes "available to the public?" Mr. Makris stated that EPA will continue to struggle with this issue in hopes of getting closer to a solution. Ms. Jones clarified that under the law, worst-case scenarios and alternative release scenarios are treated in the same manner.

Next, Ms. Schneider addressed the requirements of public meetings and the submission of a certification letter to the FBI. She asked the Subcommittee for suggestions on how the public could be notified that facilities have held the required meetings. Mr. Gablehouse suggested that EPA publish a list of facilities sorted by facility ID number and listing the dates on which they held meetings and submitted certification letters. Dr. Rosenthal suggested that EPA also publish a list of facilities that have not held their public meetings. Nancy Ketcham-Colwill (EPA/OGC) clarified that facilities are exempt from the meeting requirements only if they have solely Level 1 processes at their facility. In response to Mr. Gablehouse's question about who enforces meeting noncompliance, Ms. Ketcham-Colwill explained that EPA could get a court order to force a facility to hold the public meeting or post their RMP information. Mr. Makris stated that some facilities may be intimidated because of the FBI involvement in the process. Therefore, industries are more likely to hold the public meetings and submit certification letters. Mr. Langley stated that the implementing states do not care about meetings and reporting requirements. They would prefer that EPA maintain a list of facilities that are not complying with the requirements.

Mr. Makris stated that EPA and FBI have been working well together. Ms. Jones stated that DOJ will perform a site security assessment and issue a preliminary report in one year and a full report in three years. This assessment will indicate to what extent the CAA 112(r) requirements have been effective in reducing releases due to criminal activity. According to Ms. Jones, the report will also comment on site and transportation security issues. In response to a question from Art Burk (E.I. DuPont De Nemours & Co. Inc.) about who will head this assessment, Mr. Bailey stated that DOJ has not yet assigned someone to lead the assessment.

Ms. Jones stated that the agenda of the meeting was designed to obtain feedback from the Subcommittee. She asked the Subcommittee whether the RMP Implementation Workgroup should be tasked with work that needs to be accomplished under this new legislation. Ms. Jones said that it would be beneficial to create a list of tasks that could be passed on to a Workgroup for

implementation.

Mr. Langley expressed concern about the exemption for information collected under state laws. He said that all implementing states must have an information collection law in place, and hey could therefore use guidance on this exemption from EPA and/or DOJ. He provided the example that all information collected under Georgia state law is considered public information. Ms. Ketcham-Colwill stated that EPA can review this exemption by having EPA general counsel meet with the Georgia Attorney General. She clarified that the law says that states have the discretion to decide whether to release information to the public. It does not authorize federal agencies to release information to the public. Mr. Makris also emphasized that it is up to individual states to decide how to disseminate this information. Mr. Langley stated that his fallback position is to require all information to be physically submitted to the state.

A public commenter suggested that EPA perform a balancing test when performing the site security assessment. The commenter emphasized that EPA has not done a sufficient evaluation of the benefits and incentives arising from public access to information. Mr. Makris stated that the Subcommittee would focus on this issue in the afternoon.

III. FLAMMABLE FUELS - Jim Belke

Update on Fuels Rule

Mr. Belke stated that P.L. 106-40 prohibits EPA from listing flammable fuels when used or held for retail sale. There is an exception for fuels having acute adverse health effects not resulting from fire or explosion. Mr. Belke noted that this is a theoretical exception because any flammable substance that meets the criteria for toxicity is listed as a toxic.

Mt. Belke also stated that EPA is currently drafting a rule to align the RMP rule with P.L. 106-40 which will go final without public comment. EPA does not typically exclude a public comment period, but the rule will simply codify the statutory requirements. Minimal interpretive language will be included to ensure that lawsuits cannot be filed claiming that the fuels rule goes beyond what is included in the statute. Therefore, the fuels rule will only reiterate much of what was stated by Congress. Mr. Belke also noted that the fuels rule will create an exclusion in place of a "delisting." In other words, if a flammable substance is used as a fuel, then it is not regulated. Because any of the flammable 63 substances on the regulated substances list could be used as a fuel, EPA is drafting a rule, which will state that if the substance is used exclusively as a fuel or held for sale at a retail facility, then it is not covered.

Regarding the exclusion criteria, Mr. Belke stated that EPA will not attempt to interpret the term "fuel use." The Agency is using a strict Webster's dictionary definition, which explains fuel use as the burning of a material for heat or power; OSHA has used the same definition. Regarding the term "retail sale," the definition being used is the statutory definition, which is similar to OSHA's retail exemption. A retail facility is one that derives more than half its income from direct sales to end users. In addition, Mr. Belke explained that there is a new provision for cylinder exchange, which is a practice used by facilities such as Hechingers or Home Depot to exchange propane

cylinders. For purposes of the law, if half of the fuel sold is through the cylinder exchange program, the facility will be considered a retailer.

Mr. Belke stated that one of the effects P.L. 106-40 has on previous EPA actions is that the proposed 67,000 pound fuel exemption will be withdrawn, as P.L. 106-40 reaches further than the EPA proposal. In addition, the administrative stay made in conjunction with the proposal will be allowed to expire on December 21, 1999.

Next, Mr. Belke noted that in conjunction with litigation by the National Petroleum Gas Association (NPGA), the D.C. Circuit Court stay is still in effect. The stay extends to all propane facilities regardless of type and there is no threshold. It is assumed that the NPGA is satisfied with the results of P.L. 106-40 and will, therefore, settle the case out of court.

EPA's NFPA Amendments

Mr. Belke began by stating that the P.L. provisions encourage EPA participation in the consensus standards process. Specifically, the law calls for amendments to NFPA 58 to provide information to emergency responders on the off-site effects of accidental propane releases. The law did not specify how these amendments should be made and who should make them. The NFPA process is such that an LP-Gas Technical Committee controls the content of NFPA code 58. The membership of the Committee includes representatives from the propane industry, government, insurance companies, fire service, and independent experts. EPA was appointed to the Technical Committee in July 1999 and has made proposals to incorporate provisions of the P.L. to code 58.

Mr. Belke noted that the deadline for submitting proposals for the next revision of NFPA 58 was one month prior to the signing of P.L. 106-40. Mr. Belke stated that the code revision process is on a three-year cycle. The previous proposal deadline was July 1, 1999. In general, the Committee meets to debate proposals and then conducts an oral vote. Votes can either be accepted, accepted in principle with modifications, or rejected. The Committee last met in Orlando, Florida, on September 21-23, 1999. The approved proposals will then go through a public comment period from January through March 2000. The Committee will meet again in May 2000 to discuss the public comments, and the code revision will be published in January 2001.

Mr. Belke stated that approximately 150 proposals have been submitted. EPA proposals provide OCA information to responders and incorporate new accident prevention requirements. The accepted EPA proposals, which could change based on the Committee vote or public comment, include the following requirements:

- A written fire safety analysis, which must consider safety of the off-site public in the event of an accidental release and must be reviewed by local emergency response agencies;
- Written operating and maintenance procedures;
- Recurring operator training; and
- Contractor training and supervision.

In addition, EPA proposed that the new requirements be retroactive for existing facilities after the

three-year phase-in period.

The EPA proposals that were rejected involve three-year compliance audits; accident investigation and reporting; and worst-case and alternative release scenario analysis. Other major revisions that were provisionally accepted include:

- Requalifications of cylinders not in commerce;
- Requirements for automatic flow shut-off in the event of a transfer hose separation;
- Remote shut-off valve for tanks on roofs;
- Measures to prevent debris from entering propane systems;
- Thermally activated shut-off valves on liquid transfer lines of large tanks;
- Plans for new large installations to be submitted to local authorities prior to start of installation; and
- Editorial changes and reformatting.

Discussion

Mr. Belke asked for questions on his presentation from the Subcommittee. Dr. Rosenthal commented that it is a noteworthy accomplishment to get peers to adopt the proposed amendments to strengthen the NFPA 58 code. He stated that these amendments place responsibility where it should be, at the local level. Dr. Rosenthal added that, if the amendments are adopted, then the controversy has led to a better solution. Mr. Belke replied that the code is structured to focus on the design and installation of facilities, and it is unconventional to include operation and maintenance requirements in a code. He also reminded the Subcommittee that these requirements are provisional and could be changed before January 2001. Mr. Makris stated that all of this is a work in process and that it can be overturned at any time. According to Mr. Makris, some Congressional members are working with the National Governors Association (NGA) and NFPA to go beyond EPA's requirements; however, there are more hurdles to jump before everything is complete. He asked the Subcommittee whether they support these actions.

Dr. Rosenthal stated that the course of action is very positive and should lead to a better result. Ms. Warren asked what other flammable fuels and what volumes of them are covered in the rule modifications. Mr. Belke replied that propane, butane, and methane are covered. He also clarified that propane is actually a mixture that may contain one or more other fuels. Ms. Warren stated that it is commendable that EPA had input in the standard process and was able to recapture some provisions that were lost in the legislation. She asked whether EPA will use other EPA authorities to enforce the law and ensure that facilities provide more public information. She provided the example of Toxic Substances Control Act (TSCA) giving EPA the authority to require notification by facilities. Ms. Warren suggested that EPA look at TSCA and other EPA laws to provide the public, not just fire departments, with all of the information.

A public commenter, Tony O'Neill (NFPA), stated that EPA has other laws to address the sharing of information. He stated that the federal government should participate in setting national standards and use codes when carrying out public policy. He added that anyone can view public

comments on the NFPA 58 code by visiting www.nfpa.org and clicking on the codes and standards section. According to Mr. O'Neill, the LP-Gas Technical Committee has worked with the Hazardous Materials Committee to look at the capability and efficiency of writing codes. He said that, although the NFPA code is voluntary, all of the states have adopted, updated, and revised it. Therefore, the states have systems in place for regulating propane. The commenter discussed how much further EPA and other organizations should go in educating the public about the dangers of propane and flammable fuels. He stated that accident histories are very different now than they were 25 to 30 years ago because the code has been applied and enforced at the state level, resulting in far fewer accidents.

Dr. Rosenthal stated that application of the NFPA code is not a unique situation as many states have laws that require the adoption of codes; however, some state agencies do not provide adequate resources when requiring this. Mr. Burk declared that the NFPA code is a consensus code and that most EPA substances do not have a code. He emphasized that this NFPA code has no operation parameters, it only deals with installation and design. Mr. Makris added that the industry shoulders the burden of ensuring that the code works.

Status of Received RMPs that Contain Flammable Fuels - Karen Schneider

Ms. Schneider stated that flammable fuels are no longer covered under the law that was signed on August 5, 1999. However, since the RMP submission deadline was June 21, 1999, EPA did receive some RMPs that contain flammable fuels that are no longer covered. Therefore, Ms. Schneider requested the Subcommittee's input on what should be done with those RMPs considering that EPA is not aware of what the facilities would like done. Ms. Schneider explained that EPA proposes to divided RMP submissions containing flammable fuels into two groups. Those RMPs containing only data on a flammable fuel that is no longer covered could be withdrawn at the facilities request. Ms. Schneider clarified that this is different from de-registering an RMP because a withdrawn RMP is deleted from the database as if it was never submitted, where a de-registered RMP is maintained in the database as inactive for 15 years. For those RMPs containing a flammable fuel and another covered chemical, EPA proposes to allow the facility to send an updated RMP to replace the previously submitted RMP or keep their current RMP as is.

Mr. Gablehouse stated that he has had a number of conversations with propane facilities. Conversations with facilities that filed their RMP indicated that a conscious decision was made to file, and they would choose to leave the file as is, if given an option.

Mr. Langley stated that he has received the same message from propane facilities. Many of them spent a great deal of time and money to prepare their RMP and would not opt to alter it. However, Mr. Langley stressed that any message given to flammable fuels facilities must include a statement that reminds them that they may still be required to submit their RMP under state law. Following the discussion, the Subcommittee agreed with the proposal presented by Ms. Schneider.

IV. ACCESS TO OCA DATA

Covered Person - Karen Schneider

Ms. Schneider discussed the terms and conditions surrounding access to OCA data. She read the definition of "covered persons" included in Public Law 106-40:

(aa) an officer or employee of the United States;
(bb) an officer or employee of an agent or contractor of the Federal Government;
(cc) an officer or employee of a State or local government;
(dd) an officer or employee of an agent or contractor of a State or local government;
(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;
(ff) an officer or employee or an agent or contractor of an entity described in (ee); and
(gg) a qualified researcher.

Ms. Schneider then raised the question of how an individual would prove that they are a covered person. She stated that EPA is working on the technical issues of sending electronic information out to covered persons. EPA proposed to ask covered persons to send a letter on their letterhead and include a statement certifying that they are a covered person and will be using the data for official use only. The letter must also include their signature. Ms. Schneider asked the Subcommittee to consider how EPA might mail out information to covered persons. She suggested that they might adopt the confidential business information (CBI) procedures where documents are double packaged with the inside envelope marked that it is only to be opened by the addressee.

Discussion

Dr. Rosenthal commented that it is impossible to be 100 percent certain that any security measure will work when transmitting information electronically or by mail. He suggested that websites that sell goods and ask for credit card numbers online would be useful examples for EPA to follow when setting up security measures for transmitting OCA data over the Internet. Dr. Rosenthal stated that any security measures that meet society's standards for transmitting financial information would be acceptable for transmitting OCA data. Mr. Makris stated that EPA had to struggle to get State Emergency Planning Commissions (SERCs) and LEPCs into the covered persons definition. He emphasized that covered persons need to have a legal affiliation with a government entity and EPA can only assume that the information is going to be handled properly once it is received by covered persons. Mr. Makris said that, as a result, these electronic safeguards mentioned by Dr. Rosenthal may not be analogous. According to Mr. Makris, nothing can guarantee that a covered person (e.g., a volunteer fireman) is not a terrorist or is not connected with terrorists. Mr. Bailey agreed, adding that Department of Justice has concerns about accidental disclosure. He stated that, in criminal law, a criminal charge is driven by whether people willfully commit crimes. The issue is whether covered persons would knowingly give out OCA data or unintentionally let them fall into the wrong hands.

Mr. Langley stated that the CBI procedures are probably sufficient to safeguard OCA data that

are being mailed. However, he added that this is not always certain, because even certified mail receipts are not always signed by the true recipient. He stated that the data will be seen by the public eventually, citing the example of salary information that is obtainable at corporations, even though it is supposedly restricted. Mr. Langley explained that there are many avenues for OCA data to be disseminated because so many people qualify as covered persons. He emphasized that EPA does not have control over the dissemination of OCA data and should not expect to gain control of it. The best the Agency can do is to take precautions to ensure that they only give the date to covered persons.

Mr. Burk asked whether EPA could involve the states in the process of qualifying and verifying covered persons. Mr. Gablehouse replied that not all states know about the existence and location of all of the LEPCs in the state. He suggested that EPA use the method described by Ms. Schneider and that EPA ensure that the requester is using a physical address. He also suggested that EPA call the phone number given by the covered person to verify their existence. In response to a suggestion from Ms. Schneider, the Subcommittee did not think EPA should require a photocopy of government identification because not all covered persons have this ID.

Dr. Rosenthal said that the Agency must use its limited resources to restrict access to information in the best way possible. He reiterated that these types of practices have already been developed and that reasonable codes and standards for dissemination of restricted information already exist. Dr. Rosenthal declared that EPA should simply choose one of these options, an action which would show that they have exercised due diligence in restricting access to the information. Ms. Schneider replied that transmission of financial information is different than transmission of OCA data. She asked for examples of how this type of practice can ensure that someone is a covered person. Mr. Rosenthal replied that encryption and other methods can verify who someone is over e-mail. Ms. Warren stated that websites that gather credit card information should be able to tell EPA how this is accomplished. Mr. Gablehouse clarified that EPA needs a method to verify identities of covered persons, and he added that a phone call is the best way to do this. He admitted that this might be resource intensive depending on the number of requests EPA receives. Mr. Perry pointed out that, when consumers purchase goods over the Internet, the company assumes that the person entering the information is actually the credit card holder and they do not attempt to verify the person's identity. He said that the number of covered persons is large because it includes 30,000 fire departments with 300,000 professional firefighters and up to two million volunteer firefighters. Ms. Warren compared this issue to the one of installing speed bumps to limit access to electronic information. She stated that it is impossible for EPA to create the perfect system and that it is sufficient for EPA to set a reasonable standard and have criminal penalties for willfully misusing the information. Finally, Ms. Warren added that Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and TSCA have representation and verification processes for CBI transactions.

Mr. Burk stated that SERCs should be involved in the process because verification of covered persons is too large a task for one person. Mr. Langley explained that SERCs do not have the resources or legal authority to perform this task. Ms. Ketcham-Colwill explained that the law provides the right for covered persons to get information from EPA. EPA must follow the law and distribute the data to covered persons who request them. She added that EPA has no legal

authority to require that states verify the identity of covered persons.

Mr. Bailey stated that no one can expect EPA to build a foolproof system. EPA must assume that a certain amount of fraud will take place, which is what credit card companies do. He emphasized that Congress has defined covered persons, and it is up to EPA to allow access to information by these people. Mr. Bailey agreed that a telephone call is a good check to verify the identity of a covered person because this represents a good faith effort by EPA.

Mr. Gales stated that the Oklahoma SERC will not ask for verification information from anyone because they already have all the information they need. The Oklahoma SERC has not had any requests for information so far, and they do not expect future requests. Therefore, verification is not an immediate concern, according to Mr. Gales. He stated that EPA and the states must exercise reasonable judgement, adding that reasonable judgement is dictated by the General Counsel in Oklahoma. Mr. Gablehouse stated that he does not expect Colorado to receive many requests from covered persons whom they do not already know. Therefore, verification will not be a major issue for the state.

Dr. Rosenthal suggested that EPA hire a commercial service to handle verification of covered persons. Using this method, EPA could ensure that they are using the standards and methods already in place. Mr. Gales pointed out that civil suits may be a problem and should be more of a concern to EPA than criminal issues.

Definition of Qualified Researcher - Dorothy McManus

Dorothy McManus (EPA/CEPPO) began the discussion by noting that many of the issues that are involved with defining the term "qualified researcher" closely parallel the issues involved in defining the term "covered persons." Ms. McManus stated that EPA is required to develop a system by February 2000 for providing OCA to qualified researchers. To begin defining a qualified researcher, Ms. McManus asked the Subcommittee to consider and provide input on several factors including technical or experiential qualifications that should be required, if any; the need to conduct suitability checks to determine potential security issues, such as whether a qualified researcher applicant has been convicted of a felony; use of the information obtained and how it should be analyzed; the types of persons in stakeholder groups the Subcommittee anticipates will want the information; and the development of a delivery system for transmitting this information. Ms. McManus noted that each of these issues has legal and administrative concerns. She stated that EPA has been working with the EPA OGC, as well as other Federal Agencies, to discuss these issues and suggestions that have been received via e-mail.

For context, Mr. Makris read the section applicable to qualified researches from the law, which states that "Not later than 180 days after the date of enactment of this subparagraph, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification to any qualified researcher, including a qualified researcher from industry or any public interest group."

Discussion

Dr. Rosenthal suggested that a reasonably prudent set of guidelines be established. Mr. Gablehouse stated that, given that Congress did not describe the kind of research that would identify an individual as a qualified researcher, the only definition that seems fitting provides that the individual has some intent to conduct analysis of the data, but does not ask what the analysis is intended to do. He also suggested asking individuals to describe the nature of the research. No value judgement would be put on their use of the data, but this statement would help clarify that they intend to use the data for research purposes.

Mr. Gales stated that the only system EPA should consider is a simple request process that asks the applicant to provide their name, address, and a simple statement of their research purpose. Mr. Gablehouse noted that the format suggested by Mr. Gales may make the qualified researcher request, which if granted allows access to the entire national database, easier to obtain than that of a covered person. Governor Earl stated that, under the Statute, researchers who are granted access to the database cannot make the data available, and given the high value placed on published research, the data may not even be very attractive to researchers. It was clarified that Congress stated that a qualified researcher could receive the data to conduct analyses and publish the results of the analyses, but could not publish the OCA data.

Mr. Perry stated that the Agency should rely on the law to develop the definition of who is qualified. The law states that a covered person should not disclose OCA data in any form, which is a very broad statement and it should be made clear that adhering to this definition will eliminate the use of a lot of research.

Ms. Warren stated that she would like to make clear her intent that no academic qualifications be imposed within the definition of qualified researcher. However, Ms. Warren noted that it would not be inappropriate to ask what data the researcher wants to obtain and what they intend to do with the data. Ms. McManus noted that she has spoken with some union organizations, which have supported the same position regarding exclusions based on non-academic qualifications.

Paula Littles (Paper, Allied-Industrial, Chemical and Energy Workers International Union [PACE]) agreed and stated that the unions she represents will definitely be interested in comparing data from one facility to another to improve operations at facilities nationwide. However, the individuals conducting the research will most likely not have high academic qualifications. Ms. Littles stated that there nothing wrong with asking what the researcher intends to do with the data. If this is questioned, the Agency has done what is required given the Congressional mandate.

Dr. Rosenthal reiterated that the definition of qualified research should not be so broad that it is easier to obtain qualified researcher status than covered person status. Dr. Rosenthal also suggested that the applicant should be required to sign a statement declaring that they agree to not disseminate OCA data.

Ms. Nixon commented that the Agency must be careful when qualifying and quantifying the work done by a researcher, because the applicant may be interested in distributing a small newsletter

that could have major impacts within a community.

Ms. Ketcham-Colwill brought up three issues related to covered persons and qualified researchers. First, she explained that the law requires that covered persons, including qualified researchers, receive a notice describing restrictions on the information. This indicates that the law anticipates a need for educating covered persons on how the OCA data can be used. Second, regarding the definition of qualified researcher, Ms. Ketcham-Colwill explained the constitutional dilemma behind this term. She addressed the Subcommittee's suggestion that EPA let anyone say they are a qualified researcher as long as they describe their research. Ms. Ketcham-Colwill said that, according to Department of Justice, implementation of this suggestion is difficult. Under the First Amendment, the government cannot restrict information that is in the public domain. Congress has defined covered persons (except qualified researchers) as being connected to the government in some way. Because covered persons are connected to the government, they can be subject to restrictions on use of the information. However, once information goes out to the public, the government cannot control its use, due to provisions in the First Amendment. Therefore, when the term "qualified researcher" is defined broadly, these researchers are considered the public and the government cannot dictate use of the information given to the researchers. Finally, Ms. Ketcham-Colwill addressed the issue of whether the government can determine if someone is a qualified researcher based on the nature of their research. She stated that EPA must narrow down the number of people who can be considered qualified researchers. She asked the Subcommittee to determine criteria EPA can use to make this decision. Mr. Rosenthal replied that this would be an arbitrary decision that would probably be challenged in court.

Mr. Bailey stated that Congress approached this issue backwards. That is, instead of examining the information and determining its importance, they have decided that EPA must examine the individual requesting the information.

Mr. Langley stated that anyone could be included under the definition of qualified researcher because no one can be excluded on the basis of age or education. He added, however, that there are not many people who care about the issue, and, therefore, EPA is not likely to be sued. Mr. Langley stated that the people who actually have a stake in the issue are likely to prove that they are qualified researchers.

V. COMMENTS FROM THE PUBLIC

Phil Squair, a representative from the NPGA, commended Mr. Belke for his participation in the NFPA process and noted that this form of participation opens up the process and provides further buy-in over time. Mr. Squair stated that the NPGA has spent $1.5 million on the development of a textbook that provides information on how to respond to propane emergencies. The textbook is geared towards firefighters and includes tactical direction described in very clear language. This textbook is being distributed to every fire company in the country and can also be ordered via the Internet at the website www.propanesafety.com.
John Chelen (UNISON) commended the Subcommittee on its discussions; however, he stated that he hopes that the Subcommittee is not depending on legislation and/or litigation to resolve

these difficult issues. Mr. Chelen stressed the need to give the government the power to not exclude individuals from OCA data without the treat of a lawsuit. He also recommended that the Subcommittee investigate other standards that may currently exist to help them with this difficult process. For example, he cited the National Academy of Science's peer review criteria and the National Security standards. Mr. Chelen stated that it is critical that researchers have the ability to weigh in on this "balancing act," which cannot be accomplished without access to the data.

Regarding the qualified researcher discussion, Mr. Chelen recommended that the Agency ask the questions "Do we have the ability to make a person agree to the restrictions imposed by the law?" and "Is this done based on identity or should a signature be required?" He also asked whether US resident status should be questioned and noted that disclosure of any conflicts of interest should also be considered.

Next, Mr. Chelen stated that the research being conducted should follow scientific principles and publishing of the analysis should be done under a peer review process. He stated that applicants should be required to make an assertion regarding their research purpose and describe their intent to publish the analyses. Mr. Chelen stated that EPA should not look at the validity or correctness of the assertions, assumptions, paradigms, etc., and there should be no prior restraint on the content of analysis (i.e., how the researcher intends to publish their analysis). However, EPA could ask for the provision of a citation at the time of publication. In addition, Mr. Chelen stated that maybe the researcher should be allowed to ask for EPA's assistance in publishing the data, and the researcher should engage with EPA regarding a public debate of their analysis.

Mr. Chelen reiterated that it is crucial to get the information into the hands of the people who need it. He stated that a high standard should be set immediately to get the information into the hands of the research community. In the meantime, a process should be set whereby individuals can file for a looser standard.

Tony O'Neill (NFPA) presented two concerns to the Subcommittee. First, he asked whether there would be efforts to use the scientific method to bring uniformity to the data and attempt to eliminate outliers. Second, he expressed concerns over where chemicals are being placed as facilities reduce their storage quantities to be under the RMP reporting thresholds. He suggested that EPA analyze the safety implications of more frequent trips that are incurred when cylinders are used at only half capacity.

In response to Mr. O'Neill's first question, Mr. Makris said that most of the data are reasonably close to what EPA expected. He added that EPA has an obligation to review the list of chemicals; however, they do not expect to revise the list and thresholds this year as was previously expected, but to examine the RMP data received, and then make revisions. Mr. Makris stated that EPA is receiving input from Wharton and other sources on how to improve their data collection methods.

VI. ASSESSMENTS

Risks Assessment - Leonard Bailey

Mr. Bailey described DOJ's efforts to build a credible risk assessment. He said that DOJ is gathering domestic and international data for the assessment. Two surprising factors are that there is no central repository for any of these data, and there are no law enforcement data on attacks on chemical plants. He listed clarifications about DOJ's risk assessment:

- The assessment does not suggest that there is no benefit to the data. This is an interesting government issue, and it will be up to senior policy makers to make an informed decision on it.
- The assessment does not assume that no one should have access to OCA data. It simply attempts to determine the incremental risks associated with increased availability of data.
- The assessment attempts to determine if there is an increased danger of a chemical plant being used as a weapon of mass destruction and whether OCA data make this more likely.
- The assessment attempts to determine if OCA data would be useful to hostile agents who want access to infrastructure information.

Mr. Bailey stated that he believes the process needs a balance between the threats and benefits of providing information to the public.

Dr. Rosenthal stated that the FBI said they did not believe OCA data affected local threats to chemical plants. He asked whether there is any information available on international terrorist incidents. Mr. Bailey replied that the assessment will look at domestic and international risks. Mr. Makris clarified that the FBI expressed concern over local threats such as vandalism and disgruntled employees; however, their concerns now focus on the Internet surfer who might not otherwise have access to this information. Mr. Bailey stated that he does not know of any incidents where foreign forces have attacked a domestic chemical facility. Dr. Rosenthal concluded that there are no data points.

Mr. Langley said that the initial study did not include a baseline; therefore, it would be misleading to show that releasing RMP information increases risk by any amount. He added that the assessment should balance the risks and benefits and use the same bases, parameters, and data for comparison purposes.

Ms. Warren asked how the study addresses whether a chemical plant could be a weapon of mass destruction. Mr. Bailey replied that there is difficulty in quantifying any of the risks. However,

they can examine emerging trends, such as increased interest in these types of crimes and increased Internet usage to commit crimes or gather information on the subject. Mr. Bailey emphasized that prevention is the main concern and that a lot of speculation is involved. Ms. Warren stated that just because information is on the Internet does not mean it will cause people to commit crimes. She suggested that the assessment examine the quality of the information on the Internet and whether it can actually be used for terrorism. She stated, and Mr. Bailey agreed, that just because information is accessible on the Internet does not mean that it is useable.

Mr. Perry commented on local issues and stated that, if the assessment is examining international terrorists or Timothy McVeigh-style terrorists, chemical plants are not the issue. These terrorists will target large public places, such as Grand Central Station in New York or Union Station in Washington, DC. He concluded that the definition of risk should be broadened to include more than chemical plants. Mr. Bailey replied that a plume from a chemical plant can be considered a weapon of mass destruction. Mr. Makris added that terrorists are becoming more sophisticated and might think to combine the effects of a bomb with a chemical plant plume to cause more impact. He said there is a tendency to think that terrorists are not as comfortable with other chemicals or biological weapons that have not traditionally been used for terrorism. Mr. Makris stated that one benefit that might result from the public having access to RMP information is increased security at chemical plants. This benefit was not included in previous analyses. Mr. Perry stated that the average terrorist may be discouraged by RMP data because it is not in a form that is attractive to them. Mr. Rosenthal spoke about public perception of these threats and how it must be dealt with as a public policy issue. He said that the President must consider that reality of these threats and how the public feels about them. The decision to deal with these risks may be incongruous with the facts; however it would not be the first time this has happened. Mr. Burk said that people have thought of targeting chemical plants and provided the example of local terrorists targeting a chemical plant in Texas.

Ms. Warren stated that risks are always there regardless of whether the public has access to RMP information. She said that facilities will not react by increasing security if the information is not made public. Therefore, Ms.Warren concluded that letting this mechanism work may not be effective. Rather, EPA may need regulations in place to ensure that security is increased. Mr. Gablehouse agreed, saying that there is a strong need for increased security at the local level even if there is no access to information by the public.

Mr. Makris offered Mr. Bailey that, to the extent Federal Advisory Committee Act (FACA) input is desired by DOJ, it is available for any purpose they may want, as the FACA represents many constituencies.

Mr. Bailey clarified that the law provides paper copies of OCA data to the public after the 1-year moratorium, so the data will not be taken completely out of the public realm. The important issue is how far above and beyond making the information available via hard copy should the Agency go to ensure public availability. Dr. Rosenthal reiterated that it is important not to dismiss the fact that the information is available via hardcopy.

Site Security Alert - Vanessa Rodriguez

Vanessa Rodriguez (EPA/CEPPO) began the site security alert discussion by distributing a draft document entitled "Chemical Accident Prevention: Site Security." As background, Ms. Rodriguez explained that EPA committed to developing this alert as a result of concerns expressed during the EPA and FBI process of working on the law. The purpose of the document is to highlight security issues that small and large businesses need to be concerned about. The participants in developing the alert included CMA, API, the Synthetic/Organic Association, ARW, and chemical distributors. Ms. Rodriguez explained that the alert begins with a description of the problem and purpose of the document, followed by examples illustrating the need to examine security measures at a facility, especially those handling highly hazardous substances, to guard against criminal acts, particularly vandalism. Ms. Rodriguez asked for the Subcommittee's assistance in providing more dramatic examples that illustrate the problem and resulting concern. Next, Ms. Rodriguez explained that the alert identifies the areas of concern, including physical security, information system security, and personnel security. Ms. Rodriguez stated that the most important section of the alert is the "Information Sources," which provides several websites that can be referenced for additional security information. EPA wanted to ensure that other sources that implement security measures were included in the alert.

In conclusion, Ms. Rodriguez stated that the Agency hopes to finalize the alert by the end of November 1999 and welcomes any feedback provided by the Subcommittee. Additional comments not provided at the meeting, can be provided to Ms. Rodriguez via an e-mail to Karen Schneider at schneider.karen@epa.gov.

Discussion

Mr. Gablehouse stated it may be beneficial to include more information regarding the general duty obligations within the alert. Mr. Makris stated that plants have a general duty to operate safely; much of the basis for this requirement is what industry has already implemented as "industry standards." Mr. Makris stated that a fair foundation for general duty is being more fully examined. Dr. Rosenthal stated that general duty is going to escalate into an obligation on industry.

Benefits Assessment - John Ferris

John Ferris (EPA/CEPPO) described the background behind the benefits assessment. He stated that by August 4, 2000, the President must sign regulations allowing public access to paper copies of OCA data. EPA has until August 4, 2000, to meet the requirements for benefits and risk assessments. According to Mr. Ferris, both are public safety issues that involve terrorism and knowledge of risks. He reminded the committee of the handout he sent "Assessment of the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases," and posed the question of how the President should balance public safety issues. He presented lists of questions to the Subcommittee for consideration:

1) How do we arrive at the number of paper copies accessible to the public?

2) What are the options for "other public disclosure... as appropriate" that we should be

considering? What are the pro's and con's associated with each option?

3) To what extent should we allow state and local covered persons to distribute OCA data to the public? If so, in what manner?

4) Is there a current read-only technology to allow reading room access?

He asked the Subcommittee if EPA answers all the questions, have they completed the assessment required by law and, is EPA using the right logic when asking the questions?

Mr. Gablehouse said that the questions are good and added that the public should have the right to worst-case OCA data because they live in the area and could potentially be impacted by chemical plants. He emphasized that any limitation on the numbers of pages applied to restrict access would be arbitrary and, therefore, should not be done. The number of pages designated should be reasonably convenient and should be larger for those areas where impacts could cross state boundaries. Mr. Gablehouse suggested that EPA consider qualified researcher and covered persons issues and whether a page limitation would cover everyone or just those who live outside of the community? He recommended that EPA do the following when determining criteria for inquiries: examine the number of subsidiaries and the number of facilities in the same sector (using NAICS codes). He said the primary consideration should be geographic and the secondary consideration the kinds of facilities and types of risks. Mr. Langley said that, since most RMPs are about ten pages in length, EPA should specify a limitation of 100 pages, which would be about ten facilities. However, people in the local area should be able to obtain all the information for their locality, regardless of the number of pages; only information provided in response to requests from outside the local areas should be limited.

Mr. Burk recommended that EPA include the following factors in the base case when considering how much the availability of information will decrease risks: most risk reduction is from the reduction features of the rule and there are full disclosure aspects included in PL 106-40. He described the base case as being full disclosure versus disclosure restricted by law. Mr. Ferris said that OCA data have been available for contingency plans for several years. Therefore, EPA should also examine the past availability of data versus current availability of information. Mr. Gablehouse expressed concern that EPA is examining incremental incentives when the statute mandates that EPA look at all of the incentives that exist. He stated that EPA's assessment of the incentives to reduce accidents must be performed in the context of Section 112(r) and PL 106-40. He added that some LEPCs do a lot to try to prevent accidents; however, many do nothing. Mr. Ferris clarified that, although some LEPCs have analyzed all of the OCA data, others have not, and EPA must recognize that few LEPCs have done what RMP requires. Mr. Gablehouse replied that the point of the statute is public availability of information and whether planners have access to information is a different issue, which is not addressed by the statute. He added that there is no baseline Emergency Planning and Community Right-to-Know Act (EPCRA) case for EPA to use in their analysis.
Mr. Burk stated that the study should not measure the benefits of LEPCs obtaining information if they already have it. If LEPCs already have the information, then the increment that EPA should be examining is public availability of information. Mr. Gablehouse replied that not all LEPCs

have the means or resources to manage, nor distribute, the information. He added that, according to the statute, the base case is public access to information. Mr. Burk said that many parties are trying to ensure that LEPCs have the information they need. Mr. Gales asked about the benefits of public availability of data. He asked to what extent EPA needs to measure this. He questioned whether the benefits go beyond a basic right to information.

Mr. Gablehouse stated that there are incredibly large variations in the assumptions that exist. He stated that one critical component of public access is accountability to local preparedness organizations. If there is no public access, there is also no accountability because no one knows what risks exist.

Mr. Gales stated that his organization still has to deal with the issue of local politics and limited resources. He stated that a lot of good can result from public access, but actual implementation will not be fully achieved until an accident forces it. He stated that he is still trying to determine the benefits that will be derived from all the resources and costs that have gone into this process.

Mr. Ferris asked whether the Subcommittee could identify other institutions, beyond the public, that the Agency should be targeting for these assessments (e.g., insurance companies).

Ms. Warren stated that EPA has historically analyzed the results of various programs, such as those under EPCRA and the Clean Water Act (CWA). For example, the CWA required that companies provide monthly reports, which ultimately caused them to "toe the line." Ms. Warren stated that this is the reaction that typically occurs when information is made available; the ability to have a productive discourse between the public and a facility is removed when the information is not available. Ms. Warren also suggested the rationale for distributing ten copies of the assessment does not make any sense. Mr. Ferris noted that due to time constraints, an expansive quantitative approach is not feasible. Ms. Warren noted that EPA could certainly look at the results of EPCRA and CWA. Mr. Bailey stated that the issue of whether the OCA data are comparable to the EPCRA data must also be considered. Ms. Warren noted that when the EPCRA data were released, companies began providing information on what they were planning to do about it. However, the EPCRA data only provided emissions data, which had to be deciphered by the public. The OCA data provides worst-case scenario data, which requires much less deciphering by the public and can, therefore, be that much more effective in spurring facility change.

In conclusion, Mr. Ferris questioned if the Agency should consider analogies of other reports in the assessment, such as airline on-time records that presumably caused airlines to perform better. Ms. Warren stated that, rather than going to other areas, the Agency should be more selective and speak to agencies such as OSHA regarding their workplace tallies.

VII. NEXT STEPS - Kathy Jones

Recommendations for New/Changed Workgroups under the Subcommittee

With regard to P.L. 106-40, Ms. Jones asked the Subcommittee to consider whether any discreet tasks could be identified that would benefit by having a new Workgroup under the Subcommittee. She stated that, assuming that further issues will arise, the Subcommittee has three options to deal with these issues: (1) convene a conference call or schedule a meeting of the Accident Prevention Subcommittee; (2) create a Workgroup at the time the issues arise; or (3) use the existing RMP Implementation Workgroup to address these issues.

Dr. Rosenthal stated that there are many experts in the fields (from universities or consulting firms) who could be beneficial in the resolution of any issues that may arise. Therefore, he suggested retaining their services when necessary. He also noted that a general expert should be consulted on the question "what does the provision of information do to public opinion?" Dr. Rosenthal noted that the Workgroup process is often too slow given the short amount of time available.

Mr. Gablehouse stated that there is value to the existing RMP Implementation Workgroup beyond just addressing these short timetable issues. However, Mr. Langley noted that his impression is that the current Workgroup is tired and many of the members are even busier now that they have to implement the programs. Ms. Jones noted that during the September Implementation Workgroup conference call this same question was posed by Bill Finan (EPA/CEPPO and Chair of the RMP Implementation Workgroup) to which he received an almost unanimous vote not to discontinue the conference calls. Therefore, Ms. Jones stated that one proposal is to continue the monthly conference calls for those interested, and as new issues arise convene a new call or create a subset of the existing Workgroup to address the issue. Mr. Makris noted that to have continuity, some structure is needed. Therefore, he suggested using the Workgroup if needed.

The Subcommittee thanked the existing RMP Implementation Workgroup for its efforts over the past year and granted permission for it to continue the monthly conference calls as necessary. A future topic for a new Workgroup is: Should EPA publish reports on RMP data, what type, etc.?

Mr. Gablehouse volunteered to continue acting as the liaison between the Workgroup and the Subcommittee and noted that any new group established should be composed of representatives from state agencies, both implementing and non-implementing, public interest groups, and first response and emergency planning organizations.

VIII. OTHER ISSUES - Jim Makris

EPA Voluntary Program

Ms. Jones described voluntary programs being instituted by EPA. She said that last year's Subcommittee meeting strengthened EPA's desire to establish voluntary programs to reduce risks and accidents. An update on more activities related to voluntary programs will be provided at the next Subcommittee meeting. She suggested that the Special Activities workgroup might perform some tasks related to voluntary programs. Mr. Rosenthal suggested that EPA work with industry associations on reducing risks through voluntary programs.

Wharton Epidemiologic Study

Dr. Rosenthal described the epidemiologic study being conducted by Wharton for EPA. Initially, it was proposed that the study be descriptive, comparing regions, industries, etc. However, the study has progressed to being epidemiologic. Dr. Rosenthal stated that the data resulting from this study will be extremely helpful to EPA. The study is progressing well. Ms. Schneider announced that the study and other topics will be discussed at a spills conference April 4 through 6, 2000, in St. Louis, where there will be a session on RMP data presented by Wharton.

Mr. Makris brought up the Texas evaluation project, which is in the process of developing agreed-upon metrics. He thanked the Subcommittee for approving the study and industries and agencies for participating. Mr. Makris described the study as trying to show that all parties are making contributions to safety.

IX. COMMENTS FROM THE PUBLIC

One public commenter stated that there is confusion about the benefits of behavior resulting from rule implementation versus behavior resulting from RMP availability. He suggested that EPA keep these separate in the assessment. Another commenter stated that it is important for EPA to analyze who will be using the information when measuring the benefits versus the risks of distributing information. The commenter said that he has performed TRI analyses and the statistics on risk reduction show that this should be a quick and easy calculation, not a detailed assessment. Dr. Rosenthal stated that the CSB report does not conclude that risk reduction was a result of TRI. Ms. Nixon asked who chemical companies were giving out their OCA information to at the public meetings. She asked whether chemical companies are having public meetings or just giving the information to LEPCs. Mr. Burk said that DuPont supports the P.L. 106-40 language that requires public meetings after issuance of reasonable public notice. Reasonable public notice, according to Mr. Burk, is advertisement in the paper of the date, time, and place for the meeting and that it is open to everyone.

CLOSING COMMENTS

Mr. Makris concluded the meeting by saying that the benefits of distributing information electronically and making it available on the Internet are clear. The statistics on RMP submittals show that it is obvious that facilities want to submit information electronically. He thanked the

Subcommittee for their discussion and ideas. Mr. Makris said that the assessments must be complete by August 4, 2000. He told the Subcommittee that if they ever wanted a status update on OMB, DOJ, and EPA's work together, then they can just ask CEPPO.

List of Attendee

Bill Allmond - National Association of Chemical Distributors

Richard Antoff - State of Delaware

Leonard Bailey* - Department of Justice

Stephanie Barrett - ICF Consulting for EPA

Jim Belke - U.S. EPA

Kathleen Bishop - Reynolds Metals

Rick Blum - OMB Watch

Jay Brabson - State of Delaware

Arthur Burk* - E.I. DuPont De Nemours & Co. Inc.

Mark Burtschi - NAM

Ben Chadwick - Booz Allen & Hamilton

John Chelen - UNISON

Una Connolly - NAPA

Tony Earl* - Center for Clean Air Policy

Ashley Ehrhart - Booz Allen & Hamilton

Richard Fairfax* - Occupational Safety and Health Administration

John Ferris - U.S. EPA

Timothy Gablehouse* - Jefferson County LEPC

Larry Gales* - Oklahoma Department of Environmental Quality

Michelle Hawkins - National Governors Association

Pat Hell - Georgia-Pacific

Kevin Hogan - Thompson Publishing

Teresa Hollingsworth - U.S. Air Force

Judy Jacobs - Bureau of National Affairs

Irene Jones - Huntsman/CMA

Kathy Jones - U.S. EPA

Nancy Ketcham-Colwill - U.S. EPA/OGC

Hank Kim - IAFF

Bob Klugiewicz - AIA

Christine Kronk - ICF Consulting for EPA

Dan Kuespert - AcuTech

Bert Langley* - Georgia Environmental Protection Division

Paula Littles* - Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE)

Carole Macko - U.S. EPA

Jim Makris* - U.S. EPA

Sharon Masserant - Chemical Manufacturers Association

Craig Matthiessen - U.S. EPA

Dorothy McManus - U.S. EPA

Pam Nixon* - Kanawha-Putnam Emergency Planning Committee

Nicole Noyd - Booz Allen & Hamilton

Leslie Oif - U.S. EPA

Ellen O'Brien - Department of Justice

Tony O'Neill - National Fire Protection Association

Jesus Peralta - CF Industries

>Bob Perry (for Jack Weaver*) - Center for Chemical Process Safety

Vanessa Rodriguez - U.S. EPA

Irv Rosenthal* - Chemical Safety and Hazard Investigation Board

Karen Schneider - U.S. EPA

Rick Schwietzer - National Welding Supply Association

Jim Solyst - Chemical Manufacturers Association

Bob Smerko - Chlorine Institute

Phil Squair - National Propane Gas Association

Gene Steachuagh - Celanese

David Thompson - National Safety Council

Jackie Warren* - public interest lawyer

Antoinette Wenzel - Sunoco, Inc.

Nancy White - Chemical Manufacturers Association

David Wiley - U.S. EPA

Tishie Woodwell - U.S. Steel

* Indicates Accident Prevention Subcommittee Member