

# FAQ SHEET

## - “MOTIVA” FEDERAL REGISTER NOTICE

### ***Acronyms and Abbreviations Used***

ALJ	-	Administrative Law Judge
HHC	-	Highly Hazardous Chemical
OSHA	-	Occupational Safety and Health Administration
OSHRC	-	Occupational Safety and Health Review Commission
PSM	-	Process Safety Management
TQ	-	Threshold Quantity

### ***Why is the Notice important?***

It addresses the issue of aggregation of inventories of highly hazardous chemicals (HHCs) in determining the threshold quantity (TQ) for a process which is key to determining coverage of a process under the PSM standard. Specifically, it affirms OSHA’s use of the concepts of “interconnection” and “co-location” in determining coverage under the PSM standard.

### ***Why was the Notice issued?***

OSHA issued a citation to Motiva Enterprises LLC alleging that a Motiva distribution terminal that filled tank trucks with liquefied propane supplied by piping originating at PSM-covered storage tanks within an adjacent Motiva oil refinery was part of the covered process even though the terminal piping contained less than the TQ of 10,000 pounds for a flammable and was not a covered process in its own right.

Motiva disputed OSHA’s view that the piping connection was sufficient to make the distribution terminal PSM-covered and argued that OSHA had to show that an incident at the distribution terminal could involve the refinery’s propane storage tanks in a potential release or vice versa.

OSHA lost the case before the Occupational Safety and Health Review Commission: *Motiva Enterprises*, 21 BNA OSHC 1696 (OSHRC No. 02-2160, 2006), although OSHA had won the case at the Administrative Law Judge (ALJ) level. The Review Commission was unable to determine that the cited activities were part of a covered process because, while the PSM standard defines the term “process”, it does not define the terms “on site” and “in one location” used in the Application section:

1910.119 (a) Application. (1) This section applies to the following: (i) A process

which involves a chemical at or above the specified threshold quantities listed in appendix A to this section; (ii) A process which involves a flammable liquid or gas (as defined in § 1910.1200(c) of this part) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more ... .

The Review Commission questioned whether the language of the PSM standard was meant to limit the coverage of the standard to an HHC process that was both “on-site” and “in one location” and vacated the citations. However, recognizing that OSHA is the agency responsible for policymaking under the Occupational Safety and Health Act, the Review Commission left it to the agency to offer an “authoritative interpretation” of the terms. The Notice constitutes OSHA’s official interpretation and explanation of the phrase “on site in one location”.

### ***How does “process” relate to “on site in one location”?***

OSHA determined that there is considerable overlap between the term “on site in one location” and the definition of “process” and intends that the term “process” be read in conjunction with the terms “on site in one location” when evaluating the applicability of the PSM standard and that “process” be the central term used in determining the standard's coverage.

OSHA used these terms to give “highly hazardous chemical” and “process” a rough geographical boundary (“on site”), and within that boundary a functional limit (“in one location”).

### ***What does it take to be a covered process?***

A large facility can have separate processes at different locations within its boundaries. OSHA’s intent is that TQs of HHCs be calculated by individual process or location. Employers need not aggregate all amounts of an HHC in an entire facility to determine whether a TQ is present. Instead, only amounts in a group of vessels that are interconnected, or in vessels that are separate but sufficiently close together that they could be involved in the same release, are to be aggregated.

The important factor is the amount of an HHC in a facility that could be released at one point in time. If the total amount of an HHC in a facility exceeds its TQ but the HHC is used in small quantities around the facility and is not concentrated in one process or in one area, OSHA believes that a catastrophic release of the entire material would be unlikely.

The PSM standard's scope was meant to apply to an area more confined than multiple processes, but more expansive than a single process point, where the process involves inter-connecting vessels or pipes, or vessels in close proximity such that the release of an HHC in one could trigger a chain reaction in the others. Accordingly, OSHA's definition of "process" includes the concepts of "interconnection" and "co-location" and the language:

"any group of vessels which are interconnected or separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process." 29 CFR 1910.119(b).

Thus a "single process" containing a TQ of an HHC includes an interconnected or closely co-located process.

### ***How does OSHA interpret "on site in one location"?***

OSHA interprets this term to mean that the PSM standard applies when a TQ of an HHC exists within contiguous areas under the control of an employer, or group of affiliated employers, in any group of vessels within that area that are interconnected, or in separate vessels that are located in such proximity that the HHC could be involved in a potential catastrophic release.

OSHA has noted that "contiguous" has been found to mean either "nearby" or "in actual contact" in terms of the application of an OSHA standard, as well as "in close proximity" and "neighboring".

The use of "on site in one location" regarding flammables was intended to signal that employers would not need to aggregate all sources of the HHC facility-wide, or those outside the boundaries of the employers' facility.

Although "on site in one location" is included in the subsection on application to flammable liquids and gases and not the subsection on application to listed HHCs, OSHA intends the same principles apply to both types of HHCs in determining PSM coverage of a process.

### ***Is there any special meaning to "on site in one location"?***

OSHA considers that "on site in one location" serves another independent function of excluding coverage where the TQ would be met only if all amounts in interconnected or proximate vessels or pipes were aggregated but some of the amounts needed to meet the TQ are outside the perimeter of the employer's facility. For example, trucks and pipelines outside the boundaries of the employer's property, which may be regulated by

the Department of Transportation, and in any event, are excluded.

***What is the bottom line?***

The interpretation and application of the scope provisions of the PSM standard stays the same. Nothing has changed. The Federal Register Notice reiterated OSHA's current interpretation.

A process is covered under the PSM standard if it contains a TQ of an HHC either in vessels and piping that are interconnected or in vessels and piping that are located close enough such that an incident involving a catastrophic release could occur.

***How can I get more information?***

Consult the Federal Register: June 7, 2007 (Volume 72, Number 109, Pages 31453 - 31457), *Interpretation of OSHA's Standard for Process Safety Management of Highly Hazardous Chemicals - 72:31453-31457.*

Contact Primatech at:

50 Northwoods Blvd.  
Columbus, OH 43235  
Tel 614-841-9800  
Fax 614-841-9805  
[www.primatech.com](http://www.primatech.com)

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