Risk Management Program/Clean Air Act: American Chemistry Council Comments on U.S. Environmental Protection Agency Proposed Revisions

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11/07/2022

The American Chemistry Council ("ACC") submitted October 31st comments to the United States Environmental Protection Agency ("EPA") on its proposed revisions to the Clean Air Act Risk Management Program ("RMP") regulations. See Docket No. EPA-HQ-OLEM-2022-0174.

EPA proposed the revisions to the regulations on August 31st. See 87 Fed Reg. 53556.

Section 112(r) of the Clean Air Act required EPA to publish regulations and guidance for chemical accident prevention for facilities that use certain hazardous substances. These regulations and guidance have been denominated by EPA as the RMP rule.

EPA promulgated the original RMP regulations in 1996. It requires that facilities using extremely hazardous substances develop a RMP which:

- Identifies the potential effects of a chemical accident
- Identifies the steps the facility has taken to prevent an accident
- Details emergency response procedures should an accident occur

A key objective of such requirements is to provide the necessary information to local fire, police, and emergency response personnel so they can prepare for and respond to chemical emergencies.

The RMP rule has been applicable to facilities holding more than a threshold quantity of a regulated substance in a process. A process is defined to include any activity involving a list of regulated substances including:

- Use
- Storage
- Manufacturing
- Handling
- Onsite movement of such substances
- Combination of activities

EPA's proposed revisions have been described by the agency as including:

- Changes in amplifications to the accident prevention program requirements
- Enhancements to the emergency preparedness requirements
- Increased public availability of chemical hazard information

- Changes to certain regulatory definitions or points of clarification

ACC in its comments on the proposed revisions describes itself as including the leading companies engaged in the multibillion-dollar business of chemistry. The organization initially notes:

- A long history of engagement with EPA on the RMP regulations
- Representation of much of the chemical manufacturing capacity in the United States
- Changes made to the RMP could have significant implication for ACC members and ripple effects across the supply chain
- Sound science should be relied upon as the foundation on which modifications are proposed
- Potential cost of any changes should be understood
- An attempt to foresee and minimize unintended consequences should be undertaken

Aspects of the proposed revisions that ACC potentially supports include:

- Use of statutory authority to prevent/mitigate accidental releases of regulated substances
- Field exercises implementation timeframe is reasonable because:
- Sufficient time to gather expert
- Sufficient time to allocate funds
- Sufficient time to dedicate resources to conduct comprehensive exercises
- Support some elements of the proposal to conduct a root cause analysis for a reportable incident

Key concerns outlined in the ACC comments include:

- EPA Has Not Demonstrated a Link Between Natural Hazards and Accidental Releases
- Power Loss: EPA Should Not Require Standby or Backup Power for Air Pollution Control or Detection Equipment
- Stationary Source Siting: EPA Should Remain Consistent with OSHA and Avoid Prescriptive Requirements for Stationary Source Siting
- Hazard Evaluation and PHA Recommendation Information Availability
- EPA Should Not Require Making Rejected Recommendations from Risk Reviews and PHAs Public
- EPA Should Not Adopt Format Requirements for Information Availability
- EPA Should Not Adopt Methods to Justify Declining Recommendations
- Safer Technology and Alternatives Assessment
- EPA Has Provided Insufficient Evidence That IST Would Improve Safety
- EPA Should Continue the Long History of Rejecting IST Requirements
- EPA Lacks Statutory Authority to Adopt an STAA Requirement EPA Has Mischaracterized the Process Safety Performance of Facilities in NAICS Code 325
- The Proposed STAA Provision Would Not Be Cost-Effective
- EPA Should Limit Any STAA Requirement to the Design and Development Phases of New RMP NAICS Code 324 or 325 Processes
- Ambiguities in the Proposed STAA Requirements Would Make Compliance Difficult
- EPA Should Not Adopt the Proposed Practicability Assessment Requirement
- EPA Should Not Develop an STAA Clearinghouse
- The Proposed STAA Applicability Criteria Are Not Appropriate
- A Definition of “Near Miss” is Not Required and Could Cause Confusion
- Third-Party Compliance Audits
- EPA Lacks Statutory Authority to Require Third-Party Audits and Cannot Delegate Any Authority It May Have to a Private Party
- EPA Has Not Shown That Third-Party Auditing Is Necessary
- Third-Party Audits May Not Be as Insightful as Self-Audits and, Therefore, Not as Valuable
- Requiring Justification of Declined Audit Findings May Result in Acceptance of Ill-Advised Recommendations

- Mandatory Public Release of Declined Third-Party Audit Recommendations Could Impermissibly Infringe on a Legal Privilege
- EPA Should Not Set Specific Employee Representation Criteria
- Proposed Modifications and Amplifications to Emergency Response Requirements: These Are Outside the Control of a Facility and Are More Appropriately Placed with Response Agencies
- Information Availability:
- The Proposed Changes Fail to Address Security Concerns and Would Be Contrary to Law
- EPA Should Minimize Duplicative Efforts with EPCRA
- EPA Should Not Require Public Disclosure of Hazard-Related Information
- EPA Should Instead Encourage Local Citizens to Engage with the LEPC
- The Proposed 6-Mile Radius for Information Sharing Is Arbitrary and Inappropriate
- Security Threats Are Likely From Dissemination of This Information

A copy of the ACC comments can be downloaded here.